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FEDERAL REGISTER

Vol. 79 Monday,
No. 91 May 12, 2014

Pages 26829–27158

OFFICE OF THE FEDERAL REGISTER

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 331

9 CFR Part 121

[Docket No. APHIS–2009–0070]

Agricultural Bioterrorism Protection Act of 2002; Biennial Review and Republication of the Select Agent and Toxin List; Amendments to the Select Agent and Toxin Regulations; Technical Amendment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule; technical amendment.

SUMMARY: In a final rule that was published in the **Federal Register** on October 5, 2012, we amended and republished the list of select agents and toxins that have the potential to pose a severe threat to animal or plant health, or to animal or plant products; reorganized the list of select agents and toxins based on the relative potential of each select agent or toxin to be misused to adversely affect human, plant, or animal health; and amended the regulations in order to add definitions and clarify language concerning security, training, biosafety, biocontainment, and incident response. In that final rule we neglected to precisely align all of our regulatory language with that used by the Centers for Disease Control and Prevention (CDC) in their regulations and, in some cases, did not align our language in the Animal and Plant Health Inspection Service (APHIS) regulations concerning plant health and plant products with that concerning animal health and animal products. As APHIS co-administers the select agent regulations with CDC, this document corrects inconsistencies in language between APHIS and CDC regulations. We are also correcting an improper term used in those sections of the regulations associated with identification of a viral strain or subspecies that is excluded from the requirements of the regulations, modifying the terms used when a select toxin is excluded from the regulations, clarifying those parts of the regulations that deal with temporary exemptions granted during periods of agricultural or public health emergencies, and adding language to specify that individuals not approved for access to registered space for activities not related to select agents or toxins (e.g., routine cleaning, maintenance, and repairs) would not have to be continuously escorted by an approved individual so long as those non-approved persons would not be able to gain access to select agents or toxins.

DATES: *Effective Date:* May 12, 2014.

FOR FURTHER INFORMATION CONTACT: Dr. Charles L. Divan, Unit Director, APHIS Agriculture Select Agent Services, APHIS, 4700 River Road Unit 2, Riverdale, MD 20737–1231; (301) 851–3300, option 3.

SUPPLEMENTARY INFORMATION: The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (referred to below as the Bioterrorism Response Act) provides for the regulation of certain biological agents that have the potential to pose a severe threat to both human and animal health, to animal health, to plant health, or to animal and plant products. The Animal and Plant Health Inspection Service (APHIS) has the primary responsibility for implementing the provisions of the Act within the U.S. Department of Agriculture (USDA). Veterinary Services (VS) select agents and toxins are those that have been determined to have the potential to pose a severe threat to animal health or animal products. Plant Protection and Quarantine (PPQ) select agents and toxins are those that have the potential to pose a severe threat to plant health or plant products. Overlap select agents and toxins are those that have been determined to pose a severe threat to both human and animal health or animal products. Overlap select agents are subject to regulation by both APHIS and the Centers for Disease Control and Prevention (CDC), which has the primary responsibility for implementing the provisions of the Act for the Department of Health and Human Services (HHS).

We use the term ''select agents and toxins'' throughout the preamble of this technical amendment. Unless otherwise specified, the term ''select agents and toxins'' will refer to all agents or toxins listed by APHIS. When it is necessary to specify the type of select agent or toxin, we will use the following terms: ''PPQ select agents and toxins'' (for the plant agents and toxins listed in 7 CFR 331.3), ''VS select agents and toxins'' (for the animal agents and toxins listed in 9 CFR 121.3), or ''overlap select agents and toxins'' (for the agents and toxins listed in both 9 CFR 121.4 and 42 CFR 73.4).

On October 5, 2012, we published in the **Federal Register** (77 FR 61056–61081, Docket No. APHIS–2009–0070) a final rule [1] that amended and republished the list of select agents and toxins that have the potential to pose a severe threat to animal or plant health, or to animal or plant products; reorganized the list of select agents and toxins based on the relative potential of each select agent or toxin to be misused to adversely affect human, plant, or animal health; and amended the regulations in order to add definitions and clarify language concerning security, training, biosafety, biocontainment, and incident response. Concurrently, CDC published a final rule amending and republishing the list of select agents that have the potential to pose a severe threat to human health.

APHIS and CDC worked to establish identical language in their respective regulations wherever possible. Within APHIS, we also aimed to maintain consistency between the VS and PPQ select agent regulations. The current action is necessary to correct the discrepancies in language in order to fully harmonize the regulations.

We are also clarifying a term used in the PPQ select agents and toxins regulations in § 331.3(d)(3) and the VS and overlap select agents and toxins regulations in §§ 121.3(d)(3) and 121.4(d)(3), which addresses the circumstances in which a virus strain or agent subspecies is excluded from the requirements set out in the regulations. Specifically, these paragraphs do not

[1] To view the final rule, its preceding proposed rule, and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2009-0070.*

clearly identify those strains of viruses and subspecies of agents that we do not consider to have the potential to pose a severe threat to both human and animal health, to animal health, to plant health, or to animal and plant products. These sections allow the listed virus strains and agent subspecies to be excluded from the requirements of the regulations provided that an entity can verify that the virus or agent in their possession is within the listed strain or subspecies. In this amendment, we are replacing the word ''verify'' with the word ''identify,'' as identification must occur prior to verification of a viral strain or subspecies of agent.

Sections 331.3(e), 121.3(e), and 121.4(e) concern the circumstances under which attenuated strains of select agents or inactive select toxins may be excluded from the requirements of the regulations. In these sections, we are replacing the words ''inactive'' and ''inactivated'' with the phrase ''modified to be less toxic or potent.'' This is necessary in order to cover a broader category of toxins. A select toxin may be modified to be less toxic or potent in such a way that it loses some but not necessarily all functional activity. By comparison, an inactive select toxin is completely non-functional. A written request and supporting scientific information would have to be submitted for toxins that have been modified to be less toxic or potent and a determination of whether to exclude the submitted toxin would be made by the Administrator.

Paragraphs 121.6(e) and (f) involve temporary exemptions to all or part of the regulations concerning overlap select agents and toxins, which may be granted by the Administrator or requested by the HHS Secretary in the event of an agricultural or public health emergency. We are amending the language in order to clarify that entities do not have to request these exemptions, as is the case with the other potential exemptions listed in § 121.6, since the decision regarding whether to issue exemptions is predicated on an independent determination of the existence of such an emergency by the Administrator or HHS Secretary.

Finally, § 331.11(d)(2) and § 121.11(d)(2) require that individuals not approved by the Administrator or the HHS Secretary for access to registered space for activities not related to select agents or toxins (e.g., routine cleaning, maintenance, and repairs) be continuously escorted by an approved individual. We are adding language to clarify that continuous escort is required only if those non-approved persons could potentially gain access to select agents or toxins.

List of Subjects

7 CFR Part 331

Agricultural research, Laboratories, Plant diseases and pests, Reporting and recordkeeping requirements.

9 CFR Part 121

Agricultural research, Animal diseases, Laboratories, Medical research, Reporting and recordkeeping requirements.

Accordingly, we are amending 7 CFR part 331 and 9 CFR part 121 as follows:

TITLE 7—AGRICULTURE

PART 331— POSSESSION, USE, AND TRANSFER OF SELECT AGENTS AND TOXINS

■ 1. The authority citation for part 331 continues to read as follows:

Authority: 7 U.S.C. 8401; 7 CFR 2.22, 2.80, and 371.3.

§ 331.1 [Amended]

■ 2. Section 331.1 is amended as follows:

■ a. In paragraph (1) of the definition of *recombinant nucleic acids,* by removing the words ''(i.e., recombinant nucleic acids)''.

■ b. In the definition of *security barrier,* by removing the words '', animals, or materials''.

■ 3. Section 331.3 is amended as follows:

■ a. In paragraph (d)(3), by removing the word ''verify'' and adding the word ''identify'' in its place.

■ b. By revising paragraph (e) introductory text.

■ c. In paragraph (e)(2), by removing the word ''inactivated'' and adding the word ''modified'' in its place.

The revision reads as follows:

§ 331.3 PPQ select agents and toxins.

* * * * *

(e) An attenuated strain of a select agent or a select toxin modified to be less potent or toxic may be excluded from the requirements of this part based upon a determination by the Administrator that the attenuated strain or modified toxin does not pose a severe threat to plant health or plant products.

* * * * *

§ 331.11 [Amended]

■ 4. Section 331.11 is amended as follows:

■ a. In paragraph (d)(2), by adding the words ''if the potential to access to select agents or toxins exists'' after the words ''approved individual''.

■ b. In paragraph (g), by removing the word ''documents'' and adding the word ''document'' in its place.

§ 331.12 [Amended]

■ 5. In § 331.12, paragraph (a) is amended by adding the words ''(including arthropods)'' after the words ''including any animals''.

§ 331.13 [Amended]

■ 6. In § 331.13, paragraph (a) introductory text is amended by removing both commas.

TITLE 9—ANIMALS AND ANIMAL PRODUCTS

PART 121—POSSESSION, USE, AND TRANSFER OF SELECT AGENTS AND TOXINS

■ 7. The authority citation for part 121 continues to read as follows:

Authority: 7 U.S.C. 8401; 7 CFR 2.22, 2.80, and 371.4.

■ 8. Section 121.3 is amended as follows:

■ a. In paragraph (d)(3), by removing the word ''verify'' and adding the word ''identify'' in its place.

■ b. By revising paragraph (e) introductory text.

■ c. In paragraph (e)(2), by removing the word ''inactivated'' and adding the word ''modified'' in its place.

The revision reads as follows:

§ 121.3 VS select agents and toxins.

* * * * *

(e) An attenuated strain of a select agent or a select toxin modified to be less potent or toxic may be excluded from the requirements of this part based upon a determination by the Administrator that the attenuated strain or modified toxin does not pose a severe threat to animal health or animal products.

* * * * *

■ 9. Section 121.4 is amended as follows:

■ a. In paragraph (d)(3), by removing the word ''verify'' and adding the word ''identify'' in its place.

■ b. By revising paragraph (e) introductory text.

■ c. In paragraph (e)(2) by removing the word ''inactivated'' and adding the word ''modified'' in its place.

■ d. In paragraph (f)(3)(i), first sentence, by removing the second occurrence of the word ''and'' and adding the word ''or'' in its place.

The revision reads as follows:

§ 121.4 Overlap select agents and toxins.

* * * * *

(e) An attenuated strain of a select agent or a select toxin modified to be

less potent or toxic may be excluded from the requirements of this part based upon a determination by the Administrator that the attenuated strain or modified toxin does not pose a severe threat to public health and safety, animal health, or animal products.

* * * * *

§ 121.5 [Amended]

■ 10. In § 121.5, paragraph (a)(3)(i) is amended by removing the words ''and swine'' and adding the words ''or swine'' in their place.

■ 11. Section 121.6 is amended as follows:

■ a. In paragraph (a)(3)(i), by removing the second occurrence of the word ''and'' and adding the word ''or'' in its place.

■ b. By revising paragraphs (e) and (f).

The revisions read as follows:

§ 121.6 Exemptions for overlap select agents and toxins.

* * * * *

(e) If it is necessary to respond to a domestic or foreign agricultural emergency involving an overlap select agent or toxin, the Administrator may exempt an individual or entity from the requirements, in whole or in part, of this part for up to 30 calendar days. The Administrator may extend the exemption once for an additional 30 days.

(f) Upon request of the Secretary of Health and Human Services, the Administrator may exempt an individual or entity from the requirements, in whole or in part, of this part for up to 30 calendar days if the Secretary of Health and Human Services has granted an exemption for a public health emergency involving an overlap select agent or toxin. The Administrator may extend the exemption once for an additional 30 days.

§ 121.9 [Amended]

■ 12. In § 121.9, paragraph (c)(1) is amended by removing the words ''and swine'' and adding the words ''or swine'' in their place.

§ 121.11 [Amended]

■ 13. Section 121.11 is amended as follows:

■ a. In paragraph (c)(2), by adding the words ''(including arthropods)'' after the word ''animals''.

■ b. In paragraph (d)(2), by adding the words ''if the potential to access to select agents or toxins exists'' after the words ''approved individual''.

■ c. In paragraph (g), by removing the word ''Internet'' and adding the words ''National Select Agent Registry'' in its place.

■ 14. Section 121.13 is amended as follows:

■ a. By revising paragraph (a).

■ b. By removing paragraph (b).

■ c. By redesignating paragraphs (c) and (d) as paragraphs (b) and (c), respectively.

■ d. In newly redesignated paragraph (b), by removing the words ''paragraph (b)'' and adding the words ''paragraph (a)'' in their place.

■ e. In newly redesignated paragraph (c), by removing the words ''paragraph (b)'' and adding the words ''paragraph (a)'' in their place.

The revision reads as follows:

§ 121.13 Restricted experiments.

(a) An individual or entity may not conduct, or possess products resulting from, the following experiments unless approved by and conducted in accordance with the conditions prescribed by the Administrator:

(1) Experiments that involve the deliberate transfer of, or selection for, a drug resistance trait to select agents that are not known to acquire the trait naturally, if such acquisition could compromise the control of disease agents in humans, veterinary medicine, or agriculture.

(2) Experiments involving the deliberate formation of synthetic or recombinant DNA containing genes for the biosynthesis of select toxins lethal for vertebrates at an LD[50] <100 ng/kg body weight.

* * * * *

Done in Washington, DC, this 1st day of May 2014.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2014–10741 Filed 5–9–14; 8:45 am]

BILLING CODE 3410–34–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

RIN 3038–AD88

Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations; Correction

AGENCY: Commodity Futures Trading Commission.

ACTION: Correcting amendments.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is correcting final rules published in the **Federal Register** of November 14, 2013 (78 FR 68506). Those rules, 17 CFR Parts 1, 3, 22, 30, and 140, took effect on January 13, 2014. This correction amends Appendix B to 17 CFR 1.20 and Appendix B to 17 CFR 1.26 by removing a phrase from both appendices.

DATES: Effective on May 12, 2014.

FOR FURTHER INFORMATION CONTACT: Parisa Abadi, Attorney-Advisor, 202–418–6620, *pabadi@cftc.gov,* Division of Clearing and Risk, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 14, 2013 (78 FR 68506), the Commission published final rules adopting new regulations and amending existing regulations to require enhanced customer protections, risk management programs, internal monitoring and controls, capital and liquidity standards, customer disclosures, and auditing and examination programs for futures commission merchants (''FCMs''). The final rules also address certain related issues concerning derivatives clearing organizations (''DCOs''), including the requirement that a DCO obtain a written acknowledgment from each depository or money market mutual fund with which the DCO holds or invests customer funds, in the form of a standard template letter set forth in Appendix B to 17 CFR 1.20—Derivatives Clearing Organization Acknowledgment Letter for CFTC Regulation 1.20 Customer Segregated Account, and in Appendix B to 17 CFR 1.26—Derivatives Clearing Organization Acknowledgment Letter for CFTC Regulation 1.26 Customer Segregated Money Market Mutual Fund Account, respectively (each an ''Acknowledgment Letter'').

The sixth full paragraph [1] of the body of the Acknowledgment Letter set forth in Appendix B to 17 CFR 1.20 and the seventh full paragraph of the body of the Acknowledgment Letter set forth in Appendix B to 17 CFR 1.26 address the depository's or money market mutual fund's obligations in the event of the bankruptcy of the DCO account holder. The provisions are intended to relate exclusively to the bankruptcy of the account holder and should not additionally refer to the bankruptcy of

[1] This paragraph, as revised, will become the seventh full paragraph of the body of the Acknowledgment Letter set forth in Appendix B to 17 CFR 1.20, after the format of that Acknowledgment Letter is conformed to the format of the Acknowledgment Letter set forth in Appendix B to 17 CFR 1.26.

''any of our futures commission merchant clearing members.''

To correct this error, the Commission is making a correcting amendment to remove the reference to ''futures commission merchant clearing members'' found in the text of Appendix B to 17 CFR 1.20 and Appendix B to 17 CFR 1.26. The Commission is also adopting conforming changes in grammar, punctuation, and formatting.

List of Subjects in 17 CFR Part 1

Brokers, Commodity futures, Consumer protection, Reporting and recordkeeping requirements.

Accordingly, 17 CFR part 1 is corrected by making the following correcting amendments:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 1a, 2, 5, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6l, 6m, 6n, 6o, 6p, 6r, 6s, 7, 7a–1, 7a–2, 7b, 7b–3, 8, 9, 10a, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24, as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010).

■ 2. Revise Appendix B to § 1.20 to read as follows:

§ 1.20 Futures customer funds to be segregated and separately accounted for.

* * * * *

Appendix B to § 1.20—Derivatives Clearing Organization Acknowledgment Letter for CFTC Regulation 1.20 Customer Segregated Account

[Date]

[Name and Address of Bank or Trust Company]

We refer to the Segregated Account(s) which [Name of Derivatives Clearing Organization] (''we'' or ''our'') have opened or will open with [Name of Bank or Trust Company] (''you'' or ''your'') entitled:

[Name of Derivatives Clearing Organization] Futures Customer Omnibus Account, CFTC Regulation 1.20 Customer Segregated Account under Sections 4d(a) and 4d(b) of the Commodity Exchange Act [and, if applicable, '', Abbreviated as [short title reflected in the depository's electronic system]'']

Account Number(s): [ ]

(collectively, the ''Account(s)'').

You acknowledge that we have opened or will open the above-referenced Account(s) for the purpose of depositing, as applicable, money, securities and other property (collectively the ''Funds'') of customers who trade commodities, options, swaps, and other products, as required by Commodity Futures Trading Commission (''CFTC'') Regulations, including Regulation 1.20, as amended; that the Funds held by you, hereafter deposited in the Account(s) or accruing to the credit of the Account(s), will be separately accounted for and segregated on your books from our own funds and from any other funds or accounts held by us in accordance with the provisions of the Commodity Exchange Act, as amended (the ''Act''), and Part 1 of the CFTC's regulations, as amended; and that the Funds must otherwise be treated in accordance with the provisions of Section 4d of the Act and CFTC regulations thereunder.

Furthermore, you acknowledge and agree that such Funds may not be used by you or by us to secure or guarantee any obligations that we might owe to you, and they may not be used by us to secure or obtain credit from you. You further acknowledge and agree that the Funds in the Account(s) shall not be subject to any right of offset or lien for or on account of any indebtedness, obligations or liabilities we may now or in the future have owing to you. This prohibition does not affect your right to recover funds advanced in the form of cash transfers, lines of credit, repurchase agreements or other similar liquidity arrangements you make in lieu of liquidating non-cash assets held in the Account(s) or in lieu of converting cash held in the Account(s) to cash in a different currency.

You agree to reply promptly and directly to any request for confirmation of account balances or provision of any other information regarding or related to the Account(s) from the director of the Division of Clearing and Risk of the CFTC or the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC, or any successor divisions, or such directors' designees, and this letter constitutes the authorization and direction of the undersigned on our behalf to release the requested information without further notice to or consent from us.

The parties agree that all actions on your part to respond to the above information requests will be made in accordance with, and subject to, such usual and customary authorization verification and authentication policies and procedures as may be employed by you to verify the authority of, and authenticate the identity of, the individual making any such information request, in order to provide for the secure transmission and delivery of the requested information to the appropriate recipient(s).

We will not hold you responsible for acting pursuant to any information request from the director of the Division of Clearing and Risk of the CFTC or the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC, or any successor divisions, or such directors' designees, upon which you have relied after having taken measures in accordance with your applicable policies and procedures to assure that such request was provided to you by an individual authorized to make such a request.

In the event that we become subject to either a voluntary or involuntary petition for relief under the U.S. Bankruptcy Code, we acknowledge that you will have no obligation to release the Funds held in the Account(s), except upon instruction of the Trustee in Bankruptcy or pursuant to the Order of the respective U.S. Bankruptcy Court.

Notwithstanding anything in the foregoing to the contrary, nothing contained herein shall be construed as limiting your right to assert any right of offset or lien on assets that are not Funds maintained in the Account(s), or to impose such charges against us or any proprietary account maintained by us with you. Further, it is understood that amounts represented by checks, drafts or other items shall not be considered to be part of the Account(s) until finally collected. Accordingly, checks, drafts and other items credited to the Account(s) and subsequently dishonored or otherwise returned to you or reversed, for any reason, and any claims relating thereto, including but not limited to claims of alteration or forgery, may be charged back to the Account(s), and we shall be responsible to you as a general endorser of all such items whether or not actually so endorsed.

You may conclusively presume that any withdrawal from the Account(s) and the balances maintained therein are in conformity with the Act and CFTC regulations without any further inquiry, provided that, in the ordinary course of your business as a depository, you have no notice of or actual knowledge of a potential violation by us of any provision of the Act or the CFTC regulations that relates to the segregation of customer funds; and you shall not in any manner not expressly agreed to herein be responsible to us for ensuring compliance by us with such provisions of the Act and CFTC regulations; however, the aforementioned presumption does not affect any obligation you may otherwise have under the Act or CFTC regulations.

You may, and are hereby authorized to, obey the order, judgment, decree or levy of any court of competent jurisdiction or any governmental agency with jurisdiction, which order, judgment, decree or levy relates in whole or in part to the Account(s). In any event, you shall not be liable by reason of any action or omission to act pursuant to any such order, judgment, decree or levy, to us or to any other person, firm, association or corporation even if thereafter any such order, decree, judgment or levy shall be reversed, modified, set aside or vacated.

The terms of this letter agreement shall remain binding upon the parties, their successors and assigns and, for the avoidance of doubt, regardless of a change in the name of either party. This letter agreement supersedes and replaces any prior agreement between the parties in connection with the Account(s), including but not limited to any prior acknowledgment letter agreement, to the extent that such prior agreement is inconsistent with the terms hereof. In the event of any conflict between this letter agreement and any other agreement between the parties in connection with the Account(s), this letter agreement shall govern with respect to matters specific to Section 4d of the Act and the CFTC's regulations thereunder, as amended.

This letter agreement shall be governed by and construed in accordance with the laws

of [Insert governing law] without regard to the principles of choice of law.

Please acknowledge that you agree to abide by the requirements and conditions set forth above by signing and returning to us the enclosed copy of this letter agreement, and that you further agree to provide a copy of this fully executed letter agreement directly to the CFTC (via electronic means in a format and manner determined by the CFTC). We hereby authorize and direct you to provide such copy without further notice to or consent from us, no later than three business days after opening the Account(s) or revising this letter agreement, as applicable.

[Name of Derivatives Clearing Organization]

By:

Print Name:

Title:

ACKNOWLEDGED AND AGREED:

[Name of Bank or Trust Company]

By:

Print Name:

Title:

Contact Information: [Insert phone number and email address]

DATE:

■ 3. Revise Appendix B to § 1.26 to read as follows:

§ 1.26 Deposit of instruments purchased with futures customer funds.

* * * * *

Appendix B to § 1.26—Derivatives Clearing Organization Acknowledgment Letter for CFTC Regulation 1.26 Customer Segregated Money Market Mutual Fund Account

[Date]

[Name and Address of Money Market Mutual Fund]

We propose to invest funds held by [Name of Derivatives Clearing Organization] (''we'' or ''our'') on behalf of customers in shares of [Name of Money Market Mutual Fund] (''you'' or ''your'') under account(s) entitled (or shares issued to):

[Name of Derivatives Clearing Organization] Futures Customer Omnibus Account, CFTC Regulation 1.26 Customer Segregated Money Market Mutual Fund Account under Sections 4d(a) and 4d(b) of the Commodity Exchange Act [and, if applicable, '', Abbreviated as [short title reflected in the depository's electronic system]'']

Account Number(s): [ ]

(collectively, the ''Account(s)'').

You acknowledge that we are holding these funds, including any shares issued and amounts accruing in connection therewith (collectively, the ''Shares''), for the benefit of customers who trade commodities, options, swaps and other products, as required by Commodity Futures Trading Commission (''CFTC'') Regulation 1.26, as amended; that the Shares held by you, hereafter deposited in the Account(s) or accruing to the credit of the Account(s), will be separately accounted for and segregated on your books from our own funds and from any other funds or accounts held by us in accordance with the provisions of the Commodity Exchange Act, as amended (the ''Act''), and Part 1 of the CFTC's regulations, as amended; and that the Shares must otherwise be treated in accordance with the provisions of Section 4d of the Act and CFTC regulations thereunder.

Furthermore, you acknowledge and agree that such Shares may not be used by you or by us to secure or guarantee any obligations that we might owe to you, and they may not be used by us to secure or obtain credit from you. You further acknowledge and agree that the Shares in the Account(s) shall not be subject to any right of offset or lien for or on account of any indebtedness, obligations or liabilities we may now or in the future have owing to you.

You agree to reply promptly and directly to any request for confirmation of account balances or provision of any other information regarding or related to the Account(s) from the director of the Division of Clearing and Risk of the CFTC or the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC, or any successor divisions, or such directors' designees, and this letter constitutes the authorization and direction of the undersigned on our behalf to release the requested information without further notice to or consent from us.

The parties agree that all actions on your part to respond to the above information requests will be made in accordance with, and subject to, such usual and customary authorization verification and authentication policies and procedures as may be employed by you to verify the authority of, and authenticate the identity of, the individual making any such information request, in order to provide for the secure transmission and delivery of the requested information to the appropriate recipient(s).

We will not hold you responsible for acting pursuant to any information request from the director of the Division of Clearing and Risk of the CFTC or the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC, or any successor divisions, or such directors' designees, upon which you have relied after having taken measures in accordance with your applicable policies and procedures to assure that such request was provided to you by an individual authorized to make such a request.

In the event that we become subject to either a voluntary or involuntary petition for relief under the U.S. Bankruptcy Code, we acknowledge that you will have no obligation to release the Shares held in the Account(s), except upon instruction of the Trustee in Bankruptcy or pursuant to the Order of the respective U.S. Bankruptcy Court.

Notwithstanding anything in the foregoing to the contrary, nothing contained herein shall be construed as limiting your right to assert any right of offset or lien on assets that are not Shares maintained in the Account(s), or to impose such charges against us or any proprietary account maintained by us with you. Further, it is understood that amounts represented by checks, drafts or other items shall not be considered to be part of the Account(s) until finally collected. Accordingly, checks, drafts and other items credited to the Account(s) and subsequently dishonored or otherwise returned to you or reversed, for any reason, and any claims relating thereto, including but not limited to claims of alteration or forgery, may be charged back to the Account(s), and we shall be responsible to you as a general endorser of all such items whether or not actually so endorsed.

You may conclusively presume that any withdrawal from the Account(s) and the balances maintained therein are in conformity with the Act and CFTC regulations without any further inquiry, provided that, in the ordinary course of your business as a depository, you have no notice of or actual knowledge of a potential violation by us of any provision of the Act or the CFTC regulations that relates to the segregation of customer funds; and you shall not in any manner not expressly agreed to herein be responsible to us for ensuring compliance by us with such provisions of the Act and CFTC regulations; however, the aforementioned presumption does not affect any obligation you may otherwise have under the Act or CFTC regulations.

You may, and are hereby authorized to, obey the order, judgment, decree or levy of any court of competent jurisdiction or any governmental agency with jurisdiction, which order, judgment, decree or levy relates in whole or in part to the Account(s). In any event, you shall not be liable by reason of any action or omission to act pursuant to any such order, judgment, decree or levy, to us or to any other person, firm, association or corporation even if thereafter any such order, decree, judgment or levy shall be reversed, modified, set aside or vacated.

We are permitted to invest customers' funds in money market mutual funds pursuant to CFTC Regulation 1.25. That rule sets forth the following conditions, among others, with respect to any investment in a money market mutual fund:

(1) The net asset value of the fund must be computed by 9:00 a.m. of the business day following each business day and be made available to us by that time;

(2) The fund must be legally obligated to redeem an interest in the fund and make payment in satisfaction thereof by the close of the business day following the day on which we make a redemption request except as otherwise specified in CFTC Regulation 1.25(c)(5)(ii); and,

(3) The agreement under which we invest customers' funds must not contain any provision that would prevent us from pledging or transferring fund shares.

The terms of this letter agreement shall remain binding upon the parties, their successors and assigns and, for the avoidance of doubt, regardless of a change in the name of either party. This letter agreement supersedes and replaces any prior agreement between the parties in connection with the Account(s), including but not limited to any prior acknowledgment letter agreement, to the extent that such prior agreement is inconsistent with the terms hereof. In the event of any conflict between this letter agreement and any other agreement between the parties in connection with the

Account(s), this letter agreement shall govern with respect to matters specific to Section 4d of the Act and the CFTC's regulations thereunder, as amended.

This letter agreement shall be governed by and construed in accordance with the laws of [Insert governing law] without regard to the principles of choice of law.

Please acknowledge that you agree to abide by the requirements and conditions set forth above by signing and returning to us the enclosed copy of this letter agreement, and that you further agree to provide a copy of this fully executed letter agreement directly to the CFTC (via electronic means in a format and manner determined by the CFTC) in accordance with CFTC Regulation 1.20. We hereby authorize and direct you to provide such copy without further notice to or consent from us, no later than three business days after opening the Account(s) or revising this letter agreement, as applicable.

[Name of Derivatives Clearing Organization]

By:

Print Name:

Title:

ACKNOWLEDGED AND AGREED:

[Name of Money Market Mutual Fund]

By:

Print Name:

Title:

Contact Information: [Insert phone number and email address]

DATE:

Issued in Washington, DC, on May 5, 2014, by the Commission.

Christopher J. Kirkpatrick,

Deputy Secretary of the Commission.

[FR Doc. 2014–10650 Filed 5–9–14; 8:45 am]

BILLING CODE 6351–01–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Part 234

Ukraine Guarantees Issued Under the Support for the Sovereignty, Integrity, Democracy, and Economic Stability of Ukraine Act of 2014—Standard Terms and Conditions

AGENCY: Agency for International Development (USAID).

ACTION: Final rule.

SUMMARY: This regulation prescribes the procedures and standard terms and conditions applicable to loan guarantees to be issued for the benefit of Ukraine pursuant to the Support for the Sovereignty, Integrity, Democracy, and Economic Stability of Ukraine Act of 2014.

DATES: Effective May 9, 2014.

FOR FURTHER INFORMATION CONTACT: D. Bruce McPherson, Office of General Counsel, U.S. Agency for International Development, Washington, DC 20523–6601; tel. 202–712–1611, fax 202–216–3055.

SUPPLEMENTARY INFORMATION: Pursuant to the Support for the Sovereignty, Integrity, Democracy, and Economic Stability of Ukraine Act of 2014 (Pub. L. 113–95), the United States of America, acting through the U.S. Agency for International Development, may issue certain loan guarantees applicable to sums borrowed by Ukraine (the ''Borrower''), not exceeding an aggregate total of U.S. $1 billion in principal amount. Upon issuance, the loan guarantees shall ensure the Borrower's repayment of 100% of principal and interest due under such borrowings and the full faith and credit of the United States of America shall be pledged for the full payment and performance of such guarantee obligations.

This rulemaking document is not subject to rulemaking under 5 U.S.C. 553 or to regulatory review under Executive Order 12866 because it involves a foreign affairs function of the United States. The provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) do not apply.

List of Subjects in 22 CFR Part 234

Foreign aid, Foreign relations, Guaranteed loans, Loan programs—foreign relations.

Authority and Issuance

Accordingly, a new part 234 is added to Title 22, Chapter II, of the Code of Federal Regulations, as follows:

PART 234—UKRAINE LOAN GUARANTEES ISSUED UNDER THE SUPPORT FOR THE SOVEREIGNTY, INTEGRITY, DEMOCRACY, AND ECONOMIC STABILITY OF UKRAINE ACT OF 2014, PUB. L. 113–95—STANDARD TERMS AND CONDITIONS

Sec.

234.1 Purpose.
234.2 Definitions.
234.3 The Guarantee.
234.4 Guarantee eligibility.
234.5 Non-impairment of the Guarantee.
234.6 Transferability of Guarantee; Note Register.
234.7 Fiscal Agent obligations.
234.8 Event of Default; Application for Compensation; payment.
234.9 No acceleration of Eligible Notes.
234.10 Payment to USAID of excess amounts received by a Noteholder.
234.11 Subrogation of USAID.
234.12 Prosecution of claims.
234.13 Change in agreements.
234.14 Arbitration.
234.15 Notice.
234.16 Governing Law.
Appendix A to Part 234—Application for Compensation

Authority: Pub. L. 113–95, 128 Stat. 1088.

§ 234.1 Purpose.

The purpose of the regulations in this part is to prescribe the procedures and standard terms and conditions applicable to loan guarantees issued for the benefit of the Borrower, pursuant to the Support for the Sovereignty, Integrity, Democracy, and Economic Stability of Ukraine Act of 2014 (Pub. L. 113–95). The loan guarantees will be issued as provided herein pursuant to the Loan Guarantee Agreement, dated April 14, 2014, between the United States of America and Ukraine (the ''Loan Guarantee Agreement''). The loan guarantee will apply to sums borrowed during a period beginning on the date that the Loan Guarantee Agreement enters into force and ending thirty days after such date, not exceeding an aggregate total of one billion United States Dollars ($1,000,000,000) in principal amount. The loan guarantees shall ensure the Borrower's repayment of 100% of principal and interest due under such borrowings. The full faith and credit of the United States of America is pledged for the full payment and performance of such guarantee obligations.

§ 234.2 Definitions.

Wherever used in the standard terms and conditions set out in this part:

Applicant means a Noteholder who files an Application for Compensation with USAID, either directly or through the Fiscal Agent acting on behalf of a Noteholder.

Application for Compensation means an executed application in the form of Appendix A to this part which a Noteholder, or the Fiscal Agent on behalf of a Noteholder, files with USAID pursuant to § 234.8.

Borrower means Ukraine.

Business Day means any day other than a day on which banks in New York, NY are closed or authorized to be closed or a day which is observed as a federal holiday in Washington, DC, by the United States Government.

Date of Application means the date on which an Application for Compensation is actually received by USAID pursuant to § 234.15.

Defaulted Payment means, as of any date and in respect of any Eligible Note, any Interest Amount and/or Principal Amount not paid when due.

Eligible Note(s) means [a] Note[s] meeting the eligibility criteria set out in § 234.4.

Fiscal Agency Agreement means the agreement among USAID, the Borrower and the Fiscal Agent pursuant to which the Fiscal Agent agrees to provide fiscal agency and trust services in respect of the Note[s], a copy of which Fiscal

Agency Agreement shall be made available to Noteholders upon request to the Fiscal Agent.

Fiscal Agent means the bank or trust company or its duly appointed successor under the Fiscal Agency Agreement which has been appointed by the Borrower with the consent of USAID to perform certain fiscal agency and trust services for specified Eligible Note[s] pursuant to the terms of the Fiscal Agency Agreement.

Further Guaranteed Payments means the amount of any loss suffered by a Noteholder by reason of the Borrower's failure to comply on a timely basis with any obligation it may have under an Eligible Note to indemnify and hold harmless a Noteholder from taxes or governmental charges or any expense arising out of taxes or any other governmental charges relating to the Eligible Note in the country of the Borrower.

Guarantee means the guarantee of USAID pursuant to this part 234 and the Support for the Sovereignty, Integrity, Democracy, and Economic Stability of Ukraine Act of 2014 (Pub. L. 113–95).

Guarantee Payment Date means a Business Day not more than three (3) Business Days after the related Date of Application.

Interest Amount means for any Eligible Note the amount of interest accrued on the Principal Amount of such Eligible Note at the applicable Interest Rate.

Interest Rate means the interest rate borne by an Eligible Note.

Loss of Investment means, in respect of any Eligible Note, an amount in Dollars equal to the total of the:

(1) Defaulted Payment unpaid as of the Date of Application,

(2) Further Guaranteed Payments unpaid as of the Date of Application, and

(3) Interest accrued and unpaid at the Interest Rate(s) specified in the Eligible Note(s) on the Defaulted Payment and Further Guaranteed Payments, in each case from the date of default with respect to such payment to and including the date on which full payment thereof is made to the Noteholder.

Note[s] means any debt securities issued by the Borrower.

Noteholder means the owner of an Eligible Note who is registered as such on the Note Register.

Note Register means the register of Eligible Notes required to be maintained by the Fiscal Agent.

Person means any legal person, including any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization, or government or any agency or political subdivision thereof.

Principal Amount means the principal amount of the Eligible Notes issued by the Borrower. For purposes of determining the principal amount of the Eligible Notes issued by the Borrower, the principal amount of each Eligible Note shall be the stated principal amount thereof.

USAID means the United States Agency for International Development or its successor.

§ 234.3 The Guarantee.

Subject to the terms and conditions set out in this part, the United States of America, acting through USAID, guarantees to Noteholders the Borrower's repayment of 100 percent of principal and interest due on Eligible Notes. Under this Guarantee, USAID agrees to pay to any Noteholder compensation in Dollars equal to such Noteholder's Loss of Investment under its Eligible Note; provided, however, that no such payment shall be made to any Noteholder for any such loss arising out of fraud or misrepresentation for which such Noteholder is responsible or of which it had knowledge at the time it became such Noteholder. This Guarantee shall apply to each Eligible Note registered on the Note Register.

§ 234.4 Guarantee eligibility.

(a) Eligible Notes only are guaranteed hereunder. Notes in order to achieve Eligible Note status:

(1) Must be signed on behalf of the Borrower, manually or in facsimile, by a duly authorized representative of the Borrower;

(2) Must contain a certificate of authentication manually executed by the Fiscal Agent whose appointment by the Borrower is consented to by USAID in the Fiscal Agency Agreement; and

(3) Shall be approved and authenticated by USAID by either:

(i) The affixing by USAID on the Notes of a guarantee legend incorporating these Standard Terms and Conditions signed on behalf of USAID by either a manual signature or a facsimile signature of an authorized representative of USAID or

(ii) The delivery by USAID to the Fiscal Agent of a guarantee certificate incorporating these Standard Terms and Conditions signed on behalf of USAID by either a manual signature or a facsimile signature of an authorized representative of USAID.

(b) The authorized USAID representatives for purposes of the regulations in this part whose signature(s) shall be binding on USAID shall include the USAID Chief and Deputy Chief Financial Officer; Assistant Administrator and Deputy, Bureau for Economic Growth, Education, and Environment; Director and Deputy Director, Office of Development Credit; and such other individual(s) designated in a certificate executed by an authorized USAID Representative and delivered to the Fiscal Agent. The certificate of authentication of the Fiscal Agent issued pursuant to the Fiscal Agency Agreement shall, when manually executed by the Fiscal Agent, be conclusive evidence binding on USAID that an Eligible Note has been duly executed on behalf of the Borrower and delivered.

§ 234.5 Non-impairment of the Guarantee.

After issuance of a Guarantee, that Guarantee will be an unconditional, full faith and credit obligation of the United States of America, and will not be affected or impaired by any subsequent condition or event. This non-impairment of the guarantee provision shall not, however, be operative with respect to any loss arising out of fraud or misrepresentation for which the claiming Noteholder is responsible or of which it had knowledge at the time it became a Noteholder. Moreover, the Guarantee shall not be affected or impaired by:

(a) Any defect in the authorization, execution, delivery or enforceability of any agreement or other document executed by a Noteholder, USAID, the Fiscal Agent or the Borrower in connection with the transactions contemplated by this Guarantee; or

(b) The suspension or termination of the program pursuant to which USAID is authorized to guarantee the Eligible Notes.

§ 234.6 Transferability of Guarantee; Note Register.

A Noteholder may assign, transfer or pledge an Eligible Note to any Person. Any such assignment, transfer or pledge shall be effective on the date that the name of the new Noteholder is entered on the Note Register. USAID shall be entitled to treat the Persons in whose names the Eligible Notes are registered as the owners thereof for all purposes of this Guarantee and USAID shall not be affected by notice to the contrary.

§ 234.7 Fiscal Agent obligations.

Failure of the Fiscal Agent to perform any of its obligations pursuant to the Fiscal Agency Agreement shall not impair any Noteholder's rights under this Guarantee, but may be the subject of action for damages against the Fiscal

Agent by USAID as a result of such failure or neglect. A Noteholder may appoint the Fiscal Agent to make demand for payment on its behalf under this Guarantee.

§ 234.8 Event of Default; Application for Compensation; payment.

At any time after an Event of Default, as this term is defined in an Eligible Note, any Noteholder hereunder, or the Fiscal Agent on behalf of a Noteholder hereunder, may file with USAID an Application for Compensation in the form provided in Appendix A to this part. USAID shall pay or cause to be paid to any such Applicant any compensation specified in such Application for Compensation that is due to the Applicant pursuant to the Guarantee as a Loss of Investment not later than the Guarantee Payment Date. In the event that USAID receives any other notice of an Event of Default, USAID may pay any compensation that is due to any Noteholder pursuant to a Guarantee, whether or not such Noteholder has filed with USAID an Application for Compensation in respect of such amount.

§ 234.9 No acceleration of Eligible Notes.

Eligible Notes shall not be subject to acceleration, in whole or in part, by USAID, the Noteholder or any other party. USAID shall not have the right to pay any amounts in respect of the Eligible Notes other than in accordance with the original payment terms of such Eligible Notes.

§ 234.10 Payment to USAID of excess amounts received by a Noteholder.

If a Noteholder shall, as a result of USAID paying compensation under this Guarantee, receive an excess payment, it shall refund the excess to USAID.

§ 234.11 Subrogation of USAID.

In the event of payment by USAID to a Noteholder under this Guarantee, USAID shall be subrogated to the extent of such payment to all of the rights of such Noteholder against the Borrower under the related Note.

§ 234.12 Prosecution of claims.

After payment by USAID to an Applicant hereunder, USAID shall have exclusive power to prosecute all claims related to rights to receive payments under the Eligible Notes to which it is thereby subrogated. If a Noteholder continues to have an interest in the outstanding Eligible Notes, such a Noteholder and USAID shall consult with each other with respect to their respective interests in such Eligible Notes and the manner of and responsibility for prosecuting claims.

§ 234.13 Change in agreements.

No Noteholder will consent to any change or waiver of any provision of any document contemplated by this Guarantee without the prior written consent of USAID.

§ 234.14 Arbitration.

Any controversy or claim between USAID and any Noteholder arising out of this Guarantee shall be settled by arbitration to be held in Washington, DC in accordance with the then prevailing rules of the American Arbitration Association, and judgment on the award rendered by the arbitrators may be entered in any court of competent jurisdiction.

§ 234.15 Notice.

Any communication to USAID pursuant to this Guarantee shall be in writing in the English language, shall refer to the Ukraine Loan Guarantee Number inscribed on the Eligible Note and shall be complete on the day it shall be actually received by USAID at the Office of Development Credit, Bureau for Economic Growth, Education and Environment, United States Agency for International Development, Washington, DC 20523–0030. Other addresses may be substituted for the above upon the giving of notice of such substitution to each Noteholder by first class mail at the address set forth in the Note Register.

§ 234.16 Governing Law.

This Guarantee shall be governed by and construed in accordance with the laws of the United States of America governing contracts and commercial transactions of the United States Government.

Appendix A to Part 234—Application for Compensation United States Agency for International Development Washington, DC 20523

Ref: Guarantee dated as of __, 20__:

Gentlemen: You are hereby advised that payment of $__ (consisting of $__ of principal, $__ of interest and $__ in Further Guaranteed Payments, as defined in § 234.2 of the Standard Terms and Conditions of the above-mentioned Guarantee) was due on _____, 20__, on $__ Principal Amount of Notes issued by Ukraine (the ''Borrower'') held by the undersigned. Of such amount $__ was not received on such date and has not been received by the undersigned at the date hereof. In accordance with the terms and provisions of the above-mentioned Guarantee, the undersigned hereby applies, under § 234.8 of said Guarantee, for payment of $__, representing $__, the Principal Amount of the presently outstanding Note(s) of the Borrower held by the undersigned that was due and payable on __ and that remains unpaid, and $__, the Interest Amount on such Note(s) that was due and payable by the Borrower on __ and that remains unpaid, and $__ in Further Guaranteed Payments,[1] plus accrued and unpaid interest thereon from the date of default with respect to such payments to and including the date payment in full is made by you pursuant to said Guarantee, at the rate of __% per annum, being the rate for such interest accrual specified in such Note. Such payment is to be made at [state payment instructions of Noteholder or Fiscal Agent, as applicable].

All capitalized terms herein that are not otherwise defined shall have the meanings assigned to such terms in the Standard Terms and Conditions of the above-mentioned Guarantee.

[Name of Applicant]

By: _____

Name:
Title:
Dated:

Dated: May 7, 2014.

D. Bruce McPherson,

Attorney Advisor, Office of the General Counsel, U.S. Agency for International Development.

[FR Doc. 2014–10830 Filed 5–9–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9650]

RIN 1545–BK67; RIN 1545–BK91

Definitions and Reporting Requirements for Shareholders of Passive Foreign Investment Companies; Insurance Income of a Controlled Foreign Corporation for Taxable Years Beginning After December 31, 1986; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to final and temporary regulations (TD 9650) that were published in the **Federal Register** on Tuesday, December 31, 2013 (78 FR 79602). The regulations provide guidance on determining ownership of a passive foreign investment company (''PFIC'') and on the annual filing requirements for shareholders of PFICs.

DATES: This correction is effective May 12, 2014 and applicable beginning December 31, 2013.

[1] In the event the Application for Compensation relates to Further Guaranteed Payments, such Application must also contain a statement of the nature and circumstances of the related loss.

FOR FURTHER INFORMATION CONTACT: Susan Massey at (202) 317–6934 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations (TD 9650) that are the subject of this correction are under sections 1291, 1298, 6038, and 6046 of the Internal Revenue Code.

Need for Correction

As published, the final and temporary regulations (TD 9650) contain errors that may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

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.** The section heading for § 1.6038–2T is revised to read as follows:

§ 1.6038–2T Information returns required of United States persons with respect to annual accounting periods of certain foreign corporations beginning after December 31, 1962 (temporary).

* * * * *

■ **Par. 3.** Section 1.6046–1 is amended as follows:

■ 1. Paragraphs (a)(2)(i)(*a*) and (*b*) and (c)(1) and (3) are revised.

■ 2. The language ''in value'' is removed wherever it appears in paragraphs (a)(3) *Example 2.*(i), (a)(3) *Example 3.,* and (c)(2).

■ 3. The language ''M'' in the first sentence of paragraphs (a)(3) *Example 2.*(i), (c)(2) *Example 3.*(i), and (c)(2) *Example 5.*(i) is removed and the language ''M Corporation'' added in its place.

■ 4. The language ''liability'' in paragraph (a)(3) *Example 2.* (ii) is removed and the language ''liability for A'' added in its place.

■ 5. The language ''U.S.'' in paragraph (c) introductory text and paragraph (c)(1) introductory text is removed and the language ''United States'' added in its place.

■ 6. Paragraph (l)(2) is revised.

The revisions read as follows:

§ 1.6046–1 Returns as to organizations or reorganizations of foreign corporations and as to acquisitions of their stock.

(a) * * *

(2) * * *

(i) * * *

(*a*) Acquires (whether in one or more transactions) outstanding stock of such corporation which equals, or which when added to any such stock then owned by him equals, 10 percent or more of the total combined voting power of all classes of stock of the foreign corporation entitled to vote or the total value of the stock of the foreign corporation;

(*b*) Acquires (whether in one or more transactions) an additional 10 percent or more of the total combined voting power of all classes of stock of the foreign corporation entitled to vote or the total value of the stock of the foreign corporation; or

* * * * *

(c) *Returns required of United States when liability to file arises after January 1, 1963*—(1) *United States persons required to file.* A return on Form 5471, containing the information required by paragraph (c)(4) of this section, shall be made by each United States person when at any time after January 1, 1963:

(i) Such person acquires (whether in one or more transactions) outstanding stock of such foreign corporation which equals, or which when added to any such stock then owned by him equals, 10 percent or more of the total combined voting power of all classes of stock of the foreign corporation entitled to vote or the total value of the stock of the foreign corporation;

(ii) Such person, having already acquired the interest referred to in paragraph (b) of this section or in paragraph (c)(1)(i) of this section—

(*a*) Acquires (whether in one or more transactions) an additional 10 percent or more of the total combined voting power of all classes of stock of the foreign corporation entitled to vote or the total value of the stock of the foreign corporation;

(*b*) Owns 10 percent or more of the total combined voting power of all classes of stock of the foreign corporation entitled to vote or the total value of the stock of the foreign corporation when such foreign corporation is reorganized (as defined in paragraph (f)); or

(*c*) Disposes of sufficient stock in such foreign corporation to reduce his interest to less than 10 percent of the total combined voting power of all classes of stock of the foreign corporation entitled to vote or the total value of the stock of the foreign corporation; or

(iii) Such person is, at any time after January 1, 1987, treated as a United States shareholder under *section 953(c)* with respect to a foreign corporation.

* * * * *

(3) *Shareholders who become United States persons.* A return on Form 5471, containing the information required by paragraph (c)(4) of this section, shall be made by each person who at any time after January 1, 1963, becomes a United States person while owning 10 percent or more of the total combined voting power of all classes of stock of the foreign corporation entitled to vote or the total value of the stock of the foreign corporation.

* * * * *

(l) * * *

(2) Paragraph (c)(1)(iii) of this section applies to taxable years ending on or after December 31, 2013.

* * * * *

■ **Par. 4.** Section 1.6046–1T is amended by revising paragraph (e)(5) to read as follows:

§ 1.6046–1T Returns as to organizations or reorganizations of foreign corporations and as to acquisitions of their stock (temporary).

* * * * *

(e) * * *

(5) *Persons excepted from furnishing items of information.* Any person required to furnish any item of information under paragraph (b) or (c) of this section with respect to a foreign corporation may, if such item of information is furnished by another person having an equal or greater stock interest (measured in terms of the total combined voting power of all classes of stock of the foreign corporation entitled to vote or the total value of the stock of the foreign corporation) in such foreign corporation, satisfy such requirement by filing a statement with his return on Form 5471 indicating that such liability has been satisfied and identifying the return in which such item of information was included. This paragraph (e)(5) does not apply to persons excepted from filing a return by reason of the provisions of paragraph (e)(4) of this section.

* * * * *

Martin V. Franks,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2014–10856 Filed 5–9–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9665]

RIN 1545–BG12

Tax Treatment of Qualified Retirement Plan Payment of Accident or Health Insurance Premiums

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations clarifying the rules regarding the tax treatment of payments by qualified retirement plans for accident or health insurance. The final regulations set forth the general rule under section 402(a) that amounts held in a qualified plan that are used to pay accident or health insurance premiums are taxable distributions unless described in certain statutory exceptions. The final regulations do not extend this result to arrangements under which amounts are used to pay premiums for disability insurance that replaces retirement plan contributions in the event of a participant's disability. These regulations affect sponsors, administrators, participants, and beneficiaries of qualified retirement plans.

DATES: *Effective Date:* These regulations are effective on May 12, 2014.

Applicability Date: These regulations generally apply for taxable years that begin on or after January 1, 2015. However, taxpayers may elect to apply the regulations to earlier taxable years. See the ''Effective/Applicability Dates'' section in this preamble for additional information regarding the applicability of these regulations.

FOR FURTHER INFORMATION CONTACT: Michael P. Brewer or Lauson C. Green at (202) 317–6700 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 1 under section 402(a) of the Internal Revenue Code (Code), as well as conforming amendments under sections 72, 105, 106, 401, 402(c), 403(a), and 403(b).

Section 104(a)(3) provides, in general, that gross income does not include amounts received through accident or health insurance (or through an arrangement having the effect of accident or health insurance) for personal injuries or sickness. This exclusion does not apply to amounts attributable to (and not in excess of) deductions allowed under section 213 for any prior taxable year, or to other amounts received by an employee to the extent the amounts either are attributable to contributions by the employer that were not includible in the gross income of the employee or are paid by the employer.

Section 105(a) provides that, except as otherwise provided, amounts received by an employee through accident or health insurance for personal injuries or sickness are included in gross income to the extent the amounts (1) are attributable to contributions by the employer that were not includible in the gross income of the employee or (2) are paid by the employer.

Section 105(b) generally provides that, except in the case of amounts attributable to deductions allowed under section 213 for any prior taxable year, gross income does not include amounts referred to in section 105(a) if the amounts are paid, directly or indirectly, to the taxpayer to reimburse the taxpayer for expenses incurred by the taxpayer for the medical care of the taxpayer and his or her spouse or dependents (as defined in section 152, determined without regard to paragraphs (b)(1), (b)(2), and (d)(1)(B) thereof) and any child (as defined in section 152(f)(1)) of the taxpayer who as of the end of the taxable year has not attained age 27.

Section 106(a) provides that, except as otherwise provided, the gross income of an employee does not include employer-provided coverage under an accident or health plan. Section 1.106–1 of the Income Tax Regulations provides that the gross income of an employee does not include contributions that the employer makes to ''an accident or health plan for compensation (through insurance or otherwise) to the employee for personal injuries or sickness incurred'' by the employee or the employee's spouse or dependents.

For purposes of the Code, section 7702B(a) treats a qualified long-term care insurance contract as an accident and health insurance contract, and a plan of an employer providing coverage under a qualified long-term care insurance contract as an accident and health plan with respect to that coverage.

Section 213 generally allows a deduction for expenses paid during the taxable year, not compensated for by insurance or otherwise, for medical care of the taxpayer and the taxpayer's spouse and dependents, to the extent that the expenses exceed 10 percent of the taxpayer's adjusted gross income.[1] Section 213(d)(1) provides that the term ''medical care'' includes amounts paid for insurance covering medical care (including eligible long-term care premiums with respect to qualified long-term care insurance contracts).

Section 401(a) sets forth requirements for a trust forming part of a pension, profit-sharing, or stock bonus plan to be qualified under section 401(a).

Section 401(h) provides that a pension or annuity plan may provide for the payment of benefits for sickness, accident, hospitalization, and medical expenses of retired employees, their spouses and their dependents only if certain enumerated conditions are met. Those conditions include: (1) The aggregate actual contributions for medical benefits (when added to actual contributions for life insurance protection under the plan) may not exceed 25 percent of the total actual contributions to the plan (other than contributions to fund past service credits) after the date on which the account is established; (2) a separate account must be established and maintained for such benefits; (3) the employer's contributions to the separate account must be reasonable and ascertainable; (4) it must be impossible, at any time prior to the satisfaction of all liabilities under the plan to provide such benefits, for any part of the corpus or income of such separate account to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of such benefits; (5) any amount remaining after satisfaction of all liabilities must, under the terms of the plan, be returned to the employer; and (6) special limitations for the accounts of key employees (as defined in section 401(h)) must be satisfied.

Section 402(a) provides, in general, that any amount actually distributed by a qualified plan is taxable under section 72 in the taxable year in which distributed.

Section 72(a) provides that, except as otherwise provided, gross income includes any amount received as an annuity (whether for a period certain or during one or more lives) under an annuity, endowment, or life insurance contract. Sections 72(d) and (e), which apply to any amount received as an annuity and any amount not received as an annuity, respectively, provide rules for determining the portion of any distribution that is not includable in

[1] The 7.5 percent threshold applicable before 2013 continues to apply through 2016 for individuals age 65 and older. See section 213(f).

gross income as a recovery of a participant's investment in the contract (generally the amount of the unrecovered after-tax employee contributions) under a qualified employer retirement plan.

Section 402(l) provides a limited exclusion from gross income for distributions from an eligible retirement plan used to pay health or long-term care insurance premiums of an eligible retired public safety officer to the extent that the aggregate amount of the distributions for the taxable year is not in excess of the qualified health insurance premiums of the retired public safety officer and his or her spouse or dependents. The total amount excluded from gross income pursuant to section 402(l) is limited to $3,000.

Section 1.72–15 provides rules relating to the tax treatment of amounts paid from an employer-established plan to which section 72 applies and which provides for distributions of accident or health benefits. With respect to benefits that are attributable to employer contributions, § 1.72–15(d) provides that any amount received as an accident or health benefit is includible in gross income, except to the extent excludable from gross income under section 105(b) (relating to reimbursements of medical care expenses as defined in section 213(d)).[2] Section 1.72–15(e) provides that the taxability of benefits that are not accident or health benefits is determined under section 72 without regard to any exclusion under section 104 or 105.

Section 1.401–1(b)(1)(i) provides that a plan is not a pension plan within the meaning of section 401(a) if it provides for the payment of benefits not customarily included in a pension plan, such as layoff benefits or benefits for sickness, accident, hospitalization, or medical expenses (except for medical benefits described in section 401(h)).

Section 1.401–1(b)(1)(ii) provides that a profit-sharing plan within the meaning of section 401(a) is primarily a plan of deferred compensation, but that amounts allocated to the account of a participant may be used to provide incidental life or accident or health insurance for the participant and the participant's family. Section 1.401–1(b)(1)(iii) provides that a stock bonus plan is a plan established and maintained by the employer to provide benefits similar to those of a profit-sharing plan.

Rev. Rul. 61–164 (1961–2 CB 99) (see § 601.601(d)(2)(ii)(*b*)) holds that a profit-sharing plan does not violate the incidental benefit rule in § 1.401–1(b)(1)(ii) merely because, in accordance with the plan's terms, each participant's account under the plan is charged with the cost of health insurance for the participant under group hospitalization insurance for the employer's employees, provided that the total amount used for life or accident or health insurance for the employee and the employee's family is incidental. The ruling also holds that the use of profit-sharing plan funds to pay for medical insurance for a participant and his or her beneficiary is a distribution within the meaning of section 402.

Rev. Rul. 73–501 (1973–2 CB 127) (see § 601.601(d)(2)(ii)(*b*)) applies the incidental benefit rule to the purchase of life insurance by a profit-sharing plan. The ruling states that ''[u]nder a qualified profit-sharing plan, the use of trust funds to pay the cost of life, accident, or health insurance for an employee is a distribution within the purview of section 402 of the Code.''

Rev. Rul. 2003–62 (2003–1 CB 1034) holds that amounts distributed from a qualified retirement plan that the distributee elects to have applied to pay health insurance premiums under a cafeteria plan are includible in the distributee's gross income. The ruling also holds that the same conclusion applies if amounts distributed from the plan are applied directly to reimburse medical care expenses incurred by a participant.

Rev. Rul. 2005–55 (2005–2 CB 284) holds that a profit-sharing plan that provides a sub-account that permits distributions only for the purpose of reimbursing the participant for substantiated medical expenses imposes conditions on the entitlement of the participant to amounts held in the sub-account and, as a result of the conditions, does not meet the nonforfeitability requirements of section 411.

Proposed regulations (REG–148393–06) under section 402(a) (proposed regulations) were published by the Treasury Department and the IRS in the **Federal Register** on August 20, 2007 (72 FR 46421). Corrections to the proposed regulations were published in Announcement 2007–98 (2007–2 CB 896). The Treasury Department and the IRS received written comments on the proposed regulations and a public hearing was held on December 6, 2007.

After consideration of the comments received in response to the proposed regulations, these final regulations generally adopt the provisions of the proposed regulations with certain modifications as described under the heading ''Summary of Comments and Explanation of Provisions.''

Summary of Comments and Explanation of Provisions

General Treatment of Accident or Health Insurance

Consistent with the proposed regulations, the final regulations clarify that a payment from a qualified plan for an accident or health insurance premium generally constitutes a distribution under section 402(a) that is taxable to the distributee under section 72 in the taxable year in which the premium is paid. The taxable amount generally equals the amount of the premium charged against the participant's benefits under the plan. If a defined contribution plan pays these premiums from a current year contribution or forfeiture that has not been allocated to a participant's account, then the amount of the premium for each participant will be treated as first being allocated to the participant and then charged against the participant's benefits under the plan. Therefore, the payment of an accident or health plan premium from unallocated contributions or forfeitures also will constitute a distribution to the participant under section 402(a) that is taxable under section 72 in the taxable year in which the premium is paid.

Like the proposed regulations, these regulations provide that a distribution for the payment of the premiums by a qualified plan generally is not excluded from gross income under sections 104, 105, or 106. However, the distribution may constitute a payment for medical care under section 213. Furthermore, to the extent that the payment of premiums for accident or health insurance has been treated as a distribution from a qualified plan, amounts received through the accident or health insurance for personal injuries or sickness are excludable from gross income under section 104(a)(3) and are not treated as distributions from the plan.

The general rule that the payment of an accident and health insurance premium from a qualified plan constitutes a distribution that is taxable under section 402 does not apply if another statutory provision provides for a different result. For example, section 402(l) provides an exclusion from gross income, up to $3,000 annually, for distributions paid directly to an insurer to purchase accident or health insurance or qualified long-term care insurance for an eligible retired public safety officer

[2] Section 1.72–15(d) also refers to benefits excludible under section 105(c) (relating to certain payments unrelated to absence from work) or section 105(d), which was repealed in 1983 (and which related to certain disability payments).

and his or her spouse or dependents. A similar exclusion applies for medical benefits for retired employees provided from an account described in section 401(h).

In accordance with these regulations, as with the proposed regulations, if a payment of a premium for accident or health insurance is treated as a distribution from the trust, then the insurance contract would not be treated as an investment under which the insurer's payments to the trust are treated as a return on that investment. As a result, payments from such a contract that are made to the trust (rather than made to the medical service provider or the participant as reimbursement for covered expenses) are treated as having been made to the participant and then contributed by the participant to the plan.

Special Rule for Disability Insurance Coverage

The preamble to the proposed regulations requested comments on whether there should be limited exceptions to the general rule in the proposed regulations, including whether there should be an exception for a provision that has the effect of a waiver of premium in the case of disability. All of the commenters that addressed the issue of payment of premiums for disability insurance from a plan recommended an exception for disability insurance arrangements that replace retirement plan contributions, describing these arrangements as having the same effect as a waiver of premiums in the case of disability. For example, commenters described an employer's general disability program that not only provides for wage replacement, but also provides for the purchase of insurance to make payments to a qualified plan in the event of a participant's disability that are intended to replace the contributions that would have been made if the participant was not disabled. These commenters requested that the regulations provide that a participant not be currently taxable on the premiums paid by the plan for this type of disability coverage. Similarly, they recommended the participant not be taxed when payments from the disability insurance contract are allocated to the participant's account after the participant becomes disabled. These comments pointed out that the payments would be taxable when benefits are ultimately distributed from the plan.

The Treasury Department and the IRS agree that the purchase of this type of disability coverage by a qualified plan is distinguishable from the purchase of medical insurance by a plan because the functional purpose of the disability insurance coverage is to replace retirement contributions to the plan, instead of providing medical benefits outside of the plan. Accordingly, these final regulations provide an exception for the payment of disability insurance premiums from a qualified plan if the insurance contract provides for payment of benefits to be made to the trust in the event of an employee's inability to continue employment with the employer due to disability, provided that the payment of benefits with respect to an employee's account does not exceed the reasonable expectation of the annual contributions that would have been made to the plan on the employee's behalf during the period of disability, reduced by any other contributions made on the employee's behalf for the period of disability within the year. For example, under this standard, the payment of benefits with respect to an employee's account may increase to reflect reasonably expected future salary increases. To the extent these conditions are satisfied, the insurance does not constitute a distribution to which section 402(a) applies and instead will be treated as any other plan investment. However, if the insurance contract provides for payment of benefits that exceed the reasonable expectation of the annual contributions that would have been made to the plan on the employee's behalf during the period of disability, then the exception for disability coverage would not apply and all of the premium payments made to provide the benefits to the employee would be treated as distributed to the employee under section 402(a) and (as described in this preamble) benefits from the coverage paid to the plan would constitute contributions. This limitation on the benefits payable under a contract is consistent with treating the disability coverage as a waiver of premium in case of disability, similar to the provision in § 1.408–3(a) under which a contract is not treated as other than an individual retirement annuity merely because it provides for waiver of premium upon disability. Additionally, the limitation means that benefits provided by the plan in the event of disability generally will be comparable to the disability benefits provided by a qualified disability benefit under a defined benefit plan, as described in section 411(a)(9) and § 1.411(a)–7(c)(3).

Some commenters recommended that the exception for disability coverage not result in different tax treatment for plan participants depending upon whether their employer insured or self-insured the disability benefit. The final regulations only address the situation in which payment of premiums is made from the plan. The Treasury Department and the IRS have concluded that, to the extent the insurance premiums are not paid by the plan or out of contributions to the plan, the disability insurance contract is not an asset of the plan and the amounts received by the plan under the disability insurance contract are not properly treated as a return on a plan investment. Instead, in such a case, the amounts paid from the insurance contract to the plan would be treated as contributions to the plan and would be subject to the general rules that apply to qualified plan contributions, including section 415(c). Similarly, to the extent the employer self-insures or makes arrangements to finance the disability coverage other than through third party insurance, the amounts paid to the plan on account of disability would be considered a contribution to the plan and would be subject to the general rules that apply to qualified plan contributions, including section 415(c). Payments to the plan will not be properly characterized as a return on a plan investment in any of these situations.

Conforming Amendments

The regulations contain conforming amendments to the Income Tax Regulations under sections 72, 105, 106, 401, and 402(c). These conforming amendments remove obsolete provisions, as well as cite to the rules in these regulations for determining the tax treatment of the payment of premiums for accident and health insurance from a qualified plan.[3]

Conforming amendments to the regulations under sections 403(a) and 403(b) also add a cross-reference applying these rules under section 402(a) to sections 403(a) and 403(b) arrangements. As a result, amounts paid for disability insurance premiums from an annuity or account under section 403(a) or 403(b) do not constitute distributions (and the disability insurance contracts are treated as plan investments) if the requirements applicable to the purchase of disability insurance by qualified plans are met. As in the case of a plan described in section 401(a), if the plan sponsor of an annuity

[3] The regulations do not alter the incidental benefit rule of § 1.401–1(b)(1)(ii) (which provides that a profit-sharing plan may provide incidental life or accident or health insurance for the participant and the participant's family) nor do they alter the tax treatment of the payment of life insurance. For the tax treatment of payments for life insurance, see section 72(m)(3) and § 1.72–16.

or custodial account under section 403(a) or section 403(b) financed the disability protection by paying premiums for disability insurance that provides coverage to protect against a loss of contributions during a period of disability, then the benefits paid by the disability insurer would be treated as employer contributions to the annuity or account. However, if the premiums for the disability insurance were paid from the annuity or account in accordance with the rules that apply to qualified plans, then the benefits paid by the disability insurer will be treated as a return on plan investment.

In addition, the regulations revise the first sentence of § 1.106–1 in order to update the definition of the term ''dependent'' to reflect section 207 of the Working Families Tax Relief Act of 2004, Public Law 108–311 (118 Stat. 1166 (2004)) and Notice 2004–79 (2004–2 CB 898) and to reflect the amendment of section 105(b) made by section 1004(d)(1) of the Health Care and Education Reconciliation Act of 2010, Public Law 111–152 (124 Stat. 1029 (2010)), to include certain children who have not attained age 27. For periods before the applicability date of the regulations, taxpayers can rely on the interpretation of this latter provision set forth in Notice 2010–38 (2010–20 IRB 682).

These regulations also include a cross-reference to section 402(l) and amend § 1.402(c)–2, Q&A–4, to add distributions of premiums for accident or health insurance under § 1.402(a)–1(e)(1) to the list of items that are not eligible rollover distributions.

Effective/Applicability Date

The regulations apply for taxable years beginning on or after January 1, 2015. No inference should be drawn that the payment of accident or health premiums from a qualified plan does not constitute a taxable distribution if made in an earlier taxable year. However, taxpayers may elect to apply the regulations to earlier taxable years.

Statement of Availability of IRS Documents

The recently issued IRS notices and revenue rulings cited in this preamble are published in the Internal Revenue Bulletin or Cumulative Bulletin and are available from the Superintendent of Documents, P.O. Box 979050, St. Louis, MO 63197–9000, or by visiting the IRS Web site at *http://www.irs.gov*.

Special Analyses

It has been determined that these regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the proposed regulations preceding these final regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Michael P. Brewer and Lauson C. Green, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART I—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 1.72–15 is amended by:

■ 1. Revising the last sentence of paragraph (a).

■ 2. Revising paragraph (d).

■ 3. Removing and reserving paragraph (f).

■ 4. Revising paragraphs (h) and (i).

The revisions read as follows:

§ 1.72–15 Applicability of section 72 to accident or health plans.

(a) *Applicability of section.* * * * Paragraphs (d), (h), and (i) of this section apply for taxable years beginning on or after January 1, 2015.

* * * * *

(d) *Accident or health benefits attributable to employer contributions.* Any amounts received as accident or health benefits and not attributable to contributions of the employee are includible in gross income except to the extent that the amounts are excludable from gross income under section 105(b) or (c) and the regulations under those sections. See § 1.402(a)–1(e) for rules relating to the use of a qualified plan under section 401(a) to pay premiums for accident or health insurance.

* * * * *

(h) *Medical benefits for retired employees, etc.* See § 1.402(a)–1(e)(2) for rules relating to the payment of medical benefits described in section 401(h) under a qualified pension or annuity plan.

(i) *Special rules*—(1) *In general.* For purposes of section 72(b) and (d) and this section, the taxpayer must maintain such records as are necessary to substantiate the amount treated as an investment in the taxpayer's annuity contract.

(2) *Delegation to Commissioner.* The Commissioner may prescribe a form and instructions with respect to the taxpayer's past and current treatment of amounts received under section 72 or 105, and the taxpayer's computation, or recomputation, of the taxpayer's investment in his or her annuity contract. This form may be required to be filed with the taxpayer's returns for years in which the amounts are excluded under section 72 or 105.

§ 1.105–4 [Removed]

■ Par. 3. Section 1.105–4 is removed.

§ 1.105–6 [Removed]

■ **Par. 4.** Section 1.105–6 is removed.

■ **Par. 5.** Section 1.106–1 is amended by:

■ 1. Redesignating the existing text as paragraph (a).

■ 2. In newly-designated paragraph (a), revising the first sentence and adding a sentence at the end of the paragraph.

■ 3. Adding paragraph (b).

The revisions and additions read as follows:

§ 1.106–1 Contributions by employer to accident and health plans.

(a) The gross income of an employee does not include the contributions that the employer makes to an accident or health plan for compensation (through insurance or otherwise) to the employee for personal injuries or sickness incurred by the employee, the employee's spouse, the employee's dependents (as defined in section 152 determined without regard to section 152(b)(1), (b)(2), or (d)(1)(B)), or any child (as defined in section 152(f)(1)) of the employee who as of the end of the taxable year has not attained age 27. * * * For the treatment of the payment of premiums for accident or health insurance from a qualified trust under section 401(a), see §§ 1.72–15 and 1.402(a)–1(e).

(b) *Effective/applicability date.* The first and last sentences of paragraph (a)

of this section apply for taxable years beginning on or after January 1, 2015.

Par. 6. Section 1.401–1 is amended by adding a sentence at the end of paragraph (b)(1)(ii) to read as follows:

§ 1.401–1 Qualified pension, profit-sharing, and stock bonus plans.

* * * * *

(b) * * *

(1) * * *

(ii) * * * See §§ 1.72–15, 1.72–16, and 1.402(a)–1(e) for rules regarding the tax treatment of incidental life or accident or health insurance.

* * * * *

Par. 7. Section 1.402(a)–1 is amended by:

■ 1. Revising the next to last sentence in paragraph (a)(1)(ii).

■ 2. Removing the last sentence in paragraph (a)(1)(ii).

■ 3. Adding paragraph (e).

The revision and addition read as follows:

§ 1.402(a)–1 Taxability of beneficiary under a trust which meets the requirements of section 401(a).

(a) * * *

(1) * * *

(ii) * * * Paragraph (e) of this section provides rules relating to use of a qualified pension, annuity, profit-sharing, or stock bonus plan to provide accident or health benefits or coverage otherwise described in sections 104, 105, or 106.

* * * * *

(e) *Medical, accident, etc. benefits paid from a qualified pension, annuity, profit-sharing, or stock bonus plan*—(1) *Payment of premiums*—(i) *General rule.* Except as provided in paragraph (e)(1)(iii) of this section, a payment made from a qualified trust that is a premium for accident or health insurance (including a qualified long-term care insurance contract under section 7702B) constitutes a distribution under section 402(a) to the participant for whose benefit the premium is charged. The amount of the distribution equals the amount of the premium charged against the participant's benefits under the plan. If a defined contribution plan pays these premiums from a current year contribution or forfeiture that has not been allocated to a participant's account, then the amount of the premium for each participant is treated as first being allocated to the participant and then charged against the participant's benefits under the plan, so that the amount of the distribution is treated in the same manner as determined under the preceding sentence. Except as provided in paragraphs (e)(2) and (e)(3) of this section, a distribution described in this paragraph (e)(1) is not excludable from gross income.

(ii) *Treatment of amounts received through accident or health insurance.* To the extent that the payment of a premium for accident or health insurance constitutes a distribution under this paragraph (e)(1), amounts received through accident or health insurance are neither paid by the employer nor attributable to contributions by the employer that are excludable from the gross income of the employee. Accordingly, to the extent the premium for accident or health insurance constitutes a distribution under this paragraph (e)(1), amounts received through the accident or health insurance for personal injuries or sickness are excludable from gross income under section 104(a)(3) and are not treated as distributions from the plan. If those amounts are paid to the plan instead of to the employee, those amounts are treated as having been paid to the employee and then contributed by the employee to the plan (and must satisfy the qualification requirements applicable to employee contributions).

(iii) *Exception for disability insurance that replaces retirement contributions.* The rules of paragraph (e)(1)(i) of this section do not apply to the payment made from a qualified trust that is a premium paid to an insurance company for a contract providing for payment of benefits to be made to the trust in the event of an employee's inability to continue employment with the employer due to disability, provided that the payment of benefits with respect to the employee's account for each year does not exceed the reasonable expectation of the annual contributions that would have been made to the plan on the employee's behalf for the period of disability within that year, reduced by any other contributions made on the employee's behalf for the period of disability within that year. The payment of premiums described in the preceding sentence is not treated as a distribution under section 402(a), but instead constitutes incidental accident or health insurance as provided in § 1.401–1(b)(1)(ii). The Commissioner may issue rules of general applicability in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin further describing the tax treatment of disability coverage described in this paragraph (e)(1)(iii).

(2) *Medical benefits for retired employees provided under an account described in section 401(h).* The payment of medical benefits under a pension or annuity plan from an account described in section 401(h) is treated in the same manner as a payment of accident or health benefits attributable to employer contributions, or employer-provided coverage under an accident or health plan. See § 1.401–14(a) for the definition of medical benefits described in section 401(h). Accordingly, amounts applied for the payment of accident or health benefits, or for the payment of accident or health coverage, from a section 401(h) account are not includible in the gross income of the participant on whose behalf such contributions are made to the extent they are excludible from gross income under section 104, 105, or 106.

(3) *Distributions to eligible retired public safety officers.* See section 402(l) (and any guidance issued under section 402(l)) for a limited exclusion from gross income for distributions used to pay for certain accident or health premiums (including premiums for qualified long-term care insurance contracts). This limited exclusion applies to eligible retired public safety officers, as defined in section 402(l)(4)(B).

(4) *Effect of distribution of insurance premiums on plan qualification.* See § 1.401–1(b)(1) for rules concerning the types and amount of medical coverage and benefits that are permitted to be provided under a plan that is part of a trust described in section 401(a). For example, § 1.401–1(b)(1)(ii) provides that a profit-sharing plan is primarily a plan of deferred compensation, but the amounts allocated to the account of a participant may be used to provide incidental accident or health insurance for the participant and the participant's family. See also section 401(k)(2)(B) for certain restrictions on the distribution of elective contributions.

(5) *Applicability to beneficiaries and alternate payees.* This paragraph (e) applies to the payment of premiums charged against the benefits of a beneficiary or an alternate payee in the same manner as the payment of premiums charged against the account of a participant.

(6) *Examples.* The provisions of this paragraph (e) are illustrated by the following examples:

Example 1. (i) *Facts.* Employer A sponsors a profit-sharing plan qualified under section 401(a). The plan provides solely for non-elective employer profit-sharing contributions. The plan's trustee enters into a contract with a third-party insurance carrier to provide health insurance for certain plan participants. The insurance contract provides for the payment of medical expenses incurred by those participants. The plan limits the amounts used to provide medical benefits to comply with the incidental benefit

rules. The trustee makes monthly payments of $1,000 to pay the premiums due for Participant P's health insurance and Participant P's account balance is reduced by $1,000 at the time of each premium payment. In June 2015, Participant P is admitted to the hospital for covered medical care, and in July 2015, the health insurer pays the hospital $5,000 for the medical care provided to Participant P in June.

(ii) *Conclusion.* Under paragraph (e)(1) of this section, each of the trustee's payments of $1,000 constitutes a taxable distribution under section 402(a) to Participant P on the date of each payment. The amount of these distributions may constitute payments for medical care under section 213. The $5,000 payment to the hospital is excludable from Participant P's gross income under section 104(a)(3) and is not treated as a distribution from the plan.

Example 2. (i) *Facts.* Employer B sponsors a profit-sharing plan qualified under section 401(a). The plan provides for elective contributions described in section 401(k) and matching contributions as well as non-elective employer profit-sharing contributions. The plan does not provide that a disabled participant's compensation for purposes of determining plan contributions includes amounts that the participant would have received in the absence of the disability, and accordingly Employer B does not make any contributions to the plan for the benefit of a disabled employee for the period of disability. The plan's trustee enters into a contract with a third-party insurance carrier to provide disability insurance for plan participants who elect to be covered under the insurance contract. The insurance contract provides for the payment of an amount to the trustee on a participant's behalf during the period of the participant's disability. Amounts to be paid to the trustee from the insurance contract with respect to a participant are equal to the sum of the elective, matching, and non-elective employer profit-sharing contributions that would have been made on the participant's behalf during the participant's disability (based on the participant's rate of compensation before becoming disabled) with the payments to continue for the duration of the disability until age 65 (or 5 years after the participant became disabled, if later). Participant Q elects to be covered under the insurance contract, and the trustee makes the periodic premium payments out of the account balance of Participant Q. In June 2015, Participant Q becomes disabled. During the period Participant Q is absent from employment due to disability, the insurer pays the trust the amount of the elective contributions and non-elective employer profit-sharing contributions that would have been made to the trust with respect to Participant Q had Participant Q not been disabled. The amount of the premiums for the insurance contract satisfies the limitations on incidental benefits under § 1.401–1(b)(1)(ii).

(ii) *Conclusion.* The payment of premiums from the trust is described in paragraph (e)(1)(iii) of this section. Accordingly, none of the premium payments under the contract constitute a distribution under section 402(a) to Participant Q. Further, amounts paid from the insurance contract to the trust also do not constitute a distribution to Participant Q. However, when Participant Q's account balance is distributed from the trust, the distribution will be subject to taxation in the year of distribution in accordance with the rules in section 402.

(7) *Effective/applicability date.* This paragraph (e) applies for taxable years beginning on or after January 1, 2015.

Par. 8. Section 1.402(c)–2 is amended by redesignating paragraph A–4(j) as paragraph A–4(k) and adding a new paragraph A–4(j) to read as follows:

§ 1.402(c)–2 Eligible rollover contributions; questions and answers.

* * * * *

A–4: * * *

(j) Distributions of premiums for accident or health insurance under § 1.402(a)–1(e)(1)(i). This paragraph A–4(j) applies for taxable years beginning on or after January 1, 2015.

* * * * *

Par. 9. Section 1.403(a)–1 is amended by revising paragraph (g) to read as follows:

§ 1.403(a)–1 Taxability of beneficiary under a qualified annuity plan.

* * * * *

(g) The rules of § 1.402(a)–1(e) apply for purposes of determining the treatment of amounts paid to provide accident and health insurance benefits.

Par. 10. Section 1.403(b)–6 is amended in paragraph (g) by adding two sentences at the end of the paragraph to read as follows:

§ 1.403(b)–6 Timing of distributions and benefits.

* * * * *

(g) * * * The rules of § 1.402(a)–1(e) apply for purposes of determining when certain incidental benefits are treated as distributed and included in gross income. See §§ 1.72–15 and 1.72–16.

* * * * *

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

Approved: May 6, 2014.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2014–10849 Filed 5–9–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2014–0134]

RIN 1625–AA00

Safety Zone; Sabine River, Orange, TX

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of the Sabine River in Orange, TX in support of Deep South Racing Association (DSRA) boat races. This temporary safety zone is necessary to protect the surrounding public and vessels from the hazards associated with a boat race competition. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the COTP or his designated representative.

DATES: This rule is effective May 31, 2014 through June 1, 2014. This rule will be enforced from 8:30 a.m. until 6:00 p.m. on May 31, 2014, and from 8:30 a.m. until 6:00 p.m. on June 1, 2014.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2014–0134]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Scott Whalen, U.S. Coast Guard MSU Port Arthur, (409) 719–5086 or email, *scott.k.whalen@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule. The Coast Guard received notice on March 3, 2014 that this event is planned to take place May 31 and June 1, 2014. This is the first time this event has taken place in Orange, TX, and upon full review of the event details, the Coast Guard determined that additional safety measures are necessary.

Completing the full NPRM process would be impracticable, delaying the effective date for this safety zone. Immediate action is necessary to protect event participants and members of the public from hazards associated with high speed boat races on the waterway. This event is advertised and the local community has planned for this event. Delaying the safety zone may also unnecessarily interfere with the planned event and possible contractual obligations.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Providing a full 30 days notice and delaying the effective date for this safety zone would be impracticable because immediate action is necessary to protect event participants and members of the public from the hazards present during a personal watercraft race competition.

The Coast Guard will notify the public and maritime community that the safety zone will be in effect and of its enforcement periods via broadcast notices to mariners (BNM) and will be published in the Local Notice to Mariners (LNM).

B. Basis and Purpose

The Deep South Racing Association (DSRA) is holding a two day watercraft race competition on the Sabine River in Orange, TX on May 31 and June 1, 2014. This event poses a hazard to life and property as it involves high speed watercraft racing in a narrow waterway frequented by other commercial and recreational vessel traffic. Additionally, the race event is likely to attract spectator craft to the area. The Coast Guard determined that a temporary safety zone is needed to protect spectators as well as persons participating in the event. The legal basis and authorities for this rulemaking establishing a safety zone are found in 33 U.S.C. 1231, 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish and define regulatory safety zones. A safety zone is necessary to protect vessels and mariners from the hazards associated with this high speed boat race on the waterway.

C. Discussion of the Temporary Final Rule

The Coast Guard is establishing a temporary safety zone encompassing all waters of the Sabine River, shoreline to shoreline, adjacent to the Naval Reserve Unit and the Orange public boat ramps located in Orange, TX. The northern boundary is from the end of Navy Pier One at 30°05′45″ N 93°43′24″ W then easterly to the rivers eastern shore. The southern boundary is a line shoreline to shoreline at latitude 30°05′33″ N (NAD83).

This safety zone is needed to protect mariners and event participants from hazards associated with high speed boat races. No person or vessel may enter into or remain in the zone without permission of the Captain of the Port.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

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

The Coast Guard has determined that this rule is not a significant regulatory action for the following reasons: (1) The rule will be enforced for 9.5 hours each day for two days; (2) scheduled breaks will be provided to allow waiting vessels to transit safely through the affected area; (3) persons and vessels may enter, transit through, anchor in, or remain within the regulated area if they obtain permission from the COTP or the designated representative; and (4) advance notification will be made to the maritime community via broadcast notice to mariners (BNM) and Local Notice to Mariners (LNM). Therefore, the Coast Guard enforcement of this safety zone is not a significant regulatory action.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This rule may affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit through or remain in the safety zone area. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities for the following reasons: (1) This rule will only be enforced from 8:30 a.m. until 6 p.m. each day that it is effective; (2) during non-enforcement hours all vessels will be allowed to transit through the safety zone without having to obtain permission from the Captain of the Port, Port Arthur or a designated representative; and (3) vessels will be allowed to pass through the zone with permission of the Coast Guard Patrol Commander during scheduled break periods between races and at other times when permitted by the Coast Guard Patrol Commander.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to

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

4. Collection of Information

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

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone established for the protection of spectators from the hazards associated with a personal watercraft race competition. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. A checklist and categorical exclusion determination will be provided in the docket accessible as indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. A new temporary section § 165.T08–0134 is added to read as follows:

§ 165.T08–0134 Safety Zone; Sabine River, Orange, TX.

(a) *Location.* The following area is a safety zone: all waters of the Sabine River, shoreline to shoreline, adjacent to the Naval Reserve Unit and the Orange public boat ramps located in Orange, TX. The northern boundary is from the end of Navy Pier One at 30°05′45″ N 93°43′24″ W then easterly to the rivers eastern shore. The southern boundary is a line shoreline to shoreline at latitude 30°05′33″ N (NAD83).

(b) *Effective dates and enforcement times.* This rule is effective on May 31, 2014 and on June 1, 2014. This rule will be enforced from 8:30 a.m. until 6:00 p.m. on May 31, 2014, and from 8:30 a.m. until 6:00 p.m. on June 1, 2014.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23, no person or vessel may enter into or remain in the zone without permission of the Captain of the Port.

(2) Persons or vessels requiring entry into or passage through the zone may contact the Captain of the Port, Port Arthur, or a designated representative. They may be contacted on VHF–FM Channels 16, or by phone at (409) 719–5070.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port, Port Arthur and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(d) *Information Broadcasts.* The Captain of the Port, Port Arthur or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the safety zone as well as any changes in the planned schedule.

Dated: April 9, 2014.

G.J. Paitl,

Captain, U.S. Coast Guard, Captain of the Port, Port Arthur.

[FR Doc. 2014–10753 Filed 5–9–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2013–0503]

RIN 1625–AA00

Safety Zones; Captain of the Port Boston Fireworks Display Zones, Boston Harbor, Boston, MA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing six permanent safety zones throughout Boston Inner Harbor to be enforced during certain fireworks displays. These six permanent safety zones will expedite public notification of certain fireworks events and ensure the protection of the maritime public and event participants from the hazards associated with maritime fireworks displays.

DATES: This rule is effective on June 11, 2014.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2013–0503. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number in the ''SEARCH'' Box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with the rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation, West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Mark Cutter, Coast Guard Sector Boston Waterways Management Division, telephone 617–223–4000, email *Mark.E.Cutter@uscg.mil*. If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

On Thursday, September 26, 2013 the Coast Guard published a notice of proposed rulemaking (NPRM) in the **Federal Register** (78 FR 59313). No Public meetings were requested or held. One formal written comment was received.

B. Basis and Purpose

The legal basis for this rule is 33 U.S.C. 1231, 1233; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, and 160.5; Public Law 107–295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define regulatory safety zones.

Fireworks displays are held multiple times throughout the course of the year on U.S. navigable waters within Boston Inner Harbor. In the past, to ensure the protection of the maritime public and event participants from the hazards associated with these marine events, the Coast Guard has established a temporary safety zone around each display in response to a request from the fireworks display organizer. Establishing individual safety zones in this case-by-case manner has proved to be administratively cumbersome.

To relieve administrative overhead and better apprise the public on designated safety locations, this rule will establish safety zones that will remain in effect permanently but will be enforced When deemed necessary by the Captain of the Port (COTP). These permanent safety zones will be published in Title 33 of the Code of Federal Regulations.

By establishing a permanent regulation containing these designated safety zones, the Coast Guard will eliminate the need to establish a temporary final rule for each fireworks display that occurs in Boston Harbor. This will alleviate the unnecessary administrative costs and burden associated with continually establishing temporary final rules for each event year after year. Moreover, the Coast Guard expects that placing these safety zones in the Code of Federal Regulations on a permanent basis will leave the public better informed about the location of and conditions associated with recurring maritime fireworks displays.

C. Discussion of Comments, Changes, and the Final Rule

For the reason discussed above, the Coast Guard is establishing six permanent safety zones in a new section of the Code of Federal Regulations, 33 CFR 165.119. Although these six safety zones will be in effect permanently, the associated regulations will only be enforced immediately before, during, and after a fireworks display. The Coast Guard anticipates that these safety zones will be enforced between the hours of 6:00 p.m. (e.s.t) and 1:00 a.m. (e.s.t), but the exact dates and times of enforcement will be published in the **Federal Register** via a Notice of Enforcement. The Coast Guard will also provide notice of enforcement through Local Notice to Mariners (LNM) and Broadcast Notice to Mariners (BNTM) prior to each event.

These six safety zones are the Charlestown Safety Zone, the Long Wharf Safety Zone, the Fan Pier Safety Zone, the Pier 6 Safety Zone, the North Jetty Safety Zone, and the Castle Island Safety Zone. The exact coordinates and sizes of each safety zone are listed below. The Coast Guard expects that during an enforcement period a safety zone will have a barge within the zone with a ''FIREWORKS–STAY AWAY'' sign on its port and starboard sides.

No vessels, except for fireworks barge and accompanying vessels, will be allowed to enter into, transit through, or anchor within a safety zone during an enforcement period without the permission of the COTP or the designated on-scene representative.

The one written comment received in the docket strongly supported the establishment of these Safety Zones. However, the comment contained two recommendations. First, the commenter recommended that the Coast Guard automatically enforce a safety zone anytime a fireworks display is going on within said safety zone rather than enforcing each zone only after requested to do so by a fireworks organizer. The commenter is correct that the NPRM states that the Coast Guard will enforce these safety zones ''only upon request of a fireworks display organizer.'' The Coast Guard maintains continual awareness of planned fireworks displays while exercising its authority under 33 CFR Part 100 and in keeping with that authority, fireworks display organizers are required to submit to the Coast Guard a marine event application. As a result, the COTP becomes aware of a planned event and then has the option to enforce a safety zone for that fireworks display.

Although the Coast Guard expects to enforce these safety zones only after receiving a request, the Coast Guard may enforce them anytime that the COTP determines that it is necessary for the purposes of safety. This rule does

not abrogate the COTP's discretion to enforce a safety zone. Thus, if a fireworks display were planned within one of these safety zones but no request for enforcement was submitted to the Coast Guard, the Coast Guard could still enforce the zone.

The second recommendation from the commenter pertained to fireworks displays that might take place outside of one of these enumerated zones. Specifically, the commenter recommended that the Coast Guard ensure that fireworks displays happen only within these enumerated zones. The commenter suggests that requiring fireworks displays to take place only in an enumerated zone would decrease safety risks and further cut down on administrative burdens. Once more, this rule does not abrogate the COTP's discretion to take action that he or she deems necessary in the interest of safety. Thus, if a fireworks display were planned outside of one of these enumerated safety zones, the Coast Guard has the authority to establish and enforce a safety zone around that location. That said, based on the history of fireworks events in Boston Harbor, the Coast Guard anticipates that most, if not all, fireworks events will take place within one of these enumerated zones. That is exactly why these enumerated zones are being established permanently in the Code of Federal Regulations.

With all of the above in mind, the Coast Guard made no change to this rule in response to the received comment.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

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

We expect the economic impact of this rule to be minimal. This regulation may have some impact on the public, but that potential impact will likely be minimal for several reasons. First, although these safety zones will be in effect permanently, each will be enforced only during a fireworks display. Based on past history, fireworks displays usually require enforcement for no more than two hours during the evening. Second, it is likely that the Coast Guard will enforce only one zone at a time. The Coast Guard does not expect to concurrently enforce more than one safety zones at any one time. Third, vessels may enter or pass through a safety zone during an enforcement period with the permission of the COTP or the designated representative. Finally, the Coast Guard will provide advance notification to the public anytime it intends to enforce one of these safety zones. Notification will be made through a Notice of Enforcement published in the **Federal Register** and also through the local Notice to Mariners, Broadcast Notice to Mariners well in advance of the event.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended requires federal agencies to consider the potential impact of regulations on small entitles during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rule. For the reasons discussed in the REGULATORY PLANNING AND REVIEW section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

3. Assistance for Small Entities

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

4. Collection of Information

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

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children From Environmental Health Risks

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

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination

with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a ''Significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of safety zones, and thus, this action is categorically excluded from further review under, paragraph 34(g) of figure 2–1 of the Commandant Instruction.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.119 to read as follows:

§ 165.119 Safety Zone; Captain of the Port Boston Fireworks display zones, Boston Harbor, Boston, MA.

(a) *Boston Inner Harbor.* The following areas are designated as safety zones:

(1) *Charlestown Safety Zone.* All U.S. navigable waters of Boston inner Harbor within a 700-foot radius of the fireworks barge in approximate position 42°22′12.7″ N 071°02′53″ W (NAD 1983), located off of Pier 5 Charlestown Navy Yard.

(2) *Long Wharf Safety Zone.* All U.S. navigable waters of Boston inner Harbor within a 700-foot radius of the fireworks barge in approximate position 42°21′41.2″ N 071°02′36.5″ W (NAD 1983), located off of Long Wharf, Boston MA.

(3) *Fan Pier Safety Zone.* All U.S. navigable waters of Boston inner Harbor within a 700-foot radius of the fireworks barge in approximate position 42°21′23.2″ N 071°02′26″ W (NAD 1983), located off of the Fan Pier, South Boston, MA.

(4) *Pier 6 Safety Zone.* All U.S. navigable waters of Boston inner Harbor within a 700-foot radius of the fireworks barge in approximate position 42°21′11.9″ N 071°02′1.3″ W (NAD 1983), located off of Pier 6, South Boston, MA.

(5) *North Jetty Safety Zone.* All U.S. navigable waters of Boston inner Harbor within a 700-foot radius of the fireworks barge in approximate position 42°21′01″ N 071°01′31.7″ W (NAD 1983), located off of the North Jetty, South Boston, MA.

(6) *Castle Island Safety Zone.* All U.S. navigable waters of Boston inner Harbor within a 700-foot radius of the fireworks barge in approximate position 42°20′27.4″ N 071°00′28.1″ W (NAD 1983), located off of the Castle Island, South Boston, MA.

(b) *Notification.* Coast Guard Sector Boston will use all appropriate means to notify the public in advance of an event of the enforcement of these safety zones to include publishing a Notice of Enforcement in the **Federal Register** and through the local Notice to Mariners and Broadcast Notice to Mariners. Fireworks barges used in these locations will also have a sign on their port and starboard side labeled ''FIREWORKS—STAY AWAY''. This sign will consist of a ten inch high by one and half inch wide red lettering on a white background.

(c) *Enforcement period.* The Coast Guard anticipates that these safety zones will be enforced between 6:00 p.m. (e.s.t.) and 1:00 a.m. (e.s.t.). The exact dates and times will be published as described in paragraph (b) of this section.

(d) *Definitions.* For purposes of this section ''Designated representative'' is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port Boston (COTP) to act on the COTP's behalf. The designated representative may be on an Official Patrol Vessel; Official Patrol Vessel may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP or the designated representative may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(e) No vessels, except for fireworks barges and accompanying vessels, will be allowed to enter into, transit through, or anchor within one of the aforementioned safety zones during an enforcement period without the permission of the COTP or the designated representative.

(f) All persons and vessels permitted to enter one of these safety zones during an enforcement period shall comply with the instructions of the COTP or the designated on-scene representative. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(g) Vessel operators desiring to enter or operate within a safety zone during a period of enforcement shall contact the COTP or the designated on-scene representative via VHF channel 16 or 617–223–5757 (Sector Boston Command Center) to obtain permission.

Dated: April 21, 2014.

J.C. O'Connor III,

Captain, U.S. Coast Guard, Captain of the Port Boston.

[FR Doc. 2014–10760 Filed 5–9–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2013–0471]

RIN 1625–AA00

Safety Zone; Belt Parkway Bridge Construction, Gerritsen Inlet; Brooklyn, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule and request for comments.

SUMMARY: The Coast Guard is establishing a safety zone on the navigable waters of Gerritsen Inlet surrounding the Belt Parkway Bridge. This rule will allow the Coast Guard to prohibit all vessel traffic through the safety zone during bridge replacement operations, both planned and

unforeseen, that could pose an imminent hazard to persons and vessels operating in the area. This rule is necessary to provide for the safety of life in the safety zone during the construction of the Belt Parkway Bridge.

DATES: This rule is effective without actual notice from May 12, 2014 until September 30, 2017. For the purposes of enforcement, actual notice will be used from the date the rule was signed, April 30, 2014, until May 12, 2014.

Comments and related material must be received by the Coast Guard on or before June 11, 2014.

Requests for public meetings must be received by the Coast Guard on or before June 2, 2014.

ADDRESSES: Documents mentioned in this preamble are part of Docket Number USCG–2013–0471. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Open Docket Folder'' on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may submit comments, identified by docket number, using any one of the following methods:

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

(2) *Fax:* (202) 493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329.

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Jeff Yunker, Coast Guard Sector New York, Waterways Management Division; telephone 718–354–4195, email *jeff.m.yunker@uscg.mil* or Chief Craig Lapiejko, Coast Guard First District Waterways Management Branch, telephone 617–223–8351, email *craig.d.lapiejko@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

COTP Captain of the Port
DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking
NYC DOT New York Department of Transportation

A. Public Participation and Request for Comments

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

1. Submitting Comments

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

To submit your comment online, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

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

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

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

4. Public Meeting

We currently do not plan to hold a public meeting. You may, however, submit a request for one, on or before June 2, 2014, using one of the methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid in this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

B. Regulatory History and Information

On Friday, November 29, 2013 the Coast Guard published a notice of proposed rulemaking (NPRM) entitled, ''Safety Zone; Belt Parkway Bridge Construction, Gerritsen Inlet, Brooklyn, NY'' in the **Federal Register** (78 FR 71546). No public meetings were requested or held. No comments were received. However the initial effective and enforcement periods that were published are now delayed and shorter than those published in the NPRM. The safety zone will now be effective from April 30, 2014 to September 30, 2017. The Coast Guard will consider comments in issuing a subsequent temporary interim rule or temporary final rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. It would be impracticable and

contrary to the public interest to delay promulgating this rule, as it is necessary to protect the safety of both the construction crew and the waterway users operating in the vicinity of the bridge construction zone. A delay or cancellation of the currently ongoing bridge rehabilitation project in order to accommodate a full notice and comment period would delay necessary operations, result in increased costs, and delay the date when the bridge is expected to reopen for normal operations. The Coast Guard believes it would be impracticable and contrary to the public interest to delay this regulation. At any time, the Coast Guard may publish an amended rule if necessary to address public concerns. The Coast Guard will enforce the safety zone described in this rule to all vessel traffic during circumstances that pose an imminent threat to waterway users operating in the area. The Coast Guard will provide as much advanced notice as possible prior to enforcement. Specific closure dates and times will be posted in the Local Notice to Mariners and disseminated via a Safety Marine Information Broadcast during each closure.

C. Basis and Purpose

The legal basis for this rule is 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

The purpose of this rulemaking is to ensure the safety of vessels and workers from hazards associated with the bridge construction operations in the safety zone.

D. Discussion of Comments, Changes, and the Interim Rule

For the reasons stated above, the Captain of the Port, Sector New York, is establishing a temporary safety zone on the navigable waters of Gerritsen Inlet surrounding the Belt Parkway Bridge. The effective periods that were published in the NPRM are now delayed and shorter than those previously published in the NPRM. The safety zone will be effective from April 30, 2014 to September 30, 2017.

E. Regulatory Analyses

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

1. Regulatory Planning and Review

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

The Coast Guard determined that this rulemaking would not be a significant regulatory action for the following reasons: Vessel traffic will only be restricted from the Safety Zone for limited durations and the Safety Zone covers only a small portion of the navigable waterway.

Advanced public notifications would also be made to local mariners through appropriate means, which may include but are not limited to the Local Notice to Mariners and at *http://homeport.uscg.mil/newyork.*

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to enter, transit, anchor or moor within, or upstream of the safety zone during a vessel restriction period.

The safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The safety zone will be of limited size and most waterway closures will be during times of reduced recreational boating traffic. The contractor has hired outreach consultants to ensure local interests are regularly notified of the project status and future impacts that can be expected. Additionally, before the effective period of a waterway closure, notifications will be made to local mariners through appropriate means.

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

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

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

4. Collection of Information

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

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children From Environmental Health Risks

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

11. Indian Tribal Governments

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

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves restricting vessel movement within a safety zone. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist and a categorical exclusion determination supporting this determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREA

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T01–0471 to read as follows:

§ 165.T01–0471 Safety Zone; Belt Parkway Bridge Construction, Gerritsen Inlet, Brooklyn, NY.

(a) *Location.* The following area is a safety zone: All navigable waters of Gerritsen Inlet: Southeast of a line from 40°35′09.46″ N, 073°54′53.92″ W to 40°35′10.0″ N, 073°54′44.5″ W and Northwest of a line from 40°35′04.88″ N, 073°54′45.43″ W to 40°35′10.34″ N, 073°54′35.71″ W (NAD 83).

(b) *Definitions.* The following definitions apply to this section:

(1) *Designated Representative.* A ''designated representative'' is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the Captain of the Port New York (COTP), to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(2) *Official Patrol Vessels.* Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP.

(c) *Enforcement Periods.* (1) This regulation is enforceable 24 hours a day from April 30, 2014 through September 30, 2017.

(2) Prior to commencing or suspending enforcement of this regulation, the COTP and designated on-scene patrol personnel will notify the public whenever the regulation is being enforced and whenever enforcement is lifted, to include dates and times. The means of notification will include, but are not limited to, Broadcast Notice to Mariners and Local Notice to Mariners, Marine Safety Information Bulletins, or other appropriate means.

(d) *Regulations.* (1) The general regulations contained in 33 CFR 165.23, as well as the following regulations, apply.

(2) During periods of enforcement, all persons and vessels must comply with all orders and directions from the COTP or a COTP's designated representative.

(3) During periods of enforcement, upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of the vessel must proceed as directed.

Dated: April 30, 2014.

G. Loebl,

Captain, U.S. Coast Guard, Captain of the Port New York.

[FR Doc. 2014–10749 Filed 5–9–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2014–0256]

Safety Zones; Fireworks Events in Captain of the Port New York Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce various safety zones within the Captain of the Port New York Zone on the specified dates and times. This action is necessary to ensure the safety of vessels

and spectators from hazards associated with fireworks displays. During the enforcement period, no person or vessel may enter the safety zones without permission of the Captain of the Port (COTP).

DATES: The regulation for the safety zones described in 33 CFR 165.160 will be enforced on the dates and times listed in the table in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Lieutenant Junior Grade Kristopher Kesting, Coast Guard; telephone 718–354–4154, email *Kristopher.R.Kesting@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zones listed in 33 CFR 165.160 on the specified dates and times as indicated in Table 1 below. This regulation was published in the **Federal Register** on November 9, 2011 (76 FR 69614).

TABLE 1

1. N.E.C.O Awards Fireworks, Liberty Island Safety Zone, 33 CFR 165.160(2.1).	• Launch site: A barge launch located in approximate position 40°41′16.5″ N, 074°02′23″ W (NAD 1983), located in Federal Anchorage 20–C, about 360 yards east of Liberty Island. This Safety Zone is a 360-yard radius from the barge. • Date: May 10, 2014. • Time: 11:00 p.m.–12:10 a.m.
2. Town of N. Hempstead Summer Kick Off Fireworks, Bar Beach, Hempstead Harbor Safety Zone, 33 CFR 165.160(3.9).	• Launch site: A barge launch located in approximate position 40°49′50″ N, 073°39′12″ W (NAD 1983), approximately 190 yards north of Bar Beach, Hempstead Harbor, New York. This Safety Zone is a 180-yard radius from the barge. • Date: May 24, 2014. • Time: 8:30 p.m.–9:50 p.m.
3. Dominick Neri Wedding Fireworks, Glen Island, Western Long Island Sound Safety Zone, 33 CFR 165.160(3.5).	• Launch site: A barge launch located in approximate position 40°53′12″ N, 073°46′33″ W (NAD 1983), approximately 350 yards east of the northeast corner of Glen Island, New York. This Safety Zone is a 240-yard radius from the barge. • Date: June 12, 2014. • Time: 8:30 p.m.–9:50 p.m.
4. Heritage of Pride Fireworks, Pier D, Hudson River Safety Zone, 33 CFR 165.160(5.7).	• Launch site: A barge launch located in approximate position 40°42′57.5″ N, 074°0134″ W (NAD 1983), approximately 375 yards southeast of Pier D, Jersey City, New Jersey. This Safety Zone is a 360-yard radius from the barge. • Date: June 29, 2014. • Time: 9:15 p.m.–10:30 p.m.
5. Larchmont Yacht Club Fireworks, Larchmont Harbor North Western Long Island Sound Safety Zone, 33 CFR 165.160(3.10).	• Launch site: A barge launch located in approximate position 40°55′21.8″ N, 073°44′21.7″ W (NAD 1983), approximately 560 yards north of Umbrella Rock. This Safety Zone is a 240-yard radius from the barge. • Date: July 4, 2014. • Time: 9:00 p.m.–10:22 p.m.
6. Glen Cove Independence Day Fireworks, Glen Cove, Hempstead Harbor Safety Zone, 33 CFR 165.160(3.8).	• Launch site: A barge launch located in approximate position 40°51′58″ N, 073°39′34″ W (NAD 1983), approximately 500 yards northeast of Glen Cove Breakwater Light 5 (LLNR 27065). This Safety Zone is a 360-yard radius from the barge. • Date: July 4, 2014. • Time: 8:45 p.m.–10:00 p.m.
7. City of New Rochelle Fireworks, Echo Bay, Western Long Island Sound Safety Zone, 33 CFR 165.160(3.14).	• Launch site: A shore launch located in approximate position 40°54′34.41″ N, 073°45′56.61″ W (NAD 1983), southeast portion of Harrison Island, New York. This Safety Zone is a 180-yard radius from the barge. • Date: July 4, 2014. • Time: 9:30 p.m.–10:30 p.m.
8. City of Newburgh Fireworks, Newburgh, NY Safety Zone, 33 CFR 165.160(5.12).	• Launch site: A barge launch located in approximate position 41°30′01.2″ N, 073°59′42.5″ W (NAD 1983), approximately 930 yards east of Newburgh, New York. This Safety Zone is a 360-yard radius from the barge. • Date: July 4, 2014. • Time: 9:00 p.m.–10:30 p.m.
9. Edleman Fireworks, Pier 60, Hudson River Safety Zone, 33 CFR 165.160(5.1).	• Launch site: A barge launch located in approximate position 40°44′49″ N, 074°01′02″ W (NAD 1983), approximately 500 yards west of Pier 60, Manhattan, New York. This Safety Zone is a 360-yard radius from the barge. • Date: July 8, 2014. • Time: 8:14 p.m.–9:30 p.m.

Under the provisions of 33 CFR 165.160, vessels may not enter the safety zones unless given permission from the COTP or a designated representative. Spectator vessels may transit outside the safety zones but may not anchor, block, loiter in, or impede the transit of other vessels. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This document is issued under authority of 33 CFR 165.160(a) and 5 U.S.C. 552 (a). In addition to this

document in the **Federal Register**, the Coast Guard will provide mariners with advanced notification of enforcement periods via the Local Notice to Mariners and marine information broadcasts. If the COTP determines that a safety zone need not be enforced for the full duration stated in this document, a Broadcast Notice to Mariners may be used to grant general permission to enter the safety zone.

Dated: April 17, 2014.

G. Loebl,

Captain, U.S. Coast Guard, Captain of the Port New York.

[FR Doc. 2014–10759 Filed 5–9–14; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–2013–0630, 0632, 0633, 0634, 0637, 0638, and 0639; FRL–9910–72–OSWER]

National Priorities List, Final Rule No. 58

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

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

DATES: *Effective Dates:* The effective date for this amendment to the NCP is June 11, 2014.

ADDRESSES: Contact information for the EPA Headquarters:

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

The contact information for the Regional Dockets is as follows:

- Holly Inglis, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Superfund Records and Information Center, 5 Post Office Square, Suite 100, Boston, MA 02109–3912; 617/918–1413.
- Ildefonso Acosta, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; 212/637–4344.
- Lorie Baker (ASRC), Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mailcode 3HS12, Philadelphia, PA 19103; 215/814–3355.
- Jennifer Wendel, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street, SW., Mailcode 9T25, Atlanta, GA 30303; 404/562–8799.
- Todd Quesada, Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA Superfund Division Librarian/SFD Records Manager SRC–7J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; 312/886–4465.
- Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Suite 1200, Mailcode 6SFTS, Dallas, TX 75202–2733; 214/665–7436.
- Michelle Quick, Region 7 (IA, KS, MO, NE), U.S. EPA, 11201 Renner Blvd., Mailcode SUPRERNB, Lenexa, KS 66219; 913/551–7335.
- Sabrina Forrest, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 1595 Wynkoop Street, Mailcode 8EPR–B, Denver, CO 80202–1129; 303/312–6484.
- Sharon Murray, Region 9 (AZ, CA, HI, NV, AS, GU, MP), U.S. EPA, 75 Hawthorne Street, Mailcode SFD 6–1, San Francisco, CA 94105; 415/947–4250.
- Ken Marcy, Region 10 (AK, ID, OR, WA), U.S. EPA, 1200 6th Avenue, Mailcode ECL–112, Seattle, WA 98101; 206/463–1349.

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

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I. Background

A. What are CERCLA and SARA?

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

B. What is the NCP?

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

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

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

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

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

D. How are sites listed on the NPL?

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

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

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

E. What happens to sites on the NPL?

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

F. Does the NPL define the boundaries of sites?

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

typically not known at the time of listing.

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

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

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

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

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

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

G. How are sites removed from the NPL?

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

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

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

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

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

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

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

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

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

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

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

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

In order to maintain close coordination with states and tribes in the NPL listing decision process, the EPA's policy is to determine the position of the states and tribes regarding sites that the EPA is considering for listing. This consultation process is outlined in two memoranda that can be found at the following Web site: *http://www.epa.gov/superfund/sites/npl/hrsres/policy/govlet.pdf* The EPA is improving the transparency of the process by which state and tribal input is solicited. The

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

A model letter and correspondence from this point forward between the EPA and states and tribes where applicable, is available on the EPA's Web site at *http://www.epa.gov/superfund/sites/query/queryhtm/nplstcor.htm.*

II. Availability of Information to the Public

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

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

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

DOCKET IDENTIFICATION NUMBERS BY SITE

Site name	City/county, state	Docket ID No.
MacMillan Ring Free Oil	Norphlet, AR	EPA–HQ–SFUND–2013–0630.
Keddy Mill	Windham, ME	EPA–HQ–SFUND–2013–0632.
PCE Southeast Contamination	York, NE	EPA–HQ–SFUND–2013–0633.
PCE/TCE Northeast Contamination	York, NE	EPA–HQ–SFUND–2013–0634.
Unimatic Manufacturing Corporation	Fairfield, NJ	EPA–HQ–SFUND–2013–0637.
Wolff-Alport Chemical Company	Ridgewood, NY	EPA–HQ–SFUND–2013–0638.
Walker Machine Products, Inc.	Collierville, TN	EPA–HQ–SFUND–2013–0639.

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

The Headquarters Docket for this rule contains, for each site, the HRS score sheets, the Documentation Record describing the information used to compute the score, pertinent information regarding statutory requirements or the EPA listing policies that affect the site and a list of documents referenced in the Documentation Record. For sites that received comments during the comment period, the Headquarters Docket also contains a Support Document that includes the EPA's responses to comments.

C. What documents are available for review at the Regional Dockets?

The Regional Dockets contain all the information in the Headquarters Docket, plus the actual reference documents containing the data principally relied upon by the EPA in calculating or evaluating the HRS score for the sites located in their Region. These reference documents are available only in the Regional Dockets. For sites that received comments during the comment period, the Regional Docket also contains a Support Document that includes the EPA's responses to comments.

D. How do I access the documents?

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

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

You may obtain a current list of NPL sites via the Internet at *http://www.epa.gov/superfund/sites/npl/index.htm* or by contacting the Superfund Docket (see contact information in the beginning portion of this notice).

III. Contents of This Final Rule

A. Additions to the NPL

This final rule adds the following seven sites to the General Superfund Section of the NPL. All of the sites included in this final rulemaking are being added to the NPL based on HRS scores of 28.50 or above. The sites are presented in the table below:

General Superfund section:

State	Site name	City/county
AR	MacMillan Ring Free Oil	Norphlet.
ME	Keddy Mill	Windham.
NE	PCE Southeast Contamination	York.
NE	PCE/TCE Northeast Contamination	York.
NJ	Unimatic Manufacturing Corporation	Fairfield.
NY	Wolff-Alport Chemical Company	Ridgewood.
TN	Walker Machine Products, Inc.	Collierville.

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

The EPA reviewed all comments received on the sites in this rule and responded to all relevant comments. This rule adds seven sites to the NPL, all to the General Superfund Section.

None of the seven sites being added to the NPL in this rule, which were proposed December 12, 2013 (78 FR 75534), received comments urging specific changes to the HRS score. Five sites being added to the NPL received no comments. They are Keddy Mill (Windham, ME), Walker Machine Products, Inc. (Collierville, TN), MacMillan Ring Free Oil (Norphlet, AR), PCE/TCE Northeast Contamination

(York, NE), and PCE Southeast Contamination (York, NE).

The Unimatic Manufacturing Corporation (Fairfield, NJ) received one anonymous comment, which asked EPA to stop any regulations now. In response, the site meets the NPL eligibility requirements and State of New Jersey agreed with EPA that the site should be placed on the NPL and studied further to see what response, if any, is appropriate to ensure protection of public health and the environment.

The Wolff-Alport Chemical Company (Wolff-Alport) site in Ridgewood, NY received three comments.

One comment, which was sent prior to proposal, asked that EPA address contamination at a Brownfields industrial site in Ridgewood, Queens through the Superfund program. EPA's Region 2 office responded to the commenter, saying that EPA had proposed adding the identified site to the NPL; it was the Wolff-Alport site. The EPA Region 2 response is in the public docket for the site. With this rule, EPA is adding the site to the NPL.

The second comment urged EPA to focus on stopping pollution reaching people through the air, water and soil, not just cleaning up what is already contaminated. In response, EPA has a number of environmental laws, including Superfund, to address pollution. Superfund will address contamination under its statute at the site and coordinate with other environmental programs as appropriate at this and other NPL sites.

EPA received a third comment on the Wolff-Alport site from the City of New York Law Department. New York commented that it doesn't object to the proposed listing because it may increase the likelihood that resources will be made available, but it has concerns with EPA's risk assessment and conclusions. The city believed the conclusions overemphasized the risk in several instances and failed to consider the interim measures that had been taken. The city recommended a more comprehensive investigation and assessment based on reasonable assumptions, and that the site be included in the Department of Energy (DOE) Formerly Utilized Site Remedial Action Program (FUSRAP).

In response, EPA is adding the site to the NPL as the best way to ensure resources are available for cleanup. EPA has discussed with DOE the possibility of addressing portions of the site under the FUSRAP program. If a determination is made that portions of the site are FUSRAP eligible, then USACE will conduct further site investigation at those portions. NPL listing does not preclude investigation and remedial actions being taken at portions of a site if they are determined to be eligible for FUSRAP.

In terms of New York City's desire for more reasonable assumptions and a more comprehensive investigation, EPA commits to establishing a collaborative working relationship with the state and city and will be soliciting and considering their comments as EPA proceeds with its investigation and remediation efforts. EPA's evaluation under the Hazard Ranking System is based on limited information. The HRS was created to evaluate the relative threat of sites with known or potential contaminant releases and it is not intended to be a risk assessment tool.

EPA's study and exposure assessment will be based on the best information available and will be consistent with CERCLA and NCP policies followed by Superfund in all its NPL cleanups.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

1. What is Executive Order 12866?

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the agency must determine whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities or the principles set forth in the Executive Order.

2. Is this final rule subject to Executive Order 12866 review?

No. The listing of sites on the NPL does not impose any obligations on any entities. The listing does not set standards or a regulatory regime and imposes no liability or costs. Any liability under CERCLA exists irrespective of whether a site is listed. It has been determined that this action is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

1. What is the Paperwork Reduction Act?

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR Part 9.

2. Does the Paperwork Reduction Act apply to this final rule?

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* the EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

Burden means the total time, effort or financial resources expended by persons to generate, maintain, retain or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

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. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR Part 9.

C. Regulatory Flexibility Act

1. What is the Regulatory Flexibility Act?

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any

proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

2. How has the EPA complied with the Regulatory Flexibility Act?

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

D. Unfunded Mandates Reform Act

1. What is the Unfunded Mandates Reform Act (UMRA)?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''federal mandates'' that may result in expenditures by state, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before the EPA promulgates a rule where a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of the EPA regulatory proposals with significant federal intergovernmental mandates and informing, educating and advising small governments on compliance with the regulatory requirements.

2. Does UMRA apply to this final rule?

This final rule does not contain a federal mandate that may result in expenditures of $100 million or more for state, local and tribal governments, in the aggregate, or the private sector in any one year. Listing a site on the NPL does not itself impose any costs. Listing does not mean that the EPA necessarily will undertake remedial action. Nor does listing require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of placing a site on the NPL. Thus, this rule is not subject to the requirements of section 202 and 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. As is mentioned above, site listing does not impose any costs and would not require any action of a small government.

E. Executive Order 13132: Federalism

1. What is Executive Order 13132?

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires the EPA to develop an accountable process to ensure ''meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.''

2. Does Executive Order 13132 apply to this final rule?

This final rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it does not contain any requirements applicable to states or other levels of government. Thus, the requirements of the Executive Order do not apply to this final rule.

The EPA believes, however, that this final rule may be of significant interest to state governments. In the spirit of Executive Order 13132, and consistent with the EPA policy to promote communications between the EPA and state and local governments, the EPA therefore consulted with state officials and/or representatives of state governments early in the process of developing the rule to permit them to have meaningful and timely input into its development. All sites included in this final rule were referred to the EPA by states for listing. For all sites in this rule, the EPA received letters of support either from the governor or a state official who was delegated the authority by the governor to speak on their behalf regarding NPL listing decisions.

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

1. What is Executive Order 13175?

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires the EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the federal government and the Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes.''

2. Does Executive Order 13175 apply to this final rule?

This final rule does not have tribal implications, as specified in Executive

Order 13175 (65 FR 67249, November 9, 2000). Listing a site on the NPL does not impose any costs on a tribe or require a tribe to take remedial action. Thus, Executive Order 13175 does not apply to this final rule.

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

1. What is Executive Order 13045?

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency.

2. Does Executive Order 13045 apply to this final rule?

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because the agency does not have reason to believe the environmental health or safety risks addressed by this section present a disproportionate risk to children.

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

1. What is Executive Order 13211?

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use'' (66 FR 28355, May 22, 2001), requires federal agencies to prepare a ''Statement of Energy Effects'' when undertaking certain regulatory actions. A Statement of Energy Effects describes the adverse effects of a ''significant energy action'' on energy supply, distribution, and use, reasonable alternatives to the action and the expected effects of the alternatives on energy supply, distribution, and use.

2. Does Executive Order 13211 apply to this final rule?

This action is not a ''significant energy action'' as defined in Executive Order 13211, because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. Further, the agency has concluded that this final rule is not likely to have any adverse energy impacts because adding a site to the NPL does not require an entity to conduct any action that would require energy use, let alone that which would significantly affect energy supply, distribution or usage. Thus, Executive Order 13211 does not apply to this action.

I. National Technology Transfer and Advancement Act

1. What is the National Technology Transfer and Advancement Act?

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards.

2. Does the National Technology Transfer and Advancement Act apply to this final rule?

No. This rulemaking does not involve technical standards. Therefore, the EPA did not consider the use of any voluntary consensus standards.

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

1. What is Executive Order 12898?

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

2. Does Executive Order 12898 apply to this final rule?

The EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. As this rule does not impose any enforceable duty upon state, tribal or local governments, this rule will neither increase nor decrease environmental protection.

K. Congressional Review Act

1. Has the EPA submitted this rule to Congress and the Government Accountability Office?

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. The EPA has submitted 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 rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

2. Could the effective date of this final rule change?

Provisions of the Congressional Review Act (CRA) or section 305 of CERCLA may alter the effective date of this regulation.

The EPA has submitted a report under the CRA for this rule. The rule will take effect, as provided by law, within 30 days of publication of this document, since it is not a major rule. NPL listing is not a major rule because, by itself, imposes no monetary costs on any person. It establishes no enforceable duties, does not establish that the EPA necessarily will undertake remedial action, nor does it require any action by any party or determine liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Section 801(a)(3) provides for a delay in the effective date of major rules after this report is submitted.

3. What could cause a change in the effective date of this rule?

Under 5 U.S.C. 801(b)(1), a rule shall not take effect, or continue in effect, if Congress enacts (and the President

signs) a joint resolution of disapproval, described under section 802.

Another statutory provision that may affect this rule is CERCLA section 305, which provides for a legislative veto of regulations promulgated under CERCLA. Although *INS* v. *Chadha,* 462 U.S. 919,103 S. Ct. 2764 (1983), and *Bd. of Regents of the University of Washington* v. *EPA,* 86 F.3d 1214,1222 (D.C. Cir. 1996), cast the validity of the legislative veto into question, the EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives.

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

List of Subjects in 40 CFR Part 300

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

Dated: May 1, 2014.

Barry Breen,

Principal Deputy Assistant Administrator, Office of Solid Waste and Emergency Response.

For the reasons set out in this preamble, 40 CFR part 300 is amended as follows:

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

■ 1. The authority citation for Part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B to Part 300—[Amended]

■ 2. Table 1 of Appendix B to Part 300 by adding entries for ''MacMillan Ring Free Oil'', ''Keddy Mill'', ''PCE Southeast Contamination'', ''PCE/TCE Northeast Contamination'', ''Unimatic Manufacturing Corporation'', ''Wolff-Alport Chemical Company'', and ''Walker Machine Products, Inc.'' in alphabetical order by state.

The additions read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1—GENERAL SUPERFUND SECTION

State	Site name	City/County	Notes [a]
*	*	*	*
AR	MacMillan Ring Free Oil	Norphlet.	
*	*	*	*
ME	Keddy Mill	Windham.	
*	*	*	*
NE	PCE Southeast Contamination	York.	
NE	PCE/TCE Northeast Contamination	York.	
*	*	*	*
NJ	Unimatic Manufacturing Corporation	Fairfield.	
*	*	*	*
NY	Wolff-Alport Chemical Company	Ridgewood.	
*	*	*	*
TN	Walker Machine Products, Inc.	Collierville.	
*	*	*	*

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

* * * * *

[FR Doc. 2014–10831 Filed 5–9–14; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 73

RIN 0920–AA34

Possession, Use, and Transfer of Select Agents and Toxins; Biennial Review, Technical Amendment

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

ACTION: Final rule; technical amendment.

SUMMARY: In a final rule that was published in the **Federal Register** on October 5, 2012, we amended and republished the list of select agents and toxins that have the potential to pose a severe threat to public health and safety; reorganized the list of select agents and toxins based on the relative potential of each select agent or toxin to be misused to adversely affect human health (designation of Tier 1); and amended the regulations in order to add definitions and clarify language concerning security, training, biosafety, biocontainment, and incident response. In that final rule, all of our regulatory

language was not precisely aligned with that used by the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture (USDA) in their parallel select agent regulations published on the same day in the **Federal Register**. This document corrects inconsistencies in language between the HHS/CDC and USDA/APHIS regulations. We are also correcting an improper term used in those sections of the regulations associated with identification of a viral strain or subspecies that is excluded from the requirements of the regulations, modifying the terms used when a select toxin is excluded from the regulations, clarifying those parts of the regulations that deal with temporary exemptions granted during periods of public health or agricultural emergencies, and adding language to specify that individuals not approved for unescorted access to registered space for activities not related to select agents or toxins (e.g., routine cleaning, maintenance, and repairs) would not have to be continuously escorted by an approved individual so long as those non-approved persons would not be able to gain access to select agents or toxins.

DATES: *Effective Date:* May 12, 2014.

FOR FURTHER INFORMATION CONTACT: Robbin Weyant, Director, Division of Select Agents and Toxins, Centers for Disease Control and Prevention, 1600 Clifton Rd. NE., MS A–46, Atlanta, GA 30329. Telephone: (404) 718–2000.

SUPPLEMENTARY INFORMATION: On October 5, 2012, HHS/CDC and USDA/APHIS published parallel Final Rules in the **Federal Register** (77 FR 61084 and 77 FR 61056, respectively) amending and republishing the list of select agents and toxins as required by the Public Health Security and Bioterrorism Preparedness and Response Act of 2002. Because of the overlapping nature of the regulatory requirements, HHS/CDC and USDA/APHIS strive to establish identical language in their respective regulations wherever possible. A post publication review of the regulatory language of both rules identified sections in which the regulatory language used by HHS/CDC was not precisely aligned with that used by USDA/APHIS.

In addition, we are also clarifying a term used in § 73.3(d)(5) and § 73.4(d)(3), which addresses the circumstances in which a virus strain or agent subspecies is excluded from the requirements set out in the regulations. Specifically, these paragraphs need to clearly identify those strains of viruses and subspecies of agents that we do not consider to have the potential to pose a severe threat to public health and safety. As published, these sections allowed the listed specific virus strains and agent subspecies to be excluded from the requirements of the select agent regulations provided that an entity could ''verify'' that the virus strain or agent subspecies in their possession was within the listed strain or subspecies. We are replacing the word ''verify'' with the word ''identify,'' as identification is a more precise description of the categorization of a viral strain or subspecies of agent. We note that before one can verify, one must identify. The following changes are made to correct the discrepancies in language in order to fully harmonize the regulations, to replace ''verify'' with the proper term ''identify'', and to clarify that a person without approval to have access to select agents and toxins needs to be continuously escorted only if that person will have the ability to gain access to select agents or toxins.

We are also clarifying terms used in § 73.3(e), § 73.3(e)(2), and § 73.4(e), § 73.4(e)(2), which addressed the circumstances under which select toxins may be excluded from the requirements of the regulations. In these sections, we are replacing the words ''inactive'' and ''inactivated'' with the phrase ''modified to be less toxic or potent.'' This is necessary because a select toxin may be modified to be less toxic or potent in such a way that it loses some but not necessarily all functional activity (e.g., modifying a toxin by chemical, genetic, or other means such that the toxin still retains some of its toxic activity). By comparison, an inactive select toxin is completely non-functional. For the purposes of regulatory applicability, before a select toxin will be considered ''modified to be less toxic or potent,'' a written request and supporting scientific information must be submitted to either HHS/CDC or USDA/APHIS so that a determination on whether to exclude the less toxic or potent select toxin can be made by the HHS Secretary.

Paragraphs 73.6(e) and (f) address temporary exemptions to all or part of the regulations concerning select agents and toxins which may be granted by the HHS Secretary to respond to a public health emergency. We are amending the language in order to clarify that entities will not request these exemptions, as is the case with the other potential exemptions listed in § 73.6, since the decision regarding whether to issue ''public health emergency'' exemptions is predicated on an initial determination by the HHS Secretary of the existence of a public health emergency.

Finally, § 73.11(d)(2) makes clear that individuals not approved for access to select agents and toxins may have access to registered space for activities not related to select agents or toxins (e.g., routine cleaning, maintenance, and repairs) without being continuously escorted by an approved individual so long as those non-approved individuals will not be able to gain access to select agents or toxins.

List of Subjects in 42 CFR Part 73

Biologics, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Transportation.

Accordingly, 42 CFR part 73 is corrected by making the following correcting amendments:

PART 73— SELECT AGENTS AND TOXINS

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 42 U.S.C. 262a; sections 201–204, 221 and 231 of Title II of Public Law 107–188, 116 Stat. 637 (42 U.S.C. 262a).

■ 2. In § 73.3:

■ a. Paragraph (d)(5) is amended by removing the word ''verify'' and adding the word ''identify'' in its place.

■ b. Paragraph (e) introductory text is revised.

■ c. Paragraph (e)(2) is amended by removing the word ''inactivated'' and adding the word ''modified'' in its place.

The revision reads as follows:

§ 73.3 HHS select agents and toxins.

* * * * *

(e) An attenuated strain of a select agent or a select toxin modified to be less potent or toxic may be excluded from the requirements of this part based upon a determination by the HHS Secretary that the attenuated strain or modified toxin does not pose a severe threat to public health and safety.

* * * * *

■ 3. In § 73.4:

■ a. Paragraph (d)(3) is amended by removing the word ''verify'' and adding the word ''identify'' in its place.

■ b. Paragraph (e) introductory text is revised.

■ c. Paragraph (e)(2) is amended by removing the word ''inactivated'' and adding the word ''modified'' in its place.

■ d. Paragraph (f)(3)(i) is amended by adding the word ''overlap'' before ''select agent or toxin.''

The revision reads as follows:

§ 73.4 Overlap select agents and toxins.

* * * * *

(e) An attenuated strain of a select agent, or a select toxin modified to be less potent or toxic, may be excluded from the requirements of this part based upon a determination by the HHS Secretary that the attenuated strain or modified toxin does not pose a severe threat to public health and safety.

* * * * *

■ 4. In § 73.6, revise paragraphs (e) and (f) to read as follows:

§ 73.6 Exemptions for overlap select agents and toxins.

* * * * *

(e) The HHS Secretary may exempt an individual or entity from the requirements of this part based on a determination that the exemption is necessary to provide for the timely participation of the individual or entity in response to a domestic or foreign public health emergency. The HHS Secretary may extend the exemption once for additional 30 days.

(f) Upon request of the Administrator, the HHS Secretary may exempt an individual or entity from the requirements, in whole or in part, of this part for 30 calendar days if the Administrator has granted the exemption for agricultural emergency. The HHS Secretary may extend the exemption once for an additional 30 calendar days.

■ 5. Section 73.11 is amended as follows:

■ a. In paragraph (c)(2), remove the commas before ''including'' and after ''arthropods'' and put parentheses around the words ''including arthropods'' after the word ''animals.''

■ b. Revise paragraph (c)(9)(iii).

■ c. In paragraph (d)(2) by adding ''if the potential for access to select agents or toxins exists'' after ''approved individual.''

■ d. Revise paragraph (f)(4)(viii)(A).

■ e. Revise paragraph (g).

The revisions read as follows:

§ 73.11 Security.

* * * * *

(c) * * *

(9) * * *

(iii) Ensure that controls are in place that are designed to prevent malicious code (such as, but not limited to, computer virus, worms, spyware) from compromising the confidentiality, integrity, or availability of information systems which manage access to spaces registered under this part or records in § 73.17;

* * * * *

(f) * * *

(4) * * *

(iv) * * *

(A) Determine that the response time for security forces or local police will not exceed 15 minutes where the response time is measured from the time of an intrusion alarm, or report of a security incident, to the arrival of the responders at the first security barrier or;

* * * * *

(g) In developing a security plan, an individual or entity should consider the document entitled, ''Security Guidance for Select Agent or Toxin Facilities.'' This document is available on the National Select Agent Registry at *http://www.selectagents.gov/*.

* * * * *

■ 6. Section 73.13 is amended as follows:

■ a. By revising paragraph (a).

■ b. By removing paragraph (b).

■ c. By redesignating paragraphs (c) and (d) as paragraphs (b) and (c), respectively.

■ d. In newly redesignated paragraph (b), by removing the words ''paragraph (b)'' and adding the words ''paragraph (a)'' in their place.

The additions read as follows:

§ 73.13 Restricted experiments.

(a) An individual or entity may not conduct, or possess products resulting from, the following experiments unless approved by and conducted in accordance with the conditions prescribed by the HHS Secretary:

(1) Experiments that involve the deliberate transfer of, or selection for, a drug resistance trait to select agents that are not known to acquire the trait naturally, if such acquisition could compromise the control of disease agents in humans, veterinary medicine, or agriculture.

(2) Experiments involving the deliberate formation of synthetic or recombinant DNA containing genes for the biosynthesis of select toxins lethal for vertebrates at an LD[50] <100 ng/kg body weight.''

* * * * *

§ 73.16 [Amended]

■ 7. In § 73.16, paragraph (g) is amended by removing the words ''concerning shipping'' and adding ''governing packaging and shipping'' after the words ''applicable laws''.

Dated: May 6, 2014.

Kathleen Sebelius,

Secretary.

[FR Doc. 2014–10740 Filed 5–9–14; 8:45 am]

BILLING CODE 4163–18–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WT Docket No. 03–128; FCC 04–222]

The Nationwide Programmatic Agreement Regarding Section 106 National Historic Preservation Act Review Process, Advisory Council on Historic Preservation

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, until October 31, 2014, an emergency information collection associated with the Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process. With this document, the Commission is announcing OMB approval and the effective date of the revised requirements.

DATES: FCC Forms 620, 621 and the Tower Construction Notification System were approved by OMB on April 9, 2014 and are effective on May 16, 2014.

FOR FURTHER INFORMATION CONTACT: For additional information contact Cathy Williams, *Cathy.Williams@fcc.gov <mailto:Cathy.Williams@fcc.gov>,* (202) 418–2918.

SUPPLEMENTARY INFORMATION: This document announces that, on April 9, 2014, OMB approved the revised information collection requirements for Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process published at 70 FR 556, January 4, 2005. The OMB Control Number is 3060–1039. The Commission publishes this notice as an announcement of the effective date of the requirements. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street SW., Washington, DC 20554. Please include the OMB Control Number, 3060–1039, in your correspondence. The Commission will also accept your comments via the Internet if you send them to *PRA@fcc.gov <mailto:PRA@fcc.gov>.*

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files,

audio format), send an email to *fcc504@fcc.gov <mailto:fcc504@fcc.gov>* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received OMB approval on April 9, 2014, for the revised information collection requirements contained in the information collection 3060–1039.

Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, 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 that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–1039.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060–1039.

OMB Approval Date: April 9, 2014.

OMB Expiration Date: October 31, 2014.

Title: Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process, WT Docket No. 03–128.

Form No.: FCC Forms 620 and 621; TCNS E-Filing.

Respondents: Business or Other For-Profit Entities; Not-For-Profit Institutions; State, Local or Tribal Governments.

Number of Respondents and Responses: 13,500 respondents and 13,500 responses.

Estimated Time per Response: 5 to 20 hours.

Frequency of Response: On occasion reporting requirement, Recordkeeping requirement, Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in sections 1, 4(i), 303(q), 303(r), 309(a), 309(j) and 319 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 303(q), 303(r), 309(a), 309(j) and 319, sections 101(d)(6) and 106 of the National Historic Preservation Act (NHPA) of 1966, 16 U.S.C. 470a(d)(6) and 470f, 47 CFR 800.14(b) of the Advisory Council on Historic Preservation.

Total Annual Burden: 97,929 hours.

Total Annual Cost: $13,087,425.

Nature and Extent of Confidentiality: In general there is no need for confidentiality. On a case by case basis, the Commission may be required to withhold from disclosure certain information about the location, character, or ownership of a historic property, including traditional religious sites.

Privacy Impact Assessment: No impact(s).

Needs and Uses: The data is used by FCC staff, State Historic Preservation Officers (SHPO), Tribal Historic Preservation Officers (THPO) and the Advisory Council of Historic Preservation (ACHP) to take such action as may be necessary to ascertain whether a proposed action may affect sites of cultural significance to Tribal Nations and historic properties that are listed or eligible for listing on the National Register as directed by Section 106 of the National Historic Preservation Act (NHPA) and the Commission's rules.

FCC Form 620, New Tower (NT) Submission Packet is to be completed by or on behalf of applicants to construct new antenna support structures by or for the use of licensees of the FCC. The form is to be submitted to the State Historic Preservation Office (''SHPO'') or to the Tribal Historic Preservation Office (''THPO''), as appropriate, and the Commission before any construction or other installation activities on the site begins. Failure to provide the form and complete the review process under Section 106 of the NHPA prior to beginning construction may violate Section 110(k) of the NHPA and the Commission's rules.

FCC Form 621, Collocation (CO) Submission Packet is to be completed by or on behalf of applicants who wish to collocate an antenna or antennas on an existing communications tower or non-tower structure by or for the use of licensees of the FCC. The form is to be submitted to the State historic Preservation Office (''SHPO'') or to the Tribal Historic Preservation Office (''THPO''), as appropriate, and the Commission before any construction or other installation activities on the site begins. Failure to provide the form and complete the review process under Section 106 of the NHPA prior to beginning construction or other installation activities may violate Section 110(k) of the NHPA and the Commission's rules.

The Tower Construction Notification System (TCNS) is used by or on behalf of Applicants proposing to construct new antenna support structures, and some collocations, to ensure that Tribal Nations have the requisite opportunity to participate in review prior to construction. To facilitate this coordination, Tribal Nations have designated areas of geographic preference, and they receive automated notifications based on the site coordinates provided in the filing. Applicants complete TCNS before filing a 620 or 621 and all the relevant data is pre-populated on the 620 and 621 when the forms are filed electronically.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison, Office of the Secretary, Office of Managing Director.

[FR Doc. 2014–10768 Filed 5–9–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 25

[IB Docket No. 12–376; FCC 14–45]

Commission's Rules Governing the Use of Earth Stations Aboard Aircraft Communicating With Fixed-Satellite Service Geostationary-Orbit Space Stations Operating in the Ku-Bands

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) promotes regulatory parity for Earth Stations Aboard Aircraft (ESAA) by adopting a primary allocation for ESAA in the 14.0–14.5 GHz band. The Commission also provides regulatory certainty by clarifying some of the ESAA rules.

DATES: Effective June 11, 2014.

FOR FURTHER INFORMATION CONTACT: Jennifer Balatan or Howard Griboff, Policy Division, International Bureau, (202) 418–1460.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Report and Order and Order on Reconsideration (*Second R&O and Recon Order*), FCC 14–45, adopted on April 17, 2014, and released on April 18, 2014. The full text of this document is available for inspection and copying during normal business hours in the Commission Reference Center, 445 12th Street SW., Washington, DC 20554. The document is also available for download over the Internet at *http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0418/FCC-14-45A1.pdf.* The complete text may also be purchased from the Commission's

copy contractor, Best Copy and Printing, in person at 445 12th Street SW., Room CY–B402, Washington, DC 20554, via telephone at (202) 488–5300, via facsimile at (202) 488–5563, or via email at *Commission@bcpiweb.com.*

Summary

1. On June 30, 2009, the Commission adopted the *ESAA Notice of Proposed Rulemaking and Report and Order* in IB Docket No. 07–101 (*ESAA NPRM & Order*), 78 FR 14920–01, March 8, 2013, (Final Rule), as amended at 78 FR 67309–01, November 12, 2013, and 78 FR 14952–01 (Notice), March 8, 2013, as amended at 78 FR 19172–01, March 29, 2013, establishing licensing and service rules for ESAA operating in the 14.0–14.5 GHz/11.7–12.2 GHz (Ku-band) frequencies. In the *Second R&O and Recon Order,* the Commission elevates ESAA from secondary status to primary status in the 14.0–14.5 GHz band and, as a result, modifies Non-governmental footnote NG55 in the U.S. Table of Frequency Allocations. The *Second R&O and Recon Order* also addresses several issues raised by a Petition for Reconsideration and Clarification filed by The Boeing Company (Boeing) with respect to discrete portions of the ESAA rules adopted in the *ESAA NPRM & Order.* First, the *Second R&O and Recon Order* clarifies the language in §§ 25.103 and 25.227(a)(14) to make clear that the Commission licenses ESAA terminals on all U.S.-registered civil aircraft regardless of whether that aircraft is operating within or outside of U.S. territory. The *Second R&O and Recon Order* also clarifies § 25.227(b)(3)(i) to more closely reflect the language in the *ESAA NPRM & Order* and in § 25.222(b)(3)(ii) of the rules for Earth Stations on Vessels. Further, the *Second R&O and Recon Order* clarifies the meaning of sigma in § 25.227(b)(1)(iii)(A), which sets forth the licensing requirement for demonstrating compliance with antenna pointing error limitations.

Final Regulatory Flexibility Analysis

2. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the U.S. Small Business Administration (SBA).

3. In light of the rules adopted in the *Second R&O and Recon Order,* we find that there are only two categories of licensees that would be affected by the new rules. These categories of licensees are Satellite Telecommunications and Fixed-Satellite Transmit/Receive Earth Stations. The SBA has determined that the small business size standard for Satellite Telecommunications is a business that has $30 million or less in average annual receipts. Commission records reveal that there are 20 space station licensees and operators in the Ku-band. We do not request or collect annual revenue information concerning such licensees and operators, and thus are unable to estimate the number of geostationary space station licensees and operators that would constitute a small business under the SBA definition cited above, or apply any rules providing special consideration for geostationary space station licensees and operators that are small businesses. Currently there are approximately 2,879 operational fixed-satellite transmit/receive earth stations authorized for use in the Ku-band. The Commission does not request or collect annual revenue information, and thus is unable to estimate the number of earth stations that would constitute a small business under the SBA definition. Of the two classifications of licensees, we estimate that approximately six (6) entities will provide ESAA service. For the reasons described below, we certify that the clarification to the rules adopted in the *Second R&O and Recon Order* will not have a significant economic impact on a substantial number of small entities.

4. In the *ESAA NPRM & Order,* the Commission tentatively concluded that ESAA should be authorized on a primary basis in the 14.0–14.5 GHz uplink band, noting that several parties had argued that regulatory parity calls for ESAA to be primary, just like ESV and VMES are primary in that band. The Commission proposed to revise footnote NG55 which would grant primary status to ESAA in the 14.0–14.5 GHz band, and, as an administrative matter, combine ESV, VMES and ESAA into the same footnote as applications of the FSS with primary status in the 11.7–12.2 GHz and 14.0–14.5 GHz bands.

5. In the *Second R&O and Recon Order,* the Commission adopted its tentative conclusion to grant primary status to ESAA operators in the 14.0–14.5 GHz band. The Commission also made a minor administrative change to § 25.227(b)(2)(i) of the Commission's rules by replacing the word ''receive'' with the word ''create'' in that rule, acknowledging that the term ''receive'' was incorrectly put into the rule originally. The Commission does not expect a substantial number of small entities to incur significant costs associated with the changes adopted in this *Second R&O and Recon Order.* The change from secondary status to primary status in the 14.0–14.5 GHz band will benefit both large and small entities by allowing greater regulatory certainty in providing ESAA service. In addition, the administrative change to § 25.227(b)(2)(i) is a ''clean-up'' change involving no substantive decision of significance to small business or the industry in general. Overall, we believe these changes do not impose a significant economic impact on small entities. Therefore, we certify that the requirements adopted in the *Second R&O and Recon Order* will not have a significant economic impact on a substantial number of small entities.

6. The *ESAA NPRM & Order* established service and licensing rules for ESAA operations based on the rules adopted for VSAT networks as well as ESV and VMES networks, noting that authorizing ESAA operations in the FSS Ku-band presented many technical issues that are similar to authorizing the ESV and VMES operations in that band. ESAA terminals communicate with FSS GSO space stations operating in the extended Ku-band (10.95–11.2 GHz and 11.45–11.7 GHz bands) and conventional Ku-band (11.7–12.2 GHz and 14.0–14.5 GHz bands). As part of the ESAA service rules, the Commission adopted technical measures to protect other radio services in the Ku-band, including the FSS and FS (in the extended Ku-band), from harmful interference. The Commission also adopted a regulatory framework for ESAA systems on U.S.-registered aircraft operating in or near foreign nations and over international waters and non-U.S.-registered aircraft operating in U.S. airspace.

7. The Commission does not expect small entities to incur significant costs associated with the changes adopted in the *Second R&O and Recon Order.* The changes will benefit both large and small entities by allowing greater regulatory certainty in providing ESAA service. We believe these changes are nominal and do not impose a significant economic impact on small entities. Therefore, we certify that the requirements adopted in the *Second*

R&O and Recon Order will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act of 1995 Analysis

8. The *Second R&O and Recon Order* does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). The Commission will send a copy of this *Second R&O and Recon Order* to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Ordering Clauses

9. *It is ordered* that, pursuant to sections 4(i), 7, 302, 303(c), 303(e), 303(f) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157, 302a, 303(c), 303(e), 303(f) and 303(r), the Second Report and Order and Order on Reconsideration *is adopted.* Part 25 of the Commission's rules *is amended* June 11, 2014.

10. *It is further ordered* that the Petition for Reconsideration filed by The Boeing Company *is granted in part* to the extent described above and *is denied* in all other respects.

11. *It is further ordered* that the Final Regulatory Flexibility Certifications, as required by section 604 of the Regulatory Flexibility Act, *are adopted.*

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

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 2 and 25 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 2. Amend § 2.106, the Table of Frequency Allocations, as follows:

■ a. Revise pages 47 and 49.

■ b. In the list of ''Non-Federal Government (NG) Footnotes,'' revise footnote NG55 and remove footnotes NG54, NG183 and NG187.

The revisions read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

BILLING CODE 6712–01–P

Table of Frequency Allocations			10-14 GHz (SHF)		Page 47
International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
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10.55-10.6 FIXED MOBILE except aeronautical mobile Radiolocation			10.55-10.6	10.55-10.6 FIXED	Fixed Microwave (101)
10.6-10.68 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY SPACE RESEARCH (passive) Radiolocation 5.149 5.482 5.482A			10.6-10.68 EARTH EXPLORATION-SATELLITE (passive) SPACE RESEARCH (passive) US130 US131 US265	10.6-10.68 EARTH EXPLORATION-SATELLITE (passive) FIXED US265 SPACE RESEARCH (passive) US130 US131	
10.68-10.7 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340 5.483			10.68-10.7 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) US131 US246		
10.7-11.7 FIXED FIXED-SATELLITE (space-to-Earth) 5.441 5.484A (Earth-to-space) 5.484 MOBILE except aeronautical mobile	10.7-11.7 FIXED FIXED-SATELLITE (space-to-Earth) 5.441 5.484A MOBILE except aeronautical mobile		10.7-11.7 US131 US211	10.7-11.7 FIXED FIXED-SATELLITE (space-to-Earth) 5.441 US131 US211 NG52	Satellite Communications (25) Fixed Microwave (101)
11.7-12.5 FIXED MOBILE except aeronautical mobile BROADCASTING BROADCASTING-SATELLITE 5.492	11.7-12.1 FIXED 5.486 FIXED-SATELLITE (space-to-Earth) 5.484A 5.488 Mobile except aeronautical mobile 5.485 12.1-12.2 FIXED-SATELLITE (space-to-Earth) 5.484A 5.488 5.485 5.489	11.7-12.2 FIXED MOBILE except aeronautical mobile BROADCASTING BROADCASTING-SATELLITE 5.492 5.487 5.487A	11.7-12.2	11.7-12.2 FIXED-SATELLITE (space-to-Earth) 5.485 5.488 NG55 NG143	Satellite Communications (25)

International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
14-14.25 FIXED-SATELLITE (Earth-to-space) 5.457A 5.457B 5.484A 5.506 5.506B RADIONAVIGATION 5.504 Mobile-satellite (Earth-to-space) 5.504B 5.504C 5.506A Space research 5.504A 5.505			14-14.2 Space research US133	14-14.2 FIXED-SATELLITE (Earth-to-space) NG55 Mobile-satellite (Earth-to-space) Space research US133	Satellite Communications (25)
14.25-14.3 FIXED-SATELLITE (Earth-to-space) 5.457A 5.457B 5.484A 5.506 5.506B RADIONAVIGATION 5.504 Mobile-satellite (Earth-to-space) 5.504B 5.506A 5.508A Space research 5.504A 5.505 5.508			14.2-14.4	14.2-14.47 FIXED-SATELLITE (Earth-to-space) NG55 Mobile-satellite (Earth-to-space)	
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* * * * *

NON–FEDERAL GOVERNMENT (NG) FOOTNOTES

* * * * *

NG55 In the bands 11.7–12.2 GHz (space-to-Earth) and 14.0–14.5 GHz (Earth-to-space), Earth Stations on Vessels (ESV), Vehicle-Mounted Earth Stations (VMES), and Earth Stations Aboard Aircraft (ESAA) as regulated under 47 CFR part 25 are applications of the fixed-satellite service and may be authorized to communicate with geostationary satellites in the fixed-satellite service on a primary basis.

* * * * *

PART 25—SATELLITE COMMUNICATIONS

■ 3. The authority citation for part 25 continues to read as follows:

Authority: Interprets or applies sections 4, 301, 302, 303, 307, 309, 319, 332, 705 and 721 of the Communications Act as amended, 47 U.S.C. 154, 301, 302, 303, 307, 309, 319, 332, 605 and 721, unless otherwise noted.

■ 4. Amend § 25.103 by revising the definition of ''*Earth Stations Aboard Aircraft (ESAA)*'' to read as follows:

§ 25.103 Definitions.

* * * * *

Earth Stations Aboard Aircraft (ESAA). Earth stations operating aboard aircraft that receive from and transmit to geostationary-orbit Fixed-Satellite Service space stations pursuant to the requirements in § 25.227.

* * * * *

■ 5. Amend § 25.227 by revising paragraphs (a)(14), (b)(1)(iii)(A), (b)(2)(i), and the second to last sentence of paragraph (b)(3)(i) to read as follows:

§ 25.227 Blanket Licensing provisions for Earth Stations Aboard Aircraft (ESAAs) receiving in the 10.95–11.2 GHz (space-to-Earth), 11.45–11.7 GHz (space-to-Earth), and 11.7–12.2 GHz (space-to-Earth) frequency bands and transmitting in the 14.0–14.5 GHz (Earth-to-space) frequency band, operating with Geostationary Satellites in the Fixed-Satellite Service.

(a) * * *

(14) All ESAA terminals operated in U.S. airspace, whether on U.S.-registered civil aircraft or non-U.S.-registered civil aircraft, must be licensed by the Commission. All ESAA terminals on U.S.-registered civil aircraft operating outside of U.S. airspace must be licensed by the Commission, except as provided by section 303(t) of the Communications Act.

* * * * *

(b) * * *

(1) * * *

(iii) * * *

(A) Demonstrate that the total tracking error budget of their antenna is within 0.2° or less between the orbital location of the target satellite and the axis of the main lobe of the ESAA antenna. As part of the engineering analysis, the ESAA applicant must show that the antenna pointing error is within three sigma (б) from the mean value, *i.e.,* that there is a 0.997 probability the antenna maintains a pointing error within 0.2°; and

* * * * *

(2) * * *

(i) A statement from the target satellite operator certifying that the proposed operation of the ESAA has the potential to create harmful interference to satellite networks adjacent to the target satellite(s) that may be unacceptable.

* * * * *

(3) * * *

(i) * * * The ESAA applicant also shall provide a detailed showing that one or more transmitters are capable of automatically ceasing or reducing emissions within 100 milliseconds of receiving a command from the system's network control and monitoring center that the aggregate off-axis EIRP spectral-densities of the transmitter or transmitters exceed the off-axis EIRP-density limits specified in paragraph (a)(3)(i) of this section. * * *

* * * * *

[FR Doc. 2014–10876 Filed 5–9–14; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 395

Notice of Regulatory Guidance: Automatic On-Board Recording Devices

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

ACTION: Notice of regulatory guidance.

SUMMARY: FMCSA issues regulatory guidance on two issues involving roadside inspection of commercial motor vehicles (CMVs) equipped with automatic on-board recording devices (AOBRDs) to assist drivers with hours-of-service (HOS) recordkeeping and compliance. All prior Agency interpretations and regulatory guidance, including memoranda and letters, may no longer be relied upon to the extent they are inconsistent with this guidance.

DATES: This regulatory guidance is effective May 12, 2014.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, Driver and Carrier Operations Division, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, phone (202) 366–4325, email *MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION:

Legal Basis

The Motor Carrier Safety Act of 1984 (Pub. L. 98–554, Title II, 98 Stat. 2832, October 30, 1984) (the 1984 Act) authorizes the Secretary of Transportation to regulate CMVs and equipment, and the drivers and motor carriers that operate them 49 U.S.C. 31136(a)]. Section 211 of the 1984 Act also gives the Secretary broad power to ''prescribe recordkeeping and reporting requirements'' and to ''perform other acts the Secretary considers appropriate'' (49 U.S.C. 31133(a)(8) and (10)). The Administrator of FMCSA has been delegated authority under 49 CFR 1.87(f) to carry out the functions vested in the Secretary by 49 U.S.C. chapter 311, subchapters I and III, relating to CMV programs and safety regulation.

Background

Motor carriers began to use automated HOS recording devices in the mid-1980s to replace paper records. The Federal Highway Administration, the agency at that time responsible for motor carrier safety regulations, published a final rule in 1988 that defined AOBRDs and set forth performance standards for their use (53 FR 38670, September 30, 1988).

AOBRD Display, Recording, and Printing Requirements

FMCSA has been informed that inspection officials sometimes request drivers to provide printouts from AOBRDs, or to email or fax records of duty status (RODS) to an enforcement official. The Agency has also been advised that, in some cases, inspection officials have issued citations to CMV drivers because their AOBRDs did not display certain information.

The Federal Motor Carrier Safety Regulations (FMCSRs) have never required AOBRDs to be capable of providing printed records at the roadside, although a driver may voluntarily do so if his/her AOBRD has that capability. Such printed information must meet the *display* requirements of § 395.15.

The AOBRD requirements for recording—but not displaying—information reflect mid-1980s information technology. These requirements were developed when small electronic displays were relatively

uncommon and costly, and the amount and type of information they could display were limited. The earliest displays could show only text, not graphics—hence the requirement for the ''time and sequence of duty status'' rather than the § 395.8 graph grid. The additional information that is recorded but not displayed is intended for use during an audit of the carrier's HOS records.

Regulatory Guidance

FMCSA amends the April 4, 1997, publication to add questions 5 and 6 production of records during a roadside inspection.

PART 395—HOURS OF SERVICE OF DRIVERS

Add § 395.15 Questions 5 and 6, to read as follows:

Question 5: What information is required to be displayed on the AOBRD?

Guidance:

(1) Section 395.15(i)(5) requires that AOBRDs with electronic displays must be capable of *displaying* the following: ''(i) Driver's total hours of driving today; (ii) The total hours on duty today; (iii) Total miles driving today; (iv) Total hours on duty for the 7 consecutive day period, including today; (v) Total hours on duty for the prior 8 consecutive day period, including the present day; and (vi) The sequential changes in duty status and the times the changes occurred for each driver using the device.''

(2) While § 395.15(c) requires additional information be recorded by the AOBRD, only the specific information listed in § 395.15(i)(5) must be displayed.

(3) The two provisions differ because of the data display limitations of a minimally compliant AOBRD.

Question 6: Must an AOBRD be capable of providing a hardcopy printout?

Guidance: No, the FMCSRs do not require AOBRDs to provide a hardcopy printout for an enforcement official. As long as the information made available for display on the AOBRD meets the requirements of § 395.15(i)(5), the driver and motor carrier are not required to provide additional RODS documentation to an enforcement official at the roadside. However, an enforcement official may request that additional information be provided by email, fax, or similar means within 48 hours for follow-up after the conclusion of the roadside inspection.

Issued on: April 28, 2014.

Anne S. Ferro,

Administrator.

[FR Doc. 2014–10822 Filed 5–9–14; 8:45 am]

BILLING CODE 4910–EX–P

Proposed Rules

Federal Register
Vol. 79, No. 91
Monday, May 12, 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 HOMELAND SECURITY

8 CFR Parts 204, 214, 248, and 274a

[CIS No. 2515–11; DHS Docket No. USCIS–2012–0005]

RIN 1615–AC00

Enhancing Opportunities for H–1B1, CW–1, and E–3 Nonimmigrants and EB–1 Immigrants

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Proposed rule.

SUMMARY: The Department of Homeland Security (DHS) proposes to update the regulations to include nonimmigrant high-skilled specialty occupation professionals from Chile and Singapore (H–1B1) and from Australia (E–3) in the list of classes of aliens authorized for employment incident to status with a specific employer, to clarify that H–1B1 and principal E–3 nonimmigrants are allowed to work without having to separately apply to DHS for employment authorization.

DHS also is proposing to provide authorization for continued employment with the same employer if the employer has timely-filed for an extension of the nonimmigrant's stay. DHS also proposes this same continued work authorization for Commonwealth of the Northern Mariana Islands (CNMI)-Only Transitional Worker (CW–1) nonimmigrants if a Petition for a CNMI-Only Nonimmigrant Transitional Worker, Form I–129CW, is timely filed to apply for an extension of stay.

In addition, DHS is proposing to update the regulations describing the filing procedures for extensions of stay and change of status requests to include the principal E–3 and H–1B1 nonimmigrant classifications. These changes would harmonize the regulations for E–3, H–1B1, and CW–1 nonimmigrant classifications with the existing regulations for other, similarly situated nonimmigrant classifications.

Finally, DHS is proposing to expand the current list of evidentiary criteria for employment-based first preference (EB–1) outstanding professors and researchers to allow the submission of evidence comparable to the other forms of evidence already listed in the regulations. This proposal would harmonize the regulations for EB–1 outstanding professors and researchers with other employment-based immigrant categories that already allow for submission of comparable evidence.

DHS is proposing these changes to the regulations to benefit these highly skilled workers and CW–1 transitional workers by removing unnecessary hurdles that place such workers at a disadvantage when compared to similarly situated workers in other visa classifications.

DATES: Written comments must be received on or before July 11, 2014

ADDRESSES: You may submit comments, identified by DHS Docket No. USCIS–2012–0005 by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email:* You may submit comments directly to DHS by email at *USCISFRComment@uscis.dhs.gov.* Include DHS Docket No. USCIS–2012–0005 in the subject line of the message.
- *Mail:* Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW., Washington, DC 20529–2140. To ensure proper handling, please reference DHS Docket No. USCIS–2012–0005 on your correspondence. This mailing address may be used for paper, disk, or CD–ROM submissions.
- *Hand Delivery/Courier:* Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW., Washington, DC 20529–2140. Contact telephone number is (202) 272–8377.

FOR FURTHER INFORMATION CONTACT: Paola Rodriguez Hale, Adjudications Officer (Policy), Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW., Washington, DC 20529–2141. Contact telephone number is (202) 272–1470.

SUPPLEMENTARY INFORMATION:

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I. Public Participation

All interested parties are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this proposed rule. DHS and U.S. Citizenship and Immigration Services (USCIS) also invite comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. Comments that will provide the most assistance to USCIS in implementing these changes will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include

data, information, or authority that supports a recommended change.

Instructions: All submissions must include the agency name and DHS Docket No. USCIS–2012–0005 for this rulemaking. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary public comment submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov*.

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

II. Executive Summary

A. Purpose of the Regulatory Action

DHS proposes to amend its regulations in several ways to improve the programs serving the E–3, H–1B1, and CW–1 nonimmigrant classifications and the EB–1 immigrant classification for outstanding professors and researchers. The proposed changes would harmonize the regulations governing these classifications with regulations governing similar visa classifications by removing unnecessary hurdles that place E–3, H–1B1, CW–1 and certain EB–1 workers at a disadvantage.

B. Summary of the Major Provisions of the Regulatory Action

The rulemaking includes the following changes:

- Designates E–3 and H–1B1 classifications as authorized to work for the specific employer listed in their petition without requiring separate approval for work authorization from USCIS (8 CFR 274a.12): This designation would update DHS regulations to match current practice, under which E–3 and H–1B1 nonimmigrant visa holders are authorized to work for the duration of their authorized stay in the United States without applying separately for employment authorization. The E–3 and H–1B1 nonimmigrant classifications were established by statute in 2005 and 2003, respectively. *See* REAL ID Act of 2005, Public Law 109–13, § 501, 119 Stat. 231; United States-Singapore Free Trade Agreement Implementation Act, Public Law 108–78, § 402, 117 Stat. 948 (2003); United States-Chile Free Trade Agreement Implementation Act, Public Law 108–77, §§ 402–404, 117 Stat. 909 (2003). Since that time, the DHS employment authorization regulations at 8 CFR 274a.12 have not been updated to include principal E–3 and H–1B1 nonimmigrants as aliens authorized to accept employment in the United States as authorized by statute. This rule proposes to specifically include these two classifications in the regulation at proposed 8 CFR 274a.12(b)(25) and 8 CFR 274a.12(b)(9). This reflects statutory authority and codifies current practice into the regulation.
- Automatically extends employment authorization to E–3 and H–1B1 nonimmigrants with pending extension of stay requests (8 CFR 274a.12): The regulations at 8 CFR 274a.12(b)(20) authorize aliens in specific nonimmigrant classifications to continue employment with the same employer for a 240-day period beyond the authorized period specified on the Arrival-Departure Record, Form I–94, as long as a timely application for an extension of stay is filed. This means that these individuals can continue to work with the specific employer listed in their petition, even after their authorized stay expires, as long as their extension petition is still pending. Congress created the E–3 and H–1B1 nonimmigrant classifications after that regulation was promulgated. As such, E–3 and H–1B1 nonimmigrant workers are not included in that provision and cannot continue to work with the same employer beyond the existing authorization while waiting for USCIS to adjudicate an extension of stay request. This rule proposes to amend DHS regulations at 8 CFR 274a.12(b)(20) to accord principal E–3 and H–1B1 nonimmigrants the same treatment as other, similarly situated nonimmigrants, such as H–1B, E–1, and E–2 nonimmigrants.
- Updates the regulations describing the filing procedures for extension of stay and change of status requests to include the principal E–3 and H–1B1 nonimmigrant classifications (8 CFR 214.1(c)(1) and 8 CFR 248.1(a)): Current regulations describing the filing procedures list nonimmigrant classifications that are subject to these procedures, but do not include H–1B1 and principal E–3 nonimmigrants. Although the form instructions for H–1B1 and principal E–3 extension of stay and change of status requests (Instructions for Form I–129, Petition for a Nonimmigrant Worker) were updated to include H–1B1 and principal E–3 nonimmigrants when these categories were first established, the regulations were not. This rule proposes to amend the regulations to add H–1B1 and principal E–3 nonimmigrants to the list. This amendment is consistent with statutory authority and codifies current practice into the regulation. *See* INA sections 214(g)(8)(C)–(D) and (g)(11), 248, 8 U.S.C. 1184(g)(8)(C)–(D) and (g)(11), 1258.
- Automatically extends employment authorization for CW–1 nonimmigrant workers with pending extension of stay requests (8 CFR 274a.12): The current regulations provide continued work authorization for a CW–1 nonimmigrant worker seeking to change to a new employer, including a change resulting from early termination, and for an employee under the previous CNMI immigration system. 8 CFR 214.2(w)(7) and 8 CFR 274a.12(b)(23). Currently, a CW–1 nonimmigrant worker cannot continue to work with the same employer beyond the existing authorization while waiting for DHS to adjudicate an extension of stay request. DHS is proposing to amend 8 CFR 274a.12(b)(20) to add the CW–1 nonimmigrant classification to the list of employment-authorized nonimmigrant classifications allowing for an automatic extension of employment authorization of up to 240 days while the employer's timely filed extension of stay request remains pending. This change would harmonize the treatment of CW–1 nonimmigrants waiting for a decision from USCIS on their pending request for an extension of stay with those CW–1 nonimmigrants awaiting a decision on a petition to change employers.
- Allows a petitioner who wants to employ an outstanding professor or researcher to submit evidence comparable to the evidence otherwise described in 8 CFR 204.5(i)(3)(i) that demonstrates that the beneficiary is recognized as an outstanding professor or researcher. The current EB–1 regulations do not allow petitioners for outstanding professors and researchers to submit evidence that the beneficiary is recognized internationally as outstanding in a specific academic area such as, in certain circumstances, important patents or prestigious peer-reviewed funding grants. This rule proposes to modify the regulatory limitation on initial evidence for outstanding professors and researchers to allow a petitioner to submit evidence that is comparable to the list of currently accepted evidence and that demonstrates that the beneficiary is

recognized as outstanding. The new regulatory criterion for initial evidence would be similar to those found under the aliens of extraordinary ability and the aliens of exceptional ability classifications. This would broaden the range of evidence that professors and researchers may submit and therefore provide petitioners with an opportunity to present additional or alternative documentation demonstrating the beneficiary's achievements if the evidence otherwise described in 8 CFR 204.5(i)(3)(i) does not readily apply.

C. Cost and Benefits

The proposed rule, if finalized, would not impose any additional costs on employers, workers or any governmental entity.

The portion of the proposed rule addressing E–3, H–1B1, and CW–1 nonimmigrant classifications would extend the period of authorized employment while requests for an extension of stay for these employment-based nonimmigrant classifications are being reviewed. The regulations at 8 CFR 274a.12(b)(20) generally provide aliens in specific nonimmigrant classifications with authorization to continue employment with the same employer for a 240-day period beyond the period specified on the Arrival-Departure Record, Form I–94, as long as a timely application for an extension of stay is filed on an alien's behalf. This provision applies only to the classifications specified in the regulation—which does not currently include the E–3, H–1B1, and CW–1 nonimmigrant classifications. By harmonizing the regulations for E–3, H–1B1, and CW–1 nonimmigrants with the other listed nonimmigrant classifications, this proposed rule would provide equity for these nonimmigrants relative to other nonimmigrant classifications.

The proposed rule also would help employers of E–3, H–1B1, and CW–1 nonimmigrants avoid potential interruptions of employment for E–3, H–1B1, and CW–1 employees during the period that requests for an extension of these employment-based nonimmigrant visa classifications are being reviewed. DHS recognizes that these disruptions could result in lost wages for an employee and lost productivity for an employer. In fact, stakeholders have indicated to USCIS that providing automatic extensions of employment authorization would help alleviate potential disruptions to the petitioning employer's business arising out of their inability to keep their nonimmigrant workers on the payroll while the extension request is still pending. DHS does not have data on the number of employers or E–3, H–1B1, and CW–1 nonimmigrants experiencing disruption in employment by not receiving an approval of the extension before the expiration date specified on the Arrival-Departure Record or the duration (length of time) of any disruption, but specifically welcomes comment on this issue.

The portion of the proposed rule addressing the evidentiary requirements for the EB–1 outstanding professor and researcher employment-based immigrant classification would allow for the submission of comparable evidence (e.g., achievements not currently listed in the regulation as available evidence, such as important patents or prestigious, peer-reviewed funding grants) in addition to that listed in 8 CFR 204.5(i)(3)(i)(A)—(F) to establish that the EB–1 professor or researcher is recognized internationally as outstanding in his or her academic field. Similar to the benefits of harmonizing E–3, H–1B1, and CW–1 provisions, the harmonization of the evidentiary requirements for EB–1 outstanding professors and researchers with other comparable employment-based immigrant classifications would provide equity for EB–1 outstanding professors and researchers relative to those other employment-based visa categories. The proposed rule may also facilitate petitioners' recruitment of the EB–1 outstanding professors and researchers by expanding the range of evidence that may be provided to support their petitions.

TABLE 1—SUMMARY OF COSTS AND BENEFITS

Costs	Proposed change	Benefits and avoided costs
	E–3, H–1B1 and CW–1 Nonimmigrants	
None ..	Automatic extension of stay of 240 days for an H–1B1, E–3 or CW–1 nonimmigrant while a petition to extend stay is pending.	Avoided cost of lost productivity for U.S. employers of E–3, H–1B1and CW–1 nonimmigrants and avoided lost wages by the nonimmigrant workers. Not quantified. Would provide equity for E–3 and H–1B1 nonimmigrants relative to other employment-based nonimmigrants listed in 8 CFR 274a.12.(b)(20) and provide equity for CW–1 nonimmigrants whose extension request is filed by the same employer relative to other CW–1 nonimmigrants who change employers. Qualitative benefit.
	Clarify that E–3 and H–1B1 nonimmigrants are work authorized incident to status, and specify current filing procedures for requesting change of status or extension of status.	Ensures the regulations are consistent with statutory authority and codifies current practice.
	EB–1 Outstanding Professors and Researchers	
	Allow the use of comparable evidence to that listed in 8 CFR 204.5(i)(3)(i)(A)–(F) to establish that the EB–1 professor or researcher is recognized internationally as outstanding in his or her academic field.	May facilitate recruitment of EB–1 outstanding professors and researchers for U.S. employers. Not quantified. Would provide equity for EB–1 immigrants relative to other employment-based immigrants listed in 8 CFR 204.5. Qualitative benefit.

III. Background

The Immigration Act of 1990 (IMMACT90), among other things, reorganized immigrant classifications and created new employment-based immigrant classifications. *See* Public Law 101–649, 104 Stat. 4978. The new employment-based immigration provisions were intended to cultivate a more competitive economy by encouraging increased immigration of skilled individuals to meet our

economic needs.[1] Those IMMACT90 provisions were enacted to address the need of American businesses for highly skilled, specially trained personnel to fill increasingly sophisticated jobs for which domestic personnel could not be found. *See* Employment-Based Immigrants, 56 FR 30703 (July 5, 1991). The need for high-skilled workers was based on an increasing skills gap in current and projected U.S. labor pools. *Id.*

American businesses continue to need skilled nonimmigrant and immigrant workers. As such, our legal immigration system can be improved by reducing barriers for these workers.[2] By attracting the ''best and brightest'' from around the world, the United States can harness their talents, skills, and ideas to help the U.S. economy grow.[3] Attracting and retaining highly-skilled workers is critical to sustaining our nation's global competitiveness. Governments seeking to make the most of their highly skilled immigration face the challenge of identifying, attracting, and retaining those with the best prospects for success.[4] Not only does the U.S. economy lose opportunities for expansion, but the loss is compounded when highly-skilled immigrants leave the United States and fuel innovation and economic growth in countries that compete with the American economy.[5] Consistent with this vision of attracting and retaining foreign workers, DHS has identified four employment-based (EB) classifications for which simple harmonizing changes to the regulations would further the goal of removing unnecessary obstacles for highly-skilled workers or transitional workers to continue working in the United States or seek admission as an immigrant. These classifications are the E–3, H–1B1, and CW–1 nonimmigrant classifications and the EB–1 outstanding professor and researcher immigrant classification.

A. E–3 Nonimmigrant Classification

The E–3 nonimmigrant visa provisions became effective upon signing of the REAL ID Act of 2005. *See* Public Law 109–13, sec. 501, 119 Stat. 231. The E–3 classification permits certain Australian nationals to apply for admission to the United States solely to perform services in a specialty occupation. *See* Immigration and Nationality Act (INA) section 101(a)(15)(E)(iii), 8 U.S.C. 1101(a)(15)(E)(iii). USCIS's role with respect to the E–3 classification is limited primarily to adjudicating requests for either a change from another nonimmigrant status to E–3 status, *see* 8 CFR part 248, or for an extension of stay in E–3 classification, *See* 8 CFR 214.1(c). Both types of requests also are governed by the pertinent instructions accompanying the Petition for a Nonimmigrant Worker, Form I–129. *See* Instructions to Petition for a Nonimmigrant Worker, Form I–129; 8 CFR 103.2(a).

The E–3 nonimmigrant visa classification is similar in many respects to the H–1B nonimmigrant classification. *See* INA section 101(a)(15)(H)(i)(b), 8 U.S.C. 1101(a)(15)(H)(i)(b). As with the H–1B classification, the E–3 classification requires the position in which the alien will work to be a specialty occupation. The INA defines a specialty occupation as one that requires the theoretical and practical application of a body of highly specialized knowledge, and a bachelor's or higher degree in the specific specialty (or its equivalent). *See* INA section 214(i)(1), 8 U.S.C. 1184(i)(1). E–3 nonimmigrant workers also must meet any other occupational requirements specified by the jurisdiction in which the alien will be employed, such as licensure or other official permission required to immediately and fully perform the duties of the occupation in question. *See* INA section 214(i)(2), 8 U.S.C. 1184(i)(2); *see also* 9 Foreign Affairs Manual (FAM) 41.51 N.16.7.

Similar to procedures governing the H–1B classification, a U.S. employer seeking to employ E–3 nonimmigrant workers must obtain a Labor Condition Application (LCA) issued by the U.S. Department of Labor (DOL). *See* INA section 101(a)(15)(E)(iii), 8 U.S.C. 1101(a)(15)(E)(iii). After DOL approves an LCA, individuals who are outside the United States may apply for an E–3 visa directly at a consular office overseas, similar to other E nonimmigrant visa applicants. *See* 22 CFR 41.51(c); 9 FAM 41.51 N16.1. For individuals in the United States in another nonimmigrant status, the employer may instead file a Petition for a Nonimmigrant Worker, Form I–129, with USCIS to change the alien's nonimmigrant status to that of an E–3 nonimmigrant. *See* Adjudicator's Field Manual (AFM) Chapter 34.6(b); *see also* Instructions to Petition for a Nonimmigrant Worker, Form I–129, page 2. This petition may also be used to request an extension of stay for an E–3 nonimmigrant worker in the United States. *Id.*

E–3 nonimmigrant workers may be admitted initially for a period not to exceed 2 years, the maximum validity period of the accompanying LCA. *See* AFM Chapter 34.6 (a)(3); *see also* INA 101(a)(15)(E)(iii); 20 CFR 655.750(a); 22 CFR 41.51(c)(1)(iv). USCIS may grant extensions of stay in increments not to exceed the validity period of the accompanying LCA (in increments of up to 2 years each). *Id.* USCIS may extend an E–3 nonimmigrant worker's status indefinitely. *Id.*

The E–3 nonimmigrant receives from USCIS his or her approval notice on Form I–797 with an attached Arrival-Departure Record, Form I–94, which serves as evidence of lawful immigration status. Currently, E–3 nonimmigrant workers may work for the petitioning employer only until the expiration date noted on the Arrival-Departure Record, Form I–94. The E–3 nonimmigrant must stop working if USCIS does not approve the petition for an extension of stay before the expiration date noted on the individual's Arrival-Departure Record, Form I–94.

Principal E–3 aliens are subject to an annual numerical limitation of 10,500 initial E–3 visas per fiscal year (FY). *See* INA section 214(g)(11), 8 U.S.C. 1184(g)(11). To determine numerical limitation compliance, USCIS counts initial E–3 visa applications submitted abroad, initial petitions for a change of status to E–3, and E–3 applications for an extension of stay requesting a change of employers against the numerical limitation. *See* INA section 214(g)(11)(A), 8 U.S.C. 1184(g)(11)(A); AFM Chapter 34.6(a)(3) Note 3. USCIS does not count the dependent spouse and children of E–3 principal aliens against the numerical limitation. *See* INA section 214(g)(11)(C), 8 U.S.C. 1184(g)(11)(C); 22 CFR 41.51(c)(2).

[1] *See Statement by President upon Signing of the Immigration Act of 1990,* 1990 U.S.C.C.A.N 6801–1 (Nov. 29, 1990), available at *http://www.presidency.ucsb.edu/ws/index.php?pid=19117#ixzz1KvDlYZql. See also* H.R. Rep. No. 101–723(I), at 6721 (1990) (''[I]mmigration can and should be incorporated into an overall strategy that promotes the creation of the type of workforce needed in an increasingly competitive global economy without adversely impacting on the wages and working conditions of American workers.'').

[2] *See* White House, *Building a 21st Century Immigration System* May 2011, at 9, available at *http://www.whitehouse.gov/sites/default/files/rss_viewer/immigration_blueprint.pdf.*

[3] *See* White House, *Building a 21st Century Immigration System,* May 2011, at 1, available at *http://www.whitehouse.gov/sites/default/files/rss_viewer/immigration_blueprint.pdf.*

[4] *See* Demetrios G. Papademetriou and Madeleine Sumption, *Attracting and Selecting from the Global Talent Pool, Policy Challenges,* Migration Policy Inst., Sept. 2013, at 4, available at *http://www.migrationpolicy.org/research/attracting-and-selecting-global-talent-pool-%E2%80%94-policy-challenges.*

[5] *See* Madeline Zavodny, *Immigration and American Jobs,* Am. Enter. Inst. & the Partnership for a New Am. Econ., Dec. 2011, at 5, available at *http://www.aei.org/files/2011/12/14/-immigration-and-american-jobs_144002688962.pdf.*

B. H–1B1 Nonimmigrant Classification

Similar to the E–3 and H–1B nonimmigrant visa classifications, the H–1B1 nonimmigrant visa classification also involves the performance of services in a specialty occupation, except that it specifically applies to nationals of Chile and Singapore. *See* INA section 101(a)(15)(H)(i)(b1), 8 U.S.C. 1101(a)(15)(H)(i)(b1); INA section 214(g)(8)(A), 8 U.S.C. 1184(g)(8)(A). Congress created the H–1B1 nonimmigrant classification in sections 402–404 of the United States-Chile Free Trade Agreement Implementation Act, Public Law 108–77, 117 Stat. 909 (2003), and in section 402 of the United States-Singapore Free Trade Agreement Implementation Act, Public Law 108–78, 117 Stat. 947 (2003), both effective on January 1, 2004.

To employ an H–1B1 nonimmigrant, a U.S. petitioner must first obtain a certification from the U.S. Department of Labor (DOL) generally confirming that the petitioner has filed a Labor Condition Application (LCA) in the occupational specialty in which the nonimmigrant will be employed and has made the requisite attestations. *See* INA sections 101(a)(15)(H)(i)(b1), 212(t), 8 U.S.C. 1101(a)(15)(H)(i)(b1), 1182(t). The validity period of an LCA issued for an H–1B1 nonimmigrant must not exceed three years; an LCA for an extension must not exceed two years. *See* 20 CFR 655.750(a). After receiving a certified LCA, individuals who are not in the United States may apply for an H–1B1 visa directly at a consular office overseas. *See* 9 FAM 41.53 N26.2 and N26.3. For individuals in the United States in another nonimmigrant status, the U.S. employer may instead choose to file a Petition for a Nonimmigrant Worker, Form I–129, with USCIS to change the alien's status to that of an H–1B1 nonimmigrant. *See* AFM Chapter 30.3(a); Instructions to Petition for a Nonimmigrant Worker, Form I–129, page 17. This petition may also be used to request an extension of stay for an H–1B1 nonimmigrant worker in the United States. *Id.*

H–1B1 nonimmigrant workers may initially be admitted for 1 year, and may only be extended in one-year increments. *See* INA section 214(g)(8)(C), 8 U.S.C. 1184(g)(8)(C). Extensions of stay may only be granted if there is a certified H–1B1 LCA for the period requested. *See* INA section 212(t), 8 U.S.C. 1182(t). USCIS may indefinitely extend H–1B1 nonimmigrant status. *See* INA 214(g)(8)(C). Currently, the H–1B1 nonimmigrant may work for the petitioning employer until his or her authorized period of stay expires, as noted on the latest Arrival-Departure Record, Form I–94. If USCIS has not approved the petition for an extension by this expiration date, the H–1B1 nonimmigrant cannot continue working past this date. *See* AFM Chapter 30.2(d).

A numerical limitation of 1,400 initial H–1B1 visas per FY applies to H–1B1 principal aliens who are nationals of Chile. *See* INA section 214(g)(8)(B)(ii)(I), 8 U.S.C. 1184 (g)(8)(B)(ii)(I). A numerical limitation of 5,400 initial H–1B1 visas per FY applies to principal aliens who are nationals of Singapore. *See* INA section 214(g)(8)(B)(ii)(II), 8 U.S.C. 1184 (g)(8)(B)(ii)(II). These numerical limitations apply to all initial H–1B1 visa applications submitted abroad and to all petitions seeking change of status to H–1B1 nonimmigrant classification submitted to USCIS. USCIS does not count the dependent spouses and children of H–1B1 principal aliens against the numerical limitations. *See* INA section 214(g)(8)(B)(iii), 8 U.S.C. 1184(g)(8)(B)(iii).

C. CW–1 Nonimmigrant Classification

The CW classification includes CW–1 nonimmigrants, referring to principal workers, and CW–2 nonimmigrants, referring to dependent spouses and minor children. *See* 8 CFR 214.2(w)(2) and (3). The CW nonimmigrant classification was created in accordance with title VII of the Consolidated Natural Resources Act of 2008 (CNRA). *See* Pub. L. 110–229, 122 Stat. 754, 853 (2008). Title VII of the CNRA made effective the immigration laws of the United States in the CNMI and replaced the immigration laws of the CNMI. *Id.* The CNRA included provisions for a ''transition period'' to phase-out the CNMI's nonresident contract worker program and phase-in the U.S. Federal immigration system in a manner that minimizes the adverse economic and fiscal effects and maximizes the CNMI's potential for future economic and business growth. *See* section 701 of the CNRA, 48 U.S.C. 1806 note. The CNRA authorized DHS to create a nonimmigrant classification that would ensure adequate employment in legitimate businesses in the CNMI, while preventing adverse effects on wages and working conditions of workers already authorized to be employed in the United States, during the transition period, which is set to end on December 31, 2014, unless extended by the Secretary of Labor.[6] *See id.;* 48 U.S.C. 1806(d)(2).

Consistent with the CNRA, DHS published a final rule[7] on September 7, 2011, effective October 7, 2011, amending its regulations to add a new provision at 8 CFR 214.2(w) that implemented a temporary CW classification. *See* Commonwealth of the Northern Mariana Islands Transitional Worker Classification, 76 FR 55502 (Sept. 7, 2011) (hereinafter, 2011 CW classification final rule). With limited exception, the CW classification provides a method for certain aliens to transition from the former CNMI foreign worker permit system to the U.S. immigration system. *Id.* at 55502.

A CW–1 nonimmigrant worker is an alien worker who is ineligible for another nonimmigrant classification under the INA and who performs services or labor for an employer in the CNMI during the 5-year transition period in an occupational category designated by DHS. *See* 8 CFR 214.2 (w)(2)(i) and (vi). CW–1 nonimmigrant workers cannot be present in the United States, other than in the CNMI. *See* 8 CFR 214.2(w)(2)(iii). In addition, their presence in the CNMI must be lawful. *See* 8 CFR 214.2(w)(2)(iv). Moreover, if they are inadmissible to the United States as a nonimmigrant, they must have been granted a waiver of each ground of inadmissibility. *See* 8 CFR 214.2 (w)(2)(v). The alien seeking CW–1 nonimmigrant status must also meet any other occupational requirements as specified by the CNMI or local jurisdiction in which the alien will be employed, such as licensure or other official permission required to fully perform the duties of the occupation in question. *See* 8 CFR 214.2(w)(6)(ii)(E), (iii); Petition for a CNMI-Only Nonimmigrant Transitional Worker, Form I–129CW Classification Supplement, page 10.

Unlike the nonimmigrant specialty occupation worker classifications, this classification does not require a certified LCA from DOL prior to filing a petition

[6] The Secretary of Labor is authorized to extend the transitional worker program beyond December 31, 2014 for additional periods of up to 5 years each. *See* section 701 of the CNRA, 48 U.S.C. 1806(d)(5).

[7] On October 27, 2009, DHS published an interim rule which provided a 30-day comment period. *See Commonwealth of the Northern Mariana Islands Transitional Worker Classification,* 74 FR 55094 (Oct. 27, 2009). The interim rule was to become effective on November 27, 2009. However, as a result of a lawsuit filed by the CNMI government, a preliminary injunction was entered enjoining the interim final rule. *See CNMI v. United States,* 670 F. Supp. 2d 65 (D.D.C. 2009). On December 9, 2009, DHS published a notice in the **Federal Register** reopening and extending the public comment period for an additional 30 days. *See Commonwealth of the Northern Mariana Islands Transitional Worker Classification; Reopening the Public Comment Period,* 74 FR 64997 (Dec. 9, 2009). The comments received during both comment periods were addressed in the final rule.

with USCIS. Instead, a U.S. employer seeking to classify an alien as a CW–1 nonimmigrant worker must first file a petition with USCIS. *See* 8 CFR 214.2(w)(5). Specifically, such employer must file a Petition for a CNMI-Only Nonimmigrant Transitional Worker, Form I–129CW, or other form prescribed by USCIS, with the accompanying CW Supplement and supporting evidence. *See* 8 CFR 214.2(w)(1)(x), (w)(5), and (w)(6). For individuals in the CNMI in another nonimmigrant status, the Form I–129CW may also be used to change status to that of a CW–1 nonimmigrant worker. *See* 8 CFR 214.2(w)(18); Instructions to Petition for a CNMI-Only Nonimmigrant Transitional Worker, Form I–129CW, page 1. Employers may also file a Form I–129CW to request an extension of stay for a CW–1 nonimmigrant worker in the CNMI or to petition to change employers. *See* 8 CFR 214.2(w)(7), (17); Instructions to Petition for a CNMI-Only Nonimmigrant Transitional Worker, Form I–129CW, page 1. Upon obtaining CW–1 nonimmigrant status, CW–1 nonimmigrant workers are employment authorized incident to status, but only in the CNMI and with the petitioning employer. 8 CFR 214.2(w)(22)(iv). This means that CW–1 nonimmigrants are authorized to work for the specific employer listed in their petition without requiring separate approval for work authorization from USCIS.

Under certain circumstances, the Form I–129CW may be filed on behalf of multiple beneficiaries, but the petitioning employer must submit one CW Supplement per beneficiary. *See* 8 CFR 214.2(w)(9); Instructions to Petition for a CNMI-Only Nonimmigrant Transitional Worker, Form I–129CW, page 2.

CW–1 nonimmigrant workers may be admitted for a period of up to 1 year. *See* 8 CFR 214.2(w)(13). USCIS may grant extensions of CW–1 status of up to 1 year until the end of the transition period, subject to the annual numerical limitation per FY. *See* 8 CFR 214.2(w)(17)(iii). The CW visa classification is valid only in the CNMI. *See* 8 CFR 214.2(w)(22).

The CW–1 nonimmigrant in the CNMI receives from USCIS a Notice of Action, Form I–797, or another form as USCIS may prescribe with an attached Arrival-Departure Record, Form I–94, which serves as evidence of lawful immigration status. *See* 8 CFR 214.2 (w)(12). Currently, CW–1 nonimmigrant workers may work for the petitioning employer only until the expiration of the petition validity period, even if an employer has filed a timely application for an extension of stay on the CW–1 nonimmigrant's behalf. *See* 8 CFR 214.2(w)(13). The CW–1 nonimmigrant must stop working if USCIS does not approve the petition for an extension of stay before the expiration of the petition's validity period.

CW–1 nonimmigrant workers are subject to an annual numerical limitation per FY. *See* 8 CFR 214.2(w)(1)(viii). The CNRA mandates an annual reduction in the number of transitional workers and total elimination of the CW classification by the end of the transition period.[8] Consistent with this mandate, DHS established the CW–1 numerical limitation for FY 2011 at 22,417 and for FY 2012 at 22,416. *See* 8 CFR 214.2(w)(1)(viii)(A) and (B). The numerical limitation for FY 2013 was set at 15,000. *See CNMI-Only Transitional Worker Numerical Limitation for Fiscal Year 2013,* 77 FR 71287 (Nov. 30, 2012). The numerical limitation was set at 14,000 for FY 2014. *See* Commonwealth of the Northern Mariana Islands (*CNMI)-Only Transitional Worker Numerical Limitation for Fiscal Year 2014,* 78 FR 58867 (Sept. 25, 2013). USCIS counts initial petitions for a change of status to CW–1, CW–1 petitions for an extension of stay, and requests for a change of status from another nonimmigrant status to CW–1 status against the numerical limitation. USCIS does not count CW–2 nonimmigrant dependent spouses and children of CW–1 principal aliens against the numerical limitation. *Id.* at 58868.

D. EB–1 Outstanding Professor and Researcher Immigrant Classification

The outstanding professor and researcher immigrant classification constitutes one of the three EB–1 immigrant worker categories.[9] *See* INA section 203(b)(1)(B), 8 U.S.C. 1153(b)(1)(B). The professor or researcher must:

- Be recognized internationally as outstanding in a specific academic area;
- Have at least 3 years of experience in teaching or research in his or her academic area; and
- Seek to enter the United States for a tenured or tenure-track position within a university or institution of higher education to teach in the academic area, for a comparable position with a university or institution of higher education to conduct research in the area, or for a comparable position to conduct research in the area with a department, division, or institute of a private employer, if the department, division, or institute employs at least three full-time persons in research activities and has achieved documented accomplishments in an academic field. *See* INA section 203(b)(1)(B), 8 U.S.C. 1153(b)(1)(B).

A prospective U.S. employer submitting a petition on behalf of an outstanding professor or researcher is not required to obtain an approved labor certification application from DOL, but the U.S. employer must submit an Immigrant Petition for Alien Worker, Form I–140, along with an offer of employment and other supporting evidence. *See* 8 CFR 204.5(i)(1) and 204.5(i)(3)(iii).

E. Need for Regulatory Improvements

DHS recognizes that attracting and retaining these highly-skilled workers is important given the contributions of these individuals to the U.S. economy, including advances in entrepreneurial and research and development endeavors, which are highly correlated with overall economic growth and job creation. By some estimates, immigration was responsible for one-third of the explosive growth in patenting in past decades, and these innovations have the potential to contribute to increasing U.S. gross domestic product (GDP).[10] According to one study, in over 25 percent of technology companies founded in the United States from 1995 to 2005, at least one key founder was foreign-born.[11]

[8] The CNRA mandated that DHS provide the CNMI with flexibility to maintain existing businesses and develop new economic opportunities, yet required an annual reduction in the number of permits and total elimination of the CW classification by the end of the transition period. *See* section 701(b) of the CNRA, 48 U.S.C. 1806 note; 48 U.S.C. 1806(d)(2).

[9] The employment-based first-preference classification (EB–1) also consists of: (1) Persons of extraordinary ability (must be able to demonstrate extraordinary ability in the sciences, arts, education, business, or athletics through sustained national or international acclaim); and (2) executives and managers of multinational employers (must have been employed in the three years preceding filing of the petition for at least one year by a firm, corporation, other legal entity, or affiliate or subsidiary thereof and must be seeking to enter the United States to continue service to that entity or a subsidiary or affiliate thereof in a capacity that is managerial or executive). This rule only proposes changes to EB–1 outstanding professors and researchers.

[10] *See generally* Jennifer Hunt & Marjolaine Gauthier-Loiselle, *How Much Does Immigration Boost Innovation?,* Nat'l Bureau of Econ. Research, Sept. 2008, available at *http://www.nber.org/papers/w14312.*

[11] *See* Vivek Wadhwa et al., *Intellectual Property, the Immigration Backlog, and a Reverse Brain-Drain—America's New Immigrant Entrepreneurs, Part III,* Ctr. for Globalization, Governance & Competitiveness, Aug. 2007, at 2, available at *http://www.cggc.duke.edu/documents/IntellectualProperty_theImmigrationBacklog_andaReverseBrainDrain_003.pdf;* Vivek Wadhwa et

Continued

Likewise, in 2012, the Kauffman Foundation reported that immigrants were more than twice as likely to start a business in the United States as the native-born and a report by the Partnership for a New American Economy found that more than 40 percent of 2010 Fortune 500 companies were founded by immigrants or their children.[12]

DHS intends to harmonize regulations governing filing procedures, continued work authorization, and evidentiary requirements, with other similarly situated worker classifications. The proposals remove current regulatory obstacles that may cause unnecessary disruptions to the petitioning employers' ability to maintain productivity. In doing so, the proposals also remove obstacles for these workers to remain in or enter the United States and provide equity among the similar classifications.

1. E–3, H–1B1, and EB–1 Classifications

When Congress established the E–3 and H–1B1 nonimmigrant classifications, it authorized certain foreign workers to apply to the Department of State (DOS) for a visa without first obtaining a petition approval from USCIS. *See* REAL ID Act of 2005, Public Law 109–13, § 501; United States-Singapore Free Trade Agreement Implementation Act, Public Law 108–78, sec. 402; United States-Chile Free Trade Agreement Implementation Act, Public Law 108–77, secs. 402–404; *see* also 22 CFR 41.51(c); 9 FAM 41.51 N16.1; 9 FAM 41.53 N27.2 and N27.3 (respectively). In this regard, the procedures for obtaining status under the E–3 and H–1B1 classifications require fewer administrative steps than those required for the similar H–1B nonimmigrant classification.[13] U.S. employers of E–3 and H–1B1 nonimmigrants save associated petition filing fees and processing times as a result.

For the EB–1 outstanding professor and researcher immigrant classification, the prospective U.S. employer must file an Immigrant Petition for Alien Worker, Form I–140, and supporting evidence. Unlike most other employment-based immigrant classifications, however, the employer is not required to obtain and submit an approved labor certification application issued by DOL prior to filing the petition with USCIS.[14] *See* 8 CFR 204.5(i)(1) and 204.5(i)(3)(iii).

While the procedures for the E–3, H–1B1, and EB–1 classifications may contain fewer administrative steps than procedures for other nonimmigrant or immigrant classifications, statistics indicate that these classifications are still underutilized. Even though there are 10,500 E–3 visas and 6,800 H–1B1 visas available per FY, DOS and USCIS statistics indicate that in FY 2013, DOS issued 3,946 new E–3 nonimmigrant visas and USCIS approved 622 extensions of stay requests and 102 requests for change of status to the E–3 nonimmigrant classification. Also in FY 2013, DOS issued 571 new H–1B1 visas and USCIS approved 411 extensions of stay requests and 315 requests for change of status to the H–1B1 nonimmigrant classification.[15] In FY 2012, the most recent year that data has been released, a total of 3,394 persons obtained lawful permanent resident status in the EB–1 outstanding professor and researcher category, 16 of whom were new arrivals admitted to the United States as EB–1 immigrants whereas the remaining 3,378 individuals adjusted their status in the United States.[16]

In reviewing the existing regulations, DHS has identified changes to the regulations that can be made to significantly improve the process for these individuals seeking to remain in the United States in the E–3, H–1B1, or EB–1 classifications. The changes address stakeholders' concerns regarding the lack of the continued work authorization for E–3 and H–1B1 nonimmigrants with pending extension of stay requests and regarding the inability of EB–1 outstanding professors and researchers to submit comparable evidence for establishing eligibility. These changes would remove unnecessary obstacles for these workers to remain in or enter the United States under these classifications, while harmonizing the regulations of these similarly related classifications.

2. CW–1 Nonimmigrant Classification

For the CW nonimmigrant classification, facilitating the retention of workers is not the objective, since Congress specifically directed a reduction in the number of aliens extended CW–1 nonimmigrant status during the transition period.[17] Instead, the express congressional intent of the CNRA provisions is to minimize the potential adverse economic and fiscal effects of the federalization of immigration in the CNMI. *See* 48 U.S.C. 1806(d)(2). While DHS believes that it issued implementing regulations consistent with congressional intent, *see* 76 FR 55502, DHS has identified improvements that can be made to the regulations to further minimize the effects of federalization and, therefore, better facilitate eligibility for continuing

al., *America's New Immigrant Entrepreneurs,* Duke School of Engineering and the Univ. of Cal. Berkeley School of Info., Jan. 4, 2007, at 11, available at *http://people.ischool.berkeley.edu/~anno/Papers/Americas_new_immigrant_entrepreneurs_I.pdf;* Julia Preston, *Work Force Fueled by Highly Skilled Immigrants, N.Y. Times,* Apr. 15, 2010, available at *http://www.nytimes.com/2010/04/16/us/16skilled.html?_r=1.*

[12] *See* Robert Fairlie, *Kauffman Index of Entrepreneurial Activity: 1996–2012,* The Ewing Marion Kauffman Found., Apr. 2013, at 10, available at *http://www.kauffman.org/what-we-do/research/2013/04/kauffman-index-of-entrepreneurial-activity-19962012;* Partnership for a New Am. Econ., 2011, *The ''New American'' Fortune 500,* June 2011, at 2 available at *http://www.nyc.gov/html/om/pdf/2011/partnership_for_a_new_american_economy_fortune_500.pdf.*

[13] Under 8 CFR 214.2(h)(2), a United States employer or agent seeking to classify an alien as an H–1B temporary worker must file a petition with USCIS.

[14] *See* INA section 212(a)(5)(A). A permanent labor certification issued by the DOL is typically the first step in allowing an employer to hire a foreign worker to work permanently in the United States. Via the labor certification process, DOL certifies that there are not enough U.S. workers who are able, willing, qualified, and available in the geographic area where the immigrant is to be employed and that the employment of such alien will not adversely affect the wages and working conditions of similarly employed workers in the United States. Generally, petitioners for employees in the second preference categories (members of the professions holding advanced degrees and aliens of exceptional ability) (EB–2) and in the third preference categories (skilled workers, professionals and other workers) (EB–3) must obtain a permanent labor certification from DOL prior to filing an Immigrant Petition for Alien Worker, Form I–140, on behalf of a prospective foreign national employee. *See* INA section 203(b)(2)–(3), 8 U.S.C. 1153(b)(2)–(3); 8 CFR 204.5(k), (l).

[15] For visas issued: *See* DOS, *Fiscal Year 2013 Annual Report, Table XVI(B), Nonimmigrant Visas Issued by Classification (Including Crewlist Visas and Border Crossing Cards) Fiscal Years 2009–2013,* available at *http://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2013AnnualReport/FY13AnnualReport-TableXVIB.pdf.* Source for USCIS processing volumes: USCIS Office of Performance and Quality, April 2014.

[16] *See* DHS, Office of Immigration Statistics, *2012 Yearbook of Immigration Statistics* Table 7, available at *https://www.dhs.gov/yearbook-immigration-statistics-2012-legal-permanent-residents.pdf.*

[17] The CNRA requires an annual reduction in the number of transitional workers (and complete elimination of the CW nonimmigrant classification by the end of the transition period) but does not mandate a specific reduction. 48 U.S.C. 1806(d)(2). In addition, 8 CFR 214.2(w)(1)(viii)(C) provides that the numerical limitation for any fiscal year will be less than the number established for the previous fiscal year, and it will be reasonably calculated to reduce the number of CW–1 nonimmigrant workers to zero by the end of the transition period. DHS established the CW–1 numerical limitation for FY 2011 at 22,417 and for FY 2012 at 22,416. *See* 8 CFR 214.2(w)(1)(viii)(A) and (B). DHS set the numerical limit of CW–1 temporary visas at 15,000 for FY 2013 and 14,000 for FY 2014. *See Commonwealth of the Northern Mariana Islands (CNMI)-Only Transitional Worker Numerical Limitation for Fiscal Year 2014,* 78 FR 58867. For FY 13, employers filed petitions for a total of 8,133 beneficiaries (Source: USCIS Office of Performance and Quality).

employment of CW–1 nonimmigrant workers during the transition period.

IV. Proposed Rule

In this rule, DHS proposes to amend DHS regulations in several ways in order to improve the programs serving the E–3, H–1B1, and CW–1 nonimmigrant classifications and the EB–1 immigrant classification by harmonizing regulations for these classifications with regulations for other similar classifications. First, DHS proposes to amend 8 CFR 274a.12 to:

- Designate the principal E–3 and H–1B1 nonimmigrant classifications as employment authorized incident to status with a specific employer; and
- Automatically extend employment authorization to principal E–3, H–1B1, and CW–1 nonimmigrants with timely filed, pending extension of stay requests.

DHS recognizes that the current limitation on continued employment authorization, while the petition extension is pending, may cause disruption to a petitioning employer's business. Through this rule, DHS intends to remove that potential disruption, as well as to provide equity with similar classifications.

Second, consistent with these changes and form instructions on the Petition for a Nonimmigrant Worker, Form I–129, DHS proposes to amend 8 CFR 214.1(c)(1) and 8 CFR 248.3(a) to add the principal E–3 and H–1B1 nonimmigrant classifications to the list of nonimmigrant classifications that must file a petition with USCIS to make an extension of stay or change of status request.

Third, DHS is proposing to amend 8 CFR 204.5(i)(3) by adding a provision allowing a petitioner seeking to employ an outstanding professor or researcher to submit comparable evidence to establish the beneficiary is recognized internationally as an outstanding professor or researcher.

A. Employment Authorization for E–3 and H–1B1 Nonimmigrants

1. Employment Authorization Incident to Status With a Specific Employer

DHS regulations at 8 CFR 274a.12 list the classes of aliens authorized to accept employment in the United States. Some classes of aliens are extended employment authorization automatically upon attaining their status. *See* 8 CFR 274a.12(a) and (b). On the other hand, other classes of aliens are employment authorized only after receiving a specific grant of employment authorization from USCIS following an application process. *See* 8 CFR 274a.12(c). Such nonimmigrants must apply for an Employment Authorization Document (EAD) which indicates that the individual is allowed to work in the United States as a result of the specific nonimmigrant status. For principal E–3 or H–1B1 nonimmigrants, the INA describes their employment with a specific, petitioning employer as the very basis for their presence in the United States; they do not have to apply for an EAD. *See* INA section 101(a)(15)(E)(iii), 8 U.S.C. 1101(a)(15)(E)(iii); INA section 101(a)(15)(H)(i)(b1), 8 U.S.C. 1101(a)(15)(H)(i)(b1). Similarly situated nonimmigrants, such as H–1B nonimmigrants, are classified in the regulations as employment authorized incident to status with a specific employer. *See* 8 CFR 274a.12(b)(9). However, following the establishment of the E–3 and H–1B1 nonimmigrant categories by statute, the provisions in 8 CFR 274a.12(b) have not been updated to include principal E–3 and H–1B1 nonimmigrants.

Through this rule, DHS is proposing a new provision at 8 CFR 274a.12(b)(25) to add principal E–3 nonimmigrants to the list of aliens employment authorized incident to status with a specific employer. DHS is also proposing to amend 8 CFR 274a.12(b)(9), which currently applies to various H nonimmigrant classifications, to include the H–1B1 nonimmigrant classification as employment authorized incident to status with a specific employer. While these nonimmigrants have been treated as work authorized incident to status for a specific employer, they are not classified as such in the regulations. As a result of this rule, the current practice will be codified into existing regulation.

2. Automatic Employment Authorization While Extension of Stay Request Is Pending

Attracting and retaining high-skilled workers is critical to sustaining our nation's global competitiveness. In fact, according to the Congressional Budget Office, doing so will lead to greater economic growth because it will add more high-demand workers to the labor force, increase capital investment and overall productivity, and lead to greater numbers of entrepreneurs starting companies in the United States.[18] These individuals add to real GDP growth by boosting investment and raising productivity.[19] Once these skilled workers are here, it is important to provide employers with continued access to their current foreign workers if and when they decide to extend the stay of such workers. The regulations at 8 CFR 274a.12(b)(20) provide aliens in specific nonimmigrant classifications with authorization to continue employment with the same employer for a 240-day period beyond the period specified on the Arrival-Departure Record, Form I–94, as long as a timely application for an extension of stay is filed on an alien's behalf. This provision applies only to the classifications specified in the regulation—not to all nonimmigrants.

Consequently, certain nonimmigrants automatically receive continued work authorization if an application for an extension of stay with the same employer is timely filed. The alien is authorized by regulation to continue employment with the same employer for a period not to exceed 240 days, beginning on the date of the expiration of the authorized period of stay. Such authorization is subject to any conditions and limitations noted on the initial authorization. If the petition is adjudicated prior to the expiration of the 240-day period and denied, the continued employment authorization is automatically terminated as of the date of the denial notice. *See* 8 CFR 274a.12(b)(20).

The E–3 and H–1B1 nonimmigrant classifications did not exist when the provision authorizing an extension of employment authorization while an extension of stay request is pending was promulgated.[20] As a result, although

[18] *See* Executive Office of the President, *White House Report: The Economic Benefits of Fixing Our Broken Immigration System* (July 10, 2013), at 4, available at *http://www.whitehouse.gov/sites/default/files/docs/report.pdf;* Congressional Budget Office, *The Economic Impact of S. 744, the Border Security, Economic Opportunity, and Immigration Modernization Act* (June 18, 2013), at 5, available at: *http://www.cbo.gov/publication/44346.*

[19] *See Economic Report of the President* (Mar. 10, 2014), at 88, available at: *http://www.whitehouse.gov/sites/default/files/docs/full_2014_economic_report_of_the_president.pdf.*

[20] The provision establishing employment authorization to certain nonimmigrants for a limited period while an extension request is pending became effective on June 1, 1987. *See* Control of Employment of Aliens, 52 FR 16216, 16220, 16227 (May 1, 1987). At that time, certain H, J, and L nonimmigrants aliens became eligible for an extension of employment authorization with the same employer incident to status for up to 120 days, and were authorized to request employment authorization beyond 120 days, if necessary, by applying for an Employment Authorization Document (EAD). The provision was amended in 1991 to change the period of employment authorization incident to status from the original 120 days to the current 240 days, and remove the ability to apply for an EAD to permit employment for additional periods. *See* Powers and Duties of Service Officers; Availability of Service Records, Control of Aliens, 56 FR 41767, 41781 (Aug. 23, 1991). In this later version, the authorization was expanded to encompass employment-based nonimmigrants more generally.

principal E–3 and H–1B1 nonimmigrants may remain in the United States without accruing unlawful presence until USCIS renders a decision on a timely filed petition for an extension of stay, they may not continue to work for the petitioning U.S. employer while the petition is pending once their authorized stay has expired. *See* INA 212(a)(9)(B)(iv), 8 U.S.C. 1182 (a)(9)(B)(iv); *see also* Memo from Donald Neufeld, Acting Assoc. Dir., Consolidation of Guidance Concerning Unlawful Presence for Purposes of Sections 212(a)(9)(B)(i) and 212 (a)(9)(C)(i)(I) of the Act 35 (May 6, 2009). To avoid gaps in employment authorization, U.S. employers of principal E–3 and H–1B1 nonimmigrants must file a petition to extend the nonimmigrant status of their E–3 and H–1B1 workers well before their period of authorized stay in the United States expires (the expiration date is indicated on the Arrival-Departure Record, Form I–94).[21] As of March 2014, processing times at the USCIS Vermont Service Center for Petitions for Nonimmigrant Workers, Form I–129, filed for E–3 and H–1B1 extensions average 2 months.[22] Alternatively, rather than apply for an extension of stay with USCIS, principal E–3 and H–1B1 nonimmigrants may choose to leave the United States, apply for a new visa at a U.S. consulate, and seek readmission to the United States in E–3 or H–1B1 status once the visa is issued. This process can involve substantial expense and may result in unanticipated delays related to issuance of a new visa or readmission to the United States. In either case, both employers and employees could face a gap in employment. The potential gap in the work authorization period can be disruptive for aliens and may be a determining factor in whether or not they decide to come to the United States on these visas.

Stakeholders have raised concerns to USCIS that, since E–3 and H–1B1 nonimmigrants are not included in 8 CFR 274a.12(b)(20) for automatic extensions of employment authorization while extension of stay requests are pending, U.S. employers experience difficulties because they cannot keep their nonimmigrant workers on the payroll and productive during this time. DHS agrees that it is important to ensure U.S. employers have uninterrupted access to these high-skilled nonimmigrants, just as U.S. employers have uninterrupted access to H–1B nonimmigrants in specialty occupations while an extension of stay request is pending. Accordingly, DHS concludes that 8 CFR 274a.12(b)(20) should be amended to include principal E–3 and H–1B1 nonimmigrant aliens, thereby giving these nonimmigrant aliens and their employers the same treatment as H–1B nonimmigrant aliens.

By automatically extending employment authorization to principal E–3 and H–1B1 nonimmigrants requesting extensions of stay, employers would gain the same predictability in the employment authorization of their E–3 and H–1B1 employees as employers of similar employment-based nonimmigrants under 8 CFR 274a.12(b)(20). Thus, U.S. employers would not have to face a potential gap in employment of these nonimmigrant employees. Additionally, employees would avoid lost wages and the costs of having to seek a visa abroad.

B. Employment Authorization for CW–1 Nonimmigrants While Extension of Stay Request Is Pending

The CW regulations do not currently treat requests for extensions of stay and requests for change of employment consistently. The CW regulations at 8 CFR 214.2(w) do not presently provide for continued employment authorization for CW–1 nonimmigrant workers based on timely filed extension of stay requests filed by the same initial employer. However, the regulations do provide continued work authorization for certain CW–1 nonimmigrant workers seeking to change to a new employer, including a change resulting from early termination, and for an employee under the previous CNMI immigration system. *See* 8 CFR 214.2(w)(7) and 8 CFR 274a.12(b)(23). Without continued work authorization for extension of stay requests, this inconsistency results in the disruption of employment for those CW–1 workers that are awaiting USCIS adjudication of their extension of stay requests with the same employer.

For individuals authorized to work under the previous CNMI immigration system, the regulation at 8 CFR 274a.12(b)(23) provides continuing work authorization in certain situations while the initial application for CW status is pending. Under this provision, an alien authorized to be employed in the CNMI can continue in that employment until a decision is made on a CW petition filed by the employer if the petition was filed on or before November 27, 2011. DHS made this accommodation in the 2011 CW classification final rule implementing the CW nonimmigrant classification to address the unique circumstances in the CNMI. *See* Commonwealth of Northern Mariana Islands Transitional Worker Classification, 76 FR 55502. These circumstances included: The lack of familiarity in the CNMI with Federal immigration processes; the expiration of CNMI-issued employment authorization on November 27, 2011; the adverse economic situation in the CNMI; and the legislative direction in the CNRA to seek to minimize adverse economic effects of the federalization of immigration authority. *See id.* at 55513.

Similarly, a CW–1 nonimmigrant worker changing employers may work for the prospective employer once a non-frivolous Petition for a CNMI-Only Nonimmigrant Transitional Worker, Form I–129CW, is filed, and work authorization continues until the petition is adjudicated. *See* 8 CFR 214.2(w)(7). The CW–1 nonimmigrant worker is covered by this provision as long as: (1) The petition is filed before the date of expiration of the CW–1 nonimmigrant worker's authorized period of stay; and (2) subsequent to his or her lawful admission, the CW–1 nonimmigrant worker has not been employed without authorization in the United States. *See* 8 CFR 214.2(w)(7)(iii). Employment authorization ceases if the new petition is denied. *See* 8 CFR 214.2(w)(7)(iv).

The CNMI change-of-employer provisions also provide continuing work authorization when a CW–1 status violation results solely from termination of CW–1 nonimmigrant employment. *See* 8 CFR 214.2(w)(7)(v). Under these provisions, CW–1 nonimmigrant status expires 30 days after the date of termination, rather than on that date itself, as long as a new employer files a non-frivolous petition within that 30-day period, and the CW–1 nonimmigrant worker does not otherwise violate the terms and conditions of his or her status. *Id.* Thus, the CW–1 nonimmigrant worker is able to begin work pending petition adjudication of the non-frivolous petition. *See* 8 CFR 214.2(w)(7)(iii). This provides a limited period of time after the termination of employment for CW–1 nonimmigrant workers to obtain new qualifying employment. *See* Commonwealth of Northern Mariana Islands Transitional Worker Classification, 76 FR 55502, 55515.

The change of employer provisions at 8 CFR 214.2(w)(7) were included in the 2011 CW classification final rule to provide a mechanism for employees to

[21] *See* AFM Chapter 30.2 (general requirements regarding extension of stay for nonimmigrants); *see also* 8 CFR 214.1. As previously noted, an H–1B1 nonimmigrant is only admitted in one-year increments. *See* INA section 214(g)(8)(C), 8 U.S.C. 1184(g)(8)(C).

[22] *See* USCIS Processing Time Information, available at *https://egov.uscis.gov/cris/processTimesDisplayInit.do.*

freely transfer between employers as mandated by the CNRA. *See* 48 U.S.C. 1806(d)(4). However, DHS did not include provisions to address employees who decide to extend their stay with the same employer. Such employees may experience gaps in employment authorization after their CW–1 nonimmigrant status expires while awaiting a decision on their request for an extension of stay with the *same* employer. While the 2011 CW classification final rule was silent regarding employment authorization in this situation, long-standing regulations at 8 CFR 274a.12(b)(20) covering other nonimmigrant classifications provide for continued employment authorization for up to 240 days.

Therefore, in the CW nonimmigrant worker context, current regulations have placed new employers petitioning for CW–1 nonimmigrant workers in a better position than existing employers of CW–1 nonimmigrant workers. The new petitioner has the advantage of work authorization for the alien beneficiary based on filing the petition, rather than upon it being granted. This effectively allows the beneficiary to work for a new employer pending adjudication of the petition as long as it is filed before the date of expiration of the CW–1 nonimmigrant worker's authorized period of stay, but the beneficiary cannot continue to work for his or her current employer on the same terms. This disparity may serve as an incentive for CW–1 nonimmigrant workers to change employers. To remedy this effect and to ensure that current and new employers are on equal footing, DHS is proposing to amend the regulations to harmonize the CW nonimmigrant provisions regarding continued employment authorization during the pendency of requests for either change of employers or extension of stay. Specifically, DHS is proposing to amend 8 CFR 274a.12(b)(20) to add the CW–1 nonimmigrant classification to the list of employment-authorized nonimmigrant classifications that receive an automatic extension of employment authorization of 240 days while the employer's timely filed extension of stay request remains pending.[23] While processing times vary, USCIS expects to adjudicate within the 240-day time period.

[23] Although the provisions are not exactly the same (continuing employment with the same employer is authorized for up to 240 days, while there is no fixed end to the work authorization pending adjudication of the petition in a change of employer situation), in practice USCIS does not expect this to result in any substantive difference as both types of petitions are normally adjudicated within 240 days.

C. Application Requirement for E–3 and H–1B1 Nonimmigrants Requesting Changes of Status or Extensions of Stay

As mentioned earlier in the Background section of the Supplementary Information, when the E–3 and H–1B1 nonimmigrant classifications were established by statute effective in 2005 and 2004 respectively, DHS provided a means for E–3 and H–1B1 nonimmigrants to request changes of status and extensions of stay through amendments to the instructions for the Petition for a Nonimmigrant Worker, Form I–129, to include the E–3 and H–1B1 nonimmigrant classifications in the change of status and extension of stay section. *See* Part 2 of Instructions to Petition for a Nonimmigrant Worker, Form I–129, pages 2, 17, and 19.

In addition to the instructions to this form, application filing procedures are also contained in the regulations at 8 CFR 214.1(c) for extensions of stay and 8 CFR 248.3(a) for change of status. To update the regulations in conformity with the application filing procedures specified in the form instructions, DHS is amending 8 CFR 214.1(c) and 8 CFR 248.3(a) to add the E–3 and H–1B1 nonimmigrant classifications to the list of nonimmigrant classifications that must file a petition with USCIS to make an extension of stay or change of status request. This will update the regulation to reflect information already provided in the Instructions for Form I–129, Petition for a Nonimmigrant Worker (page 2). The amendment also removes references in 8 CFR 214.1(c) to the specific form that is currently used for such requests, the Petition for a Nonimmigrant Worker, Form I–129. Specific reference to this form and form title need not be included in the regulations. By removing it, the regulations will maintain necessary flexibility to accommodate future changes to the form title.

In addition to these changes, DHS also is proposing to delete the term ''employer'' in the description in 8 CFR 214.1(c) and 248.3(a)(1) of who may file requests for a change of status or extension of stay. DHS has determined that use of the term ''employer'' in the change of status and extension of stay provisions may be misleading if not read in a manner consistent with the regulations governing the petition requirements specific to each nonimmigrant classification governed by 8 CFR 214.2. In the classification-specific regulatory provisions in 8 CFR 214.2, individuals and entities that may file petitions on behalf of alien workers are fully described and vary from classification to classification. For example, those who may file H–1B, H–2A or H–2B petitions include certain agents, and petitions on behalf of athletes or entertainment groups under INA 101(a)(15)(P), 8 U.S.C. 1101(a)(15)(P), can be filed by a U.S. sponsoring organization. *See* 8 CFR 214.2(h)(2)(i)(F), (p)(2)(i). To eliminate inconsistency between the change of status and extension of stay provisions and the classification-specific provisions in 8 CFR 214.2, DHS is proposing to amend the change of status and extension of stay provisions by replacing the narrow term ''employer'' with the more general term ''petitioner.'' Proposed 8 CFR 214.1(c) and 248.3(a)(1). DHS expects this change would eliminate any confusion that the current inconsistency in the regulatory text may have caused.

D. Comparable Evidence for EB–1 Outstanding Professors and Researchers

Professors and researchers play a vital role in the educational and economic future of the United States by enhancing our competitiveness within the global marketplace. The United States is in constant competition with other developed nations to attract and retain the greatest number of high-skilled researchers and professors to enhance economic and educational stability.[24] Providing for a seamless immigration system is important to attract and retain high-caliber foreign national professors and researchers.

In implementing the employment-based immigrant classifications in 1991, the former Immigration and Naturalization Service (INS) recognized the importance of establishing a system which provided access to these high-skilled and specially-trained personnel for American businesses. *See* Employment-Based Immigrants, 56 FR 60897 (Nov. 29, 1991). In the regulations implementing IMMACT90, INS provided for petitioning procedures and eligibility and admission requirements for these employment-based immigrants. *Id.* INS recognized the importance of providing petitioners with some flexibility in the documentation that could be submitted to establish a beneficiary's eligibility. *Id.* The final rule retained or added the comparable evidence provision for certain employment-based immigrant

[24] *See* Jonathan Rothwell et al. *Patenting Prosperity: Invention and Economic Performance in the United States and its Metropolitan Areas. Metropolitan Policy Program at Brookings,* Feb. 2013, at 33, available at *http://www.brookings.edu/~/media/research/files/reports/2013/02/patenting%20prosperity%20rothwell/patenting%20prosperity%20rothwell.pdf.*

categories, including EB–1 aliens of extraordinary ability under section 203(b)(1)(A) of the INA, 8 U.S.C. 1153(b)(1)(A), and the employment-based second preference (EB–2) aliens of exceptional ability under section 203(b)(2) of the INA, 8 U.S.C. 1153(b)(2). INS retained or added the comparable evidence provision in response to commenters' concerns that the proposed evidentiary criteria could exclude some aliens from qualifying for either the EB–1 aliens of extraordinary ability or the EB–2 aliens of exceptional ability classification. *See* 56 FR at 60900. The EB–1 classification consists of three types of skilled workers (persons of extraordinary ability, outstanding professors and researchers, and executives and managers of multinational employers) but INS only extended the comparable evidence provision to one of those categories—persons of extraordinary ability. However, INS did not extend the comparable evidence provision to EB–1 outstanding professors and researchers because the public did not suggest a similar change to this EB–1 provision. *See* 8 CFR 204.5(i)(3); 56 FR at 60899 and 60906. In the rule, INS limited the initial evidence for demonstrating that the alien is recognized internationally as an outstanding professor or researcher in their academic field, to six criteria. *See* 8 CFR 204.5(i)(3)(i).

Stakeholders in the educational and research arena have recently expressed concern that the current regulations at 8 CFR 204.5(i)(3) do not allow petitioners to submit comparable evidence that the beneficiary is recognized internationally as an outstanding professor or researcher, as allowed for related classifications. These stakeholders believe that the current list at 8 CFR 204.5(i)(3) is dated and may no longer be reasonably inclusive.[25] They have opined that changing the regulations to permit petitioners to submit comparable evidence would provide petitioners with the opportunity to fully document the alien's achievements, as they relate to the classification, without the constraints of a limited list of acceptable initial evidence.

Following review of the applicable regulatory provisions, DHS agrees that amending 8 CFR 204.5(i)(3) to include a comparable evidence option is appropriate in order to attract eligible professors and researchers to emigrate to the United States. In this rule, DHS proposes to modify the regulatory limitation on initial evidence for outstanding professors and researchers to allow a petitioner to submit ''comparable evidence'' in lieu of or in addition to the current list at 8 CFR 204.5(i)(3) that demonstrates that the beneficiary is internationally recognized as outstanding, if the evidence listed in the current regulation does not readily apply. *See* proposed 8 CFR 204.5(i)(3)(ii) (re-designating current 8 CFR 204.5(i)(3)(ii) and (iii) as 8 CFR 204.5(i)(3)(iii) and (iv), respectively). The new regulatory criterion for initial evidence would be similar to those found under the aliens of extraordinary ability and the aliens of exceptional ability classifications.[26] *See* 8 CFR 204.5(h)(4) and (k)(3)(iii). This change will allow the petitioner to submit additional evidence to establish eligibility for the classification; it will not change the standard for meeting the eligibility requirements.

V. Statutory and Regulatory Requirements

A. Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. DHS considers this to be a ''significant regulatory action,'' although not an economically significant regulatory action, under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has reviewed this regulation.

This proposed rule, if finalized, would not impose any additional costs on employers, individuals or government entities, including the Federal government. The proposed rule would make certain changes to the regulations, improving the process for obtaining or retaining status under the E–3, H–1B1, and CW–1 nonimmigrant classifications. Specifically, DHS is proposing to allow E–3, H–1B1, and CW–1 nonimmigrant workers up to 240 days of continued work authorization beyond the expiration date noted on their Form I–94, provided that their extension of stay request is timely filed. As previously noted, this change would put principal E–3, H–1B1, and CW–1 nonimmigrants on par with other, similarly situated nonimmigrants. The proposed provisions would not result in any additional costs, burdens, or compliance procedures for either the U.S. employer of these nonimmigrant workers, nor to the workers themselves.

Additionally, DHS proposes to allow petitioners on behalf of EB–1 outstanding professors and researchers to submit comparable evidence, in lieu of or in addition to the evidence listed in 8 CFR 204.5(i)(3)(i), that the professor or researcher is recognized internationally as outstanding in his or her academic field. The allowance for comparable evidence for EB–1 outstanding professors and researchers would harmonize the evidentiary requirements with those of similarly situated employment-based immigrant classifications.

DHS notes that the above-referenced changes are part of DHS's Retrospective Review Plan for Existing Regulations. During development of DHS's Retrospective Review Plan, DHS received a comment from the public requesting specific changes to the DHS regulations that govern continued work authorization for E–3 and H–1B1 nonimmigrants when an extension of status petition is timely filed, and to expand the types of evidence allowable in support of immigrant petitions for outstanding researchers or professors. This rule is responsive to that comment, and with the retrospective review principles of Executive Order 13563.

The costs and benefits of the proposed rule are summarized in Table 2.

[25] *See* Letter from Marlene M. Johnson, Executive Director and CEO of NAFSA: Association of International Educators, to Ivan K. Fong, General Counsel, DHS (April 13, 2011), available at *http://www.nafsa.org/uploadedFiles/DHSregreviewcommentApr122011%20public.pdf.*

[26] The aliens of extraordinary ability and aliens of exceptional ability classifications encompass a broad range of occupations (sciences, arts, education, business, or athletics for extraordinary ability aliens; and the sciences, arts, or business for exceptional ability aliens). *See* INA section 203(b)(1)(A), (2)(A). Employers filing petitions under such classifications thus may submit comparable evidence if they are able to establish that the standards listed in the regulation do not directly apply to the beneficiary's occupation. *See* 8 CFR. 204.5(h)(4), (k)(3)(iii). In contrast, the outstanding professor or researcher classification encompasses only two overarching types of occupations, and the current eligibility criteria generally readily apply to both. Consequently, limiting submission of comparable evidence for outstanding professors and researchers only to instances in which the criteria do not readily apply ''to the alien's occupation'' would be unavailing and would not adequately serve the goal of this regulatory change.

TABLE 2—SUMMARY OF COSTS AND BENEFITS

Costs	Proposed change	Benefits and avoided costs
	E–3, H–1B1, and CW–1 Status Holders	
None ..	Automatic continued employment authorization of up to 240 days for an H–1B1, E–3, or CW–1 nonimmigrant worker while an extension of stay petition is pending.	Avoided cost of lost productivity for U.S. employers of E–3, H–1B1, and CW–1 workers. Not quantified. Would provide equity for E–3 and H–1B1 status holders relative to other employment-based nonimmigrants listed in 8 CFR 274a.12.(b)(20) and provides equity for CW–1 nonimmigrant workers whose extension is filed by the same employer, similar to other CW–1 nonimmigrant workers. Qualitative benefit.
	Clarify that E–3 and H–1B1 nonimmigrants are work authorized incident to status, and specify current filing procedures for requesting change of status or extension of status.	Ensures the regulations are consistent with statutory authority and codifies current practice.
	EB–1 Outstanding Professor and Researcher Classification	
	Allow the use of comparable evidence to that listed in 8 CFR 204.5(i)(3)(i)(A)–(F) to establish that the EB–1 professor or researcher is recognized internationally as outstanding in his or her academic field.	May facilitate recruitment of EB–1 outstanding professors and researchers for U.S. employers. Not quantified. Would provide equity for EB–1 status holders relative to other employment-based immigrants listed in 8 CFR 204.5. Qualitative benefit.

A summary of the visa types affected by this proposed rule is shown in Table 3.

TABLE 3—SUMMARY OF AFFECTED VISA TYPES

Visa type	Beneficiary restrictions	Immigration status	Maximum duration of stay	Annual limitations
E–3	Nationals of Australia	Nonimmigrant (temporary workers).	2 years, indefinite extensions.	10,500.
H–1B1	Nationals of Chile or Singapore.	Nonimmigrant (temporary workers).	1 year, indefinite extensions.	1,400 for Chilean nationals; 5,400 for Singaporean nationals.
CW–1	Limited to workers in the CNMI during the transition to U.S. Federal immigration regulations.	Nonimmigrant (temporary workers).	1 year, extensions available through December 31, 2014 unless extended by DOL.	Maximum of 14,000 in FY 2014.
EB–1 outstanding professor and researcher.	Outstanding professors and researchers (any nationality).	Immigrant (permanent workers).	None	Apportioned from the approximate 40,000 available annually to first preference employment-based immigrant visas.

1. E–3 or H–1B1 Nonimmigrant Workers

Under current regulations, employers of E–3 or H–1B1 nonimmigrants must generally file a petition requesting the extension of the individual employee's stay well before the initial authorized period of stay expires in order to ensure continued employment authorization throughout the period that the extension request is pending. The petition requesting an extension may be filed as early as 6 months prior to the expiration of their authorized period of stay and, as noted previously, the average processing time for these extension requests is 2 months as of March 2014. If, however an extension request is not granted prior to the expiration of the authorized period of stay, the E–3 or H–1B1 nonimmigrant cannot continue to work while his or her extension petition remains pending.

In this rule, DHS proposes to amend its regulations to permit principal E–3 and H–1B1 nonimmigrants to continue their employment with the same employer for a period not to exceed 240 days beyond the expiration of their authorized period of stay specified on their Arrival-Departure Record, Form I–94, while their petitions requesting extensions are pending. To obtain this 240-day automatic employment bridge, employers would be required to timely file a Petition for a Nonimmigrant Worker, Form I–129, to request an extension of the employee's stay. *See* proposed 8 CFR 274a.12(b)(20). Under current regulations, employers must file Form I–129 in order to request an extension of stay on behalf of the employee, so there are no additional filing requirements for employers to comply with this proposed rule.

Through this rule, DHS intends to harmonize the provisions of extended employment authorization (generally through the adjudication period of an extension) of principal E–3 and H–1B1 nonimmigrant classifications with the related provisions of other employment-based nonimmigrant classifications in 8 CFR 274a.12(b)(20).

This provision of the proposed rule would not create additional costs for any petitioning employer or for the E–3 or H–1B1 nonimmigrant worker. The benefits of the proposed rule would be to provide equity for E–3 and H–1B1 nonimmigrants relative to other employment-based nonimmigrants

listed in 8 CFR 274a.12(b)(20). Additionally, this provision may allow employers of E–3 or H–1B1 nonimmigrant workers to avoid the cost of lost productivity resulting from interruptions of work while an extension of stay petition is pending.

In addition, DHS is proposing to amend the regulations to codify current practices. Specifically, DHS would amend 8 CFR 274a.12 to clarify in the regulations that the principal E–3 and H–1B1 nonimmigrant classifications are employment authorized incident to status with a specific employer. DHS is also proposing to amend 8 CFR 214.1(c)(1) and 8 CFR 248.3(a) to add the principal E–3 and H–1B1 nonimmigrant classifications to the list of nonimmigrant classifications that must file a petition with USCIS to make an extension of stay or change of status request. Again, both of these regulatory clarifications are consistent with current practice.

Table 4 shows that USCIS received a total of 5,221 extension of stay petitions for H–1B1 and E–3 nonimmigrant workers in the FYs from 2009 through 2013 (an average of 1,044 petitions per year). Approvals of extensions of stay petitions in the same period totaled 3,828 (an average of 766 per year). Extension of stay petitions received and petition approvals are not meant for direct comparison because decisions regarding a petition received in one year may be made in another year.

TABLE 4—PETITION FOR A NONIMMIGRANT WORKER, FORM I–129 FILED FOR AN EXTENSION OF STATUS FOR E–3 AND H–1B1 NONIMMIGRANTS

FY	Petitions received			Petition approvals		
	H–1B1	E–3	Total	H–1B1	E–3	Total
2009	490	611	1,101	231	618	849
2010	444	624	1,068	185	571	756
2011	438	555	993	220	410	630
2012	489	563	1,052	180	380	560
2013	417	590	1,007	411	622	1,033
Total	2,278	2,943	5,221	1,227	2,601	3,828

Source: Data provided by USCIS Office of Performance and Quality (OPQ), April, 2014.

USCIS does not have an estimate of either the number of cases where E–3 and H–1B1 nonimmigrants have lost work authorization because their petition for an extension of stay was not adjudicated before the expiration of their authorized period of stay or the duration of the lost work authorization.[27] Because of this data limitation, we are unable to quantify the total aggregate estimated benefits of this provision of the rule. To the extent that this rule would allow U.S. employers to avoid interruptions in productivity that could result if the extension of stay is not adjudicated prior to the expiration date noted on the nonimmigrant worker's Form I–94, the rule would result in a benefit for U.S. employers.

DHS requests public comment from impacted stakeholders on additional information or data that would permit DHS to estimate the benefits of this rule as it relates to avoiding productivity losses or other benefits to U.S. employers or E–3 and H–1B1 high-skilled workers, including whether this rule may facilitate recruitment of high-skilled workers.

[27] USCIS acknowledges that in part 3 of the Petition for a Nonimmigrant Worker (currently Form I–129), information is collected about the beneficiary that is currently in the United States. While this information is collected and considered for purposes of adjudication of benefit, this information is not captured in a database.

2. CW–1 Nonimmigrant Workers

This provision of the proposed rule would apply to the CW–1 classification which is issued solely to nonimmigrant workers in the CNMI. The CW–1 nonimmigrant visa classification was created to allow workers who are otherwise ineligible for other nonimmigrant visa classifications under the Federal immigration system to work in the CNMI during the period in which the immigration regulations of the CNMI transition to those of the U.S. Federal immigration system. This transition period will end on December 31, 2014, after which CW–1 nonimmigrant status will cease, unless the transitional worker program is extended by DOL.

CW–1 nonimmigrants may be admitted to the CNMI for a period of 1 year. USCIS may grant extensions in 1-year increments until the end of the transition period. The CW–1 nonimmigrant visa classification is valid only in the CNMI and does not require a certified LCA from the DOL.

DHS has determined that current regulations contain an inconsistency. While current regulations provide continued work authorization for CW–1 nonimmigrant workers during the pendency of USCIS adjudication of petitions for a change of employers and for certain beneficiaries of initial CW petitions filed on or before November 27, 2011, continued work authorization is not currently provided for CW–1 nonimmigrant workers requesting extensions of stay with the same employer. This inconsistency in the regulations may create an incentive for CW–1 nonimmigrant workers to change employers, as they would have the advantage of uninterrupted work authorization.

The proposed revision to the regulations would allow for equitable treatment of CW–1 nonimmigrant workers by extending continued employment authorization for up to 240 days while a request for an extension of stay with the same employer is being adjudicated. As with the similar proposal in this rule regarding H–1B1 and E–3 nonimmigrants, current employers of CW–1 nonimmigrant workers may also avoid productivity losses that could be incurred if a CW–1 nonimmigrant is not permitted to continue employment during adjudication of the extension request.

The CW–1 nonimmigrant visa classification is temporary. DHS has established numerical limitations on the number of CW–1 nonimmigrant visas that may be granted, as shown in Table 5. The numerical limitations apply to both initial petitions and extension of stay requests, including change of employer petitions, in a given FY. DHS has not yet determined the reduction in the numerical limitation for the remainder of the transition period from October 1, 2013 (beginning of FY 2014) to December 31, 2014 (the end of the transition period, unless the transition

period is extended by the Secretary of Labor).

TABLE 5—NUMERICAL LIMITATIONS OF CW–1 VISAS

FY	Numerical limit
2011	22,417
2012	22,416
2013	15,000
2014	14,000
Period from October 1, 2014 through December 31, 2014.	To be determined.

Source: FYs 2011 and 2012, 8 CFR 214(w)(viii). FY 2013, FEDERAL REGISTER volume 77, no. 231, page 71287. FY 2014, **Federal Register** volume 78, no. 186, page 58867.

DHS set the numerical limit of CW–1 temporary visas at 15,000 for FY 2013 and petitioning employers filed initial petitions for 696 beneficiaries; extension of stay requests from the same employer for 6,079 beneficiaries; and extension of stay requests from new employers for an additional 1,358 beneficiaries.[28] The population affected by this provision of the proposed rule would be those CW–1 nonimmigrant workers whose subsequent extensions of stay requests were filed by the same employer. Accordingly, if this proposal were in place in FY 2013, all of the 6,079 CW–1 nonimmigrant workers with extension of stay requests with the same employer would receive the continued 240-day employment bridge, generally putting these workers on par with CW–1 nonimmigrant workers with extension of stay request for new employers.

This proposed provision would not impose any additional costs for any petitioning employer or for CW–1 nonimmigrant workers. The benefits of the proposed rule would be to provide equity for CW–1 nonimmigrant workers whose extension of stay request is filed by the same employer relative to other CW–1 nonimmigrant workers. Additionally, this provision would mitigate any potential distortion in the labor market for employers of CW–1 nonimmigrant workers created by the differing provisions for retained workers versus provisions for workers changing employers and prevent a potential loss of productivity for current employers. Currently these benefits would be limited in duration, as the transition period in which CW–1 visas are issued is to expire on December 31, 2014, unless extended by DOL.

While USCIS does not have data to permit a quantitative estimation of the benefits[29] of this provision, the provision is offered in response to a request from stakeholder organizations to provide for continuing work authorization pending adjudication of extension of stay requests filed on behalf of original CW–1 nonimmigrant workers.[30]

DHS invites impacted stakeholders to provide any additional information or data that would permit DHS to quantitatively estimate the benefits of this rule as it relates to CW–1 nonimmigrant workers in the CNMI and preventing a potential loss of productivity for employers who retain their CW–1 nonimmigrant workers.

3. EB–1 Outstanding Professors and Researchers

For the EB–1 outstanding professor and researcher immigrant classification, under current regulations a petitioner must submit initial evidence that the beneficiary is recognized internationally as outstanding in his or her specific academic field. The type of evidence that is required is outlined in 8 CFR 204.5(i)(3).

In this rule, DHS is proposing to allow the substitution of comparable evidence (examples might include important patents and prestigious, peer-reviewed funding or grants) for that listed in 8 CFR 204.5(i)(3)(i)(A)–(F) to establish that the EB–1 professor or researcher is recognized internationally as outstanding in his or her academic field. *See* proposed 8 CFR 204.5(i)(3)(ii). The other requirements remain unchanged. This change is being proposed in response to stakeholder concerns that the current evidentiary list is dated and may not allow the beneficiary to present the full documentation of their talents.[31]

By allowing the submission of comparable evidence, DHS would harmonize the evidentiary requirements of the EB–1 outstanding professor and researcher category with those currently available to employment-based petitioners in both the aliens with extraordinary ability category as well as the second-preference employment category for a person of exceptional ability.

This provision of the proposed rule would not create additional costs for any petitioning employer or for the EB–1 outstanding professor and researcher classification. The benefits of this provision are qualitative, as it would provide equity for EB–1 outstanding professors and researchers relative to other employment-based immigrant status holders listed in 8 CFR 204.5. Because of the expanded types of evidence that could be used to support an EB–1 petition, it is possible that qualified U.S. employers would find the recruitment of EB–1 outstanding professors and researchers eased due to this proposed provision.

As shown in Table 6, over the past ten FYs, an average of 91.9 percent of EB–1 petitions for outstanding professors and researchers are approved under the current evidentiary standards. USCIS does not have data to indicate which, if any, of the 2,896 petitions that were not approved from FY 2003 through FY 2013 would have been approved under the proposed evidentiary standards. Furthermore, we are not able to estimate whether the proposed evidentiary standards would alter the demand for EB–1 outstanding professors and researchers by U.S. employers. Because of this data limitation, the further quantification of this benefit is not possible.

TABLE 6—IMMIGRANT PETITION FOR ALIEN WORKER (I–140) WITH OUTSTANDING PROFESSOR OR RESEARCHER PREFERENCE RECEIPTS AND COMPLETIONS, FY 2003–2013

FY	Receipts[32]	Approved[33]	Denied	Percent approved
2003	3,434	2,403	278	89.63
2004	2,864	2,021	375	84.35
2005	3,089	5,455	391	93.31

[28] Source: USCIS Office of Performance and Quality.

[29] The aggregate value of benefits would depend on several non-quantifiable factors including: The number of CW–1 workers prompted to change employment because of the automatic extension versus those changing for reasons of promotion, advancement or termination by their previous employer and whether the Secretary of Labor decides to extend the transition period.

[30] Joint letter to the Director, USCIS, from the Saipan Chamber of Commerce, the Hotel Association of the Northern Mariana Islands and the Society for Human Resource Management CNMI (Dec. 20, 2012).

[31] *See* Letter from Marlene M. Johnson, Executive Director and CEO of NAFSA: Association of International Educators, to Ivan K. Fong, General Counsel, DHS (April 13, 2011), available at *http://www.nafsa.org/uploadedFiles/DHSregreviewcommentApr122011%20public.pdf.*

TABLE 6—IMMIGRANT PETITION FOR ALIEN WORKER (I–140) WITH OUTSTANDING PROFESSOR OR RESEARCHER PREFERENCE RECEIPTS AND COMPLETIONS, FY 2003–2013—Continued

FY	Receipts [32]	Approved [33]	Denied	Percent approved
2006	3,111	3,139	165	95.01
2007	3,560	2,540	300	89.44
2008	2,648	2,223	187	92.24
2009	3,209	3,991	309	92.81
2010	3,522	3,199	332	90.60
2011	3,187	3,090	218	93.41
2012	3,112	3,223	194	94.32
2013	3,350	3,180	147	95.58
Total	35,086	34,464	2,896	10-Yr Avg: 91.88

Source: Data provided by USCIS Office of Performance and Quality (OPQ), April 2014.

DHS welcomes public comments from impacted stakeholders, such as employers or prospective employers of an EB–1 outstanding professor or researcher, providing information or data that would enable DHS to calculate the resulting benefits of the proposed provision.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104–121 (March 29, 1996), requires Federal agencies to consider the potential impact of regulations on small entities during the development of their rules. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. With this rule, DHS proposes these revisions to allow for additional flexibilities; harmonize the conditions of employment of E–3, H–1B1 and CW–1 nonimmigrant workers with other, similarly situated nonimmigrant categories; and harmonize the allowance of comparable evidence for EB–1 outstanding professors and researchers with evidentiary requirements of other similar employment-based immigrant categories. As discussed previously, DHS does not anticipate that the additional flexibilities and harmonization provisions proposed would result in any costs for impacted U.S. employers including any additional costs for small entities.

As discussed extensively in the regulatory assessment for Executive Orders 12866 and 13563 and elsewhere throughout the preamble, this proposed rule does not impose any costs on U.S. employers. The proposed amendments provide automatic flexibilities and harmonization for U.S. employers under current application practices, and do not impose any new or additional compliance procedures for these employers.

Based on the foregoing, DHS certifies that this rule will not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act of 1995

This proposed rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

D. Small Business Regulatory Enforcement Fairness Act of 1996

This proposed rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

E. Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

G. Paperwork Reduction Act

Under the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13, all agencies are required to submit to the Office of Management and Budget (OMB), for review and approval, any reporting requirements inherent in a rule. *See* 44 U.S.C. 3506.

The information collection requirement contained in this rule, Immigrant Petition for Alien Worker, Form I–140, has been previously approved for use by OMB under the PRA. The OMB control number for the collections is 1615–0015.

Under this rule, DHS is proposing to revise the Immigrant Petition for Alien Worker, Form I–140, instructions to expand the current list of evidentiary criteria to include comparable evidence so that U.S. employers petitioning for an EB–1 outstanding professor or researcher may submit additional or alternative documentation demonstrating the beneficiary's achievements if the evidence otherwise described in 8 CFR 204.5(i)(3)(i) does not readily apply. Specifically, DHS proposes to add a new paragraph b. under the ''Initial Evidence'' section of the form instructions, to specify that employers filing for an outstanding professor or researcher may submit comparable evidence to establish the alien's eligibility if the listed standards do not readily apply. DHS also proposes minor clarifying language updates to the form instructions to maintain parity among USCIS forms.

Accordingly, DHS is requesting comments on revisions for 60-days until

[32] Receipts are those filed within the FY indicated and include petitions from new arrivals and those that are seeking to adjust status.

[33] Approved and denied petitions may have been receipted in a previous FY.

[Insert date 60 days from date of publication in the **Federal Register**]. Comments on this information collection should address one or more of the following four points:

1. Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of information collections for Immigrant Petition for Alien Workers, Form I–140:

a. *Type of information collection:* Revision of a currently approved information collection.

b. *Abstract:* This information collection is used by USCIS to classify aliens under INA sections 203(b)(1), 203(b)(2), or 203(b)(3).

c. *Title of Form/Collection:* Immigrant Petition for Alien Workers.

d. *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–140; USCIS.

e. *Affected public who will be asked or required to respond:* Businesses or other for-profit organizations.

f. *An estimate of the total number of annual respondents:* 77,149 respondents.

g. *Hours per response:* 1 hour 5 minutes (1.08 hours) per response.

h. *Total Annual Reporting Burden:* 83,321 annual burden hours.

Comments concerning this information collection can be submitted to Chief, Regulatory Coordination Division, Office of Policy and Strategy, USCIS, DHS, 20 Massachusetts Avenue NW., Washington, DC 20529–2140.

List of Subjects

8 CFR Part 204

Administrative practice and procedures, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 214

Administrative practice and procedure, Aliens, Cultural exchange programs, Employment, Foreign officials, Health professions, Reporting and recordkeeping, Students.

8 CFR Part 248

Aliens, Reporting and recordkeeping requirements.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 204—IMMIGRANT VISA PETITIONS

■ 1. The authority citation for part 204 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1184, 1186a, 1255, 1641; 8 CFR part 2.

■ 2. Section 204.5 is amended by:
■ a. Redesignating paragraphs (i)(3)(ii) and (i)(3)(iii) as paragraphs (i)(3)(iii) and paragraph (i)(3)(iv), respectively; and
■ b. Adding a new paragraph (i)(3)(ii).

The addition reads as follows:

§ 204.5 Petitions for employment-based immigrants.

* * * * *

(i) * * *

(3) * * *

(ii) If the standards in paragraph (i)(3)(i) of this section do not readily apply, the petitioner may submit comparable evidence to establish the beneficiary's eligibility.

* * * * *

PART 214—NONIMMIGRANT CLASSES

■ 3. The authority citation for part 214 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301–1305 and 1372; sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; Pub. L. 106–386, 114 Stat. 1477–1480; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note, and 1931 note, respectively; Title VII of Pub. L. 110–229; 8 CFR part 2.

■ 4. Section 214.1 is amended in paragraph (c)(1) by:
■ a. Revising the paragraph heading; and
■ b. Removing the first and second sentences, and adding one sentence in their place.

The revision and addition read as follows:

§ 214.1 Requirements for admission, extension, and maintenance of status.

* * * * *

(c) * * *

(1) *Extension of stay for certain employment-based nonimmigrant workers.* A petitioner seeking the services of an E–1, E–2, E–3, H–1B, H–1B1, H–2A, H–2B, H–3, L–1, O–1, O–2, P–1, P–2, P–3, Q–1, R–1, or TN nonimmigrant beyond the period previously granted, must apply for an extension of stay on the form designated by USCIS, with the fee prescribed in 8 CFR 103.7(b)(1), with the initial evidence specified in § 214.2, and in accordance with the form instructions. * * *

* * * * *

PART 248—CHANGE OF NONIMMIGRANT CLASSIFICATION

■ 5. The authority citation for part 248 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1258; 8 CFR part 2.

■ 6. Section 248.3 is amended by revising the section heading and paragraph (a) to read as follows:

§ 248.3 Petition and application.

* * * * *

(a) *Requests by petitioners.* A petitioner must submit a request for a change of status to E–1, E–2, E–3, H–1C, H–1B, H–1B1, H–2A, H–2B, H–3, L–1, O–1, O–2, P–1, P–2, P–3, Q–1, R–1, or TN nonimmigrant.

* * * * *

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

■ 7. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 48 U.S.C. 1806; 8 CFR part 2.

■ 8. Section 274a.12 is amended by:
■ a. Revising the first sentence of paragraph (b)(9);
■ b. Revising the first sentence of paragraph (b)(20);
■ c. Removing the term ''or'' at the end of paragraph (b)(23);
■ d. Removing ''.'' at the end of paragraph (b)(24) and adding in its place ''; or''; and
■ e. Adding new paragraph (b)(25).

The revisions and addition read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

* * * * *

(b) * * *

(9) A temporary worker or trainee (H–1, H–2A, H–2B, or H–3), pursuant to § 214.2(h) of this chapter, or a nonimmigrant specialty occupation worker pursuant to section 101(a)(15)(H)(i)(b1) of the Act. * * *

* * * * *

(20) A nonimmigrant alien within the class of aliens described in paragraphs (b)(2), (b)(5), (b)(8), (b)(9), (b)(10), (b)(11), (b)(12), (b)(13), (b)(14), (b)(16), (b)(19), (b)(23) and (b)(25) of this section whose status has expired but who is the beneficiary of a timely application for an extension of such stay pursuant to §§ 214.2 or 214.6 of this chapter. * * *

* * * * *

(25) A nonimmigrant treaty alien in a specialty occupation (E–3) pursuant to section 101(a)(15)(E)(iii) of the Act.

* * * * *

Jeh Charles Johnson,

Secretary of Homeland Security.

[FR Doc. 2014–10733 Filed 5–9–14; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 214 and 274a

[CIS No. 2501–10; DHS Docket No. USCIS–2010–0017]

RIN 1615–AB92

Employment Authorization for Certain H–4 Dependent Spouses

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Proposed rule.

SUMMARY: The Department of Homeland Security proposes to extend the availability of employment authorization to certain H–4 dependent spouses of principal H–1B nonimmigrants. The extension would be limited to H–4 dependent spouses of principal H–1B nonimmigrants who are in the process of seeking lawful permanent resident status through employment. This population will include those H–4 dependent spouses of H–1B nonimmigrants if the H–1B nonimmigrants are either the beneficiaries of an approved Immigrant Petition for Alien Worker (Form I–140) or who have been granted an extension of their authorized period of admission in the United States under the American Competitiveness in the Twenty-first Century Act of 2000 (AC21), as amended by the 21st Century Department of Justice Appropriations Authorization Act. This regulatory change would lessen any potential economic burden to the H–1B principal and H–4 dependent spouse during the transition from nonimmigrant to lawful permanent resident status, furthering the goals of attracting and retaining high-skilled foreign workers.

DATES: Written comments must be received on or before July 11, 2014.

ADDRESSES: You may submit comments, identified by DHS Docket No. USCIS–2010–0017, by any one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the Web site instructions for submitting comments.
- *Email:* You may submit comments directly to U.S. Citizenship and Immigration Services by email at *uscisfrcomment@dhs.gov*. Include DHS docket number USCIS–2010–0017 in the subject line of the message.
- *Mail:* Laura Dawkins, Chief Regulatory Coordinator, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW., Washington, DC 20529. To ensure proper handling, please reference DHS Docket No. USCIS–2010–0017 on your correspondence. This mailing address may also be used for paper, disk, or CD–ROM submissions.
- *Hand Delivery/Courier:* Laura Dawkins, Chief Regulatory Coordinator, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW., Washington, DC 20529; Telephone (202) 272–8377.

FOR FURTHER INFORMATION CONTACT: Jennifer Oppenheim, Adjudications Officer, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW., Suite 1100, Washington, DC 20529–2140; Telephone (202) 272–1470.

SUPPLEMENTARY INFORMATION:

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I. Public Participation

All interested parties are invited to participate in this rulemaking by submitting written data, views, comments and/or arguments on all aspects of this proposed rule. U.S. Citizenship and Immigration Services (USCIS) also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. Comments that will provide the most assistance to USCIS in developing these procedures will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Instructions: All submissions must include the agency name and DHS Docket No. USCIS–2010–0017 for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

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

II. Executive Summary

A. Purpose of the Regulatory Action

1. Need for the Regulatory Action

Under current regulations, DHS does not list H–4 dependents (spouses and unmarried children under 21) of H–1B nonimmigrant workers among the classes of aliens eligible to work in the United States. *See* 8 CFR 274a.12. The lack of employment authorization for H–4 dependent spouses often gives rise to personal and economic hardship for the families of H–1B nonimmigrants the longer they remain in the United States. In many cases, for those H–1B nonimmigrants and their families who wish to remain permanently in the United States, the timeframe required for an H–1B nonimmigrant to acquire

lawful permanent residence through his or her employment may be many years. As a result, retention of highly educated and highly skilled nonimmigrant workers in the United States can become problematic for employers. Retaining highly skilled persons who intend to acquire lawful permanent residence is important to the United States given the contributions of these individuals to the U.S. economy, including advances in entrepreneurial and research and development endeavors, which correlate highly with overall economic growth and job creation.

In this rule, DHS is proposing to extend employment authorization to certain H–4 dependent spouses of H–1B nonimmigrants. DHS believes that this proposal would further encourage H–1B skilled workers to remain in the United States, continue contributing to the U.S. economy, and not abandon their efforts to become lawful permanent residents, to the detriment of their U.S. employer, because their H–4 nonimmigrant spouses are unable to obtain work authorization. This proposal would also remove the disincentive for many H–1B families to start the immigrant process due to the lengthy waiting periods associated with acquiring status as a lawful permanent resident of the United States.

2. Proposed Process To Extend Employment Authorization to Certain H–4 Dependent Spouses

With this rule, DHS is proposing to extend eligibility for employment authorization to certain H–4 dependent spouses of principal H–1B nonimmigrants who are in the process of seeking lawful permanent resident status through employment. This population will include H–4 dependent spouses of H–1B nonimmigrants if the H–1B nonimmigrants are either the beneficiaries of an approved Immigrant Petition for Alien Worker (Form I–140) or have been granted an extension of their authorized period of admission in the United States under the American Competitiveness in the Twenty-first Century Act of 2000 (AC21), amended by the 21st Century Department of Justice Appropriations Authorization Act (herein collectively referred to as ''AC21'') [1]. This regulatory change would lessen any potential economic burden to the H–1B principal and H–4 dependent spouse during the transition from nonimmigrant to lawful permanent resident status, thereby fostering the goals of attracting and retaining high-skilled foreign workers and minimizing disruption to U.S. businesses employing H–1B workers that would result if such workers were to leave the United States.

3. Legal Authority

The Secretary of Homeland Security's authority for this proposed regulatory amendment can be found in section 102 of the Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135, 6 U.S.C. 112, and section 103 of the Immigration and Nationality Act (INA or the Act), 8 U.S.C. 1103, which give the Secretary the authority to administer and enforce the immigration and nationality laws, as well as section 274A(h)(3) of the INA, 8 U.S.C. 1324a(h)(3), which refers to the Secretary's authority to authorize employment of noncitizens in the United States.

B. Summary of the Major Provisions of This Proposed Rule

DHS proposes to amend its regulations at 8 CFR 214.2(h)(9)(iv) and 274a.12(c) to extend eligibility for employment authorization to H–4 dependent spouses of H–1B nonimmigrants if the H–1B nonimmigrants have either been granted status pursuant to sections 106(a) and (b) of AC21 or are the beneficiaries of an approved Immigrant Petition for Alien Worker (Form I–140).

Under sections 106(a) and (b) of AC21, an H–1B nonimmigrant who is the beneficiary of a labor certification application or an employment-based immigrant petition that has been pending for at least 365 days prior to reaching the end of the sixth year of H–1B nonimmigrant status may obtain H–1B nonimmigrant status past the sixth year, in one year increments. An H–4 dependent may also be admitted or granted extensions of stay for the same period that the H–1B nonimmigrant is authorized to remain in such status. This proposed rule would allow work authorization for an H–4 spouse whose H–1B spouse is maintaining his or her H–1B nonimmigrant status under sections 106(a) and (b) of AC21.

Although an H–1B nonimmigrant may have already received an approval of his or her Form I–140 employment-based immigrant petition, she or he and his or her H–4 dependents may not be authorized to apply to adjust their status to that of a lawful permanent resident or otherwise seek lawful permanent resident status at a consular office abroad immediately. Instead, they may need to wait until an immigrant visa number is available, which may take years. While the H–1B nonimmigrant may continue working so long as he or she maintains H–1B nonimmigrant status under section 104(c) of AC21, the H–4 dependent spouse generally is not eligible for employment authorization under current regulations until he or she is eligible to apply for adjustment of status or has changed to another nonimmigrant status authorizing him or her to work. This proposed rule would also extend employment authorization eligibility to this group of H–4 nonimmigrant spouses.

DHS also proposes to amend 8 CFR 274a.12(c) by adding paragraph (26), which would list the H–4 nonimmigrant spouses described in revised 8 CFR 214.2(h)(9)(iv) as a new class of aliens eligible to request employment authorization from USCIS. Therefore, as is the case with all classes of aliens listed in 8 CFR 274a.12(c), aliens seeking employment authorization who fall within the new class of aliens proposed in this rule would only be employment authorized following approval of their Application for Employment Authorization (Form I–765) by USCIS and receipt of an Employment Authorization Document (Form I–766). The determination whether to approve an application for employment authorization filed by an H–4 nonimmigrant lies within the sole discretion of USCIS. *See* 8 CFR 274a.13(a)(1).

C. Costs and Benefits

The proposed amendment would permit certain H–4 spouses to request employment authorization. DHS estimates the current population of H–4 dependent spouses who would be initially eligible for employment authorization under this proposed rule could be as many as 100,600 after taking into account the backlog of those with approved or likely to be approved employment-based immigrant petitions but who are unable to file for adjustment of status to that of a lawful permanent resident. DHS has assumed that those H–4 dependent spouses in the

[1] Sections 106(a) and (b) of AC21 were amended by section 11030A of the 21st Century Department of Justice Appropriations Authorization Act, Public Law 107–273, 116 Stat. 1758 (2002). This act clarified who is eligible for an H–1B extension of stay beyond the limitation set forth in INA 214(g), 8 U.S.C. 1184(g), by eliminating the requirement that an employment-based immigrant petition or an application for adjustment of status must be filed on behalf of the individual in order for the individual to qualify for the extension. As such, an extension of stay now may be permitted for those individuals on whose behalf only a labor certification was filed, if he or she otherwise is eligible. The act also clarified that H–1B status could not be extended under section 106 of AC21 if the labor certification or employment-based immigrant petition has been denied, as well as upon a decision ''to grant or deny the alien's application for an immigrant visa or for adjustment of status.''

backlog population would file for employment authorization in the first year of implementation for ease of analysis, so the first year estimates include both the backlog estimate and the annual flow estimate of initial filers. DHS estimates the flow of H–4 dependent spouses that could apply for initial employment authorization in subsequent years to be as many as 35,900 annually. This is a high-end estimate of the affected population since only H–4 dependent spouses who decide to apply for employment authorization while residing in the United States would face the costs associated with obtaining employment authorization. Additionally, in future years there could be additional filings from H–4 spouses who apply to renew their employment authorization while continuing to wait for visas to become available. Although DHS was unable to predict the volume of H–4 spouses that would need to renew their employment authorization, the individual cost faced by these filers would be identical to first-time filers for employment authorization. The costs of the rule would stem from filing fees, the opportunity costs of time associated with filing an Application for Employment Authorization, and the estimated cost of procuring two passport-style photos which must be submitted with the application.

These amendments would increase incentives of H–1B nonimmigrant workers who have begun the immigration process to remain in and contribute to the U.S. economy as they complete the process to adjust status to or otherwise acquire lawful permanent resident status, and thereby minimize disruptions to the petitioning U.S. employer. Providing the opportunity for certain H–4 dependent spouses to work while the H–1B nonimmigrant is waiting for a visa number to become available would encourage the H–1B principal to remain employed in the United States and continue to pursue his or her efforts to immigrate notwithstanding oftentimes lengthy waiting periods for immigrant visa availability. Attracting and retaining highly skilled persons who intend to acquire lawful permanent resident status is important when considering the contributions of these individuals to the U.S. economy, including advances in entrepreneurial and research and development endeavors, which are highly correlated with overall economic growth and job creation. In addition, the proposed amendments would bring U.S. immigration laws more in line with other countries that are also competing to attract and retain similar high-skilled foreign workers.

TABLE 1—TOTAL COSTS OF INITIAL EMPLOYMENT AUTHORIZATION FOR CERTAIN H–4 DEPENDENT SPOUSES 10-YR. PRESENT VALUE ESTIMATES AT 3% AND 7%

[$Millions]

	Year 1 estimate (100,600 filers)	Sum of years 2–10 (35,900 filers annually)	Total over 10-year period of analysis [2]
3% Discount Rate:			
Total Costs Incurred by Filers @3%	$42.6	$118.2	$160.8
7% Discount Rate:			
Total Costs Incurred by Filers @7%	41.0	95.2	136.2
Qualitative Benefits	This rule is intended to remove the disincentive to pursue the immigration process due to the potentially long wait for available employment-based immigrant visas for many H–1B nonimmigrant families. Also, this rule will encourage H–1B skilled workers who have already taken steps to become lawful permanent residents (LPRs) to not abandon their efforts to acquire lawful permanent residence because their H–4 spouse is unable to work. By encouraging the H–1B workers to continue in their pursuit of becoming LPRs, this rule would result in minimizing disruptions to petitioning U.S. employers. Eligible H–4 spouses who participate in the labor market will benefit financially. We also anticipate that the socio-economic benefits will assist the family in more easily integrating into American society.		

III. Background

A. The H–1B Petition Process, Status Benefits and Validity Period

Under the H–1B nonimmigrant classification, a U.S. employer or agent may file a petition to employ a temporary foreign worker in the United States to perform services in a specialty occupation, services related to a Department of Defense (DOD) cooperative research and development project or coproduction project, or services of distinguished merit and ability in the field of fashion modeling. Immigration and Nationality Act (INA) section 101(a)(15)(H), 8 U.S.C. 1101(a)(15)(H); 8 CFR 214.2(h)(4). To employ a temporary nonimmigrant worker to perform such services (except for DOD-related services), a U.S. petitioner must first obtain a certification from the U.S. Department of Labor (DOL) confirming that the petitioner has filed a Labor Condition Application (LCA) in the occupational specialty in which the nonimmigrant will be employed. *See* 8 CFR 214.2(h)(4)(i)(B)(*1*) and 8 CFR 214.2(h)(1)(ii)(B)(*3*). Upon certification of the LCA, the petitioner may file with USCIS a Petition for a Nonimmigrant Worker (Form I–129 with H supplements or successor form(s)) (hereinafter ''H–1B petition'').

If USCIS approves the H–1B petition, the approved H–1B status is valid for an initial period of up to three years, after which USCIS may grant extensions for up to an additional three years such that the total period of the H–1B worker's admission in the United States does not exceed six years. *See* INA section 214(g)(4), 8 U.S.C. 1184(g)(4); 8 CFR 214.2(h)(9)(iii)(A)(*1*), (3), (h)(15)(ii)(B)(*1*). At the end of the 6-year period, the nonimmigrant generally must depart from the United States unless he or she falls within one of the exceptions to the 6-year ceiling,[3] he or she has changed to another nonimmigrant status, or he or she has applied to adjust status to that of a

[2] Totals may not sum due to rounding.

[3] Under sections 104(c) and 106(a)–(b) of AC21, certain nonimmigrants are exempt from the 6-year maximum period of admission.

lawful permanent resident. *See* INA sections 245(a) and 248(a), 8 U.S.C. 1255(a) and 1258(a); 8 CFR 245.1 and 8 CFR 248.1. Unless he or she falls under one of the exceptions, the nonimmigrant must depart from the United States and remain outside the United States for at least one year to be eligible for a new 6-year period of admission in H–1B nonimmigrant status. *See* 8 CFR 214.2(h)(13)(iii)(A).

For H–1B nonimmigrants performing DOD-related services, the approved H–1B status is valid for an initial period of up to five years, after which they may obtain up to an additional five years for a total period of admission not to exceed 10 years. 8 CFR 214.2(h)(9)(iii)(A)(*2*), (h)(15)(ii)(B)(*2*).[4]

The spouse and unmarried children under 21 (dependents) of the H–1B temporary worker are entitled to H–4 nonimmigrant classification and are subject to the same period of admission and limitations as the H–1B nonimmigrant. *See* 8 CFR 214.2(h)(9)(iv). Currently, DHS does not authorize H–4 nonimmigrants for employment based on their H–4 nonimmigrant status. If, however, an H–4 nonimmigrant is eligible to apply to adjust his or her status to that of a lawful permanent resident and has filed such an application, he or she may obtain employment authorization based on the pending adjustment of status application. *See* 8 CFR 274a.12(c)(9).

B. Acquiring Lawful Permanent Resident Status

For those H–1B nonimmigrants seeking to adjust their status to or otherwise acquire lawful permanent resident status, an employer or U.S. citizen or lawful permanent resident family member generally must first petition for them, unless they are qualified to self-petition, before they are eligible to file an adjustment of status application or otherwise seek to acquire status as a lawful permanent resident. *See* INA section 204(a), 8 U.S.C. 1154(a). Many H–1B nonimmigrants seeking lawful permanent resident status in the United States apply on the basis of employment. There are several employment-based (EB) immigrant classifications for which someone holding H–1B status may qualify for:

- EB–1—Aliens with extraordinary ability, outstanding professors and researchers, and certain multinational executives and managers
- EB–2—Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability
- EB–3—Skilled workers, professionals, and other workers
- EB–4—Special immigrants (*See* INA section 101(a)(27), 8 U.S.C. 1101(a)(27))
- EB–5—Employment creation immigrants

See INA section 203(b), 8 U.S.C. 1153(b).

For certain EB–2 and EB–3 classifications, prior to filing an immigrant petition on behalf of the individual with USCIS, employers must first obtain a labor certification from the DOL or provide evidence that the individual qualifies for Schedule A designation or for the DOL's Labor Market Information Pilot Program regarding a shortage of U.S. workers in the individual's occupation. *See* 8 CFR 204.5(a)(2). In order to apply for lawful permanent residence, an immigrant visa must be immediately available. *See* INA sections 201(a), 203(b), and 245(a); 8 U.S.C. 1151(a), 1153(b), 1255(a). An immigrant visa is ''immediately available'' if the priority date for the preference category is current according to the U.S. Department of State Visa Bulletin issued for the month in which the application for an immigrant visa is filed. The Visa Bulletin dates indicate whether an applicant, based on his or her priority date and country of birth, can file an adjustment of status application with USCIS or an application for an immigrant visa with the U.S. consular office abroad, or whether there is a backlog in order to apply to acquire lawful permanent residence. *See id.; see also* 8 CFR 245.1(g)(1) and 245.2(a)(2)(i)(B). If a labor certification is required, the priority date is the date the labor certification was accepted for processing by DOL. *See* 8 CFR 204.5(d). If no labor certification is required, the priority date is the date the Form I–140 petition was accepted by USCIS for processing. *See* INA section 203(e)(1), 8 USC 1153(e)(1); 22 CFR 42.53(a).

C. Obtaining H–1B Nonimmigrant Status Past the 6-Year Limit Under AC21

There are certain exceptions to the 6-year limit on a nonimmigrant's period of stay in H–1B status. These exceptions allow the individual to obtain H–1B nonimmigrant status beyond the six-year limit. One of these exceptions is found in sections 106(a) and (b) of AC21.[5]

Under sections 106(a) and (b) of AC21, an H–1B temporary worker who is the beneficiary of a labor certification application or an employment-based immigrant petition that has been pending for at least 365 days prior to reaching the end of the sixth year of H–1B nonimmigrant status may obtain H–1B nonimmigrant status past the sixth year, in one year increments. *See* Public Law 106–313, section 106(a)–(b).[6] An H–4 dependent also may be admitted or granted extensions of stay for the same period that the H–1B temporary worker is authorized to remain in such status. *See* 8 CFR 214.2(h)(9)(iv). Under current USCIS policy, USCIS may grant extensions of stay in 1-year increments until a final decision is made to either: (1) Deny the application for labor certification; (2) if the labor certification is approved, to revoke the approved labor certification; (3) Deny (or, if approved, revoke) the EB immigrant petition; or (4) Grant or deny the individual's application for an immigrant visa or for adjustment of status.[7]

Sections 106(a) and (b) of AC21 permit H–1B nonimmigrants to work and remain in the United States to apply

[4] This rule could authorize eligibility for employment authorization of H–4 dependents of H–1B nonimmigrants performing DOD-related services if the H–1B nonimmigrant is the beneficiary of an approved I–140 petition. These H–1B nonimmigrants cannot benefit from AC21 sections 106(a) or (b), because those sections solely relate to the generally applicable 6-year limitation on H–1B status under INA section 214(g)(4), whereas the 10 year limitation on H–1B status for DOD-related services is pursuant to section 222 of the Immigration Act of 1990, Public Law 101–649, 104 Stat. 4978 (Nov. 29, 1990); *see* 8 U.S.C. 1101 note.

[5] An H–1B nonimmigrant may also extend his or stay beyond the six-year period of stay under section 104(c) of AC21 if he or she is the beneficiary of an approved I–140 petition and an immigrant visa is not immediately available. While this rule does not address H–4 spouses of H–1B nonimmigrants who have extended their stay under section 104(c) of AC21, these H–4 spouses would be eligible for work authorization under this rule, as their H–1B nonimmigrant spouses are beneficiaries of an approved I–140 petition.

[6] Sections 106(a) and (b) of AC21 were amended by section 11030A of the 21st Century Department of Justice Appropriations Authorization Act, Public Law 107–273, 116 Stat. 1758 (2002). This act clarified who is eligible for an H–1B extension of stay beyond the limitation set forth in INA 214(g), 8 U.S.C. 1184(g), by eliminating the requirement that an employment-based immigrant petition or an application for adjustment of status must be filed on behalf of the individual in order for the individual to qualify for the extension. As such, an extension of stay now may be permitted for those individuals on whose behalf only a labor certification was filed, if he or she otherwise is eligible. The act also clarified that H–1B status could not be extended under section 106 of AC21 if the labor certification or employment-based immigrant petition has been denied, as well as upon a decision ''to grant or deny the alien's application for an immigrant visa or for adjustment of status.''

[7] *See* Mem. from Donald Neufeld, Acting Assoc. Dir., Domestic Operations, USCIS, Supplemental Guidance Relating to Processing Forms I–140 Employment-based Immigrant Petitions and I–129 H–1B Petitions, and Form I–485 Adjustment Applications Affected by AC21 (May 30, 2008) available at *http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/Archives%201998-2008/2008/ac21_30may08.pdf.*

for lawful permanent resident status while they await required decisions by DOL and/or USCIS on required filings to obtain status as a lawful permanent resident. Prior to AC21, such individuals often would have been required to leave the United States to await decisions from DOL and USCIS pending past their 6-year maximum period of authorized stay and apply for lawful permanent resident status outside the United States.

D. Employment Authorization for H–4 Dependents

The INA does not require DHS to extend employment authorization to H–4 dependents of H–1B nonimmigrants.[8] AC21 also does not require DHS to extend employment authorization to H–4 dependent spouses who remain in H–4 status beyond the six-year limitation and are otherwise unable to obtain work authorization during the process for obtaining lawful permanent resident status. *See* Public Law 106–313, section 106(a),-(b).

DHS regulations provide that H–4 dependents may reside in the United States, subject to the same period of admission and limitation as the H principal beneficiary. *8 CFR 214.2(h)(9)(iv).* Current regulations prohibit H–4 dependents from working in the United States in H–4 status. *Id.* However, these individuals may obtain employment authorization either by obtaining a different status that would provide employment authorization or by pursuing lawful permanent residence through an application for adjustment of status. *See* INA section 248, 8 U.S.C. 1258 (change of status); INA section 245(a), 8 U.S.C. 1255(a) (adjustment of status); 8 CFR 274a.12(c)(9).

Although H–4 dependents may obtain employment authorization by changing status to a different work authorized nonimmigrant classification, such as the H–1B or O–1 (individuals with extraordinary ability or achievement) classifications, not all H–4 dependents meet the statutory and regulatory requirements for changing status to an employment-authorized nonimmigrant classification. Furthermore, an H–4 dependent who wants to become a lawful permanent resident while remaining in the United States can only change status to a classification that would allow for dual intent, such that the nonimmigrant could simultaneously pursue lawful permanent residence while maintaining nonimmigrant status.[9] INA sections 101(a)(15) (defining the term ''immigrant''); 214(b) (discussing presumption of immigrant intent) and 214(h) (discussing effect of seeking lawful permanent residence on an alien's ability to maintain or obtain a change of status to H–1B status), 8 U.S.C. 1101(a)(15) and 1184(b), (h).

As an alternative, the H–4 nonimmigrant can wait to apply for work authorization during the adjustment of status application process following approval of an employment-based immigrant petition of which he or she is a derivative beneficiary. Under this scenario, however, H–4 nonimmigrants may be subject to lengthy immigrant visa availability delays before they may file adjustment of status applications, and related applications for work and travel authorization. *See* 8 CFR 274a.12(c)(9) (authorizing employment authorization for adjustment-of-status applicants).

It often takes years before an immigrant visa number becomes available. The INA limits the supply of available employment-based immigrant visas for each fiscal year, and the demand for visas typically exceeds the supply. The INA sets forth five employment-based preference classifications for employment-based immigrants and allocates the number of available world-wide visas among those categories. INA sections 201(d) and 203(b), 8 U.S.C. 1151(d) and 1153(b). The INA further limits the number of available visas for particular categories of foreign nationals based upon an annual per-country numerical limit. INA section 202(a)(2), 8 U.S.C. 1152(a)(2). This statutory formula has historically led to oversubscription in the employment-based second (EB–2) and third categories (EB–3), which are the categories through which H–1B nonimmigrants and their H–4 dependents typically seek permanent resident status. For instance, the approximate backlog for an EB–3 immigrant visa for individuals, other than nationals of India or the Philippines, presently is a little over 18 months. For nationals of India applying in the same EB–3 category, the approximate backlog is more than 10 years.[10]

To ease the negative impact of the immigrant visa processing delays, Congress intended that the AC21 provisions allowing for extension of H–1B status past the sixth year for workers who are the beneficiaries of certain pending or approved employment-based immigrant visa petitions or labor certification applications would minimize disruption to U.S. businesses employing H–1B workers that would result if such workers were required to leave the United States. *See* S. Rep. No. 106–260, at 15 (2000) (''These immigrants would otherwise be forced to return home at the conclusion of their allotted time in H–1B status, disrupting projects and American workers. The provision enables these individuals to remain in H–1B status until they are able to receive an immigrant visa number and acquire lawful permanent residence through either adjustment of status in the U.S. or through consular processing abroad, thus limiting the disruption to American businesses.'').

DHS recognizes that the limitation on the period of stay is not the only event that could cause an H–1B worker to leave his or her employment and cause disruption to the petitioning employer's business, including the loss of significant time and money invested in the immigration process. Prohibiting H–4 dependent spouse employment authorization beyond the six-year period of stay, when the H–1B worker is authorized status beyond six years under AC21, or the point where the H–1B nonimmigrant and his or her family are firmly on the path to lawful

[8] There is a limited exception in cases of battered spouses. Section 814(b) of Violence Against Women Act and Department of Justice Reauthorization Act of 2005 (VAWA 2005), Public Law 109–162, amended the INA by adding new section 204(a)(1)(K), which provides for employment authorization incident to the approval of a VAWA self-petition. Section 814(c) of VAWA 2005 amended the INA by adding new section 106, which provides eligibility for employment authorization to battered spouses of aliens admitted in certain nonimmigrant statuses, including H–1B.

[9] Neither H–1B nor L classification may be denied solely because the alien seeking such classification is also pursuing permanent residence. *See* section 214(h) of the INA, 8 USC 1184(h); 8 CFR 214.2(h)(16)(i), 214.2(l)(16). Moreover, the H–4 spouse of an H–1B nonimmigrant is entitled to the same period of admission, and is subject to the same limitations on stay, as the H–1B nonimmigrant, if accompanying or following to join the H–1B nonimmigrant. *See* 8 CFR 214.2(h)(9)(iv). As such, the doctrine of dual intent has historically been applied to the H–4 spouse, who may therefore pursue permanent residence while maintaining H–4 status. This application of dual intent is supported at 8 CFR 214.2(l)(16)(iv), which prohibits the denial of an alien's application to change from L–2 to H–4 status solely because the alien is also pursuing permanent residence.

[10] According to the Department of State's Visa Bulletin for April 2014, the cut-off date for persons qualifying under the employment-based third preference category is October 1, 2012 for individuals not charged to India or the Philippines, September 15, 2003 if charged to India, and June 15, 2007 if charged to the Philippines. *See http://travel.state.gov/content/dam/visas/Bulletins/visabulletin_april2014.pdf.* Unless such nationals have a priority date before the respective cut-off date, they are unable to file an adjustment of status application or otherwise acquire lawful permanent residence at this time, and if they have a pending application previously filed when the cut-off date was current, their application cannot be approved unless their priority date is before the current cut-off date. *See generally* 8 CFR 245.1(a), (g), 8 CFR 245.2(a)(2).

permanent residence also creates significant financial obstacles for many H–1B workers and their families because of the inability of the H–4 spouse to work, which in turn threaten disruption to the business of U.S. employers.

In light of the foregoing, DHS is proposing to extend eligibility for employment authorization to H–4 dependent spouses of H–1B nonimmigrants remaining in the United States pursuant to extensions of stay based on sections 106(a) and (b) of AC21, and to H–4 nonimmigrants whose H–1B nonimmigrant spouses are beneficiaries of an approved Form I–140. *See generally* INA section 103(a), 8 U.S.C. 1103(a) (generally authorizing the Secretary to administer and enforce the immigration laws); INA section 274A(h)(3), 8 U.S.C. 1324a(h)(3) (generally authorizing the Secretary to provide for employment authorization for aliens in the United States); INA section 214(a)(1), 8 U.S.C. 1184(a)(1) (authorizing the Secretary to prescribe regulations setting terms and conditions of admission of nonimmigrants). DHS believes that amending its regulations in this manner will encourage, consistent with the congressional intent expressed in AC21, potential H–1B nonimmigrants seeking lawful permanent residence and their H–4 dependents to remain in the United States, thereby relieving U.S. employers of additional disruptions, and furthers the goals of attracting and retaining high-skilled foreign workers. This goal is inherent to AC21 and is further reflected in DHS's proposed amendments to the regulations.

DHS cannot alleviate the delays in visa processing due to the numerical limitations set by statute and the resultant unavailability of visa numbers, but can alleviate the disruption caused to H–1B nonimmigrants, their families, and U.S. employers by such delays if H–1B nonimmigrants and their families choose to leave the United States. In essence, this change furthers an important public policy goal of enabling U.S. employers to attract and retain highly skilled workers. In effectuating this policy, DHS is addressing obstacles that may cause these workers to leave the United States or never seek employment in the United States in the first instance and produce the circumstance Congress attempted to prevent through AC21, i.e., significant disruptions to U.S. employers.

DHS is proposing in this rule to extend eligibility for employment authorization only to H–4 dependent spouses of H–1B nonimmigrants for whom the process for attaining lawful permanent resident status is well underway.[11] DHS is proposing limitations on which H–4 dependent spouses of H–1B nonimmigrants may be eligible for employment authorization rather than extending eligibility to all H–4 dependent spouses of H–1B nonimmigrants because the goal of this proposed rule is to enhance the United States' ability to attract and more permanently retain high-skilled foreign workers. Due to the proposed rule's focus on high-skilled H–1B workers, H–4 spouses of H–2A/B and H–3 principals are not included in this rule.[12]

Similarly, DHS is not extending eligibility for employment authorization to H–4 dependent children as DHS believes that extending employment eligibility to H–4 dependent spouses would alleviate the significant portion of any potential economic burdens H–1B principals may face during the transition from nonimmigrant to lawful permanent resident status as a result of the lack of employment authorization for their dependents. Additionally, limiting the employment authorization to dependent spouses provides parity with other nonimmigrant employment categories, such as nonimmigrants in L (intracompany transferee), E–1(treaty trader), and E–2 (treaty investor) status.

Specifically, DHS is proposing to limit employment authorization to H–4 dependent spouses only during AC21 extension periods granted to the H–1B principal worker or after the H–1B principal has obtained an approved Immigrant Petition for Alien Worker. In doing so, DHS is limiting employment authorization to H–4 dependents of H–1B spouses who have taken steps in attaining lawful permanent resident status. DHS believes that this limitation is appropriate in furthering the goal of retaining high-skilled workers by providing greater incentive to H–1B principals and their spouses who have taken these steps to remain in the United States until such time as they are admitted as lawful permanent residents. In enacting AC21, Congress hoped to reduce the disruption to U.S. businesses and to the U.S. economy caused by the required departure of H–1B workers (for whom the businesses intended to file employment-based immigrant visa petitions) upon the expiration of workers' maximum six year period of authorized stay. *See* S. Rep. No. 106 260, at 15 (2000). Consequently, DHS is proposing to provide benefits to those H–1B nonimmigrants who have demonstrated an intent to permanently contribute to and participate in the U.S. economy and who have already made significant strides towards achieving the ability to do so upon being granted lawful permanent resident status; specifically, those H–1B nonimmigrants with an approved Form I–140 or who have been granted status under sections 106(a) and (b) of AC21. DHS believes tying the H–4 spouse employment authorization to such H–1B nonimmigrants would allow for more accurate identification of H–1B nonimmigrants who are on the path to becoming LPRs pursuant to their employment, and avoid the encouraging of ''frivolous'' filings. DHS may consider expanding H–4 employment authorization eligibility in the future.

DHS estimates that the number of H–4 dependent spouses who would be initially eligible to apply for employment authorization under this proposed rule would be as many as 100,600 in the first year and 35,900 initial applications annually in subsequent years.[13] DHS is unable to project an estimate of H–4 spouses that would need to renew in future years, because we are unable to determine which H–4 nonimmigrant would need to extend their work authorization. The need to extend work authorization is an individualistic determination, since it depends on where in the immigration process the individual is, which is determined in part by the individual's nationality and visa availability. *See* Section VI Regulatory Requirements below. DHS believes that the effect of this proposal to expand employment authorization to eligible H–4 dependent spouses would result in a negligible impact on the U.S. labor market given

[11] Extension of eligibility for employment authorization to H–4 dependent children is beyond the scope of this proposed rule, but in any event limiting eligibility to H–4 dependent spouses is consistent with statutory authorities relating to other nonimmigrant employment categories (E–1/E–2, L–1), that allow employment authorization for dependent spouses only. *See* INA section 214(c)(2)(E), (e)(6).

[12] *See Beach Commc'ns v. FCC,* 508 U.S. 307, 316 (1993) (observing that policymakers ''must be allowed leeway to approach a perceived problem incrementally'').

[13] This estimate only includes filers who may obtain work authorization for the first time under this proposed rule, and does not include H–4 spouses who will subsequently file an application for renewal of their employment authorization. The actual number of applicants under the proposed regulatory section has the potential to increase as the initial employment authorization documents expire, and the applicant pool includes first time filers as well as renewal filers. There is also no prohibition for H–4 nonimmigrants with pending adjustment of status applications to rely on proposed 8 CFR 274a.12(c)(26) instead of 8 CFR 274a.12(c)(9) as the designated category under which they apply for employment authorization, which may also increase the number of people filing under the proposed regulation, without actually increasing the number of individuals authorized to work in the United States.

the size of the U.S. civilian work force. Furthermore, this proposal is simply accelerating the time frame for when these H–4 dependent spouses would be eligible to enter the labor market, because they would become eligible for employment authorization when an immigrant visa number becomes available to the H–1B principal and the H–1B dependent spouse files an application for adjustment of status.

IV. Proposed Changes

This rule proposes to amend DHS's regulations at 8 CFR 214.2(h)(9)(iv) and 274a.12(c) to extend eligibility for employment authorization to H–4 dependent spouses of H–1B nonimmigrants if the H–1B nonimmigrants have an approved Form I–140 employment-based immigrant visa petition or have been granted status under sections 106(a) and (b) of AC21.

A. Amendments to 8 CFR 214.2(h)(9)(iv)

Currently, 8 CFR 214.2(h)(9)(iv) provides that neither spouses nor children of H nonimmigrants, ''may accept employment unless he or she is the beneficiary of an approved petition filed on his or her behalf and has been granted a nonimmigrant classification authorizing his or her employment.'' To extend eligibility for employment authorization to H–4 dependent spouses of H–1B nonimmigrants with an approved Form I–140 petition or H–4 dependent spouses of H–1B nonimmigrants granted extensions of stay under sections 106(a) and (b) of AC21, DHS is proposing to amend 8 CFR 214.2(h)(9)(iv) by adding an exception for these H–4 spouses. Under this rule, eligible H–4 spouses seeking employment authorization under the exception would be required to file an Application for Employment Authorization (Form I–765 or successor form) and the required fee, with USCIS.

To obtain H–4-based employment authorization, DHS is proposing in this rule that along with filing the Application for Employment Authorization, the H–4 dependent spouse also would be required to submit documentation establishing either that the H–1B principal has an approved Form I–140, or that the H–4 dependent spouse's current H–4 admission or extension of stay was approved pursuant to the principal H–1B nonimmigrant's admission or extension of stay based on section 106(a) and (b) of AC21. *Id.* DHS anticipates that such documentary evidence could include:

1. Evidence that the principal H–1B nonimmigrant is the beneficiary of an approved Form I–140; or

2. Evidence that the principal H–1B nonimmigrant's Labor Certification Application or I–140 petition has been pending for more than 365 days, or evidence that the H–1B principal is the beneficiary of an unexpired Labor Certification Application that was filed more than 365 days ago, along with copies of documentation showing that the principal H–1B nonimmigrant has been in H–1B nonimmigrant status beyond 6 years (e.g., passport, prior Forms I–94, current and prior Forms I–797, copies of pay stubs); and

3. Copy of the H–4 dependent spouse's current approval notice of stay or Form I–94 evidencing admission as an H–4 nonimmigrant pursuant to the H–1B nonimmigrant's approved extension of stay based on sections 106(a) and (b) of AC21.

4. Secondary evidence may be considered in lieu of the evidence listed above, such as, but not limited to: an attestation by the H–1B nonimmigrant regarding his or her AC21 sections 106(a) and (b)-based extension of stay or I–140 petition approval, petition receipt numbers, or copies of any relevant petitions or receipt notices.

Rather than naming specific documentary evidence in this rule, DHS has determined that it would be more appropriate to allow for flexibility in the types of evidence that may be submitted. As a result, DHS is proposing a general eligibility standard in the regulatory text under the proposed 8 CFR 214.2(h)(9)(iv), and plans to provide examples of acceptable documentary evidence, such as that listed above, in the form instructions for the Application for Employment Authorization, Form I–765 (or successor form).

In addition, DHS's proposed revisions to 8 CFR 214.2(h)(9)(iv) include clarifying amendments to the current text. DHS has determined that the language in this paragraph providing that spouses and children of H–1B nonimmigrants are not authorized to work unless they obtain such authorization under a different nonimmigrant classification is potentially confusing. DHS is proposing to remove the reference to employment authorization under a different nonimmigrant classification. H–4 dependents may obtain employment authorization on other bases than a different nonimmigrant classification. For example, H–4 dependents may qualify for employment authorization as adjustment of status applicants. This rule proposes to clarify the text by providing that H–4 spouses are ineligible for employment authorization on the basis of their H–4 nonimmigrant status unless one of the exceptions proposed by this rule applies.

B. Amendments to 8 CFR 274a.12(c)

To conform to the proposed amendments to 8 CFR 214.2(h)(9)(iv), DHS also is proposing an amendment to 8 CFR 274a.12(c), which lists classes of aliens eligible for employment authorization. This amendment would add a new class of employment authorization-eligible aliens: those H–4 dependent spouses described as eligible for employment authorization in proposed 8 CFR 214.2(h)(9)(iv). Specifically, the proposed amendment to 8 CFR 274a.12 would list a new class of nonimmigrants eligible to apply for employment authorization: H–4 nonimmigrant spouses who (1) have been admitted or granted extensions of stay and whose H–1B nonimmigrant principal spouse is the beneficiary of an approved Form I–140; or (2) are in an authorized period of stay pursuant to sections 106(a) and (b) of AC21. *See* proposed 8 CFR 274a.12(c)(26). Therefore, under this proposed rule, an H–4 spouse would not be authorized for employment until USCIS approves, as a matter of discretion, the Application for Employment Authorization and issues an Employment Authorization Document (EAD).

The EAD, currently issued on Form I–766, contains the individual's photograph and serves as evidence of employment authorization. The period of employment authorization, reflected on the card, would be determined at the discretion of USCIS. *See* proposed 8 CFR 274a.12(c)(26). Generally, USCIS issues EADs with a one-year validity period. DHS has determined that EADs valid for two years may be issued in cases where an individual has a pending adjustment application (i.e. filed an Application to Register Permanent Resident or Adjust Status, Form I–485), but are unable to adjust status because an immigrant visa number is not currently available.[14] USCIS is considering a validity period of up to two years for eligible H–4 dependents. This would be consistent with the validity period for employment authorization extended to E–1/E–2 and L–1 spouses. USCIS could not grant a period of employment authorization that exceeds the period of stay. Before employment authorization expires, the H–4 dependent would have to apply to renew employment authorization if he

[14] The announcement of USCIS' issuance of two-year EADs is available at *http://www.uscis.gov/archive/archive-news/uscis-issue-two-year-employment-authorization-documents.*

or she remains in an H–4 nonimmigrant status that is eligible for employment authorization, find another basis for employment authorization, or discontinue working.

To maintain continuous work authorization, an EAD card holder eligible for a renewal EAD may file a new Application for Employment Authorization up to 120 days prior to the expiration date of his or her current EAD. An EAD renewal may be filed concurrently with a request for extension of status.

V. Statutory and Regulatory Requirements

A. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. As a result, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

B. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States companies to compete with foreign-based companies in domestic and export markets.

C. Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

DHS proposes to amend its regulations to allow certain H–4 dependent spouses to apply for employment authorization. This rule proposes to extend the availability of employment authorization only to the H–4 spouses of H–1B nonimmigrant workers who have an approved Immigrant Petition for Alien Worker, Form I–140, and to H–4 spouses of H–1B nonimmigrant workers who have been admitted or granted extensions of their stay in the United States under sections 106(a) and (b) of AC21.

1. Summary

Currently, USCIS does not issue work authorization to H–4 dependent nonimmigrants. To obtain work authorization, the H–4 dependent generally must have a pending Application to Register Permanent Resident Status or Adjust Status or have changed status to another nonimmigrant classification that permits employment. AC21 provides for authorized stay and employment authorization beyond the typical six-year limit for H–1B nonimmigrants who are seeking permanent residence. The proposed rule would offer employment authorization for H–4 spouses of H–1B nonimmigrants if the H–4 nonimmigrant is granted an extension of stay pursuant to the authorized extension of stay of the H–1B nonimmigrant spouse under AC21, or is the spouse of an H–1B nonimmigrant who is the beneficiary of an approved Immigrant Petition for Alien Worker. DHS estimates the current population of H–4 spouses that would be eligible for employment authorization under the proposal would initially be 100,600 after taking into account the backlog of those with approved or likely to be approved immigrant worker petitions but who are unable to adjust. DHS has assumed that those H–4 spouses in the backlog population would file for employment authorization in the first year of implementation for ease of analysis. DHS estimates the flow of new H–4 spouses that would be eligible to apply for initial employment authorization in subsequent years to be 35,900 annually. DHS is unable to determine the filing volume of H–4 spouses that will need to renew their employment authorization documents under this proposal as they continue to wait for a visa to become available. Eligible H–4 spouses who wish to work in the United States must pay the $380 filing fee to USCIS, provide two passport-style photos, and incur the estimated 3 hour and 25 minute opportunity cost of time burden associated with filing an Application for Employment Authorization (Form I–765 or successor form). After monetizing the expected opportunity cost and combining it with the filing fee [15] and estimated cost to provide two passport-style photos, an eligible H–4 dependent spouse applying for employment authorization would face a total cost of $435.67.

The total maximum anticipated annual cost to H–4 spouses applying for initial employment authorization in Year 1 is estimated at $43,828,402 (non-discounted), and $15,640,553 (non-discounted) in subsequent years. The 10-year discounted cost of this rule to H–4 spouses applying for employment authorization is $136,196,483 at 7% and $160,783,933 at 3%. Table 2 shows the maximum anticipated estimated costs expected over a 10-year period of analysis for the estimate of 100,600 applicants for initial employment authorization, and the 35,900 applicants expected to file for initial employment authorization annually in subsequent years.

TABLE 2—TOTAL COSTS OF INITIAL EMPLOYMENT AUTHORIZATION FOR CERTAIN H–4 DEPENDENT SPOUSES 10-YR. PRESENT VALUE ESTIMATES AT 3% AND 7%

[$Millions]

	Year 1 estimate (100,600 applicants)	Sum of years 2–10 (35,900 applicants annually)	Total over 10-year period of analysis [16]
3% Discount Rate:			
Total Costs Incurred by Filers @3%	$42.6	$118.2	$160.8

[15] The filing fee is assumed to be a reasonable approximation for the Department's costs of processing the application.

TABLE 2—TOTAL COSTS OF INITIAL EMPLOYMENT AUTHORIZATION FOR CERTAIN H–4 DEPENDENT SPOUSES 10-YR. PRESENT VALUE ESTIMATES AT 3% AND 7%—Continued

[$Millions]

	Year 1 estimate (100,600 applicants)	Sum of years 2–10 (35,900 applicants annually)	Total over 10-year period of analysis [16]
7% Discount Rate:			
Total Costs Incurred by Filers @7%	41.0	95.2	136.2
Qualitative Benefits	This rule is intended to remove the disincentive to pursue the immigration process due to the potentially long wait for available employment-based immigrant visas for many H–1B nonimmigrant families. Also, this rule will encourage H–1B skilled workers who have already taken steps to become lawful permanent residents to not abandon their efforts to acquire lawful permanent residence because their H–4 spouse is unable to work. By encouraging the H–1B workers to continue in their pursuit of becoming LPRs, this rule would result in minimizing disruptions to petitioning U.S. employers. Eligible H–4 spouses who participate in the labor market will benefit financially. We also anticipate that the socio-economic benefits will assist the family in more easily integrating into American society.		

2. Purpose of the Proposed Rule

According to reports prepared by the DHS Office of Immigration Statistics, in Fiscal Year (FY) 2012 a total of 1,031,631 persons became lawful permanent residents (LPRs) in the United States.[17] The majority of new lawful permanent residents (53 percent) were already living in the United States and adjusted status to obtain lawful permanent residence. Employment-based immigrant visas accounted for 14 percent of the total lawful permanent resident flow, and 26 percent of total LPRs that adjusted status in FY 2012. In FY 2012, there were a total of 143,998 LPRs admitted under employment-based preference visa categories. Among those that became LPRs under employment-based preference categories in FY 2012, ''priority workers'' (first preference or EB–1) accounted for 27 percent; ''professionals with advanced degrees'' (second preference or EB–2) accounted for 35 percent; and ''skilled workers, professionals, and other workers'' (third preference or EB–3) accounted for 27 percent.[18] H–1B nonimmigrant workers seeking to adjust status to lawful permanent residence would most likely adjust under EB–2 or EB–3 preference categories, with a much smaller amount qualifying under EB–1. As of April 2014, all employment-based preference categories are current and have visas available *except* for Chinese and Indian nationals seeking admission under the second preference category and individuals seeking admission under the third preference category.[19] The employment-based categories under which H–1B workers typically qualify to pursue lawful permanent resident status are the very categories that are oversubscribed.[20] In many cases, the timeframe associated with seeking lawful permanent residence is lengthy, extending well beyond the 6-year period of stay allotted for by the H–1B nonimmigrant visa classification. As a result, retention of highly educated and highly skilled nonimmigrant workers can be problematic. Retaining highly skilled persons who intend to acquire lawful permanent resident status is important when considering the contributions of these individuals to the U.S. economy, including advances in entrepreneurial and research and development endeavors, which are highly correlated with overall economic growth and job creation. By some estimates, immigration was responsible for one third of the explosive growth in patenting in past decades, and these innovations contributed to increasing U.S. GDP by 2.4 percent.[21] In addition, over 25 percent of tech companies founded in the United States from 1995 to 2005, the chief executive or lead technologist was foreign-born.[22] Likewise, the Kauffman Foundation reported that immigrants are more than twice as likely to start a business in the United States as the native-born and a report by the Partnership for a New American Economy found that more than 40 percent of 2010 Fortune 500 companies were founded by immigrants or their children.[23] Additionally, in March 2013, the House Judiciary Subcommittee held a hearing on Enhancing American Competitiveness Through Skilled Immigration, providing

[16] Total column may not sum due to rounding.

[17] *See* DHS Office of Immigration Statistics, Annual Flow Report, U.S. Legal Permanent Residents: 2012 (March 2013), available at: *http://www.dhs.gov/sites/default/files/publications/ois_lpr_fr_2012_2.pdf.*

[18] *Id.*

[19] *See* Department of State (DOS) Bureau of Consular Affairs, April 2014 Visa Bulletin (March 7, 2014), available at *http://travel.state.gov/content/visas/english/law-and-policy/bulletin/2014/visa-bulletin-for-april-2014.html.*

[20] *See* Wadhwa, Vivek, et al., *Intellectual Property, the Immigration Backlog, and a Reverse Brain-Drain—America's New Immigrant Entrepreneurs, Part III, Center for Globalization, Governance & Competitiveness* (Aug. 2007), available at *http://www.cggc.duke.edu/documents/IntellectualProperty_theImmigrationBacklog_andaReverseBrainDrain_003.pdf.* Note: The report examined the 2003 cohort of employment-based immigrants and showed that 36.8 percent of H–1B nonimmigrants that adjust status do so through the EB–3 category and another 28 percent do so through the EB–2 category, while only 4.62 percent adjust through the EB–1 category.

[21] *See* National Bureau of Economic Research, ''How Much Does Immigration Boost Innovation?'' September 2008, available at: *http://www.nber.org/papers/w14312.*

[22] *See* Wadhwa, Vivek, et al., *Intellectual Property, the Immigration Backlog, and a Reverse Brain-Drain—America's New Immigrant Entrepreneurs, Part III, Center for Globalization, Governance & Competitiveness* (Aug. 2007), available at *http://www.cggc.duke.edu/documents/IntellectualProperty_theImmigrationBacklog_andaReverseBrainDrain_003.pdf*; *see also* Wadhwa, Vivek, et al., ''America's New Immigrant Entrepreneurs.'' Report by the Duke School of Engineering and the UC Berkeley School of Information (January 4, 2007) available at: *http://people.ischool.berkeley.edu/~anno/Papers/Americas_new_immigrant_entrepreneurs_I.pdf*; Preston, Julia, ''Work Force Fueled by Highly Skilled Immigrants,'' *N.Y. Times,* Apr. 15, 2010, available at: *http://www.nytimes.com/2010/04/16/us/16skilled.html?_r=1*

[23] *See* Fairlie, Robert. ''Kauffman Index of Entrepreneurial Activity: 1996–2012.'' The Ewing Marion Kauffman Foundation. April, 2013, available at: *http://www.kauffman.org/what-we-do/research/2013/04/kauffman-index-of-entrepreneurial-activity-19962012.* Partnership for a New American Economy, 2011, The ''New American'' Fortune 500, available at: *http://www.nyc.gov/html/om/pdf/2011/partnership_for_a_new_american_economy_fortune_500.pdf http://www.renewoureconomy.org/2011_06_15_1.*

several members of the business community an opportunity to provide their perspectives on immigration. The witnesses represented various industries, but underscored a unified theme: skilled immigrants are contributing significantly to U.S. economic competitiveness and it is in our national interest to retain these talented individuals.[24]

This rule is intended to remove the disincentive to pursue the immigration process due to the potentially long wait for available immigrant visas for many H–1B nonimmigrant families. Also, this rule will encourage those H–1B nonimmigrant workers who have already started the process to not abandon their efforts to acquire lawful permanent residence because their H–4 dependent spouse is unable to work.

3. Volume Estimate

Due to current data limitations, we are unable to precisely track the population of H–4 dependent spouses tied to H–1B principals who have started the immigration process by having an approved Immigrant Petition for Alien Worker (Form I–140) petition or who have been admitted or granted an extension of their stay under the provisions of AC21. DHS databases are currently ''form-centric'' rather than ''person-centric.'' As USCIS transforms its systems to a more fully electronic process, there will be a shift from application and form-based databases to one that tracks information by the applicant or petitioner.

In an effort to provide a reasonable approximation of the number of H–4 dependent spouses who would be eligible for employment authorization, we have compared historical immigrant data on persons obtaining lawful permanent resident status against employment-based immigrant demand estimates. Based on current visa availability, we believe that dependent spouses of H–1B nonimmigrants who are seeking employment-based visas under the 2nd or 3rd preference categories would be the group most impacted by the provisions of this rule. However, our estimates of the backlog population indicate there may be some H–1B nonimmigrants with an approved Form I–140 that are still seeking employment-based visas under the first preference, so this analysis will examine this group as well. In addition, in line with the goals of this proposal and AC21 and based on immigration statistics, we assume that the majority of H–4 spouses who would be eligible for this provision are residing in the United States and would seek to acquire permanent resident status by applying to adjust status with USCIS rather than by departing for an indeterminate period to pursue consular processing of an immigrant visa application overseas. This assumption is supported by immigration statistics on those obtaining LPR status. In FY 2012, there were a total of 143,998 employment-based immigrant visa admissions, of which 126,016 (or 87.5 percent) obtained LPR status through adjustment of status.[25] As such, this analysis will limit the focus and presentation of impacts based on the population seeking to adjust status to that of an LPR under an employment-based preference category.

DHS is proposing to allow spouses of H–1B nonimmigrants who are the beneficiaries of an approved Immigrant Petition for Alien Worker (Form I–140) and spouses of H–1B nonimmigrants who are extending stay under provisions of AC21 to be eligible for work authorization. As mentioned in the previous paragraph, we assume the majority of H–4 spouses that would be impacted by the proposal would be those that are physically present in the United Status and intend to adjust status.

Since DHS is proposing to extend work authorization to H–4 dependent spouses tied to H–1B nonimmigrant workers with an approved Form I–140, regardless of how long they have been in H–1B status and waiting for an employment-based immigrant visa to become available, DHS assumes the volume of H–4 dependent spouses newly eligible for employment authorization would have two estimates: 1) an immediate, first year estimate due to the current backlog of LPR petitions; and 2) an annual estimate based on future demand to immigrate under employment-sponsored preference categories. The proposal to extend eligibility for work authorization to H–4 dependent spouses is ultimately tied to the actions taken by the H–1B nonimmigrant worker; therefore, the overall volume estimate is based on the population of H–1B nonimmigrants who have taken steps to acquire lawful permanent resident status under employment-based preference categories.

DHS has estimated the number of persons waiting for LPR status in the first through third employment-based preference categories as of September 2012. In this analysis, the estimated number of persons waiting for the availability of an immigrant visa is referred to as the ''backlog,'' and includes those with an approved Form I–140 and those with a pending Form I–140 that is likely to be approved as of September 2012.[26] Currently, the first preference employment-based (EB–1) visa category is not oversubscribed. Therefore, DHS believes that the majority of H–4 dependent spouses applying for employment authorization under this rule would be those whose H–1B principal will be seeking to adjust status under the second or third preference. However, since there are persons with approved or pending Immigrant Petitions for Alien Worker (Form I–140) in the first-preference category, and because the provisions of AC21 cover these individuals, DHS will include them as part of the ''backlog'' estimate.[27] Additionally, DHS has examined detailed characteristics about the LPR population for FY 2008–FY 2011 to further refine this estimate.[28]

[24] *See* Enhancing American Competitiveness through Skilled Immigration: Hearing before the H. Judiciary Subcomm. On Immigration, 113th Cong. 15 (2013), available at *http://www.gpo.gov/fdsys/pkg/CHRG-113hhrg79724/pdf/CHRG-113hhrg79724.pdf.*

[25] *See* DHS Office of Immigration Statistics, 2012 Yearbook of Immigration Statistics, Table 6, available at *http://www.dhs.gov/yearbook-immigration-statistics-2012-legal-permanent-residents* (compare statistics listed under ''Adjustment of Status'' and ''New Arrivals''). *Note:* At the time of drafting, the full FY 12 Yearbook of Immigration Statistics was not published; however, DHS OIS had released certain sections of the report in advance of publication which can be found on the Web site cited.

[26] Source for backlog estimation: USCIS Office of Policy & Strategy analysis of data obtained by DHS Office of Immigration Statistics. Analysis based on CLAIMS3 data captured in approved Immigrant Petition for Alien Worker (Form I–140) and Application to Register Permanent Residence or Adjust Status (Form I–485) records.

[27] Despite the fact that a beneficiary is in a preference category where a visa is immediately available, and the beneficiary is able to apply to adjust status to an LPR immediately upon I–140 petition approval, our data suggests that it takes 12 to 18 months on average from the approval of the I–140 petition with current priority dates to obtain LPR status. DHS believes this is a natural lag time due to choices made by the applicant and is not a result of USCIS processing times. Source: *https://egov.uscis.gov/cris/processTimesDisplayInit.do.* Data reported as of January 31, 2014 indicate that the processing times for employment-based adjustment applications was between 4–6 months. As previously explained in the preamble, when an employment-based immigrant visa category is undersubscribed and a visa is immediately available, a nonimmigrant worker who is a beneficiary of an approved I–140 petition filed under that category and his or her dependents are eligible to file an application for adjustment of status (currently USCIS Form I–485). While that application is pending, the spouse is eligible for employment authorization.

[28] Source: USCIS Office of Policy & Strategy analysis of data obtained by DHS Office of Immigration Statistics. Analysis based on CLAIMS3 data captured in Application to Register Permanent Residence or Adjust Status (Form I–485) records approved in the FY 2008–11 periods. Note: DHS only considered detailed data characteristics

Continued

We have laid out each of our assumptions and methodological steps for both the backlog and annual estimates of H–4 dependent spouses who would be eligible to apply for employment authorization. Again, the estimates are based on the actions and characteristics (e.g. whether the H–1B reports being married) of the H–1B principal because the H–4 dependent spouse's employment eligibility would be tied to the steps taken on behalf of the H–1B principal to acquire LPR status under an employment-based preference category.

Backlog Estimate

The estimate of the number of principal individuals with either an approved Form I–140 or with a Form I–140 that is likely to be approved and waiting for an immigrant visa in the EB–1, EB–2, and EB–3 categories is shown in Table 3. Importantly, the number of principal workers shown in Table 3 is not only limited to those individuals that are currently in H–1B nonimmigrant status. The counts in Table 3 includes aliens who are currently in H–1B and other nonimmigrant statuses, as well as those seeking to immigrate under employment-based preferences who are currently abroad. This analysis will use recent LPR data as a proxy to refine the estimate of principal workers in the backlog that DHS expects to be H–1B nonimmigrants seeking to adjust status.

TABLE 3—DHS ESTIMATE OF BACKLOG (PRINCIPALS ONLY) AS OF SEPTEMBER 2012

Preference category	Principal workers
EB–1	10,600
EB–2	87,200
EB–3	120,100

DHS is unable to determine precisely the number of principal workers in the backlog who would be impacted by this proposed rule. Instead, DHS examined detailed statistics of those obtaining LPR status from FY 2008–2011, and used this information as a proxy to arrive at a reasonable approximation of the number of H–4 dependent spouses that would be impacted by this rule.[29] Table 4 presents the assumptions and steps taken to determine the upper-bound estimate of H–4 dependent spouses who are represented in the backlog and would likely be eligible for work authorization under this proposal.

TABLE 4—STEPS TAKEN TO ARRIVE AT THE UPPER-BOUND ESTIMATE OF H–4 SPOUSES OF H–1B NONIMMIGRANTS WHO ARE IN THE "BACKLOG"

Assumption and/or step	EB–1	EB–2	EB–3	Total
(1) Principal Workers in the Backlog (as of September 2012)	10,600	87,200	120,100	217,900
(2) Historical Percentage of Principal Workers who Obtained LPR Status through Adjustment of Status (AOS), average of FY 08–FY11 data	95.9%	98.3%	91.5%	.....
(3) Estimated Proportion of the Backlog that DHS Assumes Would Adjust Status (rounded)	10,165	85,718	109,892	205,775
(4) Historical Percentage of those that Adjusted Status that were H–1B nonimmigrants, average of FY 08–FY11 data	34.4%	31.0%	56.8%	.....
(5) DHS Estimated Proportion of the Assumed H–1B Nonimmigrants Who Adjusted Status (rounded)	3,497	26,573	62,419	92,489
(6) Historical Percentage of H–1B Principal Workers that Adjusted Status that Reported being Married, average of FY 08–FY11 data	79.4%	72.1%	68.5%	.....
(7) DHS Estimated Proportion of the Assumed H–1B Nonimmigrants Who Adjusted Status that Report Being Married (rounded)	2,777	19,159	42,757	64,693
(8) Final Estimate of H–1B Nonimmigrants in the Backlog Who would be Impacted by the Proposed Rule (Rounded Up)	.....	.....	.....	64,700

As shown in Table 4, DHS estimates there are approximately 64,700 H–1B nonimmigrant workers currently in the backlog for an immigrant visa under the first through third employment-based preference categories. Accordingly, DHS assumes by proxy that there could be as many as 64,700 H–4 spouses of H–1B nonimmigrant workers currently in the backlog who could be initially eligible for an EAD under this proposal. DHS does not have a similar way to parse out the backlog data for those classified as ''dependents'' to capture only those that are spouses versus children. Likewise, DHS recognizes the limitation of the estimated proportion of the backlog that could be impacted by this proposed rule since there is no way to further refine this estimate by determining the immigration or citizenship status of the spouse of H–1B nonimmigrant workers that report being married. For instance, the spouse of the H–1B nonimmigrant worker could reside abroad, or could himself or herself be a U.S. citizen, LPR, or in another nonimmigrant status that confers employment eligibility. Due to the foregoing reasons, DHS believes that the estimate of 64,700 represents an upper-bound estimate of H–4 dependent spouses of H–1B nonimmigrant workers currently waiting for an immigrant visa in order to obtain employment-based LPR status.

Annual Demand Estimate

The annual demand flow of H–4 dependent spouses who would be eligible to apply for initial work authorization under this proposed rule is based on: (1) the number of approved Immigrant Petitions for Alien Worker (Forms I–140) where the principal beneficiary is currently in H–1B status; (2) the number of Immigrant Petitions for Alien Worker (Forms I–140) pending for more than 365 days where the principal beneficiary is currently in H–1B nonimmigrant status; and (3) the number of labor certification applications pending with DOL for more than 365 days where the principal beneficiary is currently in H–1B nonimmigrant status. Section 106 (a)

through the period FY 11 because at the time of drafting, detailed demographic data for LPRs adjusting in FY 12 data was not yet released by the DHS Office of Immigration Statistics.

[29] *Id.*

and (b) of AC21 allows for extensions of stay for an H–1B nonimmigrant who is the beneficiary of a labor certification application or of an employment-based immigrant visa petition (Form I–140) that has been pending for at least 365 days prior to reaching the end of the sixth year of his or her H–1B nonimmigrant status. Permanent labor certification applications are adjudicated by the Department of Labor; as of January 26, 2014, DOL's processing time for initial applications was on average approximately 2 months.[30] Similarly, average USCIS processing times for Form I–140 petitions as of November 30, 2013 was 4 months.[31] Nevertheless, petitions can be pending for a number of reasons with USCIS for longer than 365 days before a final decision is rendered.[32] The number of Form I–140 petitions where the beneficiary has a current nonimmigrant classification of H–1B pending with USCIS for more than 365 days is presented in Table 5. Unfortunately, DHS has no way of determining how many of the listed totals were pending for at least 365 days prior to reaching the end of the sixth year of H–1B nonimmigrant status, so the 5-year estimate used in annual projections represents an upper-bound estimate.

TABLE 5—FORMS I–140 FILED ON BEHALF OF H–1B NONIMMIGRANTS, NUMBER OF APPROVED AND NUMBER PENDING FOR GREATER THAN 365 DAYS [33]

Fiscal year	Approved	Pending >365 days	Total
2008	41,513	7,893	49,406
2009	26,860	1,035	27,895
2010	48,511	1,764	50,275
2011	54,363	2,033	56,396
2012	45,732	592	46,324
5-Year Average	43,396	2,663	46,059

The number of labor certifications where the beneficiary has a current nonimmigrant classification of H–1B pending with DOL for more than 365 days is presented in Table 6.

TABLE 6—LABOR CERTIFICATION APPLICATIONS FOR H–1B BENEFICIARIES, NUMBER PENDING FOR GREATER THAN 365 DAYS [34]

FY of adjudication	Certified	Denied	Withdrawn	Total
2008	292	139	101	532
2009	1,388	632	215	2,235
2010	3,697	1,719	480	5,896
2011	3,197	1,947	351	5,495
2012	130	137	30	297
5-Year Average	1,741	915	235	2,891

Over FY 2008–2012, DOL adjudicated an average of 2,891 labor certification applications that were pending for over 365 days where the beneficiary is currently in H–1B status. Again, neither DHS nor DOL has any way of determining how many of the listed totals were pending for at least 365 days prior to reaching the end of the sixth year of H–1B nonimmigrant status, so the calculated average of DOL applications in Table 6 represents an upper-bound estimate. Thus, the baseline average projection we will use for purposes of this analysis is 48,950.[35]

To refine the future annual projection estimates, DHS has chosen to estimate the proportion of Immigrant Petitions for Alien Worker (Forms I–140) and labor certification applications filed in the first through third employment-based preference categories. As previously discussed, first preference employment-based category and certain second preference employment-based categories (all those except for beneficiaries that are chargeable as nationals of China or India) are not currently oversubscribed. Although individuals in such categories are immediately eligible to file an application to adjust status, which provides eligibility to apply for employment authorization while the adjustment application is pending, because of the time lag between when an I–140 petition is approved and obtaining LPR status, we choose to include these preference categories in our annual flow estimates. Additionally, since DHS has already limited the historical counts in Table 5 to those Form I–140s filed where the beneficiary's current nonimmigrant category is H–1B, DHS has made the

[30] Source: DOL Employment & Training Administration's iCert Visa Portal System's ''PERM & PW Processing Times'' available at: *http://icert.doleta.gov/*. Data reported as of January 26, 2014, indicated that analyst were currently adjudicating labor certification applications with a priority date of November 2013. Note: This Web site's processing times are updated continuously.

[31] Source: ''USCIS Processing Time Information'' for the Texas Service Center and Nebraska Service Center for Form I–140 available at: *https://egov.uscis.gov/cris/processTimesDisplay.do*. Data reported as of January 31, 2014 indicated that the processing timeframes for I–140 petitions was between 4–5 months. Note: The Web site informing the public of the USCIS processing times is updated continuously.

[32] For example, petitions could be pending beyond one year because USCIS issued a request for evidence or the petition is undergoing additional investigations.

[33] Source for approval and pending counts: USCIS Office of Performance and Quality, Data and Analysis Reporting Branch (DARB). ''Approval'' and ''Pending'' petition counts reported by DARB after querying the CIS Consolidated Operational Repository System. Source for 5-year average: author's calculation.

[34] Source: USDOL Employment and Training Administration Office of Foreign Labor Certification. Source for 5-year average: author's calculation.

[35] Calculation: 46,059 (calculated annual average for DHS in Table 5) + 2,891 (calculated annual average for DOL in Table 6) = 48,950.

assumption that the petitions shown in Tables 5 and 6 represent H–1B nonimmigrant workers who are physically present in the United States and intend to adjust status. As shown in Table 4, the historical proportion of H–1B nonimmigrants obtaining LPR status under EB–1, EB–2, and EB–3 categories that reported being married was 79.4 percent, 72.1 percent, and 68.5 percent, respectively, resulting in an average of 73.3 percent. Applying this percentage to the baseline average calculated earlier of Form I–140 petitions filed that were approved or pending for more than 365 days and labor certification applications that were pending for more than 365 days, results in an annual flow estimate of 35,900 (rounded).[36] Again, for the same reasons discussed previously, this is an upper-bound estimate of H–4 dependent spouses who could be eligible to apply for employment authorization under the proposed rule.

Therefore, DHS estimates that this proposed rule, if finalized, would result in a maximum initial estimate of 100,600 [37] H–4 dependent spouses who would be newly eligible to apply for employment authorization in the first year of implementation, and an annual flow of as many as 35,900 that are newly eligible in subsequent years.

4. Costs

Filer Costs

The proposed amendment would permit certain H–4 dependent spouses to apply for employment authorization in order to work in the United States. Therefore, only H–4 dependent spouses who decide to seek employment while residing in the United States would face the costs associated with obtaining employment authorization. The costs of the rule would stem from filing fees and the opportunity costs of time associated with filing an Application for Employment Authorization (Form I–765 or successor form).

The current filing fee for the Application for Employment Authorization (Form I–765) is $380. The fee is set at a level to recover the processing costs to DHS. Applicants for employment authorization are required to submit two passport-style photos along with the application, which is estimated to cost $20.00 per application based on Department of State estimates.[38] USCIS estimates the time burden of completing this application to be 3 hours and 25 minutes. We recognize that H–4 dependent spouses do not currently participate in the U.S. labor market, and, as a result, are not represented in national average wage calculations. We chose to use the minimum wage to estimate the opportunity cost consistent with methodology employed in other USCIS rulemakings when estimating time burden costs for those who are not work authorized.

The Federal minimum wage is currently $7.25 per hour.[39] In order to anticipate the full opportunity cost to petitioners, we multiplied the average hourly U.S. wage rate by 1.44 to account for the full cost of employee benefits such as paid leave, insurance, and retirement for a total of $10.44 per hour.[40] H–4 dependent spouses who decide to file an Application for Employment Authorization (Form I–765 or successor form) would face an opportunity cost of time $35.67 per applicant.[41] Combining the opportunity costs with the fee—and estimated passport-style photo costs, the total cost per application would be $435.67. In the first year of implementation, we estimate the total maximum cost to H–4 spouses that could be eligible to file for an initial employment authorization would be a much as $43,828,402 (non-discounted) and $15,640,553, annually in subsequent years. The 10-year discounted cost of this rule to filers of initial employment authorizations is $136,196,483 at 7%, while the 10-year discounted cost to filers is $160,783,933 at 3%. Importantly, in future years the applicant pool of H–4 spouses filing for employment authorization will include both those initially eligible and those that will seek to renew their EAD as they continue to wait for a visa to become available. DHS could not project the number of renewals since the volume of H–4 spouses that would need to renew is dependent upon visa availability dates, which differ based on the preference category and the country of nationality. We welcome public comment on methods to estimate renewals given the lack of information needed to reasonably project the volume of H–4 spouses that would need to renew their employment authorization in future years. H–4 spouses needing to renew an EAD under the proposed provisions would face a per application cost of $435.67.

Government Costs

The INA provides for the collection of fees at a level that will ensure recovery of the full costs of providing adjudication and naturalization services, including administrative costs and services provided without charge to certain applicants and petitioners. *See* INA section 286(m), 8 U.S.C. 1356(m). USCIS has established the fee for the adjudication of Applications for Employment Authorization (Form I–765 or successor form) in accordance with this requirement. As such, there are no additional costs to the Federal Government resulting from this proposed rule.

Impact on States

Currently, once a visa is available, H–1B nonimmigrants and their dependent family members are able to apply for adjustment of status to that of a lawful permanent resident. Upon filing an adjustment of status application, the H–4 dependent spouse is eligible to request employment authorization. This rule, if finalized, often would significantly accelerate the timeframe by which qualified H–4 dependent spouses are eligible to enter the U.S. labor market since they would be eligible to request employment authorization well before they are eligible to apply for adjustment of status. DHS believes this proposal may encourage families to stay committed to the immigrant visa process during the often lengthy wait for employment-based visas whereas, otherwise, they may leave the United States. As such, DHS is presenting the geographical labor impact of this DHS proposal without factoring in the fact that these individuals would have been employment eligible at some point in the future. As mentioned previously, DHS estimates this rule could add as many as 100,600 additional persons to the U.S. labor force in the first year of implementation, and then as many as 35,900 additional persons annually in subsequent years. As of 2013, there were an estimated 155,389,000 people in the

[36] Calculation: 48,950 × 73.3 percent = 35,880.35 or 35,900 rounded to the nearest hundred.

[37] Calculation: Backlog of 64,700 plus annual demand estimate for married H–1Bs of 35,900.

[38] DOS estimates an average cost of $10 per passport photo in the Paperwork Reduction Act (PRA) Supporting Statement found under OMB control number 1450–0004. A copy of the Supporting Statement is found on Reginfo.gov at: *http://www.reginfo.gov/public/do/PRAView Document?ref_nbr=201102-1405-001* (see question #13 of the Supporting Statement); accessed January 28, 2014.

[39] U.S. Dep't of Labor, Wage and Hour Division. The minimum wage in effect as of July 24, 2009, available at: *http://www.dol.gov/dol/topic/wages/minimumwage.htm.*

[40] The calculation to burden the wage rate: $7.25 × 1.44 = $10.44 per hour. *See* Economic News Release, U.S. Dep't of Labor, Bureau of Labor Statistics, Table 1. Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Civilian workers, by major occupational and industry group (December 2012), available at *http://www.bls.gov/news.release/archives/ecec_03122013.htm* (viewed April 16, 2013).

[41] Calculation for opportunity cost of time: $10.44 per hour × 3.4167 hours (net form completion time) = $35.67.

U.S. civilian labor force.[42] Consequently, 100,600 additional available workers in the first year represents a fraction of a percent, 0.065%, of the overall U.S. civilian labor force (100,600/155,389,000 × 100 = 0.0647%).

The top five States where persons granted lawful permanent resident status choose to reside have been: California (20 percent), New York (14 percent), Florida (11 percent), Texas (9 percent), and New Jersey (5 percent).[43] While allowing certain H–4 dependent spouses the opportunity to work would result in a negligible increase to the overall domestic labor force, California, New York, Florida, Texas, and New Jersey may have a slightly larger share of additional workers compared with the rest of the United States. Based on weighted average proportions calculated from FY 2008–2012, and assuming the estimate for first year impacts of 100,600 additional workers were distributed following the same patterns, we would anticipate the following results: California would receive approximately 20,120 additional workers in the first year of implementation; New York would receive approximately 14,084 additional workers; Florida would receive approximately 11,066 additional workers; Texas would receive approximately 9,054 additional workers; and New Jersey would receive approximately 5,030 additional workers. To provide context, California had 18,597,000 persons in the civilian labor force in 2013.[44] The additional 20,120 workers who could be added to the Californian labor force as a result of this rule in the first year would represent one-tenth of a percent of that state's labor force (20,120/18,597,000 × 100 = 0.1082%).

5. Benefits

As previously mentioned, assuming this rule is finalized, these amendments would increase incentives of certain H–1B nonimmigrant workers who have begun the process of becoming lawful permanent residents to remain in and contribute to the U.S. economy as they complete this process. Providing the opportunity for certain H–4 dependent spouses to obtain employment authorization during this process would further incentivize principal H–1B nonimmigrants to not abandon their intention to remain in the United States while pursuing lawful permanent resident status. Retaining highly skilled persons who intend to become lawful permanent residents is important when considering the contributions of these individuals to the U.S. economy, including advances in entrepreneurial and research and development endeavors. As previously discussed, much research has been done to show the positive impacts on economic growth and job creation from high-skilled immigrants. In addition, the proposed amendments would bring U.S. immigration laws more in line with other countries that seek to attract skilled foreign workers. For instance, in Canada spouses of temporary workers may obtain an ''open'' work permit allowing them to accept employment if the temporary worker meets certain criteria.[45] As another example, in Australia, certain temporary work visas allow spousal employment.[46]

The proposal would result in direct, tangible benefits for the spouses that would be eligible to enter the labor market earlier than they would have otherwise been able to due to lack of visa availability. While there would be obvious financial benefits to the H–4 spouse and the H–1B nonimmigrant's family, there is also evidence that participating in the U.S. workforce and making gains in socio-economic attainment has a high correlation with smoothing an immigrant's integration into American culture and communities.[47]

Ultimately, the provisions in the proposed rule represent an interim convenience for certain H–4 dependent spouses who would otherwise not be allowed to work for up to many years until an immigrant visa became available, at which point they would be able to apply for employment authorization based on their application for adjustment of status. DHS welcomes public comment on whether this rule, by increasing the likelihood that an H–1B worker does not abandon the LPR process, provides an incentive to employers to begin the employment sponsorship process of an H–1B worker. In addition, DHS requests comments on other benefits of the rule to H–4 spouses, H–1B nonimmigrant familes seeking lawful permanent residence, and U.S. employers that have not been discussed.

6. Alternatives Considered

In addition to increasing the potential of retaining highly trained and skilled contributors to the U.S. economy, a concurrent goal of the proposed rule is to bolster U.S. competitiveness with regard to other countries that are principal users of skilled foreign workers. Benchmarking against other top immigrant receiving countries shows that many allow more liberal work authorization for spouses of principal nonimmigrant skilled workers.

One alternative considered by DHS was to permit employer authorization for all H–4 dependent spouses. As explained previously in Section III (C), DHS rejected that alternative. In enacting AC21, Congress was especially concerned with avoiding the disruption to U.S. businesses caused by the required departure of H–1B nonimmigrant workers (for whom the businesses intended to file employment-based immigrant visa petitions) upon the expiration of workers' maximum six-year period of authorized stay. *See* S. Rep. No. 106–260, at 15 (2000). DHS rejected this alternative as overbroad, since such an alternative would offer eligibility for employment authorization to those spouses of nonimmigrant workers who have not taken steps to demonstrate a desire to continue to remain in and contribute to the U.S. economy by seeking lawful permanent residence.

Another alternative considered was to limit employment eligibility to just those H–4 spouses of H–1B principal

[42] *See* News Release, United States Dep't of Labor, Bureau of Labor Statistics, Local Area Unemployment Statistics, Regional and State Unemployment—2013 Annual Averages, Table 1 ''Employment status of the civilian noninstitutional population 16 years of age and over by region, division, and state, 2012–13 annual averages'' (February 28, 2014), available at *http://www.bls.gov/news.release/archives/srgune_02282014.pdf.*

[43] DHS Office of Immigration Statistics, Annual Flow Reports, ''U.S. Legal Permanent Residents'' for 2008–2012, available at: *http://www.dhs.gov/publications-0#0.* Author calculated percentage distributions by State weighted over FY 2008–2012 (rounded).

[44] *See* News Release, U.S. Dep't of Labor, Bureau of Labor Statistics, Local Area Unemployment Statistics, Regional and State Unemployment–2013 Annual Averages, Table 1, Employment status of the civilian noninstitutional population 16 years of age and over by region, division, and state, 2012–13 annual averages (Feb. 28, 2014), available at: *http://www.bls.gov/news.release/archives/srgune_02282014.pdf.*

[45] *See* Canadian Government, Citizenship and Immigration Canada, Help Centre under Topic ''Work Permit—Can my spouse or common-law partner work in Canada?'', available at *http://www.cic.gc.ca/english/helpcentre/index-featured-can.asp#tab1* (last visited May 28, 2013).

[46] Australian Government, Dep't of Immigration and Citizenship, Employer Sponsored Workers, available at *http://www.immi.gov.au/skilled/specialist-entry/visa-options.htm.*

[47] *See* Jimenéz, Tomás. 2011. *Immigrants in the United States: How Well Are They Integrating into Society?* Washington, DC: Migration Policy Institute, available at: *http://www.migrationpolicy.org/research/immigrants-united-states-how-well-are-they-integrating-society; see also* Terrazas, Aaron. 2011. *The Economic Integration of Immigrants in the United States: Long- and Short-Term Perspectives.* Washington, DC: Migration Policy Institute, available at: *http://www.migrationpolicy.org/research/economic-integration-immigrants-united-states.*

nonimmigrants who extended their stay under the provisions of AC21. DHS estimates of this population are even less precise because DHS databases do not electronically track who is extending their stay under the provisions of AC21. DHS estimates the annual flow of those H–1B nonimmigrants who have a Form I–140 pending beyond 365 days with USCIS would be as many as 2,700. Based on the figures obtained from DOL, we estimate there could be an annual average of as many as 2,900 labor certification applications pending with DOL beyond 365 days. In addition, DHS estimates there could be approximately 7,000 persons annually that would be eligible under section 104 of AC21. This alternative would also result in some fraction of the backlog population being eligible for employment authorization in the first year after implementation, but DHS is unsure of what portion of the backlog population is extending under AC21. However, DHS believes that this alternative is too limiting and fails to recognize that other H–4 spouses also experience long waiting periods while on the path to lawful permanent residence.

D. Regulatory Flexibility Act

USCIS examined the impact of this rule on small entities under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601(6). A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business under the Small Business Act, 15 U.S.C. 632), a small not-for-profit organization, or a small governmental jurisdiction (locality with fewer than fifty thousand people). DHS has considered the impact of this rule on small entities as defined by the RFA and has determined that this rule will not have a significant economic impact on a substantial number of small entities. The individual H–4 dependent spouses to whom this rule applies are not small entities as that term is defined in 5 U.S.C. 601(6). Accordingly, DHS certifies that this rule will not have a significant economic impact on a substantial number of small entities.

E. Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any reporting requirements inherent in a rule. This rule proposes a revision to the Application for Employment Authorization (Form I–765), OMB Control Number 1615–0040.

USCIS is requesting comments on this information collection until July 11, 2014. When submitting comments on this information collection, your comments should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of the information on those who are to respond, including through the use of any and all appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Employment Authorization; Form I–765 Work Sheet.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–765; Form I–765WS. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. This form was developed for individual aliens to request employment authorization and evidence of that employment authorization. The form is being amended to add a new class of aliens eligible to apply for employment authorization: H–4 dependent spouses of H–1B nonimmigrants if the H–1B nonimmigrants are either the beneficiaries of an approved Immigrant Petition for Alien Worker or have been granted an extension of their authorized period of admission in the United States under sections 106(a) and (b) of the American Competitiveness in the Twenty-first Century Act of 2000 (AC21), as amended by the 21st Century Department of Justice Appropriations Authorization Act. Supporting documentation demonstrating eligibility must be filed with the application. The form lists examples of relevant documentation.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

- 1,891,823 responses related to Form I–765 at 3.42 hours per response;
- 594,602 responses related to Form I–765WS at .50 hours per response;
- 594,602 responses related to Biometrics services at 1.17 hours; and
- 1,891,823 responses related to Passport-Style Photographs at .50 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 8,408,932 total annual burden hours. This figure was derived by:

- Multiplying the number of Form I–765 respondents (1,891,823) × frequency of response (1) × 3.42 hours per response; plus
- Multiplying the number of Form I–765WS respondents (594,602) × frequency of response (1) × .50 hours; plus
- Multiplying the number of respondents from whom USCIS collects biometrics (594,602) × frequency of response (1) × 1.17 hours; plus
- Multiplying the number of respondents that provide Passport-Style Photographs (1,891,823) at .50 hours.

All comments and suggestions or questions regarding additional information should be directed to the Department of Homeland Security, U.S. Citizenship and Immigration Services, Chief Regulatory Coordinator, Regulatory Coordination Division, Office of Policy and Strategy, 20 Massachusetts Avenue NW., Washington, DC 20529.

List of Subjects

8 CFR Part 214

Administrative practice and procedure, Aliens, Employment,

Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

Accordingly, DHS is proposing to amend chapter I of title 8 of the Code of Federal Regulations as follows:

PART 214—NONIMMIGRANT CLASSES

■ 1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a,1187, 1221, 1281, 1282, 1301–1305 and 1372; sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; Pub. L. 106–386, 114 Stat. 1477–1480; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note and 1931 note, respectively; 48 U.S.C. 1806; 8 CFR part 2.

■ 2. Section 214.2 is amended by revising paragraph (h)(9)(iv) to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(h) * * *

(9) * * *

(iv) *H–4 dependents.* The spouse and children of an H nonimmigrant, if they are accompanying or following to join such H nonimmigrant in the United States, may be admitted, if otherwise admissible, as H–4 nonimmigrants for the same period of admission or extension as the principal spouse or parent. H–4 nonimmigrant status does not confer eligibility for employment authorization incident to status. An H–4 nonimmigrant spouse of an H–1B nonimmigrant may be eligible for employment authorization only if the H–1B nonimmigrant is the beneficiary of an approved Immigrant Petition for Alien Worker, or successor form, or the H–1B nonimmigrant's period of stay in H–1B status in the United States is authorized under sections 106(a) and (b) of the American Competitiveness in the Twenty-first Century Act 2000 (AC21), Pub. L. 106–313, as amended by the 21st Century Department of Justice Appropriations Authorization Act, Public Law 107–273. To request employment authorization, an eligible H–4 nonimmigrant spouse must file an Application for Employment Authorization, or a successor form, in accordance with 8 CFR 274a.13 and the form instructions. Such Application for Employment Authorization must be accompanied by documentary evidence establishing eligibility, including evidence that the principal H–1B is the beneficiary of an approved Immigrant Petition for Alien Worker or has been provided H–1B status under sections 106(a) and (b) of AC21, as amended by the 21st Century Department of Justice Appropriations Authorization Act, the H–1B beneficiary is currently maintaining H–1B status, and the H–4 nonimmigrant spouse has been admitted to the United States as an H–4 nonimmigrant or granted an extension of H–4 status on that basis.

* * * * *

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

■ 3. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; Title VII of Public Law 110–229; 48 U.S.C. 1806; 8 CFR part 2.

■ 4. Section 274a.12 is amended by adding a new paragraph (c)(26), to read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

* * * * *

(c) * * *

(26) An H–4 nonimmigrant spouse of an H–1B nonimmigrant described as eligible for employment authorization in 8 CFR 214.2(h)(9)(iv).

* * * * *

Jeh Charles Johnson,

Secretary.

[FR Doc. 2014–10734 Filed 5–9–14; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0766; Directorate Identifier 2013–NE–26–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Canada Corp. Turboprop Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: We are revising an earlier proposed airworthiness directive (AD) for all Pratt & Whitney Canada Corp. (P&WC) PT6A–114 and PT6A–114A turboprop engines. The NPRM proposed to require initial and repetitive borescope inspections (BSIs) of compressor turbine (CT) blades, and the removal from service of blades that fail inspection. The NPRM was prompted by several incidents of CT blade failure, causing power loss and in-flight shutdown of the engine resulting in four fatalities. This action revises the NPRM by adding a mandatory terminating action. We are proposing this supplemental NPRM (SNPRM) to prevent failure of CT blades, which could lead to damage to the engine and damage to the airplane. Since these actions impose an additional burden over that proposed in the NPRM, we are reopening the comment period to allow the public the chance to comment on this proposed change.

DATES: We must receive comments on this SNPRM by June 26, 2014.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* 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 Pratt & Whitney Canada Corp., 1000 Marie-Victorin, Longueuil, Quebec, Canada, J4G 1A1; phone: 800–268–8000; fax: 450–647–2888; Internet: www.pwc.ca. You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2013–0766; 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 Transport Canada Civil Aviation (TCCA) AD, the regulatory evaluation, any comments received, and other

information. The address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Robert Morlath, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7154; fax: 781–238–7199; email: *robert.c.morlath@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–0766; Directorate Identifier 2013–NE–26–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We issued an NPRM to amend 14 CFR part 39 by adding an AD that would apply to all P&WC PT6A–114 and PT6A–114A turboprop engines. The NPRM published in the **Federal Register** on October 29, 2013 (78 FR 64421). The NPRM proposed to require initial and repetitive BSIs of CT blades, and the removal from service of blades that fail inspection.

Actions Since Previous NPRM Was Issued

Since we issued the NPRM, we received additional information as a result of comment responses and as part of an ongoing investigation.

Comments

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

Agreement With the Proposed AD

The National Transportation Safety Board (NTSB) and Hawkins Aero agreed with the need for the AD action.

Request To Harmonize

TCCA requested that the Compliance section of this AD be revised to mandate that operators replace pre-P&WC Service Bulletin (SB) No. PT6A–72–1669 CT blades with single crystal CT blades within the next 36 months. TCCA's AD CF 2013–21R1 mandates that operators replace all CT blades with new part number (P/N) single crystal CT blades within 36 months after the effective date of the AD to address the unsafe condition of CT blade failures due to creep. The NPRM does not mandate that new P/N single crystal CT blades be installed within a particular period of time. TCCA requested that we revise the FAA AD to better address the unsafe condition.

We agree. We changed the Compliance paragraph to require that all CT blades be replaced with single crystal CT blades within 36 months after the effective date of this AD.

Request To Remove Mandatory Upgrade

Hawkins Aero and an individual commenter requested that the AD not require operators to upgrade to single crystal CT blades. Hawkins Aero stated that based on knowledge of previously conducted metallurgical examinations, certain operators experience higher levels of CT blade deterioration based on operating practices. The other commenter stated that low utilization operators may face a heavy economic burden in order to upgrade to the new single crystal CT blades.

We partially agree. We disagree with allowing certain operators to not upgrade to single crystal CT blades because CT blade failure due to creep is a significant problem for this type design, and the unsafe condition identified in this AD must be corrected. We did not change the requirement to replace the CT blades. We agree that mandating the installation of single crystal CT blades will impose a significant economic burden on low utilization operators. As such, we are re-opening the comment period for this AD to allow the public the chance to comment on the proposed changes. The additional economic costs for low utilization operators are included in the Costs of Compliance.

Request To Change Borescope Inspection Requirements

The same individual commenter requested a review and modification of the compliance time for the initial and repetitive BSIs for low-utilization operators. The commenter justified this request by stating that, ''Since the vast majority of the 114A fleet is utilized in the relatively high utilization environment of commercial operation, based on an assumption of 500 hours annual utilization, the repetitive BSIs would be done on an annual basis''.

We do not agree. The creep condition addressed by this proposed AD is related to time in operation at high temperature and high power settings, not calendar time. We did not change the compliance time.

Request To Change Definitions Paragraph

Hawkins Aero requested that we revise the Definitions paragraph to include specific original equipment manufacturer and parts manufacturer approval (PMA) P/Ns. The justification for this request is that the proposed AD does not specifically identify pre- and post-SB No. PT6A–72–1669 P/Ns and does not list PMA P/Ns.

We partially agree. We agree that P/N identification is necessary. We identified what P/Ns can be installed during the compliance period and what P/Ns must be installed prior to the end of the 36-month compliance period. We disagree with listing all potential original equipment manufacturer and PMA P/Ns. We deleted the Definitions paragraph and expanded the Compliance paragraph to identify eligible P/Ns.

Request To Include Two-Blade Metallurgical Examination

TCCA and Hawkins Aero requested that the Compliance paragraph be changed to require operators to perform a two-blade metallurgical examination at each hot section interval (HSI). The reason for this request is that the P&WC maintenance manual recommends, and the TCCA AD currently requires, that operators perform a metallurgical evaluation of two CT blades at each HSI in lieu of replacing the entire set. Based on the deterioration of the micro-structure observed in the two blade sample, a determination is made as to whether the remaining CT blades can continue in service. TCCA also requested that we revise the Applicability paragraph of the AD to clearly state that the CT blades be replaced or undergo metallurgical evaluation, repetitively, at each HSI. TCCA stated that the NPRM did not clearly state whether the evaluation was a one-time or a repetitive requirement and that without requiring the evaluation be made at each HSI our AD does not meet the basic intent of their AD, which was to detect the impending failure of the CT blades as a result of creep on all engines moving forward.

We partially agree. We agree with allowing operators to perform the metallurgical examination instead of replacing the entire set of CT blades at each HSI because the metallurgical evaluation is an approved method for determining if installed CT blades support continued safe operation. We also agree with repetitive replacement of CT blades at each HSI.

We do not agree with requiring operators to perform the metallurgical examination at each HSI because new CT blades can be installed. We have determined that either performing the metallurgical examination or installing new CT blades will provide an acceptable level of safety. We changed the Compliance paragraphs to allow operators to perform the metallurgical examination or replace the entire set of CT blades with new blades at each HSI.

Request Harmonization of Compliance Times

The NTSB requested that the difference in compliance time for the BSI between the NPRM (78 FR 64421, October 29, 2013), the TCCA AD, and the P&WC SB be explained in further detail. The NTSB stated that P&WC SB No. PT6A–72–1669, Revision 9, dated June 28, 2013, includes a re-inspection interval for the repetitive BSIs of 400 hours time-in-service (TIS) while the NPRM and the TCCA AD specify 500 hours TIS.

We do not agree. The 500 hour TIS inspection interval addresses the unsafe condition by providing an acceptable level of safety. We did not change the AD.

Request To Add Repetitive Inspections

Hawkins Aero requested that the compliance paragraph of the proposed AD be revised to include repetitive BSIs and HSI metallurgical inspections for single crystal CT blades. The reason for this request is that the commenter does not believe that the repetitive inspections should be relaxed for the single crystal CT blades until more data can be gathered about their performance. Reference was made to an engine failure that occurred on an engine with single crystal CT blades as evidence that while the design is an improvement on previous blade versions they are not immune to failure.

We do not agree with mandating that the new CT blades be subjected to an inspection program designed for a different blade design and P/N. The investigation into single crystal CT blade failures has not been completed and therefore, the need for additional corrective action has not been determined. We did not change the AD.

Request To Add Additional Inspection

Hawkins Aero requested that the Compliance paragraph be changed to include platform gap inspections as well as installation instructions to ensure the proper platform gap is achieved during HSI for P&WC single crystal CT blades, P/N 3072791–01. This change was justified because single crystal CT blades, P/N 3072791–01 and P/N 3072791–02, have different blade platform gap tolerances. The P/N 3072791–01 tolerances may lead to a smaller gap between blade platforms than on the P/N 3072791–02 blades leading to a potential failure of the CT blade.

We do not agree. There have been no unsafe conditions identified concerning the platform gap dimensions that would warrant this change. We did not change the AD.

Request Revision to Economic Evaluation

Hawkins Aero requested that the economic evaluation section of the AD include foreign-registered products and corresponding revisions to the compliance section. This request was justified because accounting for foreign-registered products would increase the projected cost for the AD; additionally, the commenter recommends that we revise the compliance paragraph and include the additional costs for all additional actions.

We partially agree. We agree with revising the Costs of Compliance to include any changes that are made to the compliance paragraph. We disagree with including foreign-registered products in the Costs of Compliance because we do not consider the cost of AD actions for foreign-registered products. We changed the AD to account for Compliance paragraph changes in the Costs of Compliance.

Request Addition of Cockpit Placard

Hawkins Aero requested that the Compliance paragraph of the proposed AD be revised to include the installation of a placard in the cockpit alerting the pilot to various operational limits and re-iterating warnings from the engine and aircraft Instructions for Continued Airworthiness (ICAs). The reason given for this request is that the current guidance for pilots and maintenance personnel is not sufficient to prevent the aircraft from being operated beyond its published limits. Additionally, there are certain procedures that the pilots, operators, and maintenance personnel can perform to ensure continued safe operation.

We do not agree. Including instructions for aircraft operation does not fall within the guidelines of the AD action. We discussed this comment with the appropriate aircraft certification office.

Request Revision to Optional Terminating Action

Hawkins Aero requested that the Optional Terminating Action paragraph be revised to include guidance for operators on whether or not to install single crystal CT blades, based on operational history and the cost of parts. This request is justified based on historical differences between the CT blade deterioration experienced by certain operators and the costs of the new CT blades.

We do not agree. Providing guidance to operators based on blade deterioration vs. cost of replacement is contrary to the intent of addressing the unsafe condition. We did not change the AD.

Request Revision to Compliance

Hawkins Aero requested that the Compliance paragraph be revised to state that cracked, stretched, sulfidated, or abnormal blades should be removed from service. A justification for this request was not provided.

We do not agree. The engine ICA provide data for serviceable limits for all engine components. We did not change the AD.

Request Revision to Compliance

Hawkins Aero requested that the Compliance paragraph be revised to provide a recommendation that the repetitive BSIs be scheduled to coincide with pre-existing fuel nozzle inspections and to state the maximum allowable HSI. The reason for this request is that fuel nozzle inspection intervals match mandated BSI intervals. The HSI recommendation is 1,800 hours.

We do not agree. The HSI recommendations are stated in the ICA and providing guidance on scheduling of maintenance actions does not support an AD action intended to address an unsafe condition in an aircraft, aircraft engine, propeller, etc. We did not change the AD.

Request Revision to Compliance

Hawkins Aero requested that the Compliance paragraph be revised to include CT disk and blade inspection intervals and requirements from the overhaul manual. The reason for this change is to provide background information for operators.

We do not agree. Restating requirements that are available to

operators is redundant. We did not change the AD.

FAA's Determination

We are proposing this SNPRM because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design. Certain changes described above expand the scope of the NPRM (78 FR 64421, October 29, 2013). As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this SNPRM.

Proposed Requirements of This SNPRM

This SNPRM would require accomplishing the actions specified in the NPRM, except as discussed under ''Differences Between this SNPRM and the Service Information.''

Differences Between This SNPRM and the Service Information

The service information requires that all operators perform metallurgical examinations of the CT blades at HSI while the proposed AD allows for either removal of the CT blades from service at HSI or performance of the metallurgical examination.

Costs of Compliance

We estimate that this proposed AD would affect about 300 engines installed on airplanes of U.S. registry. We also estimate that it would take about 4 hours per engine to perform the required inspection and 8 hours to perform parts replacement. The average labor rate is $85 per hour. Required parts would cost about $59,334 per engine. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $18,106,200.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this 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 Alaskato the extent that it justifies making a regulatory distinction, and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Pratt & Whitney Canada Corp.: Docket No. FAA–2013–0766; Directorate Identifier 2013–NE–26–AD.

(a) Comments Due Date

We must receive comments by June 26, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Pratt & Whitney Canada Corp. (P&WC) PT6A–114 and PT6A–114A turboprop engines.

(d) Unsafe Condition

This AD was prompted by several incidents of compressor turbine (CT) blade failure, causing power loss and in-flight shutdown of the engine resulting in four fatalities. We are issuing this AD to prevent failure of CT blades, which could lead to damage to the engine and damage to the airplane.

(e) Compliance

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

(1) For engines that have CT blades installed other than CT blades, part numbers (P/Ns) 3072791–01 or 3072791–02, perform the following actions:

(i) Within 150 operating hours after the effective date of this AD, perform a borescope inspection (BSI) of CT blades for engines with 500 or more hours time-since-new that have not been previously inspected or time-since-last-inspection (TSLI).

(ii) Thereafter, repeat the inspection in paragraph (e)(1)(i) of this AD within 500 flight hours TSLI.

(iii) During the next hot section inspection (HSI) after the effective date of this AD, and each HSI thereafter, replace the complete set of CT blades with any of the following:

(A) New CT blades;

(B) CT blades that have passed a two-blade metallurgical examination in accordance with paragraph 3.B. of P&WC Service Bulletin (SB) No. PT6A–72–1669, Revision 9, dated June 28, 2013; or

(C) P&WC single crystal CT blades, P/Ns 3072791–01 or 3072791–02.

(2) Reserved.

(f) Mandatory Terminating Action

Within 36 months after the effective date of this AD, replace the complete set of CT blades with single crystal CT blades, P/Ns 3072791–01 or 3072791–02.

(g) Credit for Previous Action

If you performed P&WC SB No. PT6A–72–1669, Revision 9, dated June 28, 2013, or earlier versions, you have met the initial inspection requirements of this AD. However, you must still comply with the repetitive inspection requirement of paragraph (e)(1)(ii) of this AD.

(h) Alternative Methods of Compliance (AMOCs)

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

(i) Related Information

(1) For more information about this AD, contact Robert Morlath, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7154; fax: 781–238–7199; email: *robert.c.morlath@faa.gov.*

(2) Refer to Transport Canada Civil Aviation AD CF–2013–21R1, dated October 31, 2013, for more information. You may examine AD CF–2013–21R1 in the AD docket on the Internet at *http://*

www.regulations.gov/#!documentDetail;D=FAA-2013-0766-0002.

(3) For service information identified in this AD, contact Pratt & Whitney Canada Corp., 1000 Marie-Victorin, Longueuil, Quebec, Canada, J4G 1A1; phone: 800–268–8000; fax: 450–647–2888; Internet: *www.pwc.ca.*

(4) You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Issued in Burlington, Massachusetts, on April 18, 2014.

Colleen M. D'Alessandro,

Assistant Directorate Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2014–09929 Filed 5–9–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0219; Directorate Identifier 2014–NE–04–AD]

RIN 2120–AA64

Airworthiness Directives; Turbomeca S.A. Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Turbomeca S.A. Makila 2A and Makila 2A1 turboshaft engines. This proposed AD was prompted by failure of two high-pressure (HP) fuel pumps that resulted in engine in-flight shutdowns. This proposed AD would require initial and repetitive visual inspections, and replacement of the splines of the HP fuel pump/metering valve and the module M01 drive gear, if necessary. We are proposing this AD to prevent failure of the HP fuel pump, which could lead to an in-flight shutdown, damage to the engine, and forced landing or accident.

DATES: We must receive comments on this proposed AD by July 11, 2014.

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

- Federal eRulemaking Portal: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: 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: Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Fax: 202–493–2251.

For service information identified in this proposed AD, contact Turbomeca, S.A., 40220 Tarnos, France; phone: 33 (0)5 59 74 40 00; telex: 570 042; fax: 33 (0)5 59 74 45 15. You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0219; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the mandatory continuing airworthiness information (MCAI), the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2014–0219; Directorate Identifier 2014–NE–04–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 based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2014–0059, dated March 10, 2014 (referred to hereinafter as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Two uncommanded in-flight shutdowns on Makila 2A/2A1 engines have been reported. The results of the technical investigations concluded that these events were caused by deterioration of the splines on the high-pressure (HP) fuel pump drive link, which eventually interrupted the fuel supply to the engine.
>
> This condition, if not detected and corrected, could lead to further cases of uncommanded engine in-flight shutdown, and may ultimately lead to an emergency landing.

We are proposing this AD to prevent failure of the HP fuel pump, which could lead to an in-flight shutdown, damage to the engine, and forced landing or accident.

You may obtain further information by examining the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0219.

Relevant Service Information

Turbomeca S.A. has issued Mandatory Service Bulletin (MSB) No. 298 73 2818, Version F, dated March 5, 2014. The MSB describes procedures for cleaning and visually inspecting the splines of the HP fuel pump/metering valve and the module M01 drive gear for wear, corrosion, scaling, pitting, and chafing.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of France, and is approved for operation in the United States. Pursuant to our bilateral agreement with the European Community, EASA has 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 provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design. This proposed AD would require initial and repetitive visual inspections, and replacement of the splines of the HP fuel pump/metering valve and the module M01 drive gear, if necessary.

Costs of Compliance

We estimate that this proposed AD affects 8 engines installed on helicopters of U.S. registry. We also estimate that it would take about 2 hours per engine to

comply with this proposed AD. The average labor rate is $85 per hour. Required parts cost about $750 per engine. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $1,360.

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 to the extent that it justifies making a regulatory distinction, and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Turbomeca S.A.: Docket No. FAA–2014–0219; Directorate Identifier 2014–NE–04–AD.

(a) Comments Due Date

We must receive comments by July 11, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Turbomeca S.A. Makila 2A and Makila 2A1 turboshaft engines with a high-pressure (HP) fuel pump, part number (P/N) 0 298 91 806 0 or P/N 0 298 91 805 0, installed, that have not incorporated Turbomeca modification TU 59.

(d) Reason

This AD was prompted by failure of two HP fuel pumps that resulted in engine in-flight shutdowns. We are proposing this AD to prevent failure of the HP fuel pump, which could lead to an in-flight shutdown, damage to the engine, and forced landing or accident.

(e) Actions and Compliance

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

(1) Within 25 flight hours (FH) or 6 months after the effective date of this AD, whichever occurs earlier, clean and visually inspect the splines of the HP fuel pump/metering valve and the module M01 drive gear for wear, corrosion, scaling, pitting, and chafing.

(2) Thereafter, reinspect every 100 FH since-last-inspection.

(3) If the HP fuel pump/metering valve or the module M01 drive gear fail the inspection required by this AD, replace it with a part eligible for installation before further flight.

(4) After the effective date of this AD, do not install any HP fuel pump, HP fuel pump drive shaft, module 01 drive gear, or module M01 77-tooth gear onto any engine, or install any engine onto any helicopter, unless the HP fuel pump/metering valve and the module M01 drive gear passed the inspection required by paragraph (e) of this AD.

(f) Alternative Methods of Compliance (AMOCs)

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

(g) Related Information

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

(2) Refer to MCAI European Aviation Safety Agency AD 2014–0059, dated March 10, 2014, for more information. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2014–0219.

(3) Turbomeca S.A. Mandatory Service Bulletin No. 298 73 2818, Version F, dated March 5, 2014, pertains to the subject of this AD and can be obtained from Turbomeca S.A., using the contact information in paragraph (g)(4) of this AD.

(4) For service information identified in this AD, contact Turbomeca, S.A., 40220 Tarnos, France; phone: 33 (0)5 59 74 40 00; telex: 570 042; fax: 33 (0)5 59 74 45 15.

(5) You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Issued in Burlington, Massachusetts, on May 6, 2014.

Colleen M. D'Alessandro,

Assistant Directorate Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2014–10782 Filed 5–9–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0913; Directorate Identifier 2012–NE–23–AD]

RIN 2120–AA64

Airworthiness Directives; Honeywell International Inc. Turboprop Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Honeywell International Inc. TPE331–5, –5A, –5AB, –5B, –10, –10R, –10U, –10UF, –10UG, –10UGR, and –10UR model turboprop engines. This proposed AD was prompted by engine propeller shaft coupling failures, leading to unexpected propeller pitch changes resulting in high aerodynamic and asymmetric drag on the airplanes using these engines. This proposed AD would require removing certain part number (P/N) propeller shaft couplings from service. This proposed AD would also require inserting a copy of Honeywell International Inc. Operating

Information Letter OI331–26, dated March 2, 2010, into the applicable Airplane Flight Manuals. We are proposing this AD to prevent loss of airplane control, leading to an accident.

DATES: We must receive comments on this proposed AD by July 11, 2014.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

For service information identified in this proposed AD, contact Honeywell International Inc., 111 S. 34th Street, Phoenix, AZ 85034–2802; phone: 800–601–3099; Web site: *http://portal.honeywell.com.* You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2012–0913; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; phone: 562–627–5246; fax: 562–627–5210; email: *joseph.costa@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0913; Directorate Identifier 2012–NE–23–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We have received numerous reports of propeller shaft couplings, P/Ns 3107065–1 and 865888–3, failing. These propeller shaft couplings experience fatigue cracks at the corners of the lubrication slots that may result in separation and fragmentation of the propeller shaft coupling. That separation causes a sudden loss of drive torque from the engine's power section to the propeller shaft (called drivetrain uncoupling). After a drivetrain uncoupling, the engine's fuel pump continues to provide fuel to the power section, and with no propeller load and no engine control changes by the pilot, the engine power section will accelerate to the fuel control's overspeed governor set point. Even though the propeller drive is uncoupled, the propeller blade pitch is still controlled by the propeller governor. During this overspeed condition, the propeller governor is designed to move the propeller blades toward higher pitch until full feather is reached with the propeller not rotating or rotating very slowly. Under certain conditions the power section will remain at about 104% RPM with the propeller blades in feather position and the propeller not rotating or rotating very slowly, until the engine is shut down by the pilot.

Potential Unsafe Failure Scenarios

After a propeller shaft drivetrain uncoupling, the speed of the engine's power section may be reduced: (1) From full power, by the pilot retarding the power lever to flight idle, which reduces fuel to the power section; (2) at flight idle, because the fuel control reduces the fuel supply to the power section and/or; (3) by fragmentation of the propeller shaft coupling and secondary damage to the gears in the gearbox. If the resulting speed of the power section falls below the propeller governor set point (set by the pilot-controlled condition lever), the propeller governor will move the propeller out of feather to a low-pitch, high-drag position.

Also, after a propeller shaft drivetrain uncoupling, a pilot reacting to the overspeed of the power section may inadvertently retard the power lever to flight idle. Doing so will cause the propeller governor to move the feathered propeller to a low-pitch, high-drag condition.

Several reports during maintenance test flights and in-service operations of twin-engine airplanes have shown that inadvertent movement of the propeller blade pitch to a low blade angle create a high aerodynamic and asymmetric drag with resultant uncommanded yaw and roll response on the airplane. Following this unexpected yaw and roll response, stabilization and control of the airplane may range from unusually difficult to catastrophic, and pilots may lack sufficient time to properly assess the engine problem, initiate an engine emergency shutdown, and activate the feather valve.

The drivetrain uncoupling events described previously lead to loss of thrust, cause the propeller blade pitch to go to a low-blade angle, and create a high aerodynamic and asymmetric drag on the airplane. The low-blade angle may result in loss of airplane control, leading to an accident. After a review of about 40 years of National Transportation Safety Board fatal accident reports of multi-engine airplanes with TPE331 engines, we determined that certain airplanes are more at risk by engine-failure events than others. Therefore, we are proposing compliance times in this AD that address the risk by airplane after a propeller shaft coupling failure.

Relevant Service Information

Allied-Signal Aerospace Company, Garrett Engine Division Service Bulletin No. TPE331–72–0873, Revision 1, dated May 20, 1993, describes procedures for replacing the affected P/Ns of propeller shaft couplings with a defined redesigned propeller shaft coupling.

Honeywell International Inc. Operating Information Letter OI331–26, dated March 2, 2010, describes emergency procedures for aircrew if a propeller shaft coupling fails.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require removing propeller shaft couplings, P/Ns 3107065–1, 865888–3, 865888–6, and 865888–8, from service.

This proposed AD would also require inserting a copy of Honeywell International Inc. Operating Information Letter OI331–26, dated March 2, 2010, into the applicable Airplane Flight Manual, Pilot Operating Handbook, or Manufacturer's Operating Manual.

Costs of Compliance

We estimate that this proposed AD would affect 485 engines installed on airplanes of U.S. registry. We also estimate that it would take about one hour per engine to perform the actions required by this proposed AD, if done at next turbine hot section scheduled inspection, and 40 hours per engine if done at an unscheduled access of the propeller shaft coupling. We also estimate that 400 engines would have the replacement actions done at a scheduled time of next turbine hot section inspection, and 85 engines would have the replacement actions done at an unscheduled access of the propeller shaft coupling. We also estimate that the average labor rate is $85 per hour. Required parts would cost about $12,000 per engine. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $6,143,000.

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 to the extent that it justifies making a regulatory distinction, and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Honeywell International Inc. (Type Certificate Previously Held by AlliedSignal Inc., Garrett Engine Division; Garrett Turbine Engine Company; and AiResearch Manufacturing Company of Arizona): Docket No. FAA–2012–0913; Directorate Identifier 2012–NE–23–AD.

(a) Comments Due Date

We must receive comments by July 11, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Honeywell International Inc. TPE331–5, –5A, –5AB, –5B, –10, –10R, –10U, –10UF, –10UG, –10UGR, and –10UR model turboprop engines, with a propeller shaft coupling, part number (P/N) 3107065–1, 865888–3, 865888–6, or 865888–8, installed.

(d) Unsafe Condition

This AD was prompted by engine propeller shaft coupling failures leading to unexpected propeller pitch changes resulting in high aerodynamic and asymmetric drag on the airplanes using these engines. We are issuing this AD to prevent loss of airplane control, leading to an accident.

(e) Compliance

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

(1) *Engines Installed In Mitsubishi MU–2B Series (MU–2 Series) Airplanes:* Remove from service the affected propeller shaft coupling at the earliest of the following:

(i) Next piece-part exposure; or

(ii) Next turbine (hot) section inspection (HSI); or

(iii) Before accumulating an additional 1,200 cycles after the effective date of this AD.

(2) *Engines Installed In Construcciones Aeronauticas, S.A. (CASA) C–212 Series, and Twin Commander 690 and 695 Series (Jetprop Commander) Airplanes:* Remove from service the affected propeller shaft coupling at the earliest of the following:

(i) Next piece-part exposure; or

(ii) Next turbine HSI; or

(iii) Before accumulating an additional 2,400 cycles after the effective date of this AD.

(3) *Engines Installed In British Aerospace Jetstream 3101 Series, Dornier Luftfahrt Dornier 228 Series, and M7 (formerly Fairchild, Swearingen) SA226 and SA227 Series Airplanes, and All Other Airplanes Not Listed in this AD Using Affected Engines:* Remove from service the affected propeller shaft coupling at the earliest of the following:

(i) Next piece-part exposure; or

(ii) Next turbine HSI; or

(iii) Before accumulating an additional 3,600 cycles after the effective date of this AD.

(4) *Inserting a Copy of Honeywell International Inc. Operating Information Letter into the FAA-Approved Flight Manual:*

Within 60 days after the effective date of this AD, for airplanes with engine propeller shaft coupling, P/N 3107065–1, 865888–3, 865888–6, or 865888–8, installed, insert a copy of Honeywell International Inc. Operating Information Letter OI331–26, dated March 2, 2010, into the Emergency Procedures Section of the applicable Airplane Flight Manual, Pilot Operating Handbook, or Manufacturer's Operating Manual.

(f) Definition

For the purpose of this AD, next piece-part exposure is when the nose cone assembly is removed from the engine.

(g) Installation Prohibition

After the effective date of this AD, do not install any propeller shaft coupling, P/N 3107065–1, 865888–3, 865888–6, or 865888–8, into any engine.

(h) Alternative Methods of Compliance (AMOCs)

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

(i) Related Information

(1) For more information about this AD, contact Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; phone: 562–627–5246; fax: 562–627–5210; email: *joseph.costa@faa.gov*.

(2) Allied-Signal Aerospace Company Service Bulletin No. TPE331–72–0873, Revision 1, dated May 20, 1993, addresses acceptable replacement parts, and other information pertaining to the subject of this AD.

(3) For service information identified in this AD, contact Honeywell International Inc., 111 S. 34th Street, Phoenix, AZ 85034–2802; phone: 800–601–3099; Web site: *http://portal.honeywell.com*.

(4) You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Issued in Burlington, Massachusetts, on May 6, 2014.

Colleen M. D'Alessandro,

Assistant Directorate Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2014–10783 Filed 5–9–14; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2014–0214; FRL–9910–77–Region 6]

Approval and Promulgation of Implementation Plans; New Mexico; Regional Haze and Interstate Transport Affecting Visibility State Implementation Plan Revisions; Withdrawal of Federal Implementation Plan for the San Juan Generating Station

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the New Mexico Regional Haze State Implementation Plan that address the Best Available Retrofit Technology (BART) requirement for oxides of nitrogen (NO_X) for the Public Service of New Mexico (PNM) San Juan Generating Station (SJGS) in San Juan County, New Mexico and the New Mexico Visibility Transport SIP that address impacts of emissions from the SJGS, as required by the Federal Clean Air Act (CAA) mandate to ensure that emissions from sources in New Mexico do not interfere with programs in other states to protect visibility. In conjunction with these proposed approvals, we propose to withdraw the federal implementation plan (FIP) that addresses the NO_X BART and visibility transport requirements for the SJGS. The EPA is taking this action under the CAA.

DATES: Comments must be received on or before June 11, 2014.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R06–OAR–2014–0214 by one of the following methods:

- Federal e-Rulemaking Portal: *http://www.regulations.gov*. Follow the online instructions.
- Email: *feldman.michael@epa.gov*.
- Mail or delivery: Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.

Instructions: Direct your comments to Docket No. EPA–R06–OAR–2014–0214. Our 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. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means we 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 us 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, we recommend 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 we cannot read your comment due to technical difficulties and cannot contact you for clarification, we 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.

Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim as CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, you must submit a copy of the comment that does not contain the information claimed as CBI for inclusion in the public docket. We will not disclose information so marked except in accordance with procedures set forth in 40 CFR part 2.

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment with the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214–665–7253.

FOR FURTHER INFORMATION CONTACT: Michael Feldman, 214–665–9793; *feldman.michael@epa.gov*.

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

i. The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

ii. The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

iii. The initials *SIP* mean or refer to State Implementation Plan.

iv. The initials *FIP* mean or refer to Federal Implementation Plan.

v. The initials *RH* and *RHR* mean or refer to Regional Haze and the Regional Haze Rule.

vi. The initials *NMED* mean the New Mexico Environmental Department.

vii. The initials *BART* mean or refer to Best Available Retrofit Technology.

viii. The initials *EGUs* mean or refer to Electric Generating Units.

ix. The initials NO_X mean or refer to nitrogen oxides.

x. The initials SO_2 mean or refer to sulfur dioxide.

xi. The initials H_2SO_4 mean or refer to sulfuric acid.

xii. The initials $PM_{2.5}$ mean or refer to particulate matter with an aerodynamic of less than 2.5 micrometers.

xiii. The initials *NAAQS* mean or refer to the National Ambient Air Quality Standards.

xiv. The initials *RPOs* mean or refer to regional planning organizations.

xv. The initials *WRAP* mean or refer to the Western Regional Air Partnership.

xvi. The initials *GCVTC* mean or refer to the Grand Canyon Visibility Transport Commission.

xvii. The initials *PNM* mean or refer to the Public Service Company of New Mexico.

xviii. The initials *SJGS* mean or refer to the San Juan Generating Station.

xix. The initials *SCR* mean or refer to Selective Catalytic Reduction.

xx. The initials *SNCR* mean or refer to Selective Non-Catalytic Reduction.

xxi. The initials *TSD* mean or refer to Technical Support Document.

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I. Overview of Proposed Action

A. Summary of State Submittals and EPA Actions

The State of New Mexico adopted and transmitted an Interstate Transport SIP revision on September 17, 2007 for the purpose of addressing the ''good neighbor'' provisions of the CAA section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS and the $PM_{2.5}$ NAAQS. The EPA disapproved a portion of that SIP submittal addressing the requirements with respect to visibility transport (VT) and concurrently promulgated a FIP establishing enforceable NO_X and SO_2 emission limits for the SJGS on August 22, 2011. The EPA set SO_2 emission limits of 0.15 pounds per million British Thermal Units (lb/MMBtu) for the four units of the SJGS. The EPA set enforceable NO_X emission limits of 0.05 lbs/MMBtu based upon the EPA's NO_X BART determination for the SJGS, to ensure that its emissions would meet the ''good neighbor'' requirement for visibility protection, as well as the requirement for NO_X BART. 76 FR 52388 (August 22, 2011). The EPA's NO_X BART emission limits can be met by the installation of selective catalytic reduction (SCR) at all four units of SJGS. Among other things, the FIP also included a sulfuric acid (H_2SO_4) emission limit to minimize the contribution of this pollutant to visibility impairment, since emissions of this pollutant can potentially increase due to operation of SCR. While the FIP at 49 CFR 52.1628 is currently in place, it may be withdrawn if the EPA approves a SIP revision addressing the RH requirements for NO_X BART and the VT requirements for enforceable NO_X and SO_2 emission limits.

The State of New Mexico adopted and transmitted RH SIP revisions on December 1, 2003 and July 5, 2011 (''2011 RH SIP revision'') that addressed the requirements of 40 CFR 51.309. The EPA approved all of the two submittals on November 7, 2012 (77 FR 70693) except for the submitted NO_X BART determination for SJGS. We did not take action on this portion of the 2011 RH SIP revision because stakeholders, including PNM, the New Mexico Environmental Department (NMED), and EPA, initiated discussions on the development of a new alternative that, if approved, would impose new NO_X BART requirements on SJGS and allow for withdrawal of our FIP. In a February 22, 2013 letter, New Mexico requested that the EPA stay any agency review of the NO_X BART portion of the 2011 RH SIP revision in the interest of pursuing development and a hoped-for approval of an alternative.

Accordingly, New Mexico submitted RH SIP revisions on October 7, 2013 and November 5, 2013, (''2013 RH SIP revision'') that build on the 2011 RH SIP revision.[1] The 2013 RH SIP revision contains a new NO_X BART determination for the SJGS (referred to as the ''State Alternative'' [2]). The State Alternative consists of a previously un-contemplated control scenario involving unit shutdowns at the SJGS. If fully approved by the EPA, the State Alternative supersedes the State's previous NO_X BART determination that was included in the 2011 RH SIP revision. The State Alternative reflects the terms of the nonbinding agreement signed between the PNM, NMED, and EPA to address the regional haze requirements applicable to the SJGS. This agreement is included as Exhibit 5 of the 2013 RH SIP revision.[3] The 2013 RH SIP revision also includes a preconstruction permit submitted on November 5, 2013 [4] that sets a NO_X emission limit based upon the State Alternative, compliance schedules, compliance deadline for shutdown of two units, and monitoring and testing requirements. We previously found that the 2013 RH SIP revision met the completeness criteria in 40 CFR Part 51, Appendix V on December 17, 2013.[5]

New Mexico also adopted and submitted VT SIP revisions on July 5, 2011 (''2011 VT SIP revision), and on October 18, 2013 and November 5, 2013 (''2013 VT SIP revision''). The 2011 VT SIP revision, as revised in 2013, includes the determination that all sources in New Mexico are sufficiently controlled to eliminate interference with the visibility programs of other states. It also includes a preconstruction permit for the SJGS, submitted on November 5, 2013,[6] establishing a more stringent SO_2 emission limit as part of the State Alternative and a NO_X emission limit reflecting the State Alternative.

New Mexico has incorporated emissions limits and requirements for unit shutdowns into the 2013 preconstruction permit that was submitted as part of the SIP revisions. Specifically, as a source-specific requirement of the New Mexico SIP for regional haze and visibility transport, section A112C of the 2013 SJGS permit provides a more stringent SO_2 emission limit as part of the State Alternative and a NO_X emission limit reflecting the State Alternative. The fuller permit contains three independent scenarios under section A112: A, B and C. If the SIP revisions are fully approved by the EPA and consistent with the terms of the permit as explained in the background section of the permit, Scenario C

[1] We are acting on everything not yet acted upon in the 2011 RH SIP revision that pertains to the 2013 NO_X BART determination. The 2013 RH SIP revision explains that the revised, more recent NO_X BART determination would ''supersede'' the 2011 NO_X BART determination if EPA approves it. Certain NMED documents from the 2011 RH SIP revision are relevant to the state's 2013 conclusions regarding NO_X BART, but other information that relates solely to the 2011 NO_X BART determination would be moot should EPA finalize an approval as today proposed.

[2] While the descriptor *alternative* suffices for explaining the procedural setting for our review, it is not here being used as a regulatory term of art. In other words, we do not intend to suggest that the State Alternative is an ''alternative measure'' under 40 CFR 51.308(e)(2) or that it purports to provide greater reasonable progress than BART.

[3] Term Sheet Between the U.S. Environmental Protection Agency, Public Service Company of New Mexico and the State of New Mexico (''Term Sheet''), February 15, 2013.

[4] NSR Technical Permit Revision, NSR Permit No. 0063–M6R3, November 1, 2013.

[5] See letter from EPA to Richard Goodyear, Bureau Chief, Air Quality Bureau, NMED, December 17, 2013.

[6] NSR Technical Permit Revision, NSR Permit No. 0063–M6R3, November 1, 2013.

becomes effective and the other two scenarios are moot.

B. Proposed Action on NO_X BART Determination for SJGS

As a ''309'' state, the regulatory requirement for NO_X BART applies to subject-to-BART sources in New Mexico via 40 CFR 51.309(d)(4)(vii), which requires that the SIP contain ''BART requirements for stationary source PM and NO_X emissions.''[7] We note that we approved New Mexico's BART determination for PM emissions from the SJGS in our final action on November 27, 2012. 77 FR 70693. Today, we are proposing to approve New Mexico's latest NO_X BART determination for the SJGS and are proposing to withdraw our FIP. Upon final approval of the 2013 RH SIP revision, the FIP requirements addressing regional haze, including the NO_X and H_2SO_4 emission limits,[8] may be withdrawn through a separate Administrator-signed final action.

C. Proposed Action on Interstate Transport Affecting Visibility

We are also proposing to approve the 2011 Visibility Transport SIP revision as revised in 2013 as addressing the ''good neighbor'' provisions of CAA section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS and the $PM_{2.5}$ NAAQS. Section 110(a)(2)(D)(i)(II) of the Act requires that a SIP contain provisions ''prohibiting any source or other type of emission activity within the state from emitting any air pollutant in amounts which will . . . interfere with measures required to be included in the applicable implementation plan for any other State under part C [of the CAA] to protect visibility.'' Because of the impacts on visibility from the interstate transport of pollutants, we interpret the ''good neighbor'' provisions of section 110 of the Act as requiring states to include in their SIPs either measures to prohibit emissions that would interfere with the reasonable progress goals set to protect Class I areas in other states, or a demonstration that emissions from the State's sources and activities will not interfere with other states' visibility programs.

We are proposing to approve the 2011 Visibility Transport SIP revision as revised in 2013 because it demonstrates that emissions from all sources in New Mexico are sufficiently controlled to eliminate interference with visibility programs of other states. We are proposing to approve the 2013 permit for SJGS on the basis that the SO_2 and NO_X emission limits for the SJGS will sufficiently prevent emissions from sources in New Mexico from interfering with the visibility programs of other states. Consistent with our proposed approval of the 2011 Visibility Transport SIP revision, as revised in 2013, we are proposing to rescind the provisions of the FIP that address NO_X and SO_2 emissions for the SJGS for the purpose of meeting the ''good neighbor'' requirements of CAA section 110(a)(2)(D)(i)(II) with respect to visibility. Upon final approval of the 2011 Visibility Transport SIP revision, as revised in 2013, the FIP requirements pertaining to SO_2 and NO_X emission limits for visibility transport for the SJGS may be withdrawn through a separate Administrator-signed final action.

II. What is the background for our proposed actions?

In the CAA Amendments of 1977, Congress established a program to protect and improve visibility in national parks and wilderness areas. See CAA section 169A. Congress amended the visibility provisions in the CAA in 1990 to focus attention on the problem of regional haze. See CAA section 169B. We promulgated regulations in 1999 to implement sections 169A and 169B of the Act. These regulations require states to develop and implement SIPs to ensure reasonable progress toward improving visibility in mandatory Class I Federal areas (Class I areas) by reducing emissions that cause or contribute to regional haze.[9] The final actions published at 77 FR 70693 (November 27, 2012) and 76 FR 52388 (August 22, 2011), and their underlying proposals, contain complete discussions of the RHR requirements, generally, as well as the detailed background information on those requirements as applicable to states such as New Mexico that elected to submit SIPs to satisfy the requirements of 40 CFR 51.309, i.e., the regulations specially developed for certain Western states opting to address regional haze at Colorado Plateau Class I areas by implementing the recommendations of the Grand Canyon Visibility Transport Commission. The requirements for NO_X BART and interstate transport for visibility are the only requirements addressed in this proposal, and other regional haze requirements are discussed for background purposes only.

A. Requirements for Best Available Retrofit Technology

Regional haze SIPs must assure reasonable progress towards the national goal of achieving natural visibility conditions in Class I areas. Section 169A of the CAA and our implementing regulations require states to establish long-term strategies for making reasonable progress toward meeting this goal. SIPs must also give specific attention to certain stationary sources that were in existence on August 7, 1977, but were not in operation before August 7, 1962, and require these sources, where appropriate, to install BART controls for the purpose of eliminating or reducing visibility impairment.

Pursuant to 40 CFR 51.309(d)(4)(vii), a regional haze SIP submitted under the 309 program to address SO_2 emissions must contain any necessary long-term strategies and BART requirements for PM and NO_X. These BART determinations must be submitted pursuant to 40 CFR 51.308(e). States are directed to conduct BART determinations for such sources that may be anticipated to cause or contribute to any visibility impairment in a Class I area. Rather than requiring source-specific BART controls, states also have the flexibility under 40 CFR 51.308(e)(2) to adopt an emissions trading program or other alternative program as long as the alternative program provides greater reasonable progress towards improving visibility than BART. The discussion below specifically applies to regional haze SIPs that opt to require BART on sources subject to the BART requirements, rather than satisfying the requirements for alternative measures that would be evaluated under 40 CFR 51.308(e)(2).

On July 6, 2005, the EPA published the *Guidelines for BART Determinations Under the Regional Haze Rule* at Appendix Y to 40 CFR Part 51 (hereinafter referred to as the ''BART Guidelines'') to assist states in determining which of their sources should be subject to the BART requirements and the appropriate emission limits for each applicable source. The BART Guidelines are not mandatory for all sources. However, in making a BART determination for a fossil fuel-fired electric generating plant (EGU) with a total generating capacity in excess of 750 megawatts, a state must use the approach set forth in the BART Guidelines. See CAA section 169A(b)(2).

[7] 40 CFR 51.308(e) contains the basic regulatory requirement for BART.

[8] Since we are proposing to approve the State Alternative that does not include SCR operation, we are also proposing to withdraw the H_2SO_4 emission limit in the FIP as it is no longer necessary to protect visibility impairment from the facility due to emissions of H_2SO_4.

[9] See 64 FR 35714 (July 1, 1999); see also 70 FR 39104 (July 6, 2005) and 71 FR 60612 (October 13, 2006).

A state is encouraged, but not required, to follow the BART Guidelines in making BART determinations for other types of sources.

The process of establishing BART emission limitations can be logically broken down into three steps: First, states identify those sources which meet the definition of ''BART-eligible source'' set forth in 40 CFR 51.301; [10] second, states determine whether such sources ''emit[] any air pollutant which may reasonably be anticipated to cause or contribute to any impairment of visibility in any such area'' (a source that fits this description is ''subject to BART'') and; third, for each source subject to BART, states identify the appropriate type and the level of control for reducing emissions.

Under the BART Guidelines, states may select a visibility impact threshold, measured in deciviews (dv), below which a BART-eligible source would not be expected to cause or contribute to visibility impairment in any Class I area. The state must document this threshold in the SIP and state the basis for its selection of that value. Any source with visibility impacts that model above the threshold value would be subject to a BART determination review. The BART Guidelines acknowledge varying circumstances affecting different Class I areas. States should consider the number of emission sources affecting the Class I areas at issue and the magnitude of the individual sources' impacts. Any visibility impact threshold set by the state should not be higher than 0.5 dv. See 40 CFR part 51, app. Y, section III.A.1.

The BART Guidelines establish the dv as the principal metric for measuring visibility. *Id.* This visibility metric expresses uniform changes in visibility impairment in terms of common increments across the entire range of visibility conditions, from pristine to extremely hazy conditions. Visibility is sometimes expressed in terms of the visual range which is the greatest distance, in kilometers or miles, at which a dark object can just be distinguished against the sky. The dv is a more useful measure for tracking progress in improving visibility because each dv change is an equal incremental change in visibility perceived by the human eye.

[10] BART-eligible sources are those sources that have the potential to emit 250 tons or more of a visibility-impairing air pollutant, were put in place between August 7, 1962 and August 7, 1977, and whose operations fall within one or more of 26 specifically listed source categories. See CAA section 169A(b)(2)(A).

In their SIPs, states must identify subject-to-BART sources and document their BART control determination analyses. In making BART determinations, section 169A(g)(2) of the CAA requires that states consider the following factors: (1) The costs of compliance; (2) the energy and non-air quality environmental impacts of compliance; (3) any existing pollution control technology in use at the source; (4) the remaining useful life of the source; and (5) the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. States are free to determine the weight and significance to be assigned to each factor.

A regional haze SIP must include source-specific BART emission limits and compliance schedules for each source subject to BART. Once a state has made its BART determination, the BART controls must be installed and operated as expeditiously as practicable, but no later than five years after the date of the EPA approval of the regional haze SIP. CAA section 169(g)(4); 40 CFR 51.308(e)(1)(iv). In addition to what is required by the RHR, general SIP requirements mandate that the SIP must also include all regulatory requirements related to monitoring, recordkeeping, and reporting for the BART controls on the source. See CAA section 110(a).

Pursuant to 40 CFR 51.309(d)(4)(vii), the 2013 RH SIP revision contains an enforceable NO_X BART determination. We had previously promulgated a FIP that included NO_X emission limits of 0.05 lb/MMBtu on each of the four units at SJGS to address both the requirements of CAA section 110(a)(2)(D)(i)(II) and the NO_X BART requirements of CAA section 169A and the Regional Haze Rule. The FIP also included emission limits for H_2SO_4, which were established to minimize the contribution of this pollutant to visibility impairment in light of potential increases in emissions due to operation of SCR.

B. The 1997 NAAQS for Ozone and $PM_{2.5}$ and CAA 110(a)(2)(D)(i)

On August 15, 2006, we issued our ''Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards'' (2006 Guidance). We developed the 2006 Guidance to make recommendations to states for making submissions to meet the requirements of CAA section 110(a)(2)(D)(i) for the 1997 8-hour ozone standards and the 1997 $PM_{2.5}$ standards.

As identified in the 2006 Guidance, the ''good neighbor'' provisions in section 110(a)(2)(D)(i) of the CAA require each state to submit a SIP that prohibits emissions that adversely affect another state in the ways contemplated in the statute. Section 110(a)(2)(D)(i) contains four distinct requirements related to the impacts of interstate transport. The SIP must prevent sources in the state from emitting pollutants in amounts which will: (1) Contribute significantly to nonattainment of the NAAQS in other states; (2) interfere with maintenance of the NAAQS in other states; (3) interfere with provisions to prevent significant deterioration of air quality in other states; or (4) interfere with efforts to protect visibility in other states. In this action, we only address the fourth element regarding visibility.

The 2006 Guidance stated that states may make a simple SIP submission confirming that it is not possible at that time to assess whether there is any interference with measures in the applicable SIP for another state designed to ''protect visibility'' for the 8-hour ozone and $PM_{2.5}$ NAAQS until regional haze SIPs were submitted and approved. Regional haze SIPs were required to be submitted by December 17, 2007. 40 CFR 51.308(b).

Although we received a SIP revision from New Mexico on September 17, 2007, to meet the requirements of section 110(a)(2)(D)(i), a portion of which addressed the fourth element regarding interference with the programs of other states to protect visibility, we disapproved this portion of the SIP revision for the reasons discussed in our final action published on August 22, 2011. 76 FR 52389. That action concurrently promulgated a FIP requiring SO_2 and NO_X emission limits for the SJGS to prevent interference with programs to protect visibility in other states and finalized a determination that, at that time, no additional controls on any other sources were necessary.

III. Our Analysis of the State of New Mexico's Regional Haze SIP Revision for NO_X BART

The following discussion evaluates the 2013 RH SIP revision intended to address the requirements of 40 CFR 51.309(d)(4)(vii) for the implementation of NO_X BART at SJGS. The BART evaluation process consists of three components: (1) An identification of all BART-eligible sources, (2) an assessment of whether those BART-eligible sources are in fact subject to BART and (3) a determination of any BART controls. In our prior review and action on the 2011 RH SIP revision, we agreed with New Mexico's identification

of sources that are BART-eligible and subject to BART, including Units 1, 2, 3, and 4 of the SJGS. 77 FR 70693 (November 27, 2012). We approved the State's PM BART determinations and emission limits for these units, as well as the State's participation in the SO_2 emission reduction milestones and backstop trading program, while taking no action on the State's NO_X BART determinations and emission limits for these units. The State's conclusions were also consistent with the determinations that the EPA made in the course of promulgating its FIP for the SJGS. In that final action we found that units 1, 2, 3, and 4 of the SJGS comprise the only New Mexico source subject to BART. 77 FR 70693 (November 27, 2012). The focus of our current review is on the third component—the determination of NO_X BART controls for these units.

The BART Guidelines [11] describe the BART analysis as consisting of the following five basic steps:

- Step 1: Identify All Available Retrofit Control Technologies,
- Step 2: Eliminate Technically Infeasible Options,
- Step 3: Evaluate Control Effectiveness of Remaining Control Technologies,
- Step 4: Evaluate Impacts and Document the Results, and
- Step 5: Evaluate Visibility Impacts.

The SJGS consists of four coal-fired generating units and associated support facilities. Each coal-fired unit burns pulverized coal and No. 2 diesel oil (for startup) in a boiler, and produces high-pressure steam that powers a steam turbine coupled with an electric generator. Electric power produced by the units is supplied to the electric power grid for sale. Coal for the units is supplied by the adjacent San Juan Mine. Units 1 and 2 have a unit capacity of 350 and 360 MW, respectively. Units 3 and 4 each have a unit capacity of 544 MW.

In June 2007, the operator of the SJGS, PNM, submitted its NO_X BART evaluation to NMED. That analysis was added to and revised multiple times to incorporate new information or in response to comments/requests from the NMED [12] for additional visibility modeling analyses, control technology considerations, and cost analyses.[13] PNM's April 2013 BART Analysis addendum [14] (referred to hereafter as the ''2013 PNM report'') is an addendum and update to the 2007 evaluation and subsequent revisions. This analysis adds to and updates the previous analyses and considers a new scenario not previously evaluated.

The 2013 RH SIP revision under review in this action builds upon the 2011 RH SIP revision and its supporting BART analyses, and examines a new control scenario including unit shutdowns not previously analyzed. For purposes of reviewing projected visibility benefits and cost-effectiveness, this scenario, called the State Alternative, is compared to the control scenario in the FIP (SCR on all four units) and the State's 2011 NO_X BART determination (selective non-catalytic reduction (SNCR) on all four units). The State Alternative differs from the NO_X BART emission limit of 0.05 lb/MMBtu in the FIP (which can be met by the installation of SCR on all four units) and the State's earlier submitted, superseded (if the 2013 RH SIP revision is fully approved) determination of 0.23 lb/MMBtu (which can be met by installation of SNCR on all four units). The State Alternative contains several elements, including among other things, the installation of SNCR on Units 1 and 4 and enforceable deadlines by which Units 2 and 3 will be permanently retired. The emission reductions, visibility improvements, and additional non-air quality environmental benefits due to the unit shutdowns were an important consideration in New Mexico's selection of the State Alternative as NO_X BART for the SJGS. More specifically, the 2013 RH SIP revision requires the following:

- Fifteen (15) months after the EPA final approval of the 2013 RH SIP revision, but no earlier than January 31, 2016, the PNM will complete installation of SNCR technology on the SJGS Units 1 and 4 and meet an emission limit of 0.23 lb/MMBtu on a rolling 30-day average basis; [15]
- Retirement of the SJGS Units 2 and 3 by December 31, 2017;
- The PNM will commence a program of testing and evaluation, after the installation of SNCRs, to determine if additional NO_X emission reductions can be achieved. The Testing Program, consisting of SNCR performance testing, fuel performance testing, and long-term performance evaluation, must be completed no later than January 31, 2017.[16]

In accordance with section 169A of the CAA, the RHR, and the BART Guidelines, New Mexico weighed the five statutory factors in making its NO_X BART determination. New Mexico's final evaluation is available in the revised Chapter 10 and Appendix D of the 2013 RH SIP revision. We note that the State Alternative also results in additional reductions in the emissions of SO_2 on Units 1 and 4. These SO_2 emission reductions occur separately and apart from the SO_2 backstop trading program that the EPA has already approved as satisfying SO_2 BART. These SO_2 reductions will result in increased visibility improvement, and result in permitted emissions substantially below the level needed to prevent SO_2 emissions from New Mexico from interfering with the visibility programs of other States, as discussed in our review of the State's 2013 Visibility Transport SIP revision below.

A. New Mexico's NO_X BART Determination

In promulgating our FIP, we drew heavily upon the analyses prepared by the NMED and PNM that were available at the time. While we agreed with some conclusions presented in those analyses, we also disagreed with a number of points that are outlined in the proposed and final FIP **Federal Register** notices. 76 FR 491 (January 5, 2011) and 76 FR 52388 (August 22, 2011). The BART review of the State Alternative in the 2013 RH SIP revision examines a new control scenario, the State Alternative, and compares it to the control scenarios in the FIP and the 2011 RH SIP revision. As explained above, the State Alternative is a new control scenario proposed by the PNM in coordination with the State that includes the shutdown of two units at the SJGS by December 31, 2017. Consequently, this control scenario is different than the control scenarios contemplated in the FIP and the 2011 RH SIP revision. Although the EPA's regulations do not require states to consider a fuel switch or a shutdown of an existing unit as part of their BART analyses, a state may include such options in its analysis where a company voluntarily offers such measures as a strategy for reducing emissions.

[11] 70 FR 39164.

[12] Correspondence between PNM and NMED concerning these BART analyses is contained in NMED Exhibit 6 of the 2011 RH SIP revision.

[13] PNM's 2007 BART analysis and subsequent analyses are Exhibit 7a through 7t of the NMED's 2011 RH SIP revision.

[14] Public Service of New Mexico, Best Available Retrofit Technology Analysis, Addendum, April 1, 2013, submitted as Exhibit 6 of the 2013 RH SIP revision

[15] The permit conditions at A112C specify the averaging time and calculation methodology for the enforceable emission limit for NO_X on Units 1 and 4 of 0.23 lb/MMBtu on a boiler operating day basis, averaged across the two units.

[16] Unless the long-term performance evaluation is delayed due to a delay in the EPA approval or per the language in the Term Sheet at paragraph 1(d)(iv) concerning the evaluation period spanning the required number of days during both the summer and winter months.

i. Identification of All Available Retrofit Emission Control Technologies

The SJGS currently has low-NO_X burners (LNB) with overfire air (OFA) and a neural network to reduce NO_X emissions and comply with a 2005 consent decree [17] emission limit of 0.30 lb NO_X/MMBtu on a daily rolling 30-day average basis. To address step 1 of the BART analysis, New Mexico identified a number of potentially available NO_X control technologies, including SNCR, SCR, SNCR/SCR Hybrid, Natural Gas Reburn, Nalco Mobotec ROFA and Rotamix, NO_XStar, ECOTUBE, PowerSpan ECO, Phenix Clean Combustion, and e-SCRUB.

ii. Elimination of Technically Infeasible Options

To address step 2 of the BART analysis, New Mexico determined that the following potentially available NO_X control technologies are not technically feasible: Natural Gas Reburn, NO_XStar, ECOTUBE, PowerSpan ECO, Phenix Clean Combustion, and e-SCRUB. This conclusion is consistent with our own analysis in development of the FIP. New Mexico concluded that SCR, SNCR, SNCR/SCR Hybrid, and Nalco Mobotec ROFA and Rotamix are technically feasible control options for the SJGS units.

iii. Evaluation of Control Effectiveness of Remaining Control Technologies

Step 3 of the BART analysis requires the evaluation of the control effectiveness of the remaining control technologies. Table 1 shows the control effectiveness of each remaining control technology in New Mexico's BART analysis, based on a baseline emission rate of 0.30 lb/MMBtu. In its 2011 RH SIP revision, New Mexico revised the achievable controlled emission rate of SNCR from its earlier analysis of 0.24 lb/MMBtu to 0.23 lb/MMBtu, based on tests and an updated performance guarantee from the vendor.[18] New Mexico previously evaluated SCR at an emission rate of 0.07 lb/MMBtu and a control efficiency of 77%.[19] In its 2013 RH SIP revision, however, New Mexico revised its evaluation of SCR, concluding that at an emission rate of 0.05 lb/MMBtu and a control efficiency of 83% are achievable, consistent with our own evaluation in the FIP.

TABLE 1—NEW MEXICO'S DETERMINATION OF NO_X CONTROL EFFECTIVENESS

Control technology	Control efficiency (%)	Controlled emission rate (lb/MMBtu)
ROFA	13	0.26
Rotamix (SNCR)	23	0.23
SNCR	23	0.23
ROFA/Rotamix	33	0.20
SCR/SNCR Hybrid	40	0.18
SCR	83	0.05

iv. Evaluation of Impacts and Documentation of Results

The BART Guidelines require that the cost of compliance, energy impacts, non-air quality environmental impacts, and remaining useful life of the facility be analyzed for each potential control technology in step 4. Table 2, which is found as Table 10 of the revised Appendix D of the 2013 RH SIP revision, summarizes the unit specific cost analysis results submitted to the NMED by PNM. The control effectiveness for SCR and SNCR in this analysis have been updated and the costs of these two options have also been revised to reflect more recent cost information submitted by the PNM [20] to NMED for evaluation. The costs associated with ROFA, ROFA/Rotamix and Rotamix are based on the 2008 vendor quotes [21] and later adjusted to 2010 dollars.[22] The cost of sorbent injection is included in the cost analysis for SCR.[23] We note that costs for SCR and SNCR options are in 2013 dollars and annualized over 30 years, while all remaining control options are in 2010 dollars and annualized over 20 years. Because the rate of inflation between 2013 and 2010 was minimal (1.07 percent), the costs are comparable.

[17] Consent Decree in *The Grand Canyon Trust and Sierra Club, Plaintiffs, The State of New Mexico, Plaintiff-Intervenor,* v. *Public Service Company of New Mexico, Defendant,* (CV 02–552BB/ACT (ACE)), lodged in the United States District Court, District of New Mexico, on March 10, 2005, at 15–16.

[18] Public Service Company of New Mexico, San Juan Generating Station, Revised SNCR Analysis, February 11, 2011 (2011 NM RH SIP, NMED Ex. 7t).

[19] As we discuss in our FIP regarding NO_X BART for the SJGS, we found that SCRSCRSCR is capable of achieving an emission limit of 0.05 lbs/MMBtu on each of the units of the SJGS, based on a 30 boiler operating day average. 76 FR 52388.

[20] Best Available Retrofit Technology Analysis Addendum, Public Service of New Mexico, April 1, 2013, submitted as Exhibit 6 of the 2013 RH SIP revision

[21] PNM San Juan Generating Station BART Analysis of Nalco Mobotec NO_X Control Technologies, August 29, 2008. NMED Exhibit 7n of the 2011 RH SIP revision

[22] PNM San Juan Generating Station BART Analysis Update, February 11, 2011. NMED exhibit 7t of the 2011 RH SIP revision

[23] Table 2 was constructed by PNM to incorporate costs due to sorbent injection, as a means of SO_3 control in conjunction with SCR. This was done by PNM in response to a request by NMED. As NMED notes in its BART analysis, it understands there are SCR catalysts now on the market that are capable of a much smaller SO_2 to SO_3 conversion. Furthermore, our analysis contained in the TSD to the FIP and the FIP indicate that anticipated SO_3 emissions to be much lower than estimated by PNM and finds that sorbent injection is not necessary. The TSD for our FIP, ''Visibility Modeling for BART Determination: San Juan Generating Station, New Mexico,'' and the proposed and final FIP are available in the docket to our FIP and also included in the docket for this action.

TABLE 2—NEW MEXICO'S ANALYSIS OF THE IMPACTS AND COST-EFFECTIVENESS OF NO_X CONTROL TECHNOLOGIES

Control technology	Emission limit lb/MMBtu	NO_X emissions (tpy)	NO_X reduction (tpy)	Total capital investment (TCI) (1,000$)	Total annualized cost (TAC) (1,000$)	Cost effectiveness ($/ton)	Incremental cost effectiveness ($/ton)	Energy impacts (1,000$)	Non-air impacts (1,000$)
Unit 1									
SCR + sorbent	0.05	690	3,450	180,862	22,165	6,425	6,749	746	[1] NA
SNCR/SCR Hybrid	0.18	2,484	1,656	110,683	16,816	10,154	35,917	706	1,762
ROFA/Rotamix	0.20	2,760	1,380	30,790	6,902	5,001	7,982	1,413	3
Rotamix (SNCR)	0.23	3,174	966	11,822	3,597	3,723	116	51	4
SNCR	0.23	3,174	966	17,392	5,400	5,590	80	43	[1] NA
ROFA	0.26	3,588	552	19,256	3,549	6,429	.....	1,363	[1] NA
Consent Decree	0.30	4,140	1,254	14,580	1,422	1,134	NA	NA1	[1] NA
Pre-CD	0.43	5,394	NA	NA	NA	NA	NA	NA	[1] NA
Unit 2									
SCR + sorbent	0.05	687	3,433	203,360	24,562	7,157	7,755	729	[1] NA
SNCR/SCR Hybrid	0.18	2,471	1,648	115,151	17,306	10,503	37,887	346	1,762
ROFA/Rotamix	0.20	2,746	1,373	30,790	6,902	5,027	8,024	1,413	3
Rotamix (SNCR)	0.23	3,158	961	11,822	3,597	3,742	117	51	4
SNCR	0.23	3,158	961	17,392	5,400	5,618	80	43	[1] NA
ROFA	0.26	3,570	549	19,256	3,549	6,462	.....	1,363	[1] NA
Consent Decree	0.30	4,119	2,060	14,126	1,378	669	NA	[1] NA	[1] NA
Pre-CD	0.45	6,179	NA	NA	NA	NA	NA	NA	[1] NA
Unit 3									
SCR + sorbent	0.05	1,072	5,359	264,208	32,585	6,080	6,313	1,107	[1] NA
SNCR/SCR Hybrid	0.18	3,859	2,572	178,759	26,604	10,342	39,171	507	2,658
ROFA/Rotamix	0.20	4,287	2,144	35,724	9,810	4,576	7,498	2,810	5
Rotamix (SNCR)	0.23	4,931	1,501	13,919	4,988	3,324	−378	84	5
SNCR	0.23	4,931	1,501	17,163	8,224	5,480	−578	51	[1] NA
ROFA	0.26	5,574	857	22,081	5,231	6,100	.....	2,725	[1] NA
Consent Decree	0.30	6,431	2,573	12,715	1,240	482	NA	[1] NA	[1] NA
Pre-CD	0.42	9,004	NA	NA	NA	NA	NA	NA	[1] NA
Unit 4									
SCR + sorbent	0.05	1,052	5,257	235,940	29,508	5,613	5,623	1,102	[1] NA
SNCR/SCR Hybrid	0.18	3,786	2,524	171,412	25,808	10,226	38,034	507	2,658
ROFA/Rotamix	0.20	4,206	2,103	35,724	9,810	4,664	7,643	2,810	5
Rotamix (SNCR)	0.23	4,837	1,472	13,919	4,988	3,388	−385	84	5
SNCR	0.23	4,837	1,472	17,163	8,224	5,587	−590	51	[1] NA
ROFA	0.26	5,468	841	22,081	5,231	6,218	.....	2,725	[1] NA
Consent Decree	0.30	6,309	2,524	12,870	1,256	498	NA	[1] NA	[1] NA
Pre-CD	0.42	8,833	NA	NA	NA	NA	NA	NA	[1] NA

[1] PNM performed an impact analysis for these technologies and incorporated any monetized energy or non-air environmental impacts into the cost analysis.

The 2013 RH SIP revision includes a new analysis to inform the State's BART determination and its weighing of the statutory factors for BART. This analysis contemplates three scenarios, SCR on all four units, SNCR on all four units, and the State Alternative, which includes unit shutdowns and SNCR on the remaining operating units. Table 3 summarizes the cost and impact analysis of the three scenarios and relies on aggregating the unit costs, as appropriate, from Table 2. The remaining useful life of the units with installed control technologies (units not being retired) was determined to be 30 years and therefore, the statutory factor of the remaining useful life of the source does not weigh in favor of any option over another. New Mexico estimated the cost-effectiveness of the State Alternative at $1,049/ton compared to $6,218/ton for the four SCR scenario, and $5,561/ton for the four SNCR scenario.

TABLE 3—NEW MEXICO'S ANALYSIS OF THE IMPACTS AND COST-EFFECTIVENESS OF THE THREE NO_X CONTROL SCENARIOS

Control scenario	NO_X emission level	NO_X emissions (TPY)	NO_X emission reduction (TPY)	Total capital investment (TCI) (1000$)	Total annualized cost (TAC) (1000$)	Cost effectiveness ($/ton)	Energy impacts
SCR All Units (FIP)							
SJGS 1–SCR	0.05	690	3,450	180,862	22,165	6,425	746
SJGS 2–SCR	0.05	687	3,433	180,862	24,562	7,157	729
SJGS 3–SCR	0.05	1,072	5,359	264,208	32,585	6,080	1,107
SJGS 4–SCR	0.05	1,052	5,258	235,940	29,508	5,613	1,102

TABLE 3—NEW MEXICO'S ANALYSIS OF THE IMPACTS AND COST-EFFECTIVENESS OF THE THREE NO_X CONTROL SCENARIOS—Continued

Control scenario	NO_X emission level	NO_X emissions (TPY)	NO_X emission reduction (TPY)	Total capital investment (TCI) (1000$)	Total annualized cost (TAC) (1000$)	Cost effectiveness ($/ton)	Energy impacts
Total	.....	*3,500*	*17,500*	*861,871*	*108,820*	*6,218*	*3,683*
SNCR All Units (State's 2011 BART Determination)							
SJGS 1–SNCR	0.23	3,174	966	17,392	5,400	5,590	43
SJGS 2–SNCR	0.23	3,158	961	17,392	5,400	5,618	43
SJGS 3–SNCR	0.23	4,931	1,501	17,163	8,224	5,480	51
SJGS 4–SNCR	0.23	4,837	1,472	17,163	8,224	5,587	51
Total	.....	*16,100*	*4,900*	*69,111*	*27,248*	*5,561*	*187*
SNCR Units 1&4 (State Alternative)							
SJGS 1–SNCR	0.23	3,174	966	17,392	5,400	5,590	43
SJGS 2–retire	n/a	n/a	4,119	n/a	n/a	n/a	n/a
SJGS 3–retire	n/a	n/a	6,431	n/a	n/a	n/a	n/a
SJGS 4–SNCR	0.23	4,837	1,472	17,163	8,224	5,587	51
Total	.....	*8,011*	*12,989*	*34,556*	*13,624*	*1,049*	*94*

New Mexico also examined the energy and non-air quality environmental impacts of the three scenarios. Compared to current operations and the four SCR and four SNCR scenarios, the State Alternative results in:

- Up to a 53% decrease in water usage at the facility (from 21,000 acre-feet to 10,161 acre-feet);
- A wastewater generation reduction of up to 50%;
- Reduced energy and non-air quality environmental impacts from decreased raw material usage and resource savings, including reduced limestone mining, diesel refining, carbon activation, and coal mining associated with operations at SJGS; [24] and
- 50% reduction in solid waste (from 1.71 million tons per year to 854,130 tons per year).

New Mexico determined that these energy and non-air quality environmental benefits weighed heavily in favor of the State Alternative over the four SCR and four SNCR scenarios. In addition to the energy and non-air quality environmental benefits outlined above, New Mexico noted that the State Alternative will also result in a substantial decrease in PM emissions from coal processing, handling, and transportation, as well as reductions in greenhouse gas emissions, mercury and other hazardous air pollutant emissions, and acid gas emissions from the facility.

v. Evaluation of Visibility Impacts

The final factor to consider in the BART analysis is the degree of visibility improvement anticipated to result from the BART control options. As part of its 2011 RH SIP revision, New Mexico submitted the initial and revised visibility modeling performed by PNM [25] for the SJGS that included modeled visibility impacts at the sixteen Class I Areas within 300 km of the facility. For a detailed description and our review of this modeling, see the Technical Support Document (TSD) that accompanied the proposed FIP (referred to as the ''2011 EPA TSD'').[26] In this earlier analysis, SCR was modeled at an emission rate of 0.07 lb/MMBtu.

The PNM submitted an updated visibility analysis (see Exhibit 6 of the 2013 RH SIP revision) to New Mexico for evaluation that included revised emission rates for SO_2, and H_2SO_4, and a revised background ammonia concentration of 1 ppb. The background ammonia concentration of 1 ppb is consistent with the background ammonia concentration used in our earlier modeling analysis and detailed in the 2011 EPA TSD. The SO_2 emission rate for the four SCR and four SNCR control scenarios was updated to 0.15 lb/MMBtu, consistent with the EPA modeling in support of the FIP, reflective of the emission rate determined by the EPA in its August 22, 2011, final action to be necessary to satisfy the CAA's visibility transport requirements, and set in the submitted 2011 VT SIP revision. The SO_2 emission rate for the State Alternative was updated to reflect the more stringent SO_2 limit that results from implementation of the State Alternative.[27] The H_2SO_4 modeled emission rates were revised to be consistent with the estimated current emission rates calculated by the EPA and detailed in the 2011 EPA TSD. The 2013 analysis used the same modeling protocol followed by the EPA in support of the FIP and detailed in the 2011 EPA TSD. This modeling compared the three control scenarios mentioned above. These modeling scenarios are summarized in Table 21 of Appendix D of the 2013 RH SIP revision. A description of the modeling protocol used for both the analyses can be found in Appendix D of the 2013 RH SIP revision beginning at page 19. A summary of visibility modeling inputs for both analyses can be found in Tables 16 through 19 of Appendix D and in section 7.6 of Exhibit 6 of the 2013 RH SIP revision. The visibility modeling protocol and model inputs are also summarized in the 2014 EPA TSD.[28]

[24] Table 23 of Appendix D of the 2013 RH SIP revision quantifies the reduction in raw material usage.

[25] PNM's 2007 BART analysis and subsequent analyses are contained in NMED Exhibits 7a through 7t of the 2011 RH SIP revision.

[26] Technical Support Document, Visibility Modeling for BART Determination: San Juan Generating Station, New Mexico, EPA Region 6. Docket No. EPA–R06–OAR–2010–0846 and available in the docket for this action.

[27] We note that the emission limit for SO_2 of 0.10 lb/MMBtu for Units 1 and 4 is effective as of March 5, 2014.

[28] Technical Support Document for the PNM BART Revision to the New Mexico Regional Haze

Table 4 below shows the results of New Mexico's visibility modeling. This modeling summary depicts the visibility improvement for the 98th percentile [29] of modeled results over the baseline for each control scenario. In comparing the four-SCR scenario to the State Alternative, the largest average difference over three years is 0.47 dv at Mesa Verde, 0.24 dv at Canyonlands, and 0.13 dv at Weminuche. The average difference at the 13 other Class I areas is less than 0.1 dv between the two control scenarios.

TABLE 4—MODELED AVERAGE VISIBILITY IMPROVEMENT OF THE 98TH PERCENTILE DELTA-DV IMPACTS FROM 2001–2003

Class I area	Distance to SJGS (km)	Improvement over baseline			Improvement of 4 SCR over 4 SNCR	Improvement of 4 SCR over State alternative
		4 SCR	4 SNCR	State alternative		
Arches	222	1.30	0.48	1.23	0.82	0.07
Bandelier Wilderness	210	0.77	0.28	0.78	0.49	−0.01
Black Canyon of the Gunnison Wilderness	203	0.77	0.28	0.72	0.49	0.05
Canyonlands	170	2.02	0.64	1.78	1.38	0.24
Capitol Reef	232	0.70	0.25	0.74	0.45	-0.04
Grand Canyon	285	0.30	0.10	0.34	0.20	−0.04
Great Sand Dunes National Monument	269	0.77	0.29	0.74	0.48	0.03
La Garita Wilderness	169	1.01	0.37	0.95	0.64	0.06
Maroon Bells-Snowmass Wilderness	271	0.35	0.13	0.35	0.22	0.00
Mesa Verde	40	2.91	0.61	2.44	2.30	0.47
Pecos Wilderness	248	0.68	0.24	0.69	0.44	−0.01
Petrified Forest	213	0.26	0.11	0.29	0.15	−0.03
San Pedro Parks Wilderness	155	1.38	0.47	1.29	0.91	0.09
West Elk Wilderness	216	0.87	0.31	0.79	0.56	0.08
Weminuche Wilderness	98	1.55	0.47	1.42	1.08	0.13
Wheeler Peak Wilderness	258	0.64	0.25	0.67	0.39	−0.03

In accordance with section 169A of the CAA, the RHR, and the BART Guidelines, New Mexico weighed the five statutory factors in comparing the State Alternative against the four-SCR and four-SNCR control scenarios. New Mexico concluded that the State Alternative results in significant visibility benefits that are comparable to the four-SCR scenario of the FIP and much greater than the four-SNCR scenario, while also reducing overall energy and non-air quality environmental impacts at a much lower capital expenditure, annualized costs, and average cost-effectiveness. As a result, New Mexico selected the State Alternative as BART. New Mexico determined that the schedule provided in the 2013 RH SIP revision will result in the implementation of BART as expeditiously as practicable, as required under 40 CFR 51.308(e)(1)(iv). New Mexico selected a NO_X BART emission limit, achievable through installation and operation of an SNCR retrofit on Units 1 and 4 and the shutdown of units 2 and 3, which can be found in the preconstruction permit at A112C. In accordance with the Term Sheet, the permit requires:

- Fifteen (15) months after the EPA final approval of the SIP revision, but no earlier than January 31, 2016, the PNM will complete installation of SNCR technology on the SJGS Units 1 and 4 and comply with an average nitrogen oxide (NO_X) emission limit for Units 1 and 4 of 0.23 lb/MMBtu on a daily rolling 30-day average basis.
- Retirement of SJGS Units 2 and 3 by December 31, 2017.

B. Our Evaluation of New Mexico's NO_X BART Determination

The FIP that became effective on September 21, 2011 previously established NO_X BART for SJGS at the emission rate of 0.05 lb/MMBtu on a 30 boiler operating day average, achievable through installation and operation of an SCR retrofit on all four units (76 FR 52388; August 22, 2011).[30] At the outset, we note that the NO_X BART determination for the SJGS that was submitted by New Mexico to replace the FIP cannot be disapproved solely on the basis that it differs from the determination established in the FIP. The CAA defines a FIP as ''a plan (or portion thereof) promulgated by the Administrator to fill all or a portion of a gap or otherwise correct all or a portion of an inadequacy in a [SIP].'' CAA section 302(y). Because a FIP is intended as a gap-filling measure, the EPA encourages states to submit approvable SIP revisions that correct the deficiencies that a given FIP remedied. Such a SIP revision need not adopt the same suite of control options and techniques as the EPA's FIP, nor does it necessarily have to be as stringent as the EPA's FIP in all instances. Rather, when a State submits a SIP revision to the EPA with the intention of replacing a FIP, the EPA must approve the SIP revision so long as the SIP revision does not ''interfere with any applicable requirement concerning attainment and reasonable further progress . . . or any other applicable requirement of [the Act].'' CAA section 110(*l*). In regards to regional haze SIPs and the statutory requirement to make BART determinations for certain older major stationary sources, the EPA must approve a State's SIP revision so long as the State complies with the CAA's visibility protection provisions, the RHR, and the BART Guidelines,[31] and makes a reasonable control determination based on the weighing of the five factors. We have analyzed New Mexico's new NO_X BART determination with these requirements in mind.

We propose to conclude that New Mexico has met the requirements of 40 CFR 51.309(d)(4)(vii) and the BART

State Implementation Plan and Federal Implementation Plan, April 2014. (2014 EPA TSD).

[29] The visibility analysis focuses on the 98th percentile of modeled results to avoid giving undue weight to any extreme results. *See* 70 FR 39121.

[30] The proposed FIP, the TSD, and Final Rule are added to the docket for this rule making. These records contain significant technical analyses that we consider available to commenters for this proposed action on the State's submittal.

[31] The BART determination for SJGS, as a fossil-fuel fired power plant having a total generating capacity greater than 750 megawatts, must be made pursuant to the BART Guidelines. CAA section 169A(b)(2).

Guidelines in determining NO_X BART for SJGS. This conclusion is based on our review of the 2013 RH SIP revision, including the applicable permit conditions and all supporting analyses identified above. We also propose to withdraw the FIP requirements pertaining to regional haze and rescind the emission limits for NO_X and H_2SO_4,[32] as well as the accompanying compliance schedule that would otherwise apply to SJGS. Upon final approval of the 2013 RH SIP revision, the FIP requirements may be withdrawn through a separate Administrator-signed final action. Additionally, our final approval action will moot the 2011 RH SIP revision concerning the four-SNCR scenario.

New Mexico's revised BART determination includes a control scenario proposed by PNM that includes the shutdown of two of the four units at the SJGS by December 31, 2017. As such, the control scenario in this analysis is different than the control scenarios contemplated in the FIP. Although the EPA's regulations do not require states to consider a fuel switch or a shutdown of an existing unit as part of their BART analyses, a state may include such options in its analysis where a company voluntarily offers such measures as a strategy for reducing emissions. As discussed previously, New Mexico determined that the State Alternative was NO_X BART for the SJGS. New Mexico made this determination based on an analysis of the five BART factors. Their analysis of the five BART factors included consideration of the high incremental cost-effectiveness and low incremental visibility improvement of the FIP compared with the State Alternative, as well as the additional non-air quality environmental and energy benefits of the latter. The energy and non-air quality environmental impacts, such as reduced solid waste generation, waste water generation, and water and energy usage, associated with the State Alternative scenario support the conclusion that the State Alternative is BART.[33] New Mexico also noted additional air quality benefits associated with shutting down Units 2 and 3. While important, these other air quality benefits, such as reduced ozone and PM formation, reduced greenhouse gases, and reduced mercury deposition, are not among the BART factors, and were not considered in our evaluation of the State's NO_X BART determination.

While the BART Guidelines require states to analyze visibility improvement on a facility-wide basis,[34] states have typically analyzed the costs of compliance and other BART factors for each individual emission unit that comprises the BART-eligible source. Nevertheless, we do not interpret the BART Guidelines as requiring states to use this approach with regards to analyzing the other BART factors. Instead, we believe that states have the flexibility to analyze these factors on either a unit-specific or facility-wide basis, depending on the unique facts of each case. Here, we believe that New Mexico's decision to evaluate the BART factors on a facility-wide basis was a reasonable way to take into account the visibility, energy, and non-air quality environmental benefits associated with unit shutdowns. Had New Mexico used a unit-specific approach, these benefits would have been discounted altogether, which would unfairly prevent states and sources from considering unit shutdowns as a viable strategy for achieving BART. New Mexico's approach is also consistent with the State's separate objective to meet the good-neighbor requirement of the CAA for visibility, i.e., to ensure that collective emissions from the SJGS are not interfering with other states' measures to protect visibility.

i. Visibility Analysis

We reviewed the CALPUFF modeling that supported the visibility impact analysis in the 2013 RH SIP revision. The revised CALPUFF modeling followed a modeling protocol consistent with the EPA guidance and recommendations, as well as the modeling performed by the EPA in support of the FIP. Modeled emission rates were revised to reflect SCR control efficiency evaluated in our FIP analysis, as well as the sulfuric acid emission rate estimated using the EPA's methodology as described in the 2011 EPA TSD. Please see Appendix D and Exhibit 6 of the 2013 RH SIP revision, and the EPA's TSDs for more details concerning the modeling inputs, model results, and New Mexico's evaluation. We note that New Mexico modeled the visibility improvement from the State Alternative by including the additional SO_2 reductions attributable to the implementation of the State Alternative, but did not include those reductions in the other modeling scenarios.[35] While we have some concerns with the appropriateness of including SO_2 reductions from Units 1 and 4 in one of the NO_X BART control options analyzed, rather than as part of the facility's baseline emissions, we note that the visibility benefits associated with the State Alternative are predominately due to NO_X reductions resulting from installation of SNCR and the significant emission reductions associated with the shutdown of Units 2 and 3. As a result, we do not think the inclusion of these additional SO_2 emission reductions meaningfully impact our evaluation of the visibility benefits of the evaluated control scenarios.

The modeling results indicate the largest differences in average 98th percentile impacts over the three modeled years between the four-SCR scenario and the State Alternative are 0.47 dv at Mesa Verde, 0.24 dv at Canyonlands, and 0.13 dv at Weminuche. The average difference at the 13 other Class I areas is less than 0.1 dv between the two control scenarios. The largest differences in maximum impacts over the three modeled years are 0.47 dv at Mesa Verde, 0.42 dv at Canyonlands, 0.29 dv at Weminuche, and 0.24 dv at Arches. An analysis of the difference in the average number of days with impacts greater than 0.5 dv and 1 dv shows that the State Alternative results in nine fewer days with impacts greater than 0.5 dv at Mesa Verde, but five more days with impacts greater than 1.0 dv. The number of days with impacts greater than 0.5 dv and 1 dv are summarized in the table below. Eleven Class I areas show no difference in the number of impacted days over 1 dv between the four-SCR scenario and the State Alternative. The modeled average number of days impacted over 0.5 dv between these two scenarios is 1 day or less for 11 of the Class I areas examined, with several Class I areas experiencing fewer days over the 0.5 dv threshold under the State Alternative control scenario.

[32] Since we are proposing to approve the State Alternative that does not include SCR operation, we are also proposing to withdraw the H_2SO_4 emission limit in the FIP as it is no longer necessary to protect visibility impairment from the facility due to emissions of H_2SO_4.

[33] [T]he State must take into consideration the technology available, the costs of compliance, the energy and non-air quality environmental impacts of compliance, any pollution control equipment in use at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. 40 CFR 51.308(e)(1)(ii)(A).

[34] The BART Guidelines state that ''you must conduct a visibility improvement determination for the *source(s)* as part of the BART determination.'' 40 CFR part 51, app. Y, section IV.D.5 (emphasis added).

[35] The SO_2 emission limit of 0.10 lb/MMBtu for Units 1 and 4 is effective as of March 5, 2014.

TABLE 5—AVERAGE NUMBER OF DAYS IMPACTED OVER 0.5 AND 1.0 DV

Class I area	Average number of days impacted over 0.5 dv			Average number of days impacted over 1 dv		
	4 SCR	State alternative	Difference	4 SCR	State alternative	Difference
Arches	13	14	−1	5	8	−3
Bandelier Wilderness	6	7	−1	1	1	0
Black Canyon of the Gunnison Wilderness	4	6	−2	1	1	0
Canyonlands	23	22	1	8	10	−2
Capitol Reef	6	6	0	2	2	0
Grand Canyon	2	2	0	0	0	0
Great Sand Dunes National Monument	3	4	−1	1	1	0
La Garita Wilderness	7	9	−2	0	2	−2
Maroon Bells-Snowmass Wilderness	0	0	0	0	0	0
Mesa Verde	109	100	9	45	50	−5
Pecos Wilderness	4	4	0	0	0	0
Petrified Forest	1	0	1	0	0	0
San Pedro Parks Wilderness	19	19	0	5	5	0
West Elk Wilderness	3	6	−3	0	1	−1
Weminuche Wilderness	35	41	−6	4	5	−1
Wheeler Peak Wilderness	4	3	1	0	0	0

New Mexico found, and we agree, that the four-SCR scenario in the FIP results in only slightly more visibility benefit than the State Alternative at a few of the examined Class I areas when both modeled improvement at each Class I area and number of days with significant impacts are considered. For many of the Class I Areas, the difference in visibility impacts between the two scenarios is negligible. While we have some concern with the modeled visibility differences between the two control scenarios for Mesa Verde and Canyonlands, we propose to find that the State's decision to select the State Alternative was ultimately reasonable, especially considering the costs of compliance and the energy and non-air quality environmental impacts of the two scenarios.

ii. Cost Analysis

We also reviewed the cost-effectiveness analysis submitted with the 2013 RH SIP revision. The BART Guidelines require enhanced documentation to justify costs that significantly deviate from known costs of recent retrofits and to justify departures from the Control Cost Manual.[36] We note that the FIP originally concluded that the PNM had not provided the requisite justification or documentation for a variety of cost items in their previous cost analyses. In this instance, the cost evaluation included with the 2013 RH SIP revision is limited to the 2013 PNM Report submitted as Exhibit 6 of the 2013 RH SIP revision and the Sargent and Lundy SNCR and SCR Cost Estimates[37] report, submitted as Appendix C of Exhibit 6. New Mexico has not provided any additional documentation in the record for the various line items in its updated SCR cost estimates. Therefore, as a general matter, we cannot conclude that certain line items in SCR cost estimates are well supported. In particular, some of our more significant areas of concern are: Inclusion of costs for a sorbent injection system, how the cost of the balanced draft system was assigned to SCR costs, assumptions for the amounts of fees and contingencies that account for almost 35% of the total project cost, and some of the assumptions supporting the design of the SCR box and projected catalyst demands.

While we continue to have concerns with the updated cost analysis for SCR in the 2013 RH SIP revision, we do not believe that these concerns render New Mexico's determination unreasonable. Even if we were to use the cost of the four-SCR scenario estimated by the EPA in support of the FIP ($345 million for installation of SCR on all four units), there is a large difference between the four-SCR scenario and the State Alternative, which is estimated to cost $34.5 million. Moreover, the small difference in visibility benefits between the two scenarios and the environmental and energy benefits of the State Alternative continue to support the State's determination that the State Alternative is BART. New Mexico came to a similar conclusion when considering cost estimates provided by the National Park Service (NPS), which found that the four-SCR scenario would cost approximately $374 million.[38] Many of our concerns with New Mexico's SCR cost estimates either are not applicable to its SNCR cost estimates (e.g., sorbent injection and balanced draft) or have a much smaller impact on the total estimated cost. Capital costs comprise a relatively small portion of the total cost of SNCR, where the bulk of the annual costs are due to the cost of sorbent. Consequently, we have chosen to rely on New Mexico's cost estimates for SNCR.

New Mexico estimated the annualized cost of the State Alternative to be $13,624,000/yr to reduce NO_X emissions by 12,989 tons/yr, resulting in a cost-effectiveness of $1,049/ton. New Mexico estimated the annualized cost of the four-SCR scenario to be $108,820,000/yr to reduce NO_X emissions by 17,500 tons/yr, resulting in a cost-effectiveness of $6,218/ton. The incremental cost-effectiveness to achieve the additional reduction of 4511 tons/yr between the two scenarios is $21,103/ton. If we use the costs for SCR from our FIP, then the annualized cost of the four-SCR scenario becomes $39,265,670/yr, resulting in an incremental cost-effectiveness of $5,684/ton. The latter incremental cost-effectiveness value is in the range of costs that states and the EPA have found to be reasonable in other regional haze actions. Nevertheless, when these costs are considered in combination with the other BART factors, including the marginal visibility benefits of the four-SCR scenario at most Class I areas and

[36] See 70 FR 39168 and 39166 n.15.

[37] Public Service of New Mexico San Juan Generating Station Units 1, 2, 3 & 4, SNCR and SCR Cost Estimates, Final Report, Sargent and Lundy, March 29, 2013.

[38] See NMED response to comments from the NPS available as NMED Exh. 14 of the 2013 RH SIP revision.

the unique energy and non-air quality environmental benefits associated with the State Alternative, we propose to find that the State made a reasonable determination.

iii. EPA's Conclusion

In conclusion, we propose to find that when cost, energy and non-air quality environmental impacts, and anticipated visibility benefits are taken into consideration, New Mexico's determination that the State Alternative is BART is reasonable. The State Alternative results in substantial visibility benefits and energy and non-air quality environmental benefits, and is highly cost-effective. The incremental visibility benefit of the four-SCR scenario of the FIP over the State Alternative is small at most Class I areas, and New Mexico reasonably concluded that this small additional visibility benefit did not justify the increase in costs associated with installation of SCR on all four units. We propose to approve New Mexico's 2013 RH SIP revision, including the 2013 permit conditions found at A112C that set the emission limits for Units 1 and 4, provide the methodologies for calculating the two units' emission rates and showing compliance, require the shutdown of Units 2 and 3, and establish the testing and monitoring requirements, and we propose to rescind the FIP requirements for NO_X BART. Upon final approval, the FIP requirements addressing NO_X BART for the SJGS, including the H_2SO_4 emission limit,[39] may be withdrawn through a separate Administrator-signed final action. Additionally, our final approval action will moot the portions of the 2011 RH SIP revision not related to the State Alternative.

IV. Our Analysis of New Mexico's Interstate Visibility Transport SIP Provisions

We are also proposing to approve the 2011 VT SIP revision, as revised in 2013, as addressing the ''good neighbor'' provisions of CAA section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS and the $PM_{2.5}$ NAAQS with respect to visibility. In developing its 2011 VT SIP revision, as revised in 2013, New Mexico took note that the EPA's FIP had articulated that the Western Regional Air Partnership (WRAP) regional planning organization (RPO) assumptions for the SJGS of 0.27–0.28 lbs/MMBtu for NO_X and 0.15 lbs/MMBtu for SO_2 were the appropriate criteria for approvability of a visibility transport SIP and that New Mexico sources other than the SJGS are sufficiently controlled to eliminate interference with the visibility programs of other states because the federally enforceable emission limits for these sources are consistent with those relied upon in the WRAP modeling. In developing their regional haze SIPs, New Mexico and other member states collaborated through the WRAP. Each state developed its regional haze SIP and RPGs based on the WRAP modeling and technical analysis. The WRAP modeling was based in part on the emissions reductions each state intended to achieve by 2018. As explained in the proposed and final FIP notices, we believe that the analysis conducted by the WRAP provides an appropriate means to ensure that emissions from sources in New Mexico are not interfering with the visibility programs of other states, as contemplated in CAA section 110(a)(2)(D)(i)(II). In developing their visibility projections using photochemical grid modeling, the WRAP states assumed a certain level of emissions from sources within New Mexico. The EPA's finalized FIP required a 0.15 lbs/MMBtu limit for SO_2 for SJGS, but required a more stringent control of 0.05 lbs/MMBtu for NO_X in order to satisfy the NO_X BART requirements for the SJGS.

The 2011 VT SIP revision, as revised in 2013, discusses the WRAP modeling, uses the legal rationale relying upon the reductions assumed in the WRAP modeling, and determines that all sources are sufficiently controlled. It includes a revised 2013 permit for the SJGS reflecting that the State Alternative requires installation of SNCR at Units 1 and 4 at SJGS, with a limit of 0.23 lbs/MMBtu for NO_X, and the shutdown of Units 2 and 3 in 2017. These emission limits for the SJGS will well exceed the WRAP assumptions relied upon by other states. The 2011 VT SIP revision, as revised in 2013 also provides that SO_2 emissions for the SJGS will be controlled at the level of 0.10 lbs/MMBtu at Units 1 and 4, further reducing visibility impairment.

We are proposing to approve the 2011 VT SIP revision, as revised in 2013, thereby finding that (1) emissions from all sources in New Mexico and (2) the SO_2 and NO_X emission limits for units 1 and 4 combined with the shutdown of units 2 and 3 as contained in the 2013 preconstruction permit for the SJGS at A112C, prevent SO_2 and NO_X emissions from New Mexico sources from interfering with the visibility programs of other states. Therefore, we are proposing to withdraw the provisions of the FIP that address SO_2 and NO_X emissions for the SJGS for the purpose of meeting the ''good neighbor'' requirements of CAA Section 110(a)(2)(D)(i)(II) with respect to visibility. Upon final approval of the 2011 Visibility Transport SIP revision, as revised in 2013, the FIP requirements pertaining to SO_2 and NO_X emissions for visibility transport may be withdrawn through a separate Administrator-signed final action. Additionally, our final approval action approving Scenario C in section A112 of the permit as a source-specific SIP revision into the New Mexico SIP for RH and Visibility Transport will moot scenarios A and B in the permit.

V. EPA's Analysis of 110(l)

Section 110(l) of the CAA states that ''[t]he Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of this chapter.'' 42 U.S.C. 7410(l). The EPA does not interpret section 110(l) to require a full attainment or maintenance demonstration before any changes to a SIP may be approved. Generally, a SIP revision may be approved under section 110(l) if the EPA finds that it will at least preserve status quo air quality, particularly where the pollutants at issue are those for which an area has not been designated nonattainment.

We do not believe an approval, as proposed, will interfere with the CAA requirements for BART or for preventing interference with other states' programs to protect visibility because our proposal is supported by an evaluation that those CAA requirements are met. An approval will not result in any substantive changes to the BART requirements or other CAA requirements, and the SJGS units will continue to be subject to the CAA requirements for BART. The SIP replaces a federal determination that was based on different underlying facts. We also believe that approval of the submitted SIP revision will not interfere with attainment and maintenance of the NAAQS. The submitted SIP revision, if approved, will reduce emissions from the current levels. The area has not been designated nonattainment for any of the national ambient air quality standards and all monitors in the area are currently monitoring attainment of the standards. Moreover, the SIP revision being approved here will result in reduced NO_X emissions over current

[39] As earlier noted, because we are proposing to approve the State Alternative that does not include SCR operation, we are also proposing to withdraw the H_2SO_4 emission limit in the FIP, as it is no longer necessary to prevent visibility impairment from the facility due to emissions of H_2SO_4.

levels and thus result in reduced ozone levels in an area that already is meeting the ozone standard. In addition, the State's plan, because of the shutdown of two units and the lower allowed SO_2 emissions from the remaining units, will result in less SO_2 emissions than our FIP. Thus, approval of the State's plan will not contribute to conditions of nonattainment or interfere with maintenance of any standard.

VI. EPA's Conclusions and Proposed Action

The EPA is proposing to approve the NO_X BART determination for the SJGS included in the 2013 RH SIP revision and the accompanying permit conditions at A112C (as described below). This conclusion is based on our review of the 2013 RH SIP revision, including its applicable permit conditions, and technical data and supporting analyses in it and the 2011 RH SIP revision that pertain to the 2013 NO_X BART determination.[40] If fully approved by the EPA, the State Alternative supersedes the State's previous NO_X BART determination included in the 2011 RH SIP revision, and the EPA's duty to act on the 2011 RH SIP revision's NO_X BART determination becomes moot.

The EPA is also proposing to approve the 2011 Visibility Transport SIP revision, as revised in 2013, that includes the accompanying revised 2013 permit conditions at A112C for the SJGS (as described below) because they adequately address the ''good neighbor'' provisions of CAA section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS and the $PM_{2.5}$ NAAQS with respect to visibility. If Scenario C in section A112 of the permit is fully approved into the New Mexico SIP as a source-specific SIP revision to meet the RH and Visibility Transport CAA requirements, scenarios A and B in the permit become moot.

As required by Section 110(a)(2)(A) which requires SIPs to have enforceable emissions limitations necessary or appropriate to meet the applicable requirements of the Act, New Mexico has incorporated emissions limits and requirements for unit shutdowns into a 2013 preconstruction permit that was submitted as part of the SIP revision. Specifically, we are proposing to approve as a source-specific requirement of the New Mexico SIP for regional haze and visibility transport, section A112C of the 2013 SJGS permit into the New Mexico SIP. The fuller permit contains three independent scenarios under section A112: A, B and C. Under the terms of the permit as explained in the background section of the permit, Scenario C becomes effective upon the EPA approval of the 2013 RH SIP. Section A112 provides that when one scenario is effective, the other two scenarios are moot. If we finalize our approval, Scenario C requires, among other things, the SO_2 emission limit of 0.10 lb/MMBtu and the NO_X emission limit of 0.23 lb/MMBtu for Units 1 and 4 of the SJGS, and the shutdown of Units 2 and 3 by December 31, 2017.[41] If New Mexico wishes to revise any portion of the permit's A112C, other than making the emission limits more stringent, it must adopt and submit the permit change as a revision to the New Mexico SIP.

We are proposing to withdraw the FIP, but note that the finalization of the withdrawal must follow a finalized approval of the 2013 RH SIP revision and the 2011, as revised in 2013, Visibility Transport SIP revision and be accomplished via a separate Administrator-signed action. The EPA is taking this action under section 110 and part C of the CAA.

VII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing the SIP submissions, the EPA's role is to act on state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law.

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

This proposed action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* because this proposed SIP action under section 110 of the CAA will not in-and-of itself create any new information collection burdens but simply approves or disapproves certain State requirements for inclusion into the SIP. Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. This rule does not impose any requirements or create impacts on small entities. This proposed SIP action under section 110 of the CAA will not in-and-of itself create any new requirements but simply approves or disapproves certain State requirements for inclusion into the SIP. Accordingly, it affords no opportunity for the EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. The fact that the CAA prescribes that various consequences (e.g., emission limitations) may or will flow from this action does not mean that the EPA either can or must conduct a regulatory flexibility analysis for this action. Therefore, this action will not have a significant economic impact on a substantial number of small entities.

We continue to be interested in the potential impacts of this proposed rule on small entities and welcome

[40] We are not proposing action on the 2011 NO_X BART determinations or materials relating to the 2011 determination that have no bearing on the 2013 NO_X BART determination—such items will be moot and no longer require action if the rulemaking for proposed approval is finalized as today proposed.

[41] The permit, by its language, further requires the SJGS to diligently seek non-EPA regulatory approvals to shut down the units by the prescribed date. The PNM's efforts to get necessary regulatory approvals may be a consideration in any potential enforcement action should the shutdowns not be accomplished by the end of 2017.

comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local, or tribal governments or the private sector.'' The EPA has determined that the proposed action does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This action proposes to approve or disapprove pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires the EPA to develop an accountable process to ensure ''meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves or disapproves certain state requirements for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175, Coordination With Indian Tribal Governments

This proposed action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP submittals the EPA is proposing to approve or disapprove would not apply in Indian country located in the state, and the EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action. Consistent with the EPA policy the EPA nonetheless is offering consultation to tribes regarding this rulemaking action. The EPA will respond to relevant comments in the final rulemaking action.

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

The EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This proposed action is not subject to Executive Order 13045 because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This proposed SIP action under section 110 of the CAA will not in-and-of itself create any new regulations but simply approves or disapproves certain state requirements for inclusion into the SIP.

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

This proposed action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

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

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

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

The EPA lacks the discretionary authority to address environmental justice in this proposed action. In reviewing SIP submissions, the EPA's role is to approve or disapprove state choices, based on the criteria of the CAA. Accordingly, this action merely proposes to approve or disapprove certain state requirements for inclusion into the SIP under section 110 of the CAA and will not in-and-of itself create any new requirements. Accordingly, it does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxides, Visibility, Interstate transport of pollution, RH, Best available control technology.

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

Dated: April 30, 2014.

Ron Curry,

Regional Administrator, Region 6.

[FR Doc. 2014–10845 Filed 5–9–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–2014–0318, 0319, 0320, 0321, and 0322; FRL–9910–73–OSWER]

National Priorities List, Proposed Rule No. 60

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

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

DATES: Comments regarding any of these proposed listings must be submitted (postmarked) on or before July 11, 2014.

ADDRESSES: Identify the appropriate Docket Number from the table below.

DOCKET IDENTIFICATION NUMBERS BY SITE

Site name	City/county, state	Docket ID No.
Colorado Smelter	Pueblo, CO	EPA–HQ–SFUND–2014–0318
North Shore Drive	Elkhart, IN	EPA–HQ–SFUND–2014–0319
Delta Shipyard	Houma, LA	EPA–HQ–SFUND–2014–0320
Baghurst Drive	Harleysville, PA	EPA–HQ–SFUND–2014–0321
Jard Company, Inc.	Bennington, VT	EPA–HQ–SFUND–2014–0322

Submit your comments, identified by the appropriate Docket number, by one of the following methods:

- *http://www.regulations.gov* Follow the online instructions for submitting comments.
- Email: *http://superfund.docket@epa.gov*
- Mail: Mail comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; (Mailcode 5305T); 1200 Pennsylvania Avenue NW.; Washington, DC 20460
- Hand Delivery or Express Mail: Send comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue NW.; William Jefferson Clinton Building West, Room 3334, Washington, DC 20004. Such deliveries are accepted only during the Docket's normal hours of operation (8:30 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays).

Instructions: Direct your comments to the appropriate Docket number (see table above). The EPA's policy is that all comments received will be included in the public Docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system; that means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *http://www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public Docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional Docket addresses and further details on their contents, see section II, ''Public Review/Public Comment,'' of the **SUPPLEMENTARY INFORMATION** portion of this preamble.

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

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I. Background

A. What are CERCLA and SARA?

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

B. What is the NCP?

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

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

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

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

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

D. How are sites listed on the NPL?

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

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

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

E. What happens to sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the ''Superfund'') only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). (''Remedial actions'' are those ''consistent with permanent remedy,

taken instead of or in addition to removal actions. * * *'' 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL ''does not imply that monies will be expended.'' The EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

F. Does the NPL define the boundaries of sites?

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

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

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

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

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

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

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

G. How are sites removed from the NPL?

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

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

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

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

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

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

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

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

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

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

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

go to *http://www.epa.gov/superfund/programs/recycle/pdf/sitewide_a.pdf*.

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

In order to maintain close coordination with states and tribes in the NPL listing decision process, the EPA's policy is to determine the position of the states and tribes regarding sites that the EPA is considering for listing. This consultation process is outlined in two memoranda that can be found at the following Web site: *http://www.epa.gov/superfund/sites/npl/hrsres/policy/govlet.pdf*. The EPA is improving the transparency of the process by which state and tribal input is solicited. The EPA is using the Web and where appropriate more structured state and tribal correspondence that (1) explains the concerns at the site and the EPA's rationale for proceeding; (2) requests an explanation of how the state intends to address the site if placement on the NPL is not favored; and (3) emphasizes the transparent nature of the process by informing states that information on their responses will be publicly available.

A model letter and correspondence from this point forward between the EPA and states and tribes where applicable, is available on the EPA's Web site at *http://www.epa.gov/superfund/sites/query/queryhtm/nplstcor.htm*.

II. Public Review/Public Comment

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

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

B. How do I access the documents?

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

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

The contact information for the Regional Dockets is as follows:

- Holly Inglis, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Superfund Records and Information Center, 5 Post Office Square, Suite 100, Boston, MA 02109–3912; 617/918–1413.
- Ildefonso Acosta, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; 212/637–4344.
- Lorie Baker (ASRC), Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mailcode 3HS12, Philadelphia, PA 19103; 215/814–3355.
- Jennifer Wendel, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street SW., Mailcode 9T25, Atlanta, GA 30303; 404/562–8799.
- Todd Quesada, Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA Superfund Division Librarian/SFD Records Manager SRC–7J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; 312/886–4465.
- Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Suite 1200, Mailcode 6SFTS, Dallas, TX 75202–2733; 214/665–7436.
- Michelle Quick, Region 7 (IA, KS, MO, NE), U.S. EPA, 11201 Renner Blvd., Mailcode SUPRERNB, Lenexa, KS 66219; 913/551–7335.
- Sabrina Forrest, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 1595 Wynkoop Street, Mailcode 8EPR–B, Denver, CO 80202–1129; 303/312–6484.
- Sharon Murray, Region 9 (AZ, CA, HI, NV, AS, GU, MP), U.S. EPA, 75 Hawthorne Street, Mailcode SFD 6–1, San Francisco, CA 94105; 415/947–4250.
- Ken Marcy, Region 10 (AK, ID, OR, WA), U.S. EPA, 1200 6th Avenue, Mailcode ECL–112, Seattle, WA 98101; 206/463–1349.

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

You may use the Docket at *http://www.regulations.gov* to access documents in the Headquarters Docket (see instructions included in the **ADDRESSES** section above). Please note that there are differences between the Headquarters Docket and the Regional Dockets and those differences are outlined below.

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

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

D. What documents are available for public review at the Regional Dockets?

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

E. How do I submit my comments?

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

F. What happens to my comments?

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

G. What should I consider when preparing my comments?

Comments that include complex or voluminous reports, or materials prepared for purposes other than HRS scoring, should point out the specific information that the EPA should consider and how it affects individual HRS factor values or other listing criteria (*Northside Sanitary Landfill* v. *Thomas,* 849 F.2d 1516 (D.C. Cir. 1988)). The EPA will not address

voluminous comments that are not referenced to the HRS or other listing criteria. The EPA will not address comments unless they indicate which component of the HRS documentation record or what particular point in the EPA's stated eligibility criteria is at issue.

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

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

I. May I view public comments submitted by others?

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

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

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

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

III. Contents of This Proposed Rule

A. Proposed Additions to the NPL

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

The sites are presented in the table below.

GENERAL SUPERFUND SECTION

State	Site name	City/county
CO	Colorado Smelter	Pueblo.
IN	North Shore Drive	Elkhart.
LA	Delta Shipyard	Houma.
PA	Baghurst Drive	Harleysville.
VT	Jard Company, Inc	Bennington.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

1. What is Executive Order 12866?

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the agency must determine whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety or state, local or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities or the principles set forth in the Executive Order.

2. Is this proposed rule subject to Executive Order 12866 review?

No. The listing of sites on the NPL does not impose any obligations on any entities. The listing does not set standards or a regulatory regime and imposes no liability or costs. Any liability under CERCLA exists irrespective of whether a site is listed. It has been determined that this action is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

1. What is the Paperwork Reduction Act?

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR Part 9.

2. Does the Paperwork Reduction Act apply to this proposed rule?

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

Burden means the total time, effort or financial resources expended by persons to generate, maintain, retain or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

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. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR Part 9.

C. Regulatory Flexibility Act

1. What is the Regulatory Flexibility Act?

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small

organizations and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

2. How has the EPA complied with the Regulatory Flexibility Act?

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

D. Unfunded Mandates Reform Act

1. What is the Unfunded Mandates Reform Act (UMRA)?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''federal mandates'' that may result in expenditures by state, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before the EPA promulgates a rule where a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates and informing, educating and advising small governments on compliance with the regulatory requirements.

2. Does UMRA apply to this proposed rule?

This proposed rule does not contain a federal mandate that may result in expenditures of $100 million or more for state, local and tribal governments, in the aggregate, or the private sector in any one year. Proposing a site on the NPL does not itself impose any costs. Proposal does not mean that the EPA necessarily will undertake remedial action. Nor does proposal require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of proposing a site to be placed on the NPL. Thus, this rule is not subject to the requirements of section 202 and 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. As is mentioned above, site proposal does not impose any costs and would not require any action of a small government.

E. Executive Order 13132: Federalism

1. What is Executive Order 13132?

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires the EPA to develop an accountable process to ensure ''meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.''

2. Does Executive Order 13132 apply to this proposed rule?

This proposed rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it does not contain any requirements applicable to states or other levels of government. Thus, the requirements of the Executive Order do not apply to this proposed rule.

The EPA believes, however, that this proposed rule may be of significant interest to state governments. In the spirit of Executive Order 13132, and consistent with the EPA policy to promote communications between the EPA and state and local governments, the EPA therefore consulted with state officials and/or representatives of state governments early in the process of developing the rule to permit them to have meaningful and timely input into its development. All sites included in this proposed rule were referred to the EPA by states for listing. For all sites in this rule, the EPA received letters of support either from the governor or a state official who was delegated the authority by the governor to speak on their behalf regarding NPL listing decisions.

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

1. What is Executive Order 13175?

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires the EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the federal government and the Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes.''

2. Does Executive Order 13175 apply to this proposed rule?

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

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

1. What is Executive Order 13045?

Executive Order 13045: ''Protection of Children From Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency.

2. Does Executive Order 13045 apply to this proposed rule?

This proposed rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because the agency does not have reason to believe the environmental health or safety risks addressed by this proposed rule present a disproportionate risk to children.

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

1. What is Executive Order 13211?

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' (66 FR 28355, May 22, 2001) requires federal agencies to prepare a ''Statement of Energy Effects'' when undertaking certain regulatory actions. A Statement of Energy Effects describes the adverse effects of a ''significant energy action'' on energy supply, distribution and use, reasonable alternatives to the action and the expected effects of the alternatives on energy supply, distribution and use.

2. Does Executive Order 13211 apply to this proposed rule?

This action is not a ''significant energy action'' as defined in Executive Order 13211, because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. Further, the agency has concluded that this rule is not likely to have any adverse energy impacts because proposing a site to the NPL does not require an entity to conduct any action that would require energy use, let alone that which would significantly affect energy supply, distribution or usage. Thus, Executive Order 13211 does not apply to this action.

I. National Technology Transfer and Advancement Act

1. What is the National Technology Transfer and Advancement Act?

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards.

2. Does the National Technology Transfer and Advancement Act apply to this proposed rule?

No. This proposed rulemaking does not involve technical standards. Therefore, the EPA did not consider the use of any voluntary consensus standards.

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

1. What is Executive Order 12898?

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

2. Does Executive Order 12898 apply to this proposed rule?

The EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. As this rule does not impose any enforceable duty upon state, tribal or local governments, this rule will neither increase nor decrease environmental protection.

List of Subjects in 40 CFR Part 300

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

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: May 1, 2014.

Barry Breen,

Principal Deputy Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 2014–10832 Filed 5–9–14; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

42 CFR Part 2

Confidentiality of Alcohol and Drug Abuse Patient Records

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of Public Listening Session.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) announces that it will hold a public listening session on Wednesday, June 11, 2014, to solicit information concerning the Confidentiality of Alcohol and Drug Abuse Patient Records Regulations, 42 CFR Part 2. This session will be held in Rockville, MD, to obtain direct input from stakeholders on updating the regulations. The scheduled listening session provides an opportunity for SAMHSA to seek public input on potential changes to the regulations.

DATES: The listening session will be held on Wednesday, June 11, 2014, from 9:30 a.m. to 4:30 p.m.

ADDRESSES: *Participation:* The listening session will be held at the Substance Abuse and Mental Health Services Administration at 1 Choke Cherry Road, Rockville, MD 20857, Lobby-level Sugarloaf Conference Room.

SAMHSA will post the agenda and logistical information on how to participate via the phone or internet on the SAMHSA Web site at *http://www.samhsa.gov/healthprivacy* in advance of the listening session.

The session is open to the public and the entire day's proceedings will be webcast, recorded, and made publicly available. Interested parties may participate in person or via webcast. Capacity is limited and registration is required. To register, go to *http://42cfrpart2-listeningsession.eventbrite.com.* Registration will be open until we meet maximum capacity. In addition to attending the session in person and joining via webinar, the Agency offers several ways to provide comments, as enumerated below. The forum will begin with opening remarks from the SAMHSA official charged with moderating the session. The session location is accessible to persons with disabilities.

You may submit comments using any of the following methods:

- Mail: The Substance Abuse and Mental Health Services Administration, 1 Choke Cherry Road, Rockville, MD 20857, Room 5–1011.
- Hand Delivery or Courier: 1 Choke Cherry Road, Rockville, MD 20857, Room 5–1011 between 9 a.m. and 5 p.m., ET, Monday through Friday, except federal holidays.
- Email: *PrivacyRegulations@SAMHSA.hhs.gov.*
- Fax: 1–240–276–2900.

Each submission must include the Agency name and the docket number for this notice. Comments must be received by 5:00 p.m. ET on Wednesday June 25, 2014.

FOR FURTHER INFORMATION CONTACT: For information concerning the listening session or the live webcast, please contact Kate Tipping, Public Health Advisor, SAMHSA, 1 Choke Cherry Road, Rockville, MD 20857, Room 5–1011, (240) 276–1652 or email *PrivacyRegulations@SAMHSA.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The federal statute (United States Code, Title 42, section 290dd–2) governing the confidentiality of substance abuse treatment information guarantees the confidentiality of information for persons receiving substance abuse treatment services from federally assisted programs. Under the statute, a federally assisted substance abuse program generally may only release identifiable information related to substance abuse treatment services with the individual's express consent. The federal regulations that implement this law—Title 42 of the Code of Federal Regulations Part 2 (42 CFR Part 2)—were last updated in 1987. Over the last 25 years, significant changes have occurred within the U.S. health care system that were not envisioned by these regulations, including new models of integrated care that are built on a foundation of information sharing to support coordination of patient care, the development of an electronic infrastructure for managing and exchanging patient data, the development of prescription drug monitoring programs and a new focus on performance measurement within the health care system. When the regulations were written, substance abuse treatment was primarily conducted by specialty treatment providers, and as a result, the impact on coordination of care was not raised as a core issue.

SAMHSA has heard from stakeholders that some of the current consent requirements make it difficult for these new health care organizations including health information exchange organizations (HIEs), Accountable Care Organizations (ACOs), and others to share substance abuse treatment information. A number of organizations across the country are excluding substance abuse treatment data due to the difficulty and expense of implementing the functionality and workflow changes necessary to comply with current regulations. In these instances, patients are prevented from fully participating in integrated care efforts even if they are willing to provide consent.

Behavioral health is essential to overall health and the costs of untreated substance abuse disorders, both personal and societal, are enormous. However, treatment for substance abuse disorders is still associated with discrimination. In addition, there may be potential serious civil and criminal consequences for the disclosure of this information beyond the health care context. There continues to be a need for confidentiality protections that encourage patients to seek treatment without fear of compromising their privacy. SAMHSA strives to facilitate information exchange while respecting the legitimate privacy concerns of patients due to the potential for discrimination and legal consequences. We hope to clarify the requirements associated with information exchange in these new models and reduce burdens associated with specific consent requirements that do not serve to protect patient privacy.

In consideration of the concerns raised regarding the application of 42 CFR Part 2 to new health care models and the continued need for confidentiality protections, the Agency will conduct a public listening session to provide all interested parties the opportunity to share their views on the subject prior to the initiation of rulemaking. Members of the public are invited to attend and view the proceedings, with space available on a first-come, first-served basis (based on registration). Written comments may also be submitted at the session or through the process described above.

SAMHSA asks listening session participants to consider the following questions in preparing to make comments at the listening session. Listening session attendees will also be provided with a list of these questions at the forum site:

a. Applicability of 42 CFR Part 2

42 CFR Part 2 currently applies to federally funded individuals or entities that ''hold themselves out as providing, and provide, alcohol or drug abuse diagnosis, treatment or treatment referral'' including units within a general medical facility that hold themselves out as providing diagnosis, treatment or treatment referral (§ 2.11 Definitions, Program). The U.S. health care system is changing and more substance abuse treatment is occurring in general health care and integrated care settings which are typically not covered under the current regulations. It has also posed difficulties for identifying which providers are covered by Part 2; whether a provider or organization is covered by Part 2 can change depending on whether they advertise their substance abuse treatment services (i.e. 'hold themselves out'), which can change over time.

SAMHSA is considering options for defining what information is covered under 42 CFR Part 2. Covered information could be defined based on what substance abuse treatment services are provided instead of being defined by the type of facility providing the services. For example, the regulations could be applied to any federally assisted health care provider that provides a patient with specialty substance abuse treatment services. In

this scenario, providers would not be covered if they provided only substance abuse screening, brief intervention, or other similar pre-treatment substance abuse services.

• How would redefining the applicability of 42 CFR Part 2 impact patients, health care provider organizations, HIEs, CCOs, HIT vendors, etc.?

• Would this change address stakeholder concerns?

• Would this change raise any new concerns?

b. Consent Requirements

SAMHSA has heard a number of concerns from individuals and stakeholders regarding the current consent requirements of 42 CFR Part 2. 42 CFR 2.31 requires the written consent to include the name or title of the individual or the name of the organization to which the disclosure is to be made. This is commonly referred to as the ''To Whom'' consent requirement. Some stakeholders have reported that this requirement makes it difficult to include programs covered by 42 CFR Part 2 in HIEs, health homes, ACOs and CCOs. These organizations have a large and growing number of member providers and they generally do not have sophisticated consent management capabilities. Currently, a Part 2 compliant consent cannot include future un-named providers which requires the collection of updated consent forms whenever new providers join these organizations. As a result, many of these organizations are currently not including substance abuse treatment information in their systems.

While technical solutions for managing consent collection are possible, SAMHSA is examining the consent requirements in § 2.31 to explore options for facilitating the flow of information within the health care context while ensuring the patient is fully informed and the necessary protections are in place. Specifically, we are analyzing the current requirements and considering the impact of adapting them to:

1. Allow the consent to include a more general description of the individual, organization, or health care entity to which disclosure is to be made.

2. Require the patient be provided with a list of providers or organizations that may access their information, and be notified regularly of changes to the list.

3. Require the consent to name the individual or health care entity permitted to make the disclosure.

4. Require that if the health care entity permitted to make the disclosure is made up of multiple independent units or organizations that the unit, organization, or provider releasing substance abuse related information be specifically named.

5. Require that the consent form explicitly describe the substance abuse treatment information that may be disclosed.

SAMHSA welcomes comments on patient privacy concerns as well as the anticipated impact of the consent requirements on integration of substance abuse treatment data into HIEs, health homes, ACOs, and CCOs.

• Would these changes maintain the privacy protections for patients?

• Would these changes address the concerns of HIEs, health homes, ACOs, and CCOs?

• Would these changes raise any new concerns?

c. Redisclosure

SAMHSA has also heard numerous concerns regarding the prohibition on redisclosure (§ 2.32). Currently most EHRs don't support data segmentation. Without this functionality, EHR systems must either keep alcohol and drug abuse patient records separate from the rest of the patient's medical record or apply the 42 CFR Part 2 protections to the patient's entire medical record if such record contains information that is subject to 42 CFR Part 2.

SAMHSA is considering revising the redisclosure provision to clarify that the prohibition on redisclosure only applies to information that would identify an individual as a substance abuser, and allows other health-related information shared by the Part 2 program to be redisclosed, if legally permissible. This would allow HIT systems to more easily identify information that is subject to the prohibition on redisclosure enabling them to utilize other technological approaches to manage redisclosure. If data are associated with information about where the data were collected (data provenance) which reveals that the data were collected by a practice that exclusively treats addiction, the data would still be protected under the proposed change.

• Would this type of change facilitate technical solutions for complying with 42 CFR Part 2 in an EHR or HIE environment?

• Would these changes maintain the privacy protections for patients?

d. Medical Emergency

SAMHSA has heard concerns regarding the medical emergency exception of 42 CFR Part 2 (§ 2.51). The current regulations state that information may be disclosed without consent ''for the purpose of treating a condition which poses an immediate threat to the health of any individual and which requires immediate medical intervention.'' The statute, however, states that records may be disclosed to medical personnel to the extent necessary to meet a bona fide medical emergency. SAMHSA is considering adapting the medical emergency exception to make it more in-line with the statutory language and to give providers more discretion as to when a bona fide emergency exists. For example, amending this standard to allow providers to use the medical emergency provision to prevent emergencies or to share information with a detoxification center when a patient is unable to provide informed consent due to their level of intoxication.

• What factors should providers take into consideration in determining whether a medical emergency exists?

• Are there specific use cases SAMHSA should take into consideration?

• Are there patient concerns about the impact of this change on their privacy?

e. Qualified Service Organization (QSO)

SAMHSA has also heard concerns from payers and health management organizations related to disclosing information that is subject to 42 CFR Part 2 to health care entities (ACOs/CCOs) for the purpose of care coordination and population health management; helping them to identify patients with chronic conditions in need of more intensive outreach. Under the current regulations, substance abuse information may not be shared for these purposes without consent.

SAMHSA is analyzing the regulations to identify options for allowing Part 2 data to flow to health care entities for the purpose of care coordination and population management while maintaining patient protections. One potential solution includes expanding the definition of a qualified service organization (QSO; § 2.11) to explicitly include care coordination services and to allow a QSO Agreement (QSOA) to be executed between an entity that stores Part 2 information, such as a payer or an ACO that is not itself a Part 2 program, and a service provider.

• Are there other use cases we should be taking into consideration?

• Are there specific patient concerns about the impact of this change on their privacy?

f. Research

Under the current regulations, the Part 2 ''program director'' has to authorize the release of information for scientific research purposes. This issue has been brought to SAMHSA's attention from organizations that store patient health data, including data that are subject to Part 2, which may be used for research (e.g. health management organizations). Under the current regulatory framework, absent consent, these organizations do not have the authority to disclose Part 2 data for scientific research purposes to qualified researchers or research organizations. This issue can be addressed by expanding the authority for releasing data to qualified researchers/research organizations to other health care entities that receive and store Part 2 data, including third-party payers, HIEs, and care coordination organizations for the purposes of research, audit, or evaluation.

SAMHSA is considering expanding the authority for releasing data to qualified researchers/research organizations to health care entities that receive and store Part 2 data, including third-party payers, health management organizations, HIEs, and care coordination organizations.

- Are there factors that should be considered related to how current health care entities are organized, how they function or how legal duties and responsibilities attach to entities that make up an umbrella organization?
- Would this change address concerns related to research?
- Are there specific privacy concerns associated with expanding the authority or releasing data to qualified researchers/research organizations in this way?
- Are there additional use cases that should be considered in the research context?

g. Addressing Potential Issues With Electronic Prescribing and Prescription Drug Monitoring Programs (PDMPs)

Part 2 protections include a prohibition on the redisclosure of information received directly from a Part 2 program. A pharmacy that receives electronic prescription information directly from a Part 2 program must obtain patient consent to send that information to a PDMP, and patient consent is also required for the PDMP to redisclose that information to those with access to the PDMP. Pharmacy data systems do not currently have mechanisms for managing patient consent or segregating data that are subject to Part 2 and preventing the data from reaching the PDMP. Pharmacy systems also lack the ability to identify which providers are subject to Part 2, making it difficult to prevent the Part 2 data from reaching the PDMP.

If a patient does not consent to sharing their data via e-prescribing, their only option for filling their prescription is to bring a paper prescription to the pharmacy. In this instance, since the information is given by the patient, it is not protected by 42 CFR Part 2. They, therefore, cannot prevent the information from reaching the PDMP which in some states is accessible by law enforcement and has the potential to lead to investigation/arrest and other forms of discrimination.

- How do pharmacy information system vendors anticipate addressing this issue? Are there specific technology barriers SAMHSA should take into consideration?
- Are there other concerns regarding 42 CFR Part 2 and PDMPs? Please describe relevant use cases and provide recommendations on how to address the concerns.
- Are there patient concerns about the impact of e-prescribing and PDMPs on their privacy?

Draft Agenda for the June 11, 2014 Public Listening Session

—Welcome and Introductions—9:30 a.m.–9:45 a.m.
—Applicability of 42 CFR Part 2—9:45 a.m.–10:45 a.m.
—Consent requirements—10:45 a.m.–11:45 a.m.
—Redisclosure and Medical emergency provisions—11:45 a.m.–12:45 p.m.
—LUNCH (on your own)—12:45 p.m.–1:15 p.m.
—Quality Service Organization (QSO) provision—1:15 p.m.–1:45 p.m.
—Research—1:45 p.m.–2:45 p.m.
—Electronic prescribing and prescription drug monitoring programs (PDMPs)—2:45 p.m.–3:30 p.m.
—Open Comment Period—3:30 p.m.–4:30 p.m.

The agenda will be strictly followed; participants may attend all or part of the listening session as relevant. The updated agenda will be posted on the SAMHSA Web site at *http://www.samhsa.gov/healthprivacy* in advance of the listening session.

Cathy J. Friedman,

SAMHSA Public Health Analyst.

[FR Doc. 2014–10913 Filed 5–9–14; 8:45 am]

BILLING CODE 4162–20–P

Notices

Federal Register
Vol. 79, No. 91
Monday, May 12, 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 COMMERCE

Foreign-Trade Zones Board

[B–5–2014]

Foreign-Trade Zone 230—Piedmont Triad Area, North Carolina; Authorization of Production Activity; Oracle Flexible Packaging, Inc. (Foil-Backed Paperboard); Winston-Salem, North Carolina

On January 6, 2014, the Piedmont Triad Partnership, grantee of FTZ 230, submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board on behalf of Oracle Flexible Packaging, Inc., in Winston-Salem, North Carolina.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (79 FR 6146, 2–3–2014). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the FTZ Board's regulations.

Dated: May 6, 2014.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2014–10854 Filed 5–9–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Proposed Information Collection; Comment Request; Survey of Organizations Participating in the United States (U.S.)—European Union (EU) Safe Harbor Framework and United States (U.S.)—Switzerland (Swiss) Safe Harbor Framework

AGENCY: International Trade Administration, 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 July 11, 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: David Ritchie or Nick Enz, U.S. Department of Commerce, International Trade Administration, U.S.-EU & U.S.-Swiss Safe Harbor Programs, 1401 Constitution Avenue NW., Room 20007, Washington, DC 20230; (or via the Internet at *safe.harbor@trade.gov*); tel. 202–482–4936 or 202–482–1512.

SUPPLEMENTARY INFORMATION:

I. Abstract

The following concerns the voluntary survey that U.S. organizations are asked to complete and submit to the U.S. Department of Commerce (DOC) when they self-certify their compliance with the U.S.-EU Safe Harbor Framework and/or the U.S.-Swiss Safe Harbor Framework.

The DOC's International Trade Administration (ITA) administers the U.S.-EU Safe Harbor program and U.S.-Swiss Safe Harbor program. The U.S.-EU Safe Harbor Framework and U.S.-Swiss Safe Harbor Framework provide eligible U.S. organizations with a streamlined means of complying with the relevant requirements of the European Union's Data Protection Directive and the Swiss Federal Act on Data Protection. The Safe Harbor Frameworks help facilitate the flow of personal data worth critical to billions of dollars in trade between the United States and the EU and Switzerland.

In line with President Obama's National Export Initiative, the DOC is interested in gathering information from U.S. organizations that participate in one or both of the Safe Harbor programs to: (a) Better evaluate how the Safe Harbor Frameworks support U.S. exports, and (b) potentially identify areas for improvement. The voluntary survey provides participants, including small businesses, in the Safe Harbor programs with an opportunity to communicate directly with the DOC regarding these programs.

The information collected through this survey will not be made public, except at the aggregate level. The information will be obtained via a survey using the following questions:

(1) Does your organization's participation in the U.S.-EU or U.S.-Swiss Safe Harbor programs help your organization increase U.S. exports and support U.S. jobs?

(2) Please specify the approximate amount of exports in United States Dollars (USD) facilitated by your organization's participation in the U.S.-EU or U.S.-Swiss Safe Harbor programs (please include any sales or contracts that were won or retained as a result of your participation in the programs).

(3) Does your organization currently have a contract that is dependent on self-certification to the U.S.-EU or U.S.-Swiss Safe Harbor programs? If so, what is the value of that contract(s)?

(4) What do the U.S.-EU and U.S.-Swiss Safe Harbor programs mean to your organization in terms of business opportunities in Europe?

(5) Tell us what you think about the U.S.-EU and U.S.-Swiss Safe Harbor programs?

II. Method of Collection

The DOC offers U.S. organizations the opportunity to complete this voluntary survey via the DOC's Safe Harbor Web site, located at *http://export.gov/safeharbor*.

III. Data

OMB Control Number: 0625–0268.

Form Number(s): None.

Type of Review: Regular submission (extension of a currently approved information collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,284.

Estimated Time per Response: 20 minutes for completion of survey responses submitted with initial self-

certification or recertification submission via DOC's Safe Harbor Web site).

Estimated Total Annual Burden Hours: 428.

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: May 6, 2014.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2014–10719 Filed 5–9–14; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–838]

Certain Frozen Warmwater Shrimp From Brazil: Rescission of Antidumping Duty Administrative Review; 2013–2014

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

SUMMARY: The Department of Commerce (the Department) is rescinding the administrative review of the antidumping duty order on certain frozen warmwater shrimp from Brazil for the period February 1, 2013, through January 31, 2014.

DATES: *Effective Date:* May 12, 2014.

FOR FURTHER INFORMATION CONTACT: Kate Johnson or Terre Keaton Stefanova, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4929 or (202) 482–1280, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 3, 2014, the Department published in the **Federal Register** a notice of ''Opportunity to Request Administrative Review'' of the antidumping duty order on certain frozen warmwater shrimp from Brazil for the period of February 1, 2013, through January 31, 2014.[1]

On February 26, 2014, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b), the Department received a timely request from the Ad Hoc Shrimp Trade Action Committee (the petitioner),[2] a domestic interested party, to conduct an administrative review of the sales of Amazonas Industria Alimenticias S.A. (AMASA); Procesadora del Rio S.A. (PRORIOSA); and Pesquera Veraz S.A. (Pesquera Veraz). The petitioner was the only party to request this administrative review.

On April 1, 2014, the Department published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on certain warmwater shrimp from Brazil with respect to AMASA, PRORIOSA, and Pesquera Veraz.[3]

On April 3, 2014, the petitioner timely withdrew its request for a review of all three companies.[4]

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. The petitioner timely withdrew its request for review before the 90-day deadline, and no other party requested an administrative review of the antidumping duty order. Therefore, we are rescinding the administrative review of the antidumping duty order on certain frozen warmwater shrimp from Brazil covering the period February 1, 2013, through January 31, 2014.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after the date of publication of this notice in the **Federal Register**.

Notification to Importers

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

Notification Regarding Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is published in accordance with section 751 of the Act and 19 CFR 351.213(d)(4).

Dated: May 6, 2014.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2014–10857 Filed 5–9–14; 8:45 am]

BILLING CODE 3510–DS–P

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[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 79 FR 6159 (February 3, 2014).

[2] The Ad Hoc Shrimp Trade Action Committee's members are: Nancy Edens; Papa Rod, Inc.; Carolina Seafoods; Bosarge Boats, Inc.; Knight's Seafood Inc.; Big Grapes, Inc.; Versaggi Shrimp Co.; and Craig Wallis.

[3] *See Initiation of Antidumping Duty Administrative Reviews and Request for Revocation in Part,* 79 FR 18262 (April 1, 2014).

[4] *See* petitioner's letter, ''Certain Frozen Warmwater Shrimp from Brazil: Withdrawal of Requests for Administrative Reviews,'' dated April 3, 2014.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–844]

Certain Lined Paper Products From India: Final Results of Countervailing Duty Administrative Review; 2011

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

SUMMARY: The Department of Commerce (the Department) completed the administrative review of the countervailing duty (CVD) order on certain lined paper products from India for the January 1, 2011, through December 31, 2011, period of review (POR) [1] in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). The respondent in this administrative review is A.R. Printing & Packaging India Private Limited (AR Printing).[2] Our analysis of comments received is contained in the Decision Memorandum accompanying this **Federal Register** notice.[3] The final net subsidy rate for AR Printing is listed below in the ''Final Results of Review'' section.

DATES: *Effective Date:* May 12, 2014.

FOR FURTHER INFORMATION CONTACT: John Conniff at 202–482–1009, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On September 28, 2006, the Department published in the **Federal Register** the CVD order on certain lined paper products from India.[4] On October 22, 2013, the Department published its preliminary results of administrative review of the CVD order on certain lined paper products from India for the POR.[5]

As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013. Therefore, all deadlines in this segment of the proceeding have been extended by 16 days.[6]

AR Printing and the Petitioners [7] submitted case briefs on December 9, 2013, and both submitted rebuttal briefs on December 16, 2013. No interested party requested a hearing.

On February 20, 2014, the Department issued a memorandum extending the time period for issuing the final results of this administrative review from March 7, 2014, to May 6, 2014.[8]

Scope of the Order

The merchandise subject to the order is certain lined paper products. The products are currently classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) item numbers: 4811.90.9035, 4811.90.9080, 4820.30.0040, 4810.22.5044, 4811.90.9050, 4811.90.9090, 4820.10.2010, 4820.10.2020, 4820.10.2030, 4820.10.2040, 4820.10.2050, 4820.10.2060, and 4820.10.4000. Although the HTSUS numbers are provided for convenience and customs purposes, the written product description remains dispositive.[9]

Methodology

The Department conducted this review in accordance with section 751(a)(1)(A) of the Act. For each of the subsidy programs found countervailable, we determine that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific. *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity. For a complete description of the methodology, see the Preliminary Decision Memorandum.

Analysis of Comments Received

All issues raised in parties' case and rebuttal briefs are addressed in the Decision Memorandum. A list of the issues which parties raised, and to which we responded in the Decision Memorandum, is attached to this notice as Appendix I. The Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov,* and is available to all parties in the Central Records Unit, Room 7046 of the main Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed Decision Memorandum and the electronic versions of the Decision Memorandum are identical in content.

Final Results of Review

As a result of this review, the Department determines a net subsidy rate of 2.94 percent *ad valorem* for AR Printing for the period January 1, 2011, through, December 31, 2011.

Assessment Rates/Cash Deposits

In accordance with 19 CFR 351.212(b)(2), the Department intends to issue assessment instructions to U.S. Customs and Border Protection (CBP) 15 days after the date of publication of these final results of review to liquidate shipments of subject merchandise by AR Printing entered, or withdrawn form warehouse, for consumption on or after January 1, 2011, through December 31, 2011, at the *ad valorem* assessment rate listed above. We will also instruct CBP to collect cash deposits for the respondent at the countervailing duty cash deposit rate indicated above on all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of these final results of review.

For all non-reviewed companies, we will instruct CBP to continue to collect cash deposits at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be

[1] The Department published its preliminary results for this administrative review in *Certain Lined Paper Products From India: Preliminary Results of Countervailing Duty Administrative Review; Calendar Year 2011,* 78 FR 62584 (October 22, 2013) (*Preliminary Results*), and accompanying Issues and Decision Memorandum, dated September 30, 2013 (Preliminary Decision Memorandum).

[2] Also known as A.R. Printing & Packaging (India) Pvt. Ltd.

[3] *See* ''Decision Memorandum for the Final Results of Countervailing Duty Review: Certain Lined Paper Products From India'' from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance (Decision Memorandum), dated concurrently and hereby adopted by this notice.

[4] *See Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Lined Paper Products From the People's Republic of China; Notice of Antidumping Duty Orders: Certain Lined Paper Products From India, Indonesia and the People's Republic of China; and Notice of Countervailing Duty Orders: Certain Lined Paper Products from India and Indonesia,* 71 FR 56949 (September 28, 2006) (*Lined Paper Order*).

[5] *Preliminary Results.*

[6] *See* Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, ''Deadlines Affected by the Shutdown of the Federal Government'' (October 18, 2013) (Tolling Memo).

[7] Petitioners are the Association of American School Paper Suppliers (Petitioners).

[8] *See* Memorandum to Gary Taverman, Senior Advisor for Antidumping and Countervailing Duty Operations, titled ''Certain Lined Paper Products From India: Extension of Time Limit for Final Results of Countervailing Duty Administrative Review,'' dated February 20, 1014.

[9] For a complete description of the Scope of the Order, *see* Decision Memorandum. *See also Lined Paper Order,* 71 FR at 56950–51.

applied to companies covered by this order, but not examined in this review, are those established in the most recently completed administrative proceeding for each company. The cash deposit rates for all companies not covered by this review are not changed by the results of this review, and remain in effect until further notice.

Return or Destruction of Proprietary Information

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

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

Dated: May 6, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix

I. Summary
II. Period of Review
III. Scope of the Order
IV. Attribution of Subsidies
V. Allocation Period
VI. Subsidies Valuation Information—Benchmarks and Discount Rate
VII. Analysis of Programs
VIII. Analysis of Comments
Comment 1: Whether the Department Should Countervail Long-Term Policy Loans Provided by the State Bank of India
Comment 2: Whether the Department Should Revise AR Printing's Sales Denominator
Comment 3: Whether AR Printing Was Uncreditworthy in 2010
Comment 4: Whether Certain Benefits Under the Duty-Free Import of Capital Goods and Raw Materials for Export Oriented Units (EOUs) Program Were Tied to Non-Subject Merchandise
IX. Recommendation

[FR Doc. 2014–10861 Filed 5–9–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–009]

Calcium Hypochlorite From the People's Republic of China: Notice of Postponement of Preliminary Determination in the Countervailing Duty Investigation

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

DATES: *Effective Date:* May 12, 2014.

FOR FURTHER INFORMATION CONTACT: Katie Marksberry, AD/CVD Operations, Office V, Enforcement and Compliance, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: 202–482–7906.

SUPPLEMENTARY INFORMATION:

Background

On January 7, 2014, the Department of Commerce (''Department'') initiated the countervailing duty investigation of calcium hypochlorite from the People's Republic of China.[1] Currently, the preliminary determination is due no later than March 13, 2014.

Postponement of Due Date for Preliminary Determination

Section 703(b)(1) of the Tariff Act of 1930, as amended (''the Act''), requires the Department to issue the preliminary determination in a countervailing duty investigation within 65 days after the date on which the Department initiated the investigation. However, the Department may postpone making the preliminary determination until no later than 130 days after the date on which the administering authority initiated the investigation if the petitioner makes a timely request for an extension pursuant to section 703(c)(1)(A) of the Act. In the instant investigation, Petitioner[2] made a timely request on February 12, 2014, requesting a postponement of the preliminary determination pursuant to 19 CFR 351.205(b)(2).[3] Therefore, pursuant to the discretion afforded the Department under section 703(c)(1)(A) of the Act and because the Department does not find any compelling reason to deny the request, we are fully postponing the due date until 130 days after the Department's initiation for the preliminary determination. Therefore, the deadline for the completion of the preliminary determination is now May 19, 2014.[4]

This notice is issued and published pursuant to section 703(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: February 21, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2014–10846 Filed 5–9–14; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Calcium Hypochlorite From the People's Republic of China: Initiation of Countervailing Duty Investigation,* 79 FR 2417 (January 14, 2014).

[2] Arch Chemicals, Inc.

[3] *See* 19 CFR 351.205(e) and Petitioner's February 12, 2014 letter requesting postponement of the preliminary determination.

[4] Department practice dictates that where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, as Amended,* 70 FR 24533, 24533 (May 10, 2005).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–994]

Grain-Oriented Electrical Steel From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

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

SUMMARY: The Department of Commerce (the Department) preliminarily determines that grain-oriented electrical steel (GOES) from the People's Republic of China (the PRC) is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act). The period of investigation is January 1, 2013, through June 30, 2013. The estimated weighted-average dumping margin is listed in the ''Preliminary Determination'' section of this notice. Interested parties are invited to comment on this preliminary determination.

DATES: *Effective Date:* May 12, 2014.

FOR FURTHER INFORMATION CONTACT: Edythe Artman or Ericka Ukrow, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3931 or (202) 482–0405, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department initiated this investigation on October 24, 2013.[1] For a complete description of the events that followed the initiation of this investigation, *see* the memorandum dated concurrently with and hereby adopted by this notice.[2] The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov,* and is available to all parties in the Central Records Unit, Room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The scope of this investigation covers GOES, which is a flat-rolled alloy steel product containing, by weight, specific levels of silicon, carbon, and aluminum. For a complete description of the scope of the investigation, *see* Appendix I to this notice.

Various parties submitted comments on the scope. For a discussion of these comments, *see* the Preliminary Decision Memorandum.

Tolling and Postponement of the Deadline for the Preliminary Determination

As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll deadlines for the duration of the partial closure of the Federal Government from October 1, through October 16, 2013. Therefore, all deadlines in this segment of this proceeding have been extended by 16 days.[3] In accordance with the Department's practice, if a new deadline falls on a non-business day, the deadline will become the next business day.[4]

On February 10, 2014, the petitioners made a timely request for a 50-day postponement of the preliminary determinations for this investigation and the other concurrent investigations of GOES, pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e).[5] On February 20, 2014, we postponed the preliminary determination by 50 days.[6] As a result of the postponement and aforementioned tolling, the revised deadline for the preliminary determination of this investigation is now May 2, 2014.

Methodology

The Department conducted this investigation in accordance with section 731 of the Act. We preliminarily determine that the only respondent being individually investigated, Baoshan Iron & Steel Co., Ltd. (Baoshan), failed to cooperate to the best of its ability in participating in the investigation, warranting the application of facts otherwise available with adverse inferences, pursuant to section 776(a)–(b) of the Act. As a part of the application of adverse facts available, we are treating Baoshan as part of the PRC-wide entity. Because the PRC-wide entity also failed to cooperate to the best of its ability in complying with our requests for information, we determined an estimated weighted-average dumping margin based on adverse facts available for the PRC-wide entity, which includes Baoshan.[7] For a full description of the methodology and rationale underlying our conclusions, *see* the Preliminary Decision Memorandum. A list of the topics included in the Preliminary Decision Memorandum appears in Appendix II of this notice.

Preliminary Determination

The Department preliminarily determined that the following estimated weighted-average dumping margin exists for the period January 1, 2013, through June 30, 2013:

Producer and exporter	Estimated weighted-average dumping margin (percent)
PRC-wide entity[8]	159.21

Disclosure

Normally, the Department discloses to interested parties the calculations performed in connection with a preliminary determination within five days of the date of publication of the notice of preliminary determination in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because the Department, in accordance with section 776 of the Act, preliminarily applied adverse facts available to determine the estimated weighted-average dumping margin for the mandatory respondent in this investigation, there are no calculations to disclose.

Verification

Because Baoshan is the only mandatory respondent in this investigation and because the Department preliminarily determines it to be uncooperative and its information to be unreliable, the Department does not intend to conduct verification of the information placed in the record by Baoshan at this time.

Public Comment

Interested parties are invited to comment on this preliminary determination. Interested parties may submit case briefs to the Department no later than 50 days after the date of publication of this preliminary determination.[9] Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed

[1] *See Grain-Oriented Electrical Steel From the People's Republic of China, the Czech Republic, Germany, Japan, the Republic of Korea, Poland, and the Russian Federation: Initiation of Antidumping Duty Investigations,* 78 FR 65283 (October 31, 2013) (*Initiation Notice*). AK Steel Corporation, Allegheny Ludlum, LLC, and the United Steelworkers (collectively, the petitioners) filed the underlying petitions. *Id.* at 65283.

[2] *See* memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations entitled: ''Decision Memorandum for the Preliminary Determination of the Less-Than-Fair-Value Investigation of Grain-Oriented Electrical Steel from the People's Republic of China'' (Preliminary Decision Memorandum).

[3] *See* Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, ''Deadlines Affected by the Shutdown of the Federal Government,'' dated October 18, 2013.

[4] *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

[5] *See* letter from the petitioners entitled, ''Antidumping Investigations of Grain-Oriented Electrical Steel (''GOES'') from China, Czech Republic, Germany, Japan, South Korea, Poland, and Russia: Petitioners' Request for Extension of the Preliminary Determination,'' dated February 10, 2014.

[6] *See Grain-Oriented Electrical Steel From the People's Republic of China, the Czech Republic, Germany, Japan, the Republic of Korea, Poland, and the Russian Federation: Postponement of Preliminary Determinations in the Antidumping Duty Investigations,* 79 FR 11082 (February 27, 2014).

[7] Anshan Iron & Steel Group Corporation (Anshan) failed to provide quantity and value data upon initiation of this investigation.

[8] The PRC-wide entity includes all producers and exporters of GOES from the PRC, including each of the companies identified in the petition that did not establish that they are separate from the PRC-wide entity in this investigation: Baoshan, Anshan, Hebei Shougang Qian' an Iron & Steel Co., Ltd., and Wuhan Iron & Steel Co., Ltd.

[9] *See* 19 CFR 351.309(c)(1)(i).

within five days from the deadline date for the submission of case briefs.[10] A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department.[11] Executive summaries should be limited to five pages total, including footnotes. Interested parties who wish to comment on this preliminary determination must file briefs electronically using IA ACCESS. An electronically-filed document must be received successfully in its entirety by IA ACCESS by 5 p.m. Eastern Standard Time on the date the document is due.

In accordance with section 774 of the Act, the Department will hold a hearing, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is timely requested by an interested party.[12] Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, *via* IA ACCESS within 30 days after the date of publication of this notice.[13] Requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. If a request for a hearing is made, we will inform parties of the scheduled date and time of the hearing which will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.[14] Parties may confirm by telephone the date, time, and location of the hearing.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the merchandise subject to the investigation or, in the event of a negative preliminary determination, a request for such postponement is made by the petitioners. Section 19 CFR 351.210(e)(2) requires that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On April 2, 2014, Baoshan requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by 60 days (*i.e.,* to 135 days after the date of publication of the preliminary determination) and agreed to extend the application of the provisional measures, as prescribed under section 733(d) of the Act and 19 CFR 351.210(e)(2), from a four-month period to a period not to exceed six months.[15] Because (1) our preliminary determination is affirmative; (2) the requesting producer or exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, we are postponing the final determination, in accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), until no later than 135 days after the publication of this notice in the **Federal Register** and we are extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, we will issue our final determination no later than 135 days after the date of publication of this preliminary determination.[16]

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we will instruct U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of GOES from the PRC, as described in the scope of the investigation of Appendix I of this notice, which are entered or withdrawn from warehouse for consumption on or after the date of publication of this notice in the **Federal Register**.[17]

Pursuant to section 733(d) of the Act and 19 CFR 351.205(d), we will instruct CBP to require a cash deposit[18] equal to the estimated weighted-average dumping margin, as indicated in the chart above. This suspension of liquidation will remain in effect until further notice.

U.S. International Trade Commission Notification

In accordance with section 733(f) of the Act, we will notify the U.S. International Trade Commission (ITC) of our affirmative preliminary determination of sales at less than fair value. Because our preliminary determination in this investigation is affirmative, section 735(b)(2) of the Act requires that the ITC make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of GOES from the PRC before the later of 120 days after the date of this preliminary determination or 45 days after our final determination. Because we are postponing the deadline for our final determination to 135 days from the date of the publication of this preliminary determination, as discussed above, the ITC will make its final determination no later than 45 days after our final determination.

Notice to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: May 2, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The scope of this investigation covers GOES. GOES is a flat-rolled alloy steel product containing by weight at least 0.6 percent but not more than 6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, in coils or in straight lengths. The GOES that is subject to this investigation is currently classifiable under subheadings 7225.11.0000, 7226.11.1000, 7226.11.9030, and 7226.11.9060 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these investigations is dispositive. Excluded are flat-rolled products not in coils that, prior to importation into the United States, have been cut to a shape and undergone all punching, coating, or other operations necessary for classification in Chapter 85 of the HTSUS as a transformer part (*i.e.,* laminations).

Appendix II

1. Summary
2. Background
3. Scope of the Investigation
4. Scope Comments
5. Product Comparisons
6. Respondent Selection

[10] *See* 19 CFR 351.309(d)(1)–(2).

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

[12] *See also* 19 CFR 351.310.

[13] *Id.*

[14] *Id.*

[15] *See* letter from Baoshan entitled, ''Antidumping Duty Investigation of Grain-Oriented Electrical Steel from People's Republic of China: Postponement Request of Final Determination,'' dated April 2, 2014.

[16] *See* 19 CFR 351.210(b)(2) and (e).

[17] *See* section 733(d)(2) of the Act.

[18] *See Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations,* 76 FR 61042 (October 3, 2011).

7. Discussion of the Methodology
8. Non-Market Economy Country Status
9. Separate Rates Determination
10. The PRC-Wide Entity
A. Use of Facts Available and Adverse Facts Available
B. Application of Total Adverse Facts Available to the PRC-Wide Entity
C. Selection of an Adverse-Facts-Available Rate
D. Corroboration of Secondary Information
11. Recommendation

[FR Doc. 2014–10745 Filed 5–9–14; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–871]

Grain-Oriented Electrical Steel From the Republic of Korea: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

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

SUMMARY: The Department of Commerce (the Department) preliminarily determines that grain-oriented electrical steel (GOES) from the Republic of Korea is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is July 1, 2012, through June 30, 2013. The estimated weighted-average dumping margins of sales at LTFV are listed in the ''Preliminary Determination'' section of this notice. Interested parties are invited to comment on this preliminary determination.

DATES: *Effective Date:* May 12, 2014.

FOR FURTHER INFORMATION CONTACT: Mark Flessner or Robert James, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6312 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department initiated this investigation on October 24, 2013.[1] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum dated concurrently with and hereby adopted by this notice.[2] The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov,* and is available to all parties in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The scope of the investigation covers grain-oriented electrical steel, which is a flat-rolled alloy steel product containing by weight specific levels of silicon, carbon, and aluminum. For a complete description of the scope of the investigation, see Appendix I to this notice.

Various parties submitted comments on the scope. For discussion of these comments, see the Preliminary Decision Memorandum.

Tolling and Postponement of Deadline for Preliminary Determination

As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll deadlines for the duration of the partial closure of the Federal Government from October 1, through October 16, 2013. Therefore, all deadlines in this segment of the proceeding have been extended by 16 days.[3] If the new deadline falls on a non-business day, in accordance with the Department's practice, the deadline will become the next business day.[4]

On February 10, 2014, the petitioners made a timely request for a 50-day postponement of the preliminary determinations for this and the other concurrent GOES LTFV investigations, pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e). On February 20, 2014, we postponed the preliminary determinations by 50 days.[5] As a result of the postponement and aforementioned tolling, the revised deadline for the preliminary determination of this investigation is now May 2, 2014.

Methodology

The Department conducted this investigation in accordance with section 731 of the Act. Export price (EP) is calculated in accordance with section 772 of the Act. Normal value (NV) is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our conclusions, see the Preliminary Decision Memorandum. A list of the topics included in the Preliminary Decision Memorandum is included in Appendix II to this notice.

Preliminary Determination

The preliminary estimated weighted-average dumping margins are as follows:

Producer or exporter	Estimated weighted-average dumping margin (percent)
POSCO	5.34
All Others	5.34

Disclosure

We will disclose the calculations performed to parties in this proceeding within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i) of the Act, we intend to verify information relied upon in making our final determination.

[1] *See Grain-Oriented Electrical Steel from the People's Republic of China, the Czech Republic, Germany, Japan, the Republic of Korea, Poland, and the Russian Federation: Initiation of Antidumping Duty Investigations,* 78 FR 65283 (October 31, 2013) (*Initiation Notice*). AK Steel Corporation, Allegheny Ludlum, LLC, and the United Steelworkers (collectively, the petitioners) filed the underlying petitions. *Id.,* at 65283.

[2] *See* memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, from Gary Taverman, Senior Advisor for Antidumping and Countervailing Duty Operations, entitled: ''Decision Memorandum for the Preliminary Determination of the Antidumping Duty Investigation of Grain-Oriented Electrical Steel from the Republic of Korea'' (Preliminary Decision Memorandum).

[3] *See* Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, ''Deadlines Affected by the Shutdown of the Federal Government,'' dated October 18, 2013.

[4] *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

[5] *See Grain-Oriented Electrical Steel From the People's Republic of China, the Czech Republic, Germany, Japan, the Republic of Korea, Poland, and the Russian Federation: Postponement of Preliminary Determinations in the Antidumping Duty Investigations,* 79 FR 11082 (February 27, 2014).

Public Comment

Interested parties are invited to comment on the preliminary determination. Interested parties may submit case briefs to the Department no later 30 days after the date of publication of the preliminary determination.[6] Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within five days from the deadline date for the submission of case briefs.[7] A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department.[8] Executive summaries should be limited to five pages total, including footnotes. Interested parties who wish to comment on the preliminary determination must file briefs electronically using IA ACCESS. An electronically-filed document must be received successfully in its entirety by IA ACCESS by 5 p.m. Eastern Standard Time on the date the document is due.

In accordance with section 774 of the Act, the Department will hold a hearing, if timely requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party.[9] Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically using IA ACCESS, as noted above, within 30 days after the date of publication of this notice.[10] Requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed.[11] If a request for a hearing is made, we will inform parties of the scheduled date and time of the hearing which will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.[12] Parties should confirm by telephone the date, time, and location of the hearing.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of GOES from the Republic of Korea as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

Pursuant to 19 CFR 351.205(d), the Department will instruct CBP to require a cash deposit[13] equal to the preliminary weighted-average amount by which NV exceeds U.S. price, as indicated in the chart above, as follows: (1) The rate for POSCO will be the estimated weighted-average dumping margin we determine in this preliminary determination; (2) if the exporter is not a firm identified in this investigation, but the producer is, then the rate will be the rate established for the producer of the subject merchandise; (3) the rate for all other producers or exporters will be 5.34 percent. These suspension of liquidation instructions will remain in effect until further notice.

Postponement of Final Determination

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by Petitioner. 19 CFR 351.210(e)(2) requires that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

Respondent POSCO requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by 60 days (*i.e.,* to 135 days after publication of the preliminary determination), and agreed to extend the application of the provisional measures prescribed under section 733(d) of the Act and 19 CFR 351.210(e)(2), from a four-month period to a period not to exceed six months.[14] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because (1) our preliminary determination is affirmative; (2) the requesting producer or exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, we are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register** and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, we will issue our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.[15]

International Trade Commission (ITC) Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our preliminary affirmative determination of sales at LTFV. Because the preliminary determination in this proceeding is affirmative, section 735(b)(2) of the Act requires that the ITC make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of GOES from the Republic of Korea no later than 45 days after our final determination.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: May 2, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

The scope of this investigation covers grain-oriented silicon electrical steel (GOES). GOES is a flat-rolled alloy steel product containing by weight at least 0.6 percent but not more than 6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, in coils or in straight lengths. The GOES that is subject to this investigation is currently classifiable under subheadings 7225.11.0000, 7226.11.1000, 7226.11.9030, and 7226.11.9060 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive. Excluded are flat-rolled products not in coils that, prior to importation into the United

[6] *See* 19 CFR 351.309(c)(1)(i).

[7] *See* 19 CFR 351.309(d)(1) and 19 CFR 351.309(d)(2).

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

[9] *See also* 19 CFR 351.310.

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

[11] *Id.*

[12] *See* 19 CFR 351.310.

[13] *See Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations,* 76 FR 61042 (October 3, 2011).

[14] *See* letter from POSCO entitled, ''Antidumping Duty Investigation of Grain-Oriented Electrical Steel from the Republic of Korea: Postponement Request of Final Determination,'' dated February 5, 2014.

[15] *See* 19 CFR 351.210(b)(2) and (e).

States, have been cut to a shape and undergone all punching, coating, or other operations necessary for classification in Chapter 85 of the HTSUS as a transformer part (*i.e.,* laminations).

Appendix II—List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary
2. Background
3. Period of Investigation
4. Scope of the Investigation
5. Scope Comments
6. Product Comparisons
7. Respondent Selection
8. Discussion of Methodology
   A. Determination of the Comparison Method
   B. Results of the Differential Pricing Analysis
   C. Date of Sale
   D. Export Price
   E. Normal Value
9. Currency Conversion
10. Conclusion

[FR Doc. 2014–10748 Filed 5–9–14; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–842, A–588–871, A–455–804, A–821–821]

Grain-Oriented Electrical Steel From Germany, Japan, Poland, and the Russian Federation: Preliminary Determinations of Sales at Less Than Fair Value, Certain Affirmative Preliminary Determinations of Critical Circumstances, and Postponement of Russian Final Determination

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

SUMMARY: The Department of Commerce (the Department) preliminarily determines that grain-oriented electrical steel (GOES) from Germany, Japan, Poland, and the Russian Federation (Russia) is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is July 1, 2012, through June 30, 2013. The estimated dumping margins of sales at LTFV are listed in the ''Preliminary Determinations'' section of this notice. Interested parties are invited to comment on these preliminary determinations.

DATES: *Effective Date:* May 12, 2014.

FOR FURTHER INFORMATION CONTACT: Stephen Banea at (202) 482–0656 (Germany); Steve Bezirganian at (202) 482–1131 (Japan); Alan Ray at (202) 482–5403 (Poland); or Elizabeth Eastwood at (202) 482–3874 (Russia); AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

The Department initiated these investigations on October 24, 2013.[1] For a complete description of the events that followed the initiation of these investigations, see the country-specific memoranda that are dated concurrently with and hereby adopted by this notice (collectively, Preliminary Decision Memoranda).[2] The Preliminary Decision Memoranda are public documents and are on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov*, and is available to all parties in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, complete versions of the Preliminary Decision Memoranda can be accessed directly on the Internet at *http://enforcement.trade.gov/frn/.* The signed Preliminary Decision Memoranda and the electronic versions of the Preliminary Decision Memoranda are identical in content.

Scope of the Investigations

The scope of the investigations covers GOES, which is a flat-rolled alloy steel product containing by weight specific levels of silicon, carbon, and aluminum. For a complete description of the scope of the investigations, see Appendix I to this notice.

Various parties submitted comments on the scope. For discussion of these comments, see the Preliminary Decision Memoranda.

Tolling and Postponement of Deadline for Preliminary Determinations

As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll deadlines for the duration of the partial closure of the Federal Government from October 1, through October 16, 2013. Therefore, all deadlines in this segment of these proceedings have been extended by 16 days.[3] If the new deadline falls on a non-business day, in accordance with the Department's practice, the deadline will become the next business day.[4]

On February 10, 2014, the petitioners made a timely request for a 50-day postponement of the preliminary determinations for these and the other concurrent GOES antidumping duty investigations, pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e).[5] On February 20, 2014, we postponed the preliminary determinations by 50 days.[6] As a result of the postponement and aforementioned tolling, the revised deadline for the preliminary determinations of these investigations is now May 2, 2014.

Methodology

The Department conducted these investigations in accordance with section 731 of the Act. The selected mandatory respondents in the Germany, Japan, and Poland investigations failed to respond to the Department's questionnaire or otherwise participate in those proceedings. Further, in the

[1] *See Grain-Oriented Electrical Steel from the People's Republic of China, the Czech Republic, Germany, Japan, the Republic of Korea, Poland, and the Russian Federation: Initiation of Antidumping Duty Investigations*, 78 FR 65283 (Oct. 31, 2013) (*Initiation Notice*). AK Steel Corporation, Allegheny Ludlum, LLC, and the United Steelworkers (collectively, the petitioners) filed the underlying petitions. *Id.,* at 65283.

[2] *See* memoranda to Paul Piquado, Assistant Secretary for Enforcement and Compliance, from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations entitled: ''Decision Memorandum for the Preliminary Determination of the Antidumping Duty Investigation of Grain-Oriented Electrical Steel from Germany''; ''Decision Memorandum for the Preliminary Determination of the Antidumping Duty Investigation of Grain-Oriented Electrical Steel from Japan''; ''Decision Memorandum for the Preliminary Determination of the Antidumping Duty Investigation of Grain-Oriented Electrical Steel from Poland'' (Poland Preliminary Decision Memorandum); and ''Decision Memorandum for the Preliminary Determination of the Antidumping Duty Investigation of Grain-Oriented Electrical Steel from the Russian Federation'' (Russia Preliminary Decision Memorandum).

[3] *See* Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, ''Deadlines Affected by the Shutdown of the Federal Government,'' dated October 18, 2013.

[4] *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

[5] *See* Letter from the petitioners entitled, ''Antidumping Investigations of Grain-Oriented Electrical Steel (''GOES'') from China, Czech Republic, Germany, Japan, South Korea, Poland, and Russia: Petitioners' Request for Extension of the Preliminary Determination,'' dated February 10, 2014.

[6] *See Grain-Oriented Electrical Steel From the People's Republic of China, the Czech Republic, Germany, Japan, the Republic of Korea, Poland, and the Russian Federation: Postponement of Preliminary Determinations in the Antidumping Duty Investigations,* 79 FR 11082 (February 27, 2014).

Russia investigation, the sole mandatory respondent failed to provide useable cost of production information, as requested in section D of the Department's initial questionnaire and in two supplemental questionnaires. As a result, we preliminarily determined to apply adverse facts available (AFA) to the mandatory respondents in the Germany, Japan, Poland, and Russia investigations, in accordance with section 776 of the Act and 19 CFR 351.308. For a full discussion of the rationale underlying our preliminary determinations, as well as a description of the methodology used, see the Preliminary Decision Memoranda.

Certain Affirmative Preliminary Determinations of Critical Circumstances

On February 24, 2014, the petitioners filed timely critical circumstances allegations, pursuant to section 733(e)(1) of the Act and 19 CFR 351.206(c)(1), alleging that critical circumstances exist with respect to imports of the merchandise under consideration from Poland and Russia.[7] In accordance with 19 CFR 351.206(c)(2)(i), when a critical circumstances allegation is submitted more than 20 days before the scheduled date of the preliminary determination, the Department must issue a preliminary finding whether there is a reasonable basis to believe or suspect that critical circumstances exist no later than the date of the preliminary determination. We conducted analyses of critical circumstances for Poland and Russia in accordance with section 733(e) of the Act and 19 CFR 351.206, and preliminarily determined that: (1) Importers of GOES from Poland and Russia knew or should have known that the exporter was selling the merchandise under consideration at LTFV and that there was likely to be material injury in accordance with section 733(e)(1)(A)(ii) of the Act; and (2) imports of the subject merchandise from Poland and Russia have been massive over a relatively short period in accordance with section 733(e)(1)(B) of the Act. For a full description of the methodology and results of our analysis, see the Poland Preliminary Decision Memorandum and the Russia Preliminary Decision Memorandum.

All Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated ''all others'' rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely under section 776 of the Act. Pursuant to section 735(c)(5)(B) of the Act, if the estimated weighted-average dumping margins established for all exporters and producers individually examined are zero, *de minimis* or determined based entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated dumping margin for all other producers or exporters.

We determined the dumping margin for each of the mandatory respondents in the Germany, Japan, Poland, and Russia investigations entirely under section 776 of the Act. Consequently, the only available dumping margins for these preliminary determinations are found in the petition. Pursuant to section 735(c)(5)(B) of the Act, the Department's practice under these circumstances has been to calculate the all others rate as a simple average of these margins from the petition.[8] For a full description of the methodology underlying our conclusions, see the Preliminary Decision Memoranda.

Preliminary Determinations

The preliminary dumping margins are as follows:

Manufacturer/exporter	Dumping margin (percent)
Germany:	
ThyssenKrupp Electrical Steel GmbH	241.91
All Others	133.70
Japan:	
JFE Steel Corporation	172.30
Nippon Steel & Sumitomo Metal Corporation	172.30
All Others	93.36
Poland:	
Stalprodukt S.A.	99.51
All Others	78.10
Russia:	
OJSC Novoliptesk Steel/VIZ-Steel LLC	119.88
All Others	68.98

Disclosure

Normally, the Department discloses to interested parties the calculations performed in connection with a preliminary determination within five days of the date of publication of the notice of preliminary determination in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because the Department preliminarily applied AFA to each of the mandatory respondents in these investigations in accordance with section 776 of the Act, there are no calculations to disclose.

Public Comment

Interested parties are invited to comment on these preliminary determinations. Interested parties may submit case briefs to the Department no later than 30 days after the date of publication of the preliminary determinations.[9] Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within five days from the deadline date for the submission of case briefs.[10] A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department.[11] Executive summaries should be limited to five pages total, including footnotes. Interested parties who wish to comment on the preliminary determinations must file briefs electronically using IA ACCESS. An electronically filed document must be received successfully in its entirety by IA ACCESS, by 5 p.m. Eastern Standard Time on the date the document is due.

In accordance with section 774 of the Act, the Department will hold a hearing, if timely requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party.[12] Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed

[7] *See* the letter from the petitioners entitled, ''Grain-Oriented Electricl {sic} Steel from the Czech Republic, Poland and the Russian Federation—Critical Circumstances Allegation,'' dated February 24, 2014.

[8] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany,* 73 FR 21909, 21912 (April 23, 2008), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany,* 73 FR 38986, 38987 (July 8, 2008), and accompanying Issues and Decision Memorandum at Comment 2; *see also Notice of Final Determination of Sales at Less Than Fair Value: Raw Flexible Magnets From Taiwan,* 73 FR 39673, 39674 (July 10, 2008); *Steel Threaded Rod From Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances,* 78 FR 79670, 79671 (December 31, 2013), unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances,* 79 FR 14476, 14477 (March 14, 2014).

[9] *See* 19 CFR 351.309(c)(1)(i).

[10] *See* 19 CFR 351.309(d)(1) and 19 CFR 351.309(d)(2).

[11] *See* 19 CFR 351.309(c)(2).

[12] *See also* 19 CFR 351.310.

electronically using IA ACCESS, as noted above. An electronically-filed request must be received successfully in its entirety by IA ACCESS, by 5 p.m. Eastern Standard Time within 30 days after the date of publication of this notice.[13] Requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed.[14] If a request for a hearing is made, we will inform parties of the scheduled date and time for the hearing which will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.[15] Parties should confirm by telephone the date, time, and location of the hearing.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we will instruct U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of subject merchandise from Germany and Japan entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, because we preliminarily found that critical circumstances exist in the Poland and Russia investigations with regard to the mandatory respondents and companies receiving the ''all others'' rate, we will instruct CBP to suspend liquidation of covered entries from Poland and Russia entered, or withdrawn from warehouse for consumption up to 90 days prior to the date of publication of this notice in the **Federal Register**.[16]

Pursuant to section 733(d) of the Act and 19 CFR 351.205(d), we will instruct CBP to require cash deposits [17] equal to the dumping margins, as indicated in the chart above, as follows: (1) The rate for the mandatory respondents listed above will be the respondent-specific rate we determined in these preliminary determinations; (2) if the exporter is not a mandatory respondent identified above in one of these investigations, but the producer is, the rate will be the specific rate established for the producer of the subject merchandise; and (3) the rate for all other producers or exporters will be the country-specific all others rate. These suspension of liquidation instructions will remain in effect until further notice.

Postponement of Russian Final Determination

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. 19 CFR 351.210(e)(2) requires that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

Respondent OJSC Novolipetsk Steel/VIZ-Steel LLC (NLMK) requested that, in the event of an affirmative preliminary determination in the Russia investigation, the Department postpone its final determination by 60 days (*i.e.,* to 135 days after publication of the preliminary determination), and agreed to extend the application of the provisional measures prescribed under section 733(d) of the Act and 19 CFR 351.210(e)(2), from a four-month period to a period not to exceed six months.[18] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because (1) our preliminary determination for Russia is affirmative; (2) the requesting producer or exporter accounts for a significant proportion of exports of the subject merchandise from Russia; and (3) no compelling reasons for denial exist, we are postponing the final determination in the Russia investigation until no later than 135 days after the publication of this notice in the **Federal Register** and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, we will issue our final determination in the Russia investigation no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.[19]

International Trade Commission (ITC) Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our affirmative preliminary determinations of sales at LTFV. If our final determinations in these investigations are affirmative, section 735(b)(2) of the Act requires that the ITC make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of GOES from Germany, Japan, Poland, and Russia before the later of 120 days after the date of these preliminary determinations or 45 days after our final determinations.

These determinations are issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: May 2, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigations

The scope of these investigations covers grain-oriented silicon electrical steel (GOES). GOES is a flat-rolled alloy steel product containing by weight at least 0.6 percent but not more than 6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, in coils or in straight lengths. The GOES that is subject to these investigations is currently classifiable under subheadings 7225.11.0000, 7226.11.1000, 7226.11.9030, and 7226.11.9060 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these investigations is dispositive. Excluded are flat-rolled products not in coils that, prior to importation into the United States, have been cut to a shape and undergone all punching, coating, or other operations necessary for classification in Chapter 85 of the HTSUS as a transformer part (*i.e.,* laminations).

Appendix II—List of Topics Discussed in the Preliminary Decision Memoranda

1. Summary
2. Background
3. Period of Investigation
4. Scope of the Investigation
5. Scope Comments
6. Product Comparisons
7. Respondent Selection
8. Application of Facts Available and Use of Adverse Inference
9. Corroboration of Secondary Information
10. All Others Rate
11. Critical Circumstances (Poland and Russia only)
12. Conclusion

[FR Doc. 2014–10747 Filed 5–9–14; 8:45 am]

BILLING CODE 3510–DS–P

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] *See* section 733(e)(2) of the Act.

[17] *See Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations,* 76 FR 61042 (October 3, 2011).

[18] *See* letter from NLMK entitled, ''Grain-Oriented Electrical Steel from Russia: Request for Postponement of Final Determination and to Extend Provisional Measures,'' dated April 30, 2014.

[19] *See* 19 CFR 351.210(b)(2) and (e).

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 99–7A002]

Export Trade Certificate of Review

ACTION: Notice of Issuance of an amended Export Trade Certificate of Review to California Almond Export Association, LLC (''CAEA'') (Application #99–7A002).

SUMMARY: The U.S. Department of Commerce issued an amended Export Trade Certificate of Review to California Almond Export Association, LLC on May 1, 2014.

FOR FURTHER INFORMATION CONTACT: Joseph E. Flynn, Director, Office of Trade and Economic Analysis, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number) or email at *etca@trade.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) (''the Act'') authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (2013).

The Office of Trade and Economic Analysis (''OTEA'') is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Secretary of Commerce to publish a summary of the certification in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

CAEA's Export Trade Certificate of Review has been amended to:

1. Delete the following company as a Member of CAEA's Certificate: Treehouse California Almonds, LLC, Los Angeles, CA

CAEA's Export Trade Certificate of Review complete amended membership is listed below:

Almonds California Pride, Inc., Caruthers, CA
Baldwin-Minkler Farms, Orland, CA
Blue Diamond Growers, Sacramento, CA
Campos Brothers, Caruthers, CA
Chico Nut Company, Chico, CA
Del Rio Nut Company, Inc., Livingston, CA
Fair Trade Corner, Inc., Chico, CA
Fisher Nut Company, Modesto, CA
Hilltop Ranch, Inc., Ballico, CA
Hughson Nut, Inc., Hughson, CA
Mariani Nut Company, Winters, CA
Minturn Nut Company, Inc., LeGrand, CA
Nutco, LLC d.b.a. Spycher Brothers, Turlock, CA
Paramount Farms, Inc., Los Angeles, CA
P–R Farms, Inc., Clovis, CA
Roche Brothers International Family Nut Co., Escalon, CA
South Valley Almond Company, LLC, Wasco, CA
Sunny Gem, LLC, Wasco, CA
Western Nut Company, Chico, CA

Dated: May 7, 2014.

Emily Kilcrease,

Acting Director, Office of Trade and Economic Analysis.

[FR Doc. 2014–10860 Filed 5–9–14; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD284

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Issuance of a scientific research permit, and notice of availability for final environmental assessment and finding of no significant impact.

SUMMARY: This notice is hereby given that NMFS has issued Permit 17781 to Mr. Robert Clark, Fisheries Program Supervisor of the U.S. Fish and Wildlife Service (USFWS), in accordance with the Endangered Species Act of 1973, as amended (ESA). In addition, the Final Environmental Assessment (EA) and Finding of No Significant Impact associated with this permit are available to the public.

ADDRESSES: The approved application for the permit is available on the Applications and Permits for Protected Species (APPS), *https://apps.nmfs.noaa.gov* Web site by searching the permit number within the Search Database page. The application, issued permit, Final Environmental Assessment, Finding of No Significant Impact and supporting documents are also available by appointment, or upon the following:

- *Mail:* Submit written requests to Elif Fehm-Sullivan, Fisheries Biologist, West Coast Region, California Central Valley Area Office, National Marine Fisheries Service, 650 Capitol Mall, Suite 5–100, Sacramento, CA 95814.
- *Fax:* (916) 930–3629.
- *Email: Elif.Fehm-Sullivan@noaa.gov.*

You may access a copy of supporting documents including the final EA by one of the following:

- Visit the NMFS Reintroduction Web site at *http://www.westcoast.fisheries.noaa.gov/central_valley/san_joaquin/san_joaquin_reint.html.*
- Call (916) 930–3723 and request to have a CD or hard copy mailed to you.
- Obtain a CD or hard copy by visiting the NMFS Central Valley office at 650 Capitol Mall, Suite 5–100, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Elif Fehm-Sullivan, National Marine Fisheries Service, 650 Capitol Mall, Suite 5–100, Sacramento, CA 95814 (916) 930–3723.

SUPPLEMENTARY INFORMATION:

Authority

The issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations (50 CFR parts 222–226) governing listed fish and wildlife permits.

Species Covered in This Notice

This notice is relevant to ESA listed species from the threatened Central Valley spring-run Chinook salmon (*Oncorhynchus tshawytscha*) (spring-run Chinook salmon) evolutionarily significant unit (ESU) and threatened California Central Valley (CCV) steelhead (O. mykiss).

Permit 17781

NMFS formally initiated a public review period for review of the permit application through publication of a Notice of Receipt (NOR) of the Permit application in the **Federal Register** on December 31, 2013, outlining the research and enhancement activities proposed by USFWS and take of ESA-listed spring-run Chinook salmon proposed under Permit 17781 (28 FR 79675). The notice of receipt included a

30-day public comment period for this permit application, which closed on January 30, 2014. A combined total of 6 public comments on the permit application were submitted to NMFS by two entities.

The public comments and NMFS' response are as follows:

Comment 1: The permit should acknowledge the protections accorded by The Settlement Act requiring that the reintroduction of spring-run Chinook salmon to the San Joaquin River will have no adverse impacts to Central Valley Project (CVP) contract allocations.

Response: The protections accorded by The Settlement Act, as referred to in the above comment and in this response (Pub. L. 11–111, Title X, Section 10011), have been addressed in the designation of an experimental population rule (50 CFR 223.301(b)) that went into effect January 31, 2014. That federal regulation states that an annual technical memorandum will be developed to ensure that the reintroduction of spring-run Chinook salmon will not result in more than *de minimus* water supply reductions, additional storage releases or bypass flows on unwilling persons or entities diverting or receiving water pursuant to applicable State and Federal laws. This also applies to the CVP and State Water Project (SWP) operations under any biological opinion or ESA section 10 permit that is in effect at the time for operations of the CVP and SWP. The actions of this permit will be considered in that annual process. Also note that this is directly addressed in the permit application project description. To address concerns of downstream water users and to assess take at the State and Federal pumping facilities in the Delta, an externally visible mark will be used by the Program.

Comment 2: The permit application should include provisions for genetic monitoring to ensure the introduction of the experimental spring-run Chinook salmon population will not result in adverse impacts to CVP operations.

Response: Please see the response to comment 1. Genetic material collection is part of this permit application. The need for genetic testing with respect to this concern will be addressed in the annual technical memorandum associated with 50 CFR 223.301(b).

Comment 3: There is inadequate habitat in the San Joaquin river and as a result, the issuance of the 10(a)(1)(A) permit for the salmon reintroduction program with the goal of spring-run Chinook salmon reintroduction to the San Joaquin River in 2014 is far in advance of the necessary structural and channel improvements, which are critical to providing habitat conditions for the successful reintroduction of spring-run Chinook salmon to the San Joaquin River.

Response: NMFS recognizes that the restoration of naturally self-sustaining populations of Chinook salmon to the San Joaquin River will require completion of other channel and habitat improvements to be implemented by the San Joaquin River Restoration Program. However, suitable habitat for Chinook salmon presently exists seasonally and in places along the San Joaquin River as described in section 3 of the EA. Reintroduction is not one single event, but a series of several events that over time will lead to successful restoration of spring-run Chinook to the San Joaquin River. In order for the reintroduction to be successful, the initial step of this reintroduction process will have a testing phase, where the collection, transportation, holding, rearing, and release techniques can be tested to ensure that the program will not have an adverse effect on these listed fish. This permit authorizes the implementation of necessary initial actions and the scope of the permitted actions does consider existing habitat availability.

Comment 4: There is inadequate funding for the San Joaquin River Restoration Program to achieve the program's goals of habitat restoration, channel improvements, and operate the salmon reintroduction program.

Response: Please see response to comment 3. For the purposes of this permit, NMFS assumes that all channel and structural modifications, habitat improvements, and water releases, will be implemented as required by the Settlement. Implementing only some of these measures would not achieve the Restoration Goal, and thereby would not fulfill the terms and conditions of the Settlement. NMFS correctly makes assumptions that other related factors such as compliance with other laws, plans, and policies and adequate funding to carry out the proposal will occur. Funding sources are identified for the implementation of the SJRRP. Lack of implementation could result from a suite of potential factors including lack of funding or noncompliance with a related law. If funding issues prevent the completion of some SJRRP actions, there would be no impacts to third parties from the reintroduction of spring-run Chinook salmon due to the non-essential experimental population designation and take exemptions. However, throughout Settlement implementation, the Implementing Agencies will remain cognizant of funding availability and the need to prioritize individual actions in recognition of their anticipated costs and effectiveness. If the reintroduction program were halted because of a lack of funding, NMFS would then reevaluate the program and make necessary adjustments through its regulatory processes.

Comment 5: The permit application anticipates the use of a trap and haul program to move spring-run Chinook salmon around major passage impediments in the early years of the reintroduction program, however it does not adequately address the impact on survival from such a trap and haul program.

Response: The permit application calls out specific release criteria for juveniles, found in appendix J of the attached permit documents, which specify that fish will be released only from a point where there is connectivity with the ocean, and the potential impact on survival resulting from this handling and transport has been accounted for in the take tables found in the permit application and the permit itself. For returning adults, a trap and haul program would only be used if necessary, as outline in appendix K of the attached permit documents. The incidental mortality rate provided by USFWS for the adult trap and haul program is 3 percent. The number used is a doubling of the observed mortality rate of adult fall-run trap and haul program currently being used in the San Joaquin River and outlined in appendix K. This number was used as a conservative, surrogate estimate for take, as no spring-run Chinook trap and haul program has been performed in this area.

Comment 6: The permit application proposes the use of in-river and streamside incubators for eggs and the use of in-river holding pens for juveniles, including unmarked juveniles that have not reached a sufficient size for marking, but does not adequately address the risks of releases of eggs or unmarked fish to the San Joaquin River either through accidental release or vandalism.

Response: Eggs will be transported to stream side incubators. As they develop into juveniles they will be held in incubators until they can be tagged and adipose fin-clipped, and then moved to holding pens. No un-marked juveniles will be put into net pens. The stream side incubators will be placed on federal land and built in such a way as to deter vandalism to the best extent possible.

Permit 17781 authorizes USFWS take of ESA-listed Central Valley spring-run Chinook salmon from the Feather River

Fish Hatchery (FRFH) for the following activities: (1) The collection of spring-run Chinook salmon juveniles and eggs from the FRFH and their transport to stream side incubators located alongside the San Joaquin River; (2) the transport of collected Chinook salmon to holding pens located in the San Joaquin River; (3) the tagging of FRFH collected spring-run Chinook salmon; (4) the release of tagged juvenile spring-run Chinook salmon from FRFH, the salmon conservation and research facility (SCARF), and those juveniles that were raised in the stream side incubators; (5) the release of tagged adult salmon from SCARF in years 4–5 of the permit; (6) monitoring and evaluation associated with permitted activities; and (7) if required, quarantine and pathology testing on eggs and/or juveniles collected from FRFH.

Dated: May 6, 2014.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2014–10737 Filed 5–9–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–BD32

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Comprehensive Fishery Management Plan for the Exclusive Economic Zone of Puerto Rico

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

ACTION: Supplemental Notice of Intent (NOI) to prepare a draft environmental impact statement (DEIS); reopening of comment period.

SUMMARY: NMFS is reopening the comment period for the supplemental NOI to prepare a DEIS, which published on March 11, 2014. NMFS, Southeast Region, in collaboration with the Caribbean Fishery Management Council (Council), intends to prepare a DEIS to describe and analyze a range of management alternatives for management actions to be considered when developing and establishing a Comprehensive Fishery Management Plan (FMP) for the exclusive economic zone (EEZ) of Puerto Rico. The purpose of this Supplemental NOI is to inform the public of upcoming opportunities to provide comments on the actions to be addressed in the DEIS, as specified in this notice.

DATES: Written comments on the scope of issues to be addressed in the DEIS must be received by NMFS by August 11, 2014.

ADDRESSES: You may submit comments on the DEIS, identified by ''NOAA–NMFS–2013–0093'', by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0093,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Miguel Lugo, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701, or to the Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918.

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

Electronic copies of the scoping document may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sustainable_fisheries/caribbean/island_based/index.html.*

FOR FURTHER INFORMATION CONTACT: Miguel Lugo, phone 727–824–5305, email *Miguel.Lugo@noaa.gov;* or Graciela García-Moliner, phone 787–766–5926, email *Graciela.Garcia-Moliner@noaa.gov.*

SUPPLEMENTARY INFORMATION: On Tuesday, March 11, 2014, NMFS published in the **Federal Register** (79 FR 13624) a supplemental NOI to prepare a DEIS. Comments on the notice were required to be received on or before April 10, 2014. NMFS is re-opening the comment period for an additional 90 days to allow interested parties additional time to prepare and submit comments.

Currently, the Council manages Federal fisheries in the U.S. Caribbean under four species-based FMPs: The Spiny Lobster FMP of Puerto Rico and the U.S. Virgin Islands (Spiny Lobster FMP), the Reef Fish FMP of Puerto Rico and the U.S. Virgin Islands (Reef Fish FMP), the Corals and Reef Associated Plants and Invertebrates FMP of Puerto Rico and the U.S. Virgin Islands (Coral FMP), and the FMP for the Queen Conch Resources of Puerto Rico and the U.S. Virgin Islands (Queen Conch FMP). The fishers, fishing community representatives, and the local governments of Puerto Rico and the U.S. Virgin Islands (USVI) have frequently requested the Council consider the differences between the islands or island groups when addressing fisheries management in the U.S. Caribbean to recognize the unique attributes of each U.S. Caribbean island. By developing island-based FMPs, NMFS and the Council would better account for differences among the U.S. Caribbean islands with respect to culture, markets, gear, seafood preferences, and the ecological impacts that result from these differences.

At its 145th meeting, held on March 26–27, 2013, the Council decided to transition from species-based fisheries management to island-based fisheries management. If approved, a comprehensive FMP for fisheries management off Puerto Rico, in conjunction with similar comprehensive FMPs for fisheries management off St. Croix and off St. Thomas/St. John, would replace the existing species-based FMPs.

Also at its March meeting, the Council voted to hold scoping meetings in July 2013 to receive public feedback on possible actions and alternatives to consider during the development of the Puerto Rico FMP, the St. Croix FMP, and the St. Thomas/St. John FMP. Based on public feedback received at the July scoping meetings, the Council decided at its 148th Meeting, held December 11–12, 2013, to hold a second round of scoping meetings to present a more robust set of actions and alternatives. After the second round of scoping meetings in April, 2014, the Council recommended providing the public with an additional opportunity to comment on the range of management alternatives to include in the DEIS. The Council could develop the comprehensive FMPs without significant changes to current Federal fisheries management. For example, the 2010 Caribbean Annual Catch Limit (ACL) Amendment (76 FR 82404, December 30, 2011) and the 2011 Caribbean ACL Amendment (76 FR 82414, December 30, 2011) established

ACLs by island or island group with specific ACLs for the Puerto Rico EEZ. The spatial and species-based attributes of these Puerto Rico ACLs, likely, would not change when developing the new FMP.

However, a re-arrangement from species-based FMPs to island-based FMPs also provides an opportunity for the Council to update management regulations that are outdated or do not reflect the current state of issues in the Puerto Rico EEZ. In the comprehensive Puerto Rico FMP, the Council is considering management measures to modify the composition of the fishery management units (FMUs) by adding or removing species, establishing management reference points for any new species added into the FMUs, and modifying or establishing additional management measures. If regulations are to be changed, additional analyses to assess the impacts to the social, biological, economic, ecological, and administrative environments will be required.

To implement the proposed provisions of this new FMP, the Council will develop a DEIS for the comprehensive Puerto Rico FMP that describes and analyzes the proposed management alternatives. The new FMP will provide the best available scientific information regarding the management of Puerto Rico fisheries, within the context of Federal fisheries management in the U.S. Caribbean. Those alternatives will include, but are not limited to, a ''no action'' alternative regarding the continuation of species-based Federal fishery management in Puerto Rico, as well as alternatives to revise the management of U.S. Caribbean fisheries when developing the comprehensive Puerto Rico FMP. In addition, there will be alternatives to modify the current FMUs including, but not limited to, the ''no action'' alternative. Other actions could be included in the DEIS in response to public feedback during the scoping process.

In accordance with NOAA's Administrative Order NAO 216–6, Section 5.02(c), the Council and NMFS have identified preliminary environmental issues as a means to initiate discussion for scoping purposes only. These preliminary issues may not represent the full range of issues that eventually will be evaluated in the DEIS.

After the DEIS associated with the development of the Comprehensive Puerto Rico FMP is completed, it will be filed with the Environmental Protection Agency (EPA). After filing, the EPA will publish a notice of availability of the DEIS for public comment in the **Federal Register**. The DEIS will have a 45-day comment period. This procedure is pursuant to regulations issued by the Council on Environmental Quality (CEQ) for implementing the procedural provisions of the National Environmental Policy Act (NEPA; 40 CFR parts 1500–1508) and to NOAA's Administrative Order 216–6 regarding NOAA's compliance with NEPA and the CEQ regulations.

The Council and NMFS will consider public comments received on the DEIS in developing the final environmental impact statement (FEIS), and before voting to submit the FMP to NMFS for Secretarial review, approval, and implementation.

NMFS will announce in the **Federal Register** the availability of the FMP for public review during the Secretarial review period. During Secretarial review, NMFS will also file the FEIS with the EPA for a final 30-day public comment period. This comment period will be concurrent with the Secretarial review period and will end prior to final agency action to approve, disapprove, or partially approve the FMP.

NMFS will announce in the **Federal Register**, all public comment periods on the FMP, its proposed implementing regulations, and the associated FEIS. NMFS will consider all public comments received during the Secretarial review period, whether they are on the FMP, the proposed regulations, or the FEIS, prior to final agency action.

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

Dated: May 7, 2014.

Emily H. Menashes,

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

[FR Doc. 2014–10812 Filed 5–9–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–BD33

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Comprehensive Fishery Management Plan for the Exclusive Economic Zone (EEZ) of St. Croix, U.S. Virgin Islands (USVI)

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

ACTION: Supplemental Notice of Intent (NOI) to prepare a draft environmental impact statement (DEIS); reopening of comment period.

SUMMARY: NMFS is reopening the comment period for the supplemental NOI to prepare a DEIS, which published on March 10, 2014. NMFS, Southeast Region, in collaboration with the Caribbean Fishery Management Council (Council), intends to prepare a DEIS to describe and analyze a range of management alternatives for management actions to be considered when developing and establishing a Comprehensive Fishery Management Plan (FMP) for the exclusive economic zone (EEZ) of St. Croix. The purpose of this Supplemental NOI is to inform the public of upcoming opportunities to provide comments on the actions to be addressed in the DEIS, as specified in this notice.

DATES: Written comments on the scope of issues to be addressed in the DEIS must be received by NMFS by August 11, 2014.

ADDRESSES: You may submit comments on the DEIS, identified by ''NOAA–NMFS–2013–0092'', by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0092,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Miguel Lugo, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701, or to the Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918.

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

Electronic copies of the scoping document may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sustainable_*

fisheries/caribbean/island_based/index.html.

FOR FURTHER INFORMATION CONTACT: Miguel Lugo, phone 727–824–5305, email *Miguel.Lugo@noaa.gov;* or Graciela García-Moliner, phone 787–766–5926, email *Graciela.Garcia-Moliner@noaa.gov.*

SUPPLEMENTARY INFORMATION: On Monday, March 10, 2014, NMFS published in the **Federal Register** (79 FR 13280) a supplemental NOI to prepare a DEIS. Comments on the notice were required to be received on or before April 9, 2014. NMFS is reopening the comment period for an additional 90 days to allow interested parties additional time to prepare and submit comments.

Currently, the Council manages Federal fisheries in the U.S. Caribbean under four species-based FMPs: the Spiny Lobster FMP of Puerto Rico and the U.S. Virgin Islands (Spiny Lobster FMP), the Reef Fish FMP of Puerto Rico and the U.S. Virgin Islands (Reef Fish FMP), the Corals and Reef Associated Plants and Invertebrates FMP of Puerto Rico and the U.S. Virgin Islands (Coral FMP), and the FMP for the Queen Conch Resources of Puerto Rico and the U.S. Virgin Islands (Queen Conch FMP). The fishers, fishing community representatives, and the local governments of Puerto Rico and the USVI have frequently requested the Council consider the differences between the islands or island groups when addressing fisheries management in the U.S. Caribbean to recognize the unique attributes of each U.S. Caribbean island. By developing island-based FMPs, NMFS and the Council would better account for differences among the U.S. Caribbean islands with respect to culture, markets, gear, seafood preferences, and the ecological impacts that result from these differences.

At its 145th meeting, held on March 26–27, 2013, the Council decided to transition from species-based fisheries management to island-based fisheries management. If approved, a comprehensive FMP for fisheries management off St. Croix, in conjunction with similar comprehensive FMPs for fisheries management off Puerto Rico and off St. Thomas/St. John, would replace the existing species-based FMPs.

Also at its March meeting, the Council voted to hold scoping meetings in July 2013 to receive public feedback on possible actions and alternatives to consider during the development of the St. Croix FMP, the Puerto Rico FMP, and the St. Thomas/St. John FMP. Based on public feedback received at the July scoping meetings, the Council decided at its 148th Meeting, held December 11–12, 2013, to hold a second round of scoping meetings to present a more robust set of actions and alternatives. After the second round of scoping meetings in April, 2014, the Council recommended providing the public with an additional opportunity to comment on the range of management alternatives to include in the DEIS. The Council could develop the comprehensive FMPs without significant changes to current Federal fisheries management. For example, the 2010 Caribbean Annual Catch Limit (ACL) Amendment (76 FR 82404, December 30, 2011) and the 2011 Caribbean ACL Amendment (76 FR 82414, December 30, 2011) established ACLs by island or island group with specific ACLs for the St. Croix EEZ. The spatial and species-based attributes of these St. Croix ACLs, likely, would not change when developing the new FMP.

However, a re-arrangement from species-based FMPs to island-based FMPs also provides an opportunity for the Council to update management regulations that are outdated or do not reflect the current state of issues in the St. Croix EEZ. In the comprehensive St. Croix FMP, the Council is considering management measures to modify the composition of the fishery management units (FMUs) by adding or removing species, establishing management reference points for any new species added into the FMUs, and modifying or establishing additional management measures. If regulations are to be changed, additional analyses to assess the impacts to the social, biological, economic, ecological, and administrative environments will be required.

To implement the proposed provisions of this new FMP, the Council will develop a DEIS for the comprehensive St. Croix FMP that describes and analyzes the proposed management alternatives. The new FMP will provide the best available scientific information regarding the management of St. Croix EEZ fisheries, within the context of Federal fisheries management in the U.S. Caribbean. Those alternatives will include, but are not limited to, a ''no action'' alternative regarding the continuation of species-based Federal fishery management in St. Croix, as well as alternatives to revise the management of U.S. Caribbean fisheries when developing the comprehensive St. Croix FMP. In addition, there will be alternatives to modify the current FMUs including, but not limited to, the ''no action'' alternative. Other actions could be included in the DEIS in response to public feedback during the scoping process.

In accordance with NOAA's Administrative Order NAO 216–6, Section 5.02(c), the Council and NMFS have identified preliminary environmental issues as a means to initiate discussion for scoping purposes only. These preliminary issues may not represent the full range of issues that eventually will be evaluated in the DEIS.

After the DEIS associated with the development of the Comprehensive St. Croix FMP is completed, it will be filed with the Environmental Protection Agency (EPA). After filing, the EPA will publish a notice of availability of the DEIS for public comment in the **Federal Register**. The DEIS will have a 45-day comment period. This procedure is pursuant to regulations issued by the Council on Environmental Quality (CEQ) for implementing the procedural provisions of the National Environmental Policy Act (NEPA; 40 CFR parts 1500–1508) and to NOAA's Administrative Order 216–6 regarding NOAA's compliance with NEPA and the CEQ regulations.

The Council and NMFS will consider public comments received on the DEIS in developing the final environmental impact statement (FEIS), and before voting to submit the FMP to NMFS for Secretarial review, approval, and implementation.

NMFS will announce in the **Federal Register** the availability of the FMP for public review during the Secretarial review period. During Secretarial review, NMFS will also file the FEIS with the EPA for a final 30-day public comment period. This comment period will be concurrent with the Secretarial review period and will end prior to final agency action to approve, disapprove, or partially approve the FMP.

NMFS will announce in the **Federal Register**, all public comment periods on the FMP, its proposed implementing regulations, and the associated FEIS. NMFS will consider all public comments received during the Secretarial review period, whether they are on the FMP, the proposed regulations, or the FEIS, prior to final agency action.

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

Dated: May 7, 2014.

Emily H. Menashes,

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

[FR Doc. 2014–10814 Filed 5–9–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–BD34

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Comprehensive Fishery Management Plan for the Exclusive Economic Zone of St. Thomas/St. John, U.S. Virgin Islands (USVI)

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

ACTION: Supplemental Notice of Intent (NOI) to prepare a draft environmental impact statement (DEIS); reopening of comment period.

SUMMARY: NMFS is reopening the comment period for the supplemental NOI to prepare a DEIS, which published on March 12, 2014. NMFS, Southeast Region, in collaboration with the Caribbean Fishery Management Council (Council), intends to prepare a DEIS to describe and analyze a range of management alternatives for management actions to be considered when developing and establishing a Comprehensive Fishery Management Plan (FMP) for the exclusive economic zone (EEZ) of St. Thomas/St. John. The purpose of this Supplemental NOI is to inform the public of upcoming opportunities to provide comments on the actions to be addressed in the DEIS, as specified in this notice.

DATES: Written comments on the scope of issues to be addressed in the DEIS must be received by NMFS by August 11, 2014.

ADDRESSES: You may submit comments on the DEIS, identified by ''NOAA–NMFS–2013–0094'', by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0094*, click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Miguel Lugo, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701, or to the Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918.

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

Electronic copies of the scoping document may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sustainable_fisheries/caribbean/island_based/index.html.*

FOR FURTHER INFORMATION CONTACT: Miguel Lugo, phone 727–824–5305, email *Miguel.Lugo@noaa.gov;* or Graciela García-Moliner, phone 787–766–5926, email *Graciela.Garcia-Moliner@noaa.gov.*

SUPPLEMENTARY INFORMATION: On Wednesday, March 12, 2014, NMFS published in the **Federal Register** (79 FR 13988) a supplemental NOI to prepare a DEIS. Comments on the notice were required to be received on or before April 11, 2014. NMFS is reopening the comment period for an additional 90 days to allow interested parties additional time to prepare and submit comments.

Currently, the Council manages Federal fisheries in the U.S. Caribbean under four species-based FMPs: the Spiny Lobster FMP of Puerto Rico and the U.S. Virgin Islands (Spiny Lobster FMP), the Reef Fish FMP of Puerto Rico and the U.S. Virgin Islands (Reef Fish FMP), the Corals and Reef Associated Plants and Invertebrates FMP of Puerto Rico and the U.S. Virgin Islands (Coral FMP), and the FMP for the Queen Conch Resources of Puerto Rico and the U.S. Virgin Islands (Queen Conch FMP). The fishers, fishing community representatives, and the local governments of Puerto Rico and the USVI have frequently requested the Council consider the differences between the islands or island groups when addressing fisheries management in the U.S. Caribbean to recognize the unique attributes of each U.S. Caribbean island. By developing island-based FMPs, NMFS and the Council would better account for differences among the U.S. Caribbean islands with respect to culture, markets, gear, seafood preferences, and the ecological impacts that result from these differences.

At its 145th meeting, held on March 26–27, 2013, the Council decided to transition from species-based fisheries management to island-based fisheries management. If approved, a comprehensive FMP for fisheries management off St. Thomas/St. John, in conjunction with similar comprehensive FMPs for fisheries management off Puerto Rico and off St. Croix, would replace the existing species-based FMPs.

Also at its March meeting, the Council voted to hold scoping meetings in July 2013 to receive public feedback on possible actions and alternatives to consider during the development of the St. Thomas/St. John FMP, the Puerto Rico FMP, and the St. Croix FMP. Based on public feedback received at the July scoping meetings, the Council decided at its 148th Meeting, held December 11–12, 2013, to hold a second round of scoping meetings to present a more robust set of actions and alternatives. After the second round of scoping meetings in April, 2014, the Council recommended providing the public with an additional opportunity to comment on the range of management alternatives to include in the DEIS. The Council could develop the comprehensive FMPs without significant changes to current Federal fisheries management. For example, the 2010 Caribbean Annual Catch Limit (ACL) Amendment (76 FR 82404, December 30, 2011) and the 2011 Caribbean ACL Amendment (76 FR 82414, December 30, 2011) established ACLs by island or island group with specific ACLs for the St. Thomas/St. John EEZ. The spatial and species-based attributes of these St. Thomas/St. John ACLs, likely, would not change when developing the new FMP.

However, a re-arrangement from species-based FMPs to island-based FMPs also provides an opportunity for the Council to update management regulations that are outdated or do not reflect the current state of issues in the St. Thomas/St. John EEZ. In the comprehensive St. Thomas/St. John FMP, the Council is considering management measures to modify the composition of the fishery management units (FMUs) by adding or removing species, establishing management reference points for any new species added into the FMUs, and modifying or establishing additional management measures. If regulations are to be changed, additional analyses to assess the impacts to the social, biological, economic, ecological, and administrative environments will be required.

To implement the proposed provisions of this new FMP, the Council will develop a DEIS for the

comprehensive St. Thomas/St. John FMP that describes and analyzes the proposed management alternatives. The new FMP will provide the best available scientific information regarding the management of St. Thomas/St. John EEZ fisheries, within the context of Federal fisheries management in the U.S. Caribbean. Those alternatives will include, but are not limited to, a ''no action'' alternative regarding the continuation of species-based Federal fishery management in St. Thomas/St. John, as well as alternatives to revise the management of U.S. Caribbean fisheries when developing the comprehensive St. Thomas/St. John FMP. In addition, there will be alternatives to modify the current FMUs including, but not limited to, the ''no action'' alternative. Other actions could be included in the DEIS in response to public feedback during the scoping process.

In accordance with NOAA's Administrative Order NAO 216–6, Section 5.02(c), the Council and NMFS have identified preliminary environmental issues as a means to initiate discussion for scoping purposes only. These preliminary issues may not represent the full range of issues that eventually will be evaluated in the DEIS.

After the DEIS associated with the development of the Comprehensive St. Thomas/St. John FMP is completed, it will be filed with the Environmental Protection Agency (EPA). After filing, the EPA will publish a notice of availability of the DEIS for public comment in the **Federal Register**. The DEIS will have a 45-day comment period. This procedure is pursuant to regulations issued by the Council on Environmental Quality (CEQ) for implementing the procedural provisions of the National Environmental Policy Act (NEPA; 40 CFR parts 1500–1508) and to NOAA's Administrative Order 216–6 regarding NOAA's compliance with NEPA and the CEQ regulations.

The Council and NMFS will consider public comments received on the DEIS in developing the final environmental impact statement (FEIS), and before voting to submit the FMP to NMFS for Secretarial review, approval, and implementation.

NMFS will announce in the **Federal Register** the availability of the FMP for public review during the Secretarial review period. During Secretarial review, NMFS will also file the FEIS with the EPA for a final 30-day public comment period. This comment period will be concurrent with the Secretarial review period and will end prior to final agency action to approve, disapprove, or partially approve the FMP.

NMFS will announce in the **Federal Register**, all public comment periods on the FMP, its proposed implementing regulations, and the associated FEIS. NMFS will consider all public comments received during the Secretarial review period, whether they are on the FMP, the proposed regulations, or the FEIS, prior to final agency action.

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

Dated: May 7, 2014.

Emily H. Menashes,

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

[FR Doc. 2014–10815 Filed 5–9–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD289

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will hold a meeting of its Technical Subcommittee.

DATES: The meeting will be held from 8:30 a.m. on Wednesday, May 28 until 4 p.m. on Thursday, May 29, 2014.

ADDRESSES: The meeting will be held at the Gulf of Mexico Fishery Management Council's office, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Dr. John Froeschke, Fishery Biologist/Statistician, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630; fax: (813) 348–1711; email: *john.froeschke@gulfcouncil.org.*

SUPPLEMENTARY INFORMATION: The charter vessel technical subcommittee will meet to discuss methods to improve data collection and data reporting for charter vessels in the U.S. Atlantic and Gulf of Mexico Fisheries. The subcommittee will begin work to develop recommendations on how to achieve an electronic reporting system for charter vessels. The group will consider both the national and regional plans for electronic reporting as well as agency and stakeholder perspectives and objectives. The meeting will focus on technical considerations of electronic reporting such as survey type, reporting requirements, quality assurance and quality control mechanisms, reporting mechanisms, and timeliness of fisheries data. The subcommittee will discuss potential costs, barriers to implementation, administrative responsibilities, and timelines to implementation.

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 305c 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

The meeting is 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: May 7, 2014.

Tracey L. Thompson,

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

[FR Doc. 2014–10850 Filed 5–9–14; 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 via web conference call of the Sanctuary System Business Advisory Council (Council). The web conference call is open to the public, and participants can dial into the call. Participants who choose to use the web conferencing feature in addition to the audio will be able to view the presentations as they are being given.

DATES: Members of the public wishing to participate in the meeting must register in advance by May 27, 2014. The meeting will be held Wednesday, May 28, 2014, from 2:00 p.m. to 4:00 p.m. e.d.t., and an opportunity for public comment will be provided at 3:30 p.m. e.d.t. These times and the agenda topics described below are subject to change.

ADDRESSES: The meeting will be held via web conference call. Register by contacting Rebecca Holyoke at *rebecca.holyoke@noaa.gov* or (301) 713–7264. Webinar and teleconference capacity may be limited.

FOR FURTHER INFORMATION CONTACT: Rebecca Holyoke, Office of National Marine Sanctuaries, 1305 East-West Highway, Silver Spring, Maryland 20910. (Phone: 301–713– 7264, Fax: 301–713–0404; email: *rebecca.holyoke@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 second meeting of the Council and, as such, will be devoted to additional introductory presentations and discussions about the National Marine Sanctuary System and potential recommendations for moving forward with 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. Sections 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program).

Dated: April 28, 2014.

Daniel J. Basta,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2014–10444 Filed 5–9–14; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD288

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's (Council) Observer Advisory Committee (OAC) will meet in Anchorage, AK.

DATES: The meetings will be held May 28–29, 2014. The meeting will be held from 10 a.m. to 5 p.m. on May 28th and from 8:30 a.m. to 3 p.m. on May 29th.

ADDRESSES: The meetings will be held at the Clarion Suites, 1110 8th Avenue, Heritage Room, Anchorage, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Diana Evans, Council staff; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The agenda items include updates on the program and electronic monitoring, review of the 2014 observer annual report, and review of regulatory amendment analyses on observers for tendering and the observer component of the CDQ Pacific cod amendment.

The Agenda is subject to change, and the latest version will be posted at *http://www.npfmc.org/*

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens 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 Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: May 7, 2014.

Tracey L. Thompson,

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

[FR Doc. 2014–10811 Filed 5–9–14; 8:45 am]

BILLING CODE 3510–22–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, CNCS is soliciting comments concerning its proposed Volunteer Generation Fund (VGF) Grantee Progress Report (GPR). All VGF grantees are required to complete a GPR that is due in October, to complete an abbreviated mid-year GPR due in April, and to complete a final GPR within 90 days of grant closeout. The GPR provides information for CNCS staff to monitor grantee progress and to respond to requests from Congress and other stakeholders.

Copies of the information collection request can be obtained by contacting the office listed in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by July 11, 2014.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service, AmeriCorps State and National, Attention Carla Ganiel, Senior Program and Project Specialist, Room 9517E, 1201 New York Avenue NW., Washington, DC, 20525.

(2) By hand delivery or by courier to the CNCS mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9:00 a.m. and 4:00 p.m. Eastern Time, Monday through Friday, except Federal holidays.

(3) By fax to: 202–606–3476, Attention: Carla Ganiel, Senior Program and Project Specialist.

(4) Electronically through *www.regulations.gov.*

Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Carla Ganiel, 202–606–6773, or by email at *cganiel@cns.gov.*

SUPPLEMENTARY INFORMATION: CNCS is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are expected 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 submissions of responses).

Background

All VGF grantees complete the GPR, mid-year GPR and a final GPR within 90 days of grant closeout, which provide information for CNCS staff to monitor grantee progress and to respond to requests from Congress and other stakeholders. The information is collected electronically through the eGrants system.

Current Action

This is a new information collection request. Grantees previously reported using the CNCS Universal Application.

Type of Review: New.

Agency: Corporation for National and Community Service.

Title: Volunteer Generation Fund Grantee Progress Report.

OMB Number: None.

Agency Number: None.

Affected Public: Volunteer Generation Fund grantees.

Total Respondents: 25.

Frequency: Biannual with one additional final report required at closeout of the grant.

Average Time per Response: 9 hours per submission.

Estimated Total Burden Hours: 450.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 6, 2014.

William Basl,

Director, AmeriCorps State and National.

[FR Doc. 2014–10833 Filed 5–9–14; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2014–OS–0063]

Proposed Collection; Comment Request

AGENCY: Washington Headquarters Service (WHS), DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Washington Headquarters Service (WHS), announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by July 11, 2014.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Pentagon Force Protection Agency ATTN: Parking Management Branch, Room 2D1039, 9000 Defense Pentagon, Washington, DC 20301–9000.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Pentagon Reservation Parking Permit Application; DD Form 1199; OMB Control Number 0704–0395.

Needs and Uses: To administer the Pentagon, Mark Center, and Suffolk Building Vehicle Parking Program where individuals are allocated parking spaces and to ensure that unless authorized to do so, parking permit applicants do not also receive the DoD National Capital Region Public Transportation fare subsidy benefit.

Affected Public: Individuals or households.

Annual Burden Hours: 350.

Number of Respondents: 4,200.

Responses per Respondent: 1.

Total Annual Responses: 4,200.

Average Burden per Response: 5 minutes.

Frequency: On occasion.

Respondents are Department of Defense and non-DoD personnel who utilize designated parking areas on the Pentagon Reservation. The Pentagon Reservation Parking Permit Application (PRPPA), DD Form 1199, is a handwritten or electronic form that includes information, such as name,

rank or grade, Social Security Number (SSN), and vehicle license plate number, required for the issuance and control of the parking permit. The DD Form 1199 data is entered or completed in a secured computerized database designed for the administration of the Pentagon, Mark Center, and Suffolk Building Vehicle Parking Program. Each member of an authorized van/car pool or single occupancy vehicle parking permit is required to complete and submit the DD Form 1199 upon initial application and upon renewal period thereafter.

Dated: May 7, 2014.

Aaron Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2014–10841 Filed 5–9–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

National Security Education Board; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Personnel and Readiness, Defense Language and National Security Education Office (DLNSEO), DoD.

ACTION: Meeting notice.

SUMMARY: The Department of Defense is publishing this notice to announce that the following Federal advisory committee meeting of the National Security Education Board will take place. This meeting is open to the public.

DATES: Monday, June 9, 2014, from 10:30 a.m. to 4:15 p.m.

ADDRESSES: The Liaison Capitol Hill Hotel, 415 New Jersey Avenue NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Alison Patz, telephone (703) 696–1991, *Alison.m.patz.civ@mail.mil,* fax (703) 696–5667.

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

Purpose of the Meeting: The purpose of the meeting is to review and make recommendations to the Secretary of Defense concerning requirements established by the David L. Boren National Security Education Act, Title VII of Public Law 102–183, as amended.

Agenda

10:30 a.m.—Opening Remarks and Key Updates.

11:00 a.m.—The Legacy of Boren Alumni—Career Paths within Government.

12:00 p.m.—Break.

1:15 p.m.—20 Years of Boren Data.

1:45 p.m.—Class of 2014 Boren Scholars and Fellows.

2:15 p.m.—Update on the National Language Service Corps.

2:45 p.m.—Update on the Language Training Centers.

3:15 p.m.—2014 NSEP Innovations.

3:45 p.m.—Board Discussion.

4:15 p.m.—Adjourn.

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is on a first-come basis.

Committee's Point of Contact: Alison Patz, Alternate Designated Federal Official, (703) 696–1991, *Alison.m.patz.civ@mail.mil.*

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and sections 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the Department of Defense National Security Education Board about its mission and functions. Written statements may be submitted at any time or in response to the stated agenda of the planned meeting.

All written statements shall be submitted to the Designated Federal Official for the National Security Education Board, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Designated Federal Official can be obtained from the GSA's FACA Database —*http://facadatabase.gov/.*

Statements being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Official at the address listed in **FOR FURTHER INFORMATION CONTACT** at least five calendar days prior to the meeting that is the subject of this notice. Written statements received after this date may not be provided to or considered by the National Security Education Board until its next meeting. The Designated Federal Official will review all timely submissions with the National Security Education Board and ensure they are provided to all members of the National Security Education Board before the meeting that is the subject of this notice.

Dated: May 7, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2014–10836 Filed 5–9–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID USA–2014–0013]

Proposed Collection; Comment Request

AGENCY: U.S. Army TACOM Life Cycle Management Command, DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the U.S. Army TACOM Life Cycle Management Command, DoD announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by July 11, 2014.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this

same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the TACOM LCMC CIO G6, ATTN: Vaishali, Patel, Bld 230 Rm 100E, 6501 E Eleven Mile Rd, Warren, MI 48397–5000, or call 585–282–5141 or email *vaishali.patel.civ@mail.mil*.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: EMPLOYEE DEPLOYMENT TRACKING SYSTEM (EDTS); system-generated form, 0702–XXXX.

Needs and Uses: The information collection requirement is necessary for deployment processing POCs. The POCs requires this information to process the deployment request for a candidate prior their deployment; this includes processing their reservation request prior to travelling to in processing center. It is also required to process the candidate's pay rolls once deployed, if a candidate deploys based on the in processing.

Affected Public: Individuals (Contracting Personnel).

Annual Burden Hours: 5 hr.

Number of Respondents: 100.

Responses per Respondent: 1.

Average Burden per Response: 3 minutes.

Frequency: On occasion.

Respondents are candidates seeking deployment from TACOM/(and AMC). The deployment application will automate the current deployment process AMC wide and eventually army wide. It provides an efficient way to collect, store, and route the deployment information/forms to respective POC (supervisor, CRC, ASC, G3 POC) based on the deployment status. The system will allow the POC to track the deployment accurately based on the date, and given period. The application will also send notifications to the candidate, supervisor and G3 POC based on the Deployment status. The new application will also control user access on need to know basis.

Dated: May 6, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2014–10720 Filed 5–9–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Grant an Exclusive License of U.S. Government-Owned Patent

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i), announcement is made of the intent to grant an exclusive, royalty-bearing, revocable license to PCT Application PCT/2013/040641 filed May 10, 2013, entitled ''Toxin Detection Using Stem Cell Derived Neurons'' to SynActive Bioscience, LLC, with its principal place of business at 813 S. Rose Street, Baltimore, MD 21224.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664. For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: Anyone wishing to object to grant of this license can file written objections along with supporting evidence, if any, within 15 days from the date of this publication. Written objections are to be filed with the Command Judge Advocate (see **ADDRESSES**).

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2014–10754 Filed 5–9–14; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Grant an Exclusive License of U.S. Government-Owned Patent

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i), announcement is made of the intent to grant an exclusive, royalty-bearing, revocable license to PCT Application PCT/2014/22042 filed March 7, 2014, entitled ''Methods of Detecting Neurotoxin Using Synaptic Activity'' to SynActive Bioscience, LLC, with its principal place of business at 813 S. Rose Street, Baltimore, MD 21224.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664. For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: Anyone wishing to object to grant of this license can file written objections along with supporting evidence, if any, within 15 days from the date of this publication. Written objections are to be filed with the Command Judge Advocate (see **ADDRESSES**).

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2014–10757 Filed 5–9–14; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2014–ICCD–0064]

Agency Information Collection Activities; Comment Request; Independent Living Services for Older Individuals Who Are Blind

AGENCY: Office of Special Education and Rehabilitative Service (OSERS), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before July 11, 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–2014–ICCD–0064 or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted; ED will ONLY accept comments during the comment period in this mailbox when the regulations.gov site is not available.* 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 2E115, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Elizabeth Akinola, 202–245–7303.

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: Independent Living Services for Older Individuals Who are Blind.

OMB Control Number: 1820–0608.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: State, Local, or Tribal Governments.

Total Estimated Number of Annual Responses: 56.

Total Estimated Number of Annual Burden Hours: 336.

Abstract: This data collection instrument is being submitted to obtain approval for information collection on the Independent Living Services For Older Individuals Who Are Blind program. Through this program, grants are made to states to support services for individuals age 55 or older whose severe visual impairment makes competitive employment difficult to obtain but for whom independent living goals are feasible. This data will be used to evaluate and construct a profile for the program nationwide. The respondents will be the managers of the Independent Living Services For Older Individuals Who Are blind program in each of the 56 states and territories. The revisions to this instrument consist of 2 additional items in Part I to capture the amount of other federal funds made available to the program, and the carryover for those funds. In Part III, rearrangement in the order of requested information to avoid double counting of consumers in the race and ethnicity categories; an additional item to capture the number of consumers served who are homeless; additional items to capture the number of consumers referred from nursing homes, assisted living facilities, government/social service agencies, and self-referrals.

Dated: May 6, 2014.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2014–10756 Filed 5–9–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2014–ICCD–0063]

Agency Information Collection Activities; Comment Request; Consolidated Annual Report (CAR) for the Carl D. Perkins Career and Technical Education Act of 2006

AGENCY: Office of Career Technical and Adult Education (OCTAE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before July 11, 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–2014–ICCD–0063 or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted; ED will ONLY accept comments during the comment period in this mailbox when the regulations.gov site is not available.* 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 2E115, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Sharon Head, 202–245–6131

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: Consolidated Annual Report (CAR) for the Carl D. Perkins Career and Technical Education Act of 2006.

OMB Control Number: 1830–0569.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: State, Local, or Tribal Governments.

Total Estimated Number of Annual Responses: 55.

Total Estimated Number of Annual Burden Hours: 9,570.

Abstract: The purpose of this information collection package—the

Consolidated Annual Report (CAR) is to gather narrative, financial and performance data as required by the reauthorized Carl D. Perkins Career and Technical Education Act of 2006 (Perkins IV) (20 U.S. C. 2301 *et seq.* As amended by Pub. L. 109–270). OCTAE staff will determine each States compliance with basic provisions of Perkins IV and the Education Department General Administrative Regulations (34 CFR part 80.40 [Annual Performance Report] and Part 80.41 [Financial Status Report]). OCTAE staff will review performance data to determine whether, and to what extent, each State has met its State adjusted levels of performance for the core indicators described in section 113(b)(4) of Perkins IV. Perkins IV requires the Secretary to provide the appropriate committees of Congress copies of annual reports received by the Department from each eligible agency that receives funds under the Act.

Dated: May 6, 2014.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2014–10755 Filed 5–9–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Record of Decision for the Uranium Leasing Program Programmatic Environmental Impact Statement

AGENCY: Office of Legacy Management, Department of Energy.

ACTION: Record of Decision.

SUMMARY: The U.S. Department of Energy (DOE) announces its decision to continue management of the Uranium Leasing Program (ULP) for 31 lease tracts for the next 10 years, consistent with DOE's preferred alternative identified in the Final Uranium Leasing Program Programmatic Environmental Impact Statement (Final ULP PEIS) (DOE/EIS–0472). DOE prepared the Final ULP PEIS to evaluate the reasonably foreseeable environmental impacts, including the site-specific impacts, of the range of reasonable alternatives for the management of the ULP. Under the ULP, DOE administers 31 tracts of land covering an aggregate of approximately 25,000 acres (10,000 ha) in Mesa, Montrose, and San Miguel Counties in western Colorado for exploration, mine development and operations, and reclamation of uranium mines. There are currently 29 tracts that have been leased; the two other tracts have not been leased. Analyses in the Final ULP PEIS were based on site-specific information available on the 31 lease tracts (including current lessee information and status, size of each lease tract, previous mining operations that occurred, location of existing permitted mines and associated structures, and other environmental information) and additional information on uranium mining from other references and cooperating agency input. As plans for exploration, mine development and operation, or reclamation are submitted by the lessees to DOE for approval, further National Environmental Policy Act (NEPA) analyses will be prepared for each plan and will be tiered from the analyses contained in the Final ULP PEIS.

''The 31 leases currently in existence'' under the ULP are stayed by an Order issued by the U.S. District Court for the District of Colorado (*Colorado Environmental Coalition* v. *DOE,* 819 F. Supp. 2d 1193, 1224 (D. Colo. 2011)). The Court also enjoined DOE from issuing any new leases and from approving any activities on lands governed by the ULP. The Court also ordered that after DOE conducts an environmental analysis that complies with NEPA, the Endangered Species Act (ESA), all other governing statutes and regulations, and the Court's Order, DOE could then request a dissolution of the injunction.

The Court later amended its injunction to allow DOE, other Federal, state, or local governmental agencies, and/or the ULP lessees to conduct only those activities on ULP lands that are absolutely necessary. DOE will implement this ROD only after the U.S. District Court for the District of Colorado has dissolved the injunction that it issued on October 18, 2011.

DOE has complied with Executive Order (E.O.) 13175, Section 7 of the ESA, and Section 106 of the National Historic Preservation Act (NHPA) by completing its consultations with tribal governments, with the U.S. Fish and Wildlife Service (USFWS), and with tribes, government agencies, and local historical groups.

ADDRESSES: The Final ULP PEIS and this ROD are available on DOE's NEPA Web site at *http://energy.gov/nepa/nepa-documents;* on the DOE Legacy Management (LM) Web site at *http://energy.gov/lm/office-legacy-management;* and on the ULP PEIS Web site at *http://ulpeis.anl.gov*. Requests for copies of these documents may be submitted through the ULP PEIS Web site at *http://ulpeis.anl.gov;* or by contacting Dr. David Shafer by electronic mail: *David.Shafer@lm.doe.gov*.

FOR FURTHER INFORMATION CONTACT: To obtain additional information about the ULP, the PEIS, or the ROD, contact Dr. David Shafer, LM Asset Management Team Lead, as indicated under **ADDRESSES** above. For general information about the DOE NEPA process, contact Ms. Carol Borgstrom, Director, Office of NEPA Policy and Compliance (GC–54), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585; telephone: 202–586–4600; email: *askNEPA@hq.doe.gov;* fax: 202–586–7031; or leave a toll-free message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION: DOE prepared the ULP PEIS and this ROD pursuant to the National Environmental Policy Act of 1969 (42 United States Code [U.S.C.] §§ 4321, *et seq.*), and in compliance with the Council on Environmental Quality (CEQ) implementing regulations for NEPA (40 Code of Federal Regulations [CFR] Parts 1500 through 1508), and DOE's implementing procedures for NEPA (10 C.F.R. Part 1021). This ROD is based on DOE's Final ULP PEIS.

Background

Congress authorized DOE's predecessor agency, the U.S. Atomic Energy Commission (AEC), to develop a supply of domestic uranium. The aggregated acreage managed by AEC totaled approximately 25,000 acres (10,000 ha) in Mesa, Montrose, and San Miguel Counties in western Colorado. Beginning in 1949, the AEC and its successor agencies, the U.S. Energy Research and Development Administration and DOE, administered three separate and distinct leasing programs during the ensuing 60 years. In July 2007, DOE issued a programmatic environmental assessment (PEA) for the ULP, in which it examined three alternatives for the management of the ULP for the next 10 years. In that same month, DOE issued a Finding of No Significant Impact (FONSI), in which DOE announced its decision to proceed with the Expanded Program Alternative, and also determined that preparation of an environmental impact statement (EIS) was not required. Under the Expanded Program Alternative, DOE would extend the 13 existing leases for a 10-year period and would also expand the ULP to include the competitive offering of up to 25 additional lease tracts to the domestic uranium industry. In 2008, DOE implemented the Expanded Program Alternative and executed new lease agreements with the existing

lessees for their 13 respective lease tracts, effective April 30, 2008. In addition, DOE offered the remaining, inactive lease tracts to industry for lease through a competitive solicitation process for 19 leases (some leases combined a number of the lease tracts). That process culminated in the execution of 18 new lease agreements for the inactive lease tracts, effective June 27, 2008. Since that time, two lease tracts were combined into one and another lease was relinquished back to DOE. Accordingly, there are 29 lease tracts that are actively held under lease, and 2 lease tracts that are currently inactive.

On June 21, 2011, DOE published the Notice of Intent (NOI) to prepare the ULP PEIS (see Volume 76, page 36097 of the **Federal Register** [76 FR 36097]). In the NOI, DOE stated that it had determined, in light of the site-specific information that DOE had gathered as a result of the site-specific agency actions proposed and approved pursuant to the July 2007 PEA, that it was appropriate for DOE to prepare a PEIS in order to analyze the reasonably foreseeable environmental impacts, including potential site-specific impacts, of the range of reasonable alternatives for the management of the ULP for the remainder of the 10-year period that was covered by the July 2007 PEA. After DOE published the NOI, it notified the ULP lessees that until the PEIS process was completed, DOE would not approve any new exploration and mining plans and would not require any lessees to pay royalties.

Colorado Environmental Coalition and three other plaintiffs filed a complaint against DOE in the U.S. District Court for the District of Colorado on July 31, 2008, alleging, among other things, that DOE's July 2007 PEA and FONSI violated NEPA by failing to consider adequately the environmental impacts of expansion of the ULP, and violated the ESA by jeopardizing endangered species. On October 18, 2011, the Court issued an Order in which it held, among other things, that DOE had violated NEPA by issuing its July 2007 PEA and FONSI instead of preparing an EIS, and that DOE had failed to consult with the USFWS as required by the ESA. *Colorado Environmental Coalition* v. *DOE,* 819 F. Supp. 2d 1193, 1208–14, 1220–23 (D. Colo. 2011). In that Order, the Court invalidated the July 2007 PEA and FONSI; stayed ''the 31 leases currently in existence'' under the ULP; enjoined DOE from issuing any new leases on lands governed by the ULP; enjoined DOE from approving any activities on lands governed by the ULP; and ordered that after DOE conducts an environmental analysis that complies with NEPA, the ESA, all other governing statutes and regulations, and the Court's Order, DOE could then move the Court to dissolve its injunction. *Id.* at 1224–25.

The Court later granted in part DOE's motion for reconsideration of that Order and amended its injunction to allow DOE, other Federal, state, or local governmental agencies, and/or the ULP lessees to conduct only those activities on ULP lands that are absolutely necessary: (1) To conduct DOE's environmental analysis regarding the ULP; (2) to comply with orders from Federal, state, or local government regulatory agencies; (3) to remediate certain dangers to public health, safety, and the environment on ULP lands; or (4) to conduct certain activities to maintain the ULP lease tracts and their existing facilities. *Colorado Environmental Coalition v. DOE,* No. 08–cv–1624, 2012 U.S. Dist. LEXIS 24126, at ** 10–15 (D. Colo. Feb. 27, 2012).

Purpose and Need for Agency Action

The underlying purpose and need for agency action is to support the implementation of the Atomic Energy Act of 1954, as amended (AEA), which authorized and directed DOE to develop a supply of domestic uranium (42 U.S.C. 2096), and ''to issue leases or permits for prospecting for, exploration for, mining of, or removal of deposits of source material in lands belonging to the United States'' to the extent that DOE deems it necessary to effectuate the provisions of the AEA (42 U.S.C. 2097). Congress further recognized the importance of developing a supply of domestic uranium and other source material when it stated in the AEA, in its Congressional findings, that the processing of source material must be regulated ''in order to provide for the common defense and security'' (42 U.S.C. 2012(d)). In addition, the Energy Policy Act of 2005 (Public Law 109–58) (EPAct) expressed a continued commitment to ''decreasing the dependence of the United States on foreign energy supplies'' (42 U.S.C. 16181(a) (3)); and to ''[e]nhancing nuclear power's viability as part of the United States energy portfolio'' (42 U.S.C. 16271(a)(1)). The ULP contributes to the development of a supply of domestic uranium consistent with the provisions of the AEA and EPAct. In support of these statutes, DOE needs to determine the future course of the ULP, including whether to continue leasing some or all of the withdrawn lands and other claims for the exploration and production of uranium and vanadium ores.

Proposed Action

DOE's proposed action in the ULP PEIS was to decide whether to continue the ULP and, if it decided to continue the ULP, to determine which alternative to adopt in order to manage the ULP.

Alternatives

DOE evaluated five alternatives that represent the range of reasonable alternatives for the future course of the ULP. DOE developed these alternatives by carefully considering the need to develop a supply of domestic uranium (consistent with the AEA and the EPAct), and comments received during the public scoping and public comment periods. The five alternatives are:

1. *Alternative 1:* DOE would terminate all leases, and all operations would be reclaimed by lessees. DOE would continue to manage the withdrawn lands, without uranium leasing, in accordance with applicable requirements.

2. *Alternative 2:* Same as Alternative 1, except once reclamation was completed by lessees, DOE would relinquish the lands in accordance with 43 CFR Part 2370. If the Department of the Interior/Bureau of Land Management (DOI/BLM) determines, in accordance with that same Part of the CFR, the lands were suitable to be managed as public domain lands, they would be managed by BLM under its multiple use policies. DOE's uranium leasing program would end.

3. *Alternative 3:* DOE would continue the ULP as it existed before July 2007, with the 13 active leases, for the next 10-year period or for another reasonable period, and DOE would terminate the remaining leases.

4. *Alternative 4 (DOE's preferred alternative identified in the Final ULP PEIS):* DOE would continue the ULP with the 31 lease tracts for the next 10-year period or for another reasonable period.

5. *Alternative 5:* This is the No Action Alternative, under which DOE would continue the ULP with the 31 lease tracts for the remainder of the 10-year period, and the leases would continue exactly as they were issued in 2008.

Environmentally Preferred Alternative

The analyses in the Final ULP PEIS show that potential environmental impacts on the resource areas analyzed for the five alternatives range from ''negligible to moderate.'' Further, the potential environmental impacts would be mitigated as discussed in this ROD. However, there are some differences

among the alternatives. For example, Alternative 5 would result in the greatest potential for impacts of all the alternatives because the assumptions used as the basis for analysis would potentially result in the most activities, the largest area of disturbance, the most ore tonnage excavated and transported, and the most water used. DOE considered two alternatives, Alternatives 1 and 2, which would require immediate reclamation of areas where it is needed and subsequent termination of the leasing. Alternative 1 would result in the least potential environmental impacts of the five alternatives analyzed in detail in the PEIS, and DOE therefore regards it as the environmentally preferred alternative. The potential impacts from Alternative 2 would be identical to Alternative 1 in the short term; however, there could be additional potential impacts under Alternative 2 in the future if the lease tracts would ultimately be transferred to BLM depending on future activities that might be conducted.

DOE did not select Alternative 1 because that alternative would not meet DOE's purpose and need. In contrast, the alternative selected in this ROD will meet DOE's purpose and need, while resulting in potential environmental impacts that were determined to be ''negligible to moderate.'' Additionally, mitigation measures will reduce the likelihood of these potential environmental impacts occurring.

EIS Process

The NOI published on June 21, 2011, began a 78-day public scoping period that ended on September 9, 2011. All scoping comments received were considered in the preparation of the Draft PEIS. A Notice of Availability (NOA) for the Draft ULP PEIS was published in the **Federal Register** on March 15, 2013 (78 FR 16483), and this began a 109-day public comment period that ended July 1, 2013. All comments received on the Draft ULP PEIS were considered in the preparation of the Final ULP PEIS.

DOE distributed copies of the Draft ULP PEIS to those organizations and government officials known to have an interest in the PEIS and to those organizations and individuals who requested a copy. The Draft ULP PEIS was reviewed by other Federal agencies, states, American Indian tribal governments, local governments, and the public. Copies were also made available on the ULP Web site (*http://www.ulpeis.anl.gov/*), the DOE NEPA Web site (*http://energy.gov/nepa/*), and in regional DOE public document reading rooms and public libraries. Announcements indicating the availability of the Draft ULP PEIS and the dates and times of the public hearings were published in local newspapers. Four public hearings were held in four locations in Colorado. The transcripts for the four hearings are posted on the project Web site.

Federal, state, and county agencies and tribal nations participated either as a cooperating agency or commenting agency in the development and preparation of the ULP PEIS. Since January 2012, monthly, as appropriate, telephone conferences have been held among DOE and the cooperating agencies to develop the ULP PEIS. These cooperating agencies participated by reviewing and commenting on ULP PEIS analyses and documentation, as well as providing supporting information. The following government agencies and tribal groups have participated as cooperating agencies by providing their expertise and knowledge about various areas required during the preparation of the ULP PEIS: (1) BLM, (2) U.S. Environmental Protection Agency (EPA), (3) Colorado Department of Transportation, (4) Colorado Division of Reclamation, Mining, and Safety (CDRMS), (5) Colorado Parks and Wildlife, (6) Mesa County Commission, (7) Montrose County Commissioners, (8) San Juan County Commission, (9) San Miguel County Board of Commissioners, (10) Navajo Nation, (11) Pueblo of Acoma, (12) Pueblo de Cochiti, (13) Pueblo de Isleta, and (14) Southern Ute Indian Tribe. The following agencies and tribal groups chose to participate as commenting agencies, and they were included in the project distribution list and received the Draft ULP PEIS for review and comment: (1) USFWS, (2) U.S. Nuclear Regulatory Commission, (3) Colorado Department of Public Health and Environment, (4) Utah Department of Transportation, (5) Hopi Nation, (6) Ute Indian Tribe, (7) Ute Mountain Ute Tribe, and (8) White Mesa Ute Community.

DOE has complied with E.O. 13175, Consultation and Coordination with Indian Tribal Governments, by conducting government-to-government consultations with tribal governments. The government-to-government relationship with Indian tribes was formally recognized by the Federal Government with E.O. 13175 on November 6, 2000, and DOE is coordinating and consulting with Indian tribal governments, Indian tribal communities, and tribal individuals whose interests might be directly and substantially affected by activities on the ULP lands. As part of this consultation, DOE has contacted 25 Indian tribal governments to communicate the opportunities for government-to-government consultations by participating in the planning and resource management decision-making throughout the ULP PEIS process. Five are participating as cooperating agencies, and four are participating as commenting agencies.

In compliance with Section 7 of the ESA, DOE considered the effect of its management of the ULP on species listed under the ESA, and consulted with the USFWS to ensure that the actions that DOE funds, authorizes, or permits are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of the critical habitat of such species. DOE and the USFWS completed their consultation, which included DOE submitting its final biological assessment to the USFWS on May 14, 2013. The USFWS issued its biological opinion on August 19, 2013.

DOE has completed programmatic consultation, in compliance with Section 106 of the NHPA, concerning DOE's management of the ULP, and has signed a Programmatic Agreement (PA) to govern the ULP activities. A PA was deemed appropriate as DOE expects the historic properties to be similar and repetitive or regional in scope, and the effects cannot be fully determined at this time prior to submittal of site-specific plans.

The NOA for the Final ULP PEIS was published in the **Federal Register** on March 21, 2014 (79 FR 15741).

Comments Received on the Final PEIS

DOE received three letters regarding the Final ULP PEIS, which were considered in developing this ROD. The letters were from the Hopi Tribe, the Western Colorado Congress (WCC), and the EPA. These letters did not present significant new circumstances or information that would warrant a supplemental EIS pursuant to CEQ and DOE NEPA implementing regulations [40 CFR 1502.9(c) and 10 CFR 1021.314(a)].

The Hopi Tribe stated its longstanding concerns about adverse impacts of past uranium mining on the land, water, and people, and that past contamination from uranium mining should be cleaned up before any additional mining is approved. The Hopi Tribe also expressed strong opposition to Alternatives 3, 4, and 5, and stated that, if DOE selects Alternative 4, the Tribe expects continuing consultation regarding cultural resource survey reports and treatment plans for the mitigation of adverse effects to National

Register eligible prehistoric areas and Hopi Traditional Cultural Properties that may exist in areas that cannot be avoided by ground disturbing activities.

Consistent with the PA, DOE will consult with the Hopi Tribe in identifying properties of traditional religious and cultural importance listed in or eligible for listing in areas of potential effects, assessing the effects on those properties, and developing appropriate mitigation strategies for individual undertakings.

WCC indicated in their letter that they continued to have concerns related to the prospect of increased uranium mining in western Colorado, expressed their disappointment that DOE continued to support Alternative 4, and stated that WCC could not support any new mining endeavors until all abandoned uranium mines are cleaned up. WCC also expressed concerns with ''booms and busts'' in the uranium industry and indicated that Alternative 4 would continue to tie up the lands in the area to an unstable uranium market and impact other forms of development. Further, WCC indicated they understood the rationale that the analysis of uranium markets, long-term economics, transportation corridors, and public health did not fit within DOE's ''Purpose and Need,'' but they disagreed with this approach. WCC expressed their appreciation that DOE included more site specific data in the Final PEIS but stated that the changes did not address the full breadth of their comments and concerns with Alternative 4. In addition, WCC noted that DOE did not preclude development of alternative energy projects on ULP lands and expressed hope that the ULP PEIS can be a step forward to creating a transparent process that leads to a uniform and modern standard for all abandoned uranium mines in Colorado.

DOE understands and agrees with WCC's concern with the need to reclaim all the abandoned uranium mines in the Colorado Plateau and appreciates WCC recognition that DOE has reclaimed all legacy mines within the ULP program areas. While DOE did not evaluate the economics of the uranium market, DOE did evaluate the potential impacts of the alternatives on transportation, socioeconomics, and human health, and the potential cumulative impacts of the ULP. These impacts were determined to be ''negligible to moderate,'' and DOE will require mitigation measures to avoid or minimize the environmental impacts from specific future ULP activities. DOE appreciates WCC's vision that the ULP PEIS can be a step forward to a transparent process for a uniform and modern standard of reclamation for abandoned mines. DOE believes the ULP program can also be a step forward for modern and environmentally sensitive uranium mine exploration and development in addition to reclamation.

The EPA Region 8, in its letter, indicated that DOE worked diligently to address EPA concerns on the Draft PEIS by providing additional information in the Final PEIS. EPA expressed their appreciation for the revisions made in the Final PEIS and as a result had no comments on the Final PEIS.

DOE appreciates EPA's diligence in working with DOE to assure that the PEIS provided a thorough analysis of potential impacts and clearly communicated the results. EPA also helped DOE to clarify and identify mitigation measures to reduce the potential impacts.

Decision

DOE has decided to continue the ULP with the 31 lease tracts for the next 10-year period beginning with the publication of this ROD in the **Federal Register**. Alternative 4, the alternative selected in this ROD, will result in ''negligible to moderate'' potential environmental impacts and will provide access to a domestic source of uranium consistent with the purpose and need stated in the Final PEIS. To be more transparent, DOE decided to set a specific timeframe of 10 years in this decision, even though Alternative 4 in the PEIS allowed the program to continue ''for the next 10-year period or for another reasonable period.''

DOE will implement this ROD only after the U.S. District Court for the District of Colorado has dissolved the injunction that it issued on October 18, 2011. In the continuation of the ULP, DOE will evaluate the 31 lease tracts by considering individual tract management issues, such as whether to lease the tracts that are presently not leased, and whether potential future requests for lease transfers will be approved. In implementing this decision, leases will be modified, as needed, to include mitigation measures described in the ULP PEIS. DOE will prepare a Mitigation Action Plan (MAP) as described below under Mitigation. As plans for exploration, mine development and operation, or reclamation are submitted by the lessees to DOE for approval, further NEPA analyses for these actions will be prepared and tiered from the Final ULP PEIS. The level of follow-on NEPA analyses will depend on the action being proposed by the lessees. For mining plans to be submitted for approval, DOE will prepare, at a minimum, an environmental assessment with appropriate public involvement to further evaluate potential site impacts. These NEPA analyses will be prepared to inform DOE's decisions on approval of the plans, including the conditions DOE will require to mitigate potential environmental impacts. DOE will conduct further consultations regarding cultural and endangered species, as appropriate, depending on the specific action.

Program Implementation

As described in Alternative 4 in the Final PEIS, all 31 lease tracts will be available for potential exploration and mining of uranium ores. Leases on the ULP lease tracts will be continued for the next 10 years. Two of the 31 lease tracts (Lease Tract 8A and Lease Tract 14) are currently not leased. Lease Tract 8A is a small tract that is isolated and may be located entirely below or outside the uranium-bearing formation, which could indicate a lack of ore. Lease Tract 14 is composed of three parcels (14–1, 14–2, and 14–3). There was some interest in Parcels 14–1 and 14–2 by potential lessees in the past; however, the third parcel (14–3, which lies east of 14–1) is located almost entirely within the Dolores River corridor and has never been leased. The leases stipulate that no new mining activity could be conducted within 0.25 mi (0.4 km) of the Dolores River.

Eight of the lease tracts (5, 6, 7, 8, 9, 11, 13, and 18) contain one or more existing mines that operated in the past under DOE's approval and are currently permitted by CDRMS. Three lease tracts (13A, 21, and 25) have existing mine sites that have been fully reclaimed in accordance with existing environmental requirements and DOE lease stipulations; however, these mine sites currently remain permitted by CDRMS.

The lessees have submitted no new project-specific plans to DOE with regard to where and how many mines might be developed and operated in the near future. For the purposes of analysis in the ULP PEIS, DOE conservatively assumed, based on past practices, that there would be a total of 19 mines operating at various production rates during a peak year of operations. That is, the 19 mines would comprise 6 small, 10 medium, 2 large, and 1 very large (open-pit JD–7 mine). It was further assumed that there would be a smaller number of mines in operation in years other than the peak year, and that the peak year could occur more than once (i.e., there could be multiple years with the same number of mines operating at similar ore production rates). It was expected that the potential

environmental impacts for years other than the peak year(s) would fall within the range of impacts discussed for a peak year in the ULP PEIS. Therefore, the potential environmental impacts for the entire 10-year lease period would be expected to be no more than 10 times those for the peak year.

For the exploration phase of a mine, it is assumed that a total of 0.33 acre (0.13 ha), 1.1 acre (0.44 ha), and 0.33 acre (0.13 ha) of surface would be disturbed for the new 6 small, 10 medium, and 2 large mines respectively. For the very large mine, 210 acres (92 ha) have already been disturbed at the JD–7 surface open-pit mine. A total of 20 workers would be required to conduct the exploration phase for the mines assumed for the peak year (not including the very large open-pit mine at JD–7, for which exploration was assumed to have been completed).

The total area disturbed for Alternative 4 will be approximately 460 acres (190 ha). Total tonnage of ore generated for the peak year of operation will be about 480,000 tons. The number of workers needed for mine development and operations will depend on the size of the mine and could vary from 7 to 51 workers. It is assumed that 7, 11, 17, and 51 workers will be needed for each small, medium, large, and very large mine, respectively. These workers will consist mostly of mine workers. A peak year of operation for 19 mines will involve about 237 workers.

Equipment needed for mine development and operations will include both underground and surface equipment. Water will also be needed and will be trucked to the location of the activities. The annual amount of water needed for the 19 mines during the peak year assumed for this action is estimated to be about 6,300,000 gal (19 ac-ft.). Retention ponds will be required to capture surface water and prevent sediment from entering nearby streams and drainages. Reclamation of the mine operations will involve about 39 workers over the course of a peak year. It is assumed that there will be a waiting period of up to 2 years to account for verification of adequate revegetation and obtaining the necessary release and approval.

Based on historical and existing mine development, it is expected, and the analysis assumes, that the mines will be underground, with the exception of the JD–7 mine on Lease Tract 7, which is a surface open-pit mine.

Mitigation

During lease implementation, DOE will require specific measures to be identified to ensure that potential environmental impacts from specific future ULP activities are avoided or minimized consistent with the mitigation measures in the Final ULP PEIS. DOE's decision incorporates all practicable means to avoid or minimize adverse environmental impacts during exploration, mining operations, and reclamation associated with the ULP. All activities associated with the ULP will be conducted to ensure that conditions are protective of the environment and human health. DOE will ensure implementation of the mitigation measures identified in the Final ULP PEIS (section 4.6), as appropriate. Mitigation measures will ensure that risks from potential exposures under foreseeable end-state scenarios analyzed in the ULP PEIS (i.e., a recreational visitor scenario at the mine site footprint and within the lease tracts, and a resident scenario for outside the lease tracts) will be very small. These measures are identified in current leases or will be added to the leases.

These and other mitigation measures address potential impacts to human health, transportation, and the various environmental resources as follows: (1) Reduce dust emissions, (2) identify and protect paleontological resources, (3) protect soil from erosion, (4) minimize the extent and amount of ground disturbance, (5) restore original grade and reclaim soil and vegetation, (6) protect wildlife and wildlife habitats, (7) minimize lighting to off-site areas, (8) protect human health by minimizing radiological exposure, and (9) assure safe and proper transport of generated ore.

Mitigation measures identified in the Final ULP PEIS and in the leases will be addressed in a MAP. DOE will prepare the MAP, consistent with 10 CFR 1021.331, to establish how the mitigation measures will be planned, implemented, and monitored. Compliance measures identified in the Final ULP PEIS will not be included in the MAP because they are legal requirements irrespective of the MAP. Lease stipulations will be in place to reinforce these legal requirements. DOE will ensure that the lessees fulfill the mitigation measures specified in this ROD and in the MAP, which is under development. DOE will make the MAP available to the public via the Web sites listed under **ADDRESSES** above.

Basis for Decision

In making this decision, DOE has carefully considered all public comments, the results of the Final ULP PEIS evaluation, the biological opinion issued by the USFWS based on the ESA consultation, and the establishment of the PA consistent with Section 106 of the NHPA. DOE believes that uranium mining activities at the ULP lease tracts can continue to be conducted in a manner that is protective of the environment and public health. This decision supports the AEA provisions that authorize and direct DOE to develop a supply of domestic uranium, and to issue leases or permits for prospecting, exploration, mining, or removal of deposits of uranium ore in lands belonging to the United States. An active ULP program will be more successful in meeting these needs than would an inactive program. Although Alternatives 3 and 5 considered in the PEIS also provided an active ULP program, this decision provides access to a greater supply of domestic uranium from the lease tracts compared to Alternative 3, could create about 229 direct jobs and 152 indirect jobs, generates about $14.8 million in income, provides royalties from the leases to the Federal Government, and results in negligible to moderate potential environmental impacts that would be less than those under Alternative 5.

Issued in Washington, DC, on this 6th of May 2014.

David W. Geiser,

Director, DOE Office of Legacy Management.

[FR Doc. 2014–10847 Filed 5–9–14; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9910–76–OA]

National Environmental Education Advisory Council

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act, EPA gives notice of a meeting of the National Environmental Education Advisory Council (NEEAC). The NEEAC was created by Congress to advise, consult with, and make recommendations to the Administrator of the Environmental Protection Agency (EPA) on matters related to activities, functions and policies of EPA under the National Environmental Education Act (Act). 20 U.S.C. § 5508(b).

The purpose of these meeting(s) is to discuss specific topics of relevance for consideration by the council in order to provide advice and insights to the Agency on environmental education.

DATES: The National Environmental Education Advisory Council will hold a public meeting (teleconference) on Tuesday May 27, 2014 from 9:00 a.m. to 10:00 a.m. (Mountain Standard Time) 11:00 a.m.–12:00 noon (Eastern Time).

FOR FURTHER INFORMATION CONTACT: Javier Araujo, Designated Federal Officer, *araujo.javier@epa.gov*, 202–564–2642, U.S. EPA, Office of Environmental Education, William Jefferson Clinton North, Room 1426, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Members of the public wishing to gain access to the meeting, make brief oral comments, or provide a written statement to the NEEAC must contact Javier Araujo, Designated Federal Officer, at *araujo.javier@epa.gov* or 202–564–2642 by 10 business days prior to each regularly scheduled meeting.

Meeting Access: For information on access or services for individuals with disabilities or to request accommodations please contact Javier Araujo at *araujo.javier@epa.gov* or 202–564–2642, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: May 5, 2014.

Javier Araujo,

Designated Federal Officer.

Sarah N. Sowell,

Acting Deputy Director, Office of Environmental Education.

[FR Doc. 2014–10839 Filed 5–9–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[CERCLA–10–2014–0057; FRL–9910–62–Region 10]

Proposed CERCLA Administrative Cost Recovery Settlement; Absorbent Technologies Site, Albany, OR

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of response costs incurred for the Absorbent Technologies Site located at 140 Queen Avenue SW., and 2830 Ferry Street SW., in Albany, Oregon. Under this proposed settlement, the settling parties are David L. Ellis, Pamela L. Ellis, Farouk H. Al-Hadi, Lombard Foods, Inc., an Oregon corporation, and the Bankruptcy Estate of Absorbent Technologies, Inc. The proposed settlement requires the settling parties to pay $250,000 to the EPA Hazardous Substance Superfund. Upon payment of this sum to EPA, the settling parties will be released from their obligations for payments to EPA for costs EPA incurred between October 15, 2013 and January 31, 2014. EPA has incurred additional response since January 31, 2014, and this settlement does not provide the settling parties with a release for claims for reimbursement of responses costs incurred after January 31, 2014. However, pursuant to the terms of the Settlement Agreement, EPA agrees not to file claims against the Bankruptcy Estate of Absorbent Technologies, Inc. in its bankruptcy proceeding.

For 30 days following the date of publication of this notice, the EPA will receive written comments relating to the proposed settlement. The EPA will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The EPA's response to any comments received will be available for public inspection at the U.S. EPA Region 10 Office, located at 1200 Sixth Avenue, Seattle, Washington 98101.

DATES: Comments must be submitted on or before June 11, 2014.

ADDRESSES: The proposed settlement is available for public inspection at the U.S. EPA Region 10 Office, located at 1200 Sixth Avenue, Seattle, Washington 98101. A copy of the proposed settlement may be obtained from Candace Smith, Regional Hearing Clerk, U.S. EPA Region 10, 1200 Sixth Avenue, Suite 900, Mail Stop ORC–158, Seattle, Washington 98101. Comments should reference Absorbent Technologies Site, and should be addressed to Ted Yackulic, Assistant Regional Counsel, U.S. EPA Region 10, Mail Stop ORC–158, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Ted Yackulic, Assistant Regional Counsel, U.S. EPA Region 10, Mail Stop ORC–158, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101; (206) 553–1218.

SUPPLEMENTARY INFORMATION: The Absorbent Technologies Site is located at 140 Queen Avenue SW and 2830 Ferry Street SW in Albany, Oregon. Absorbent Technologies, Inc. operated a commercial agricultural chemical formulating business at both properties within the Site. Absorbent Technologies Inc.'s operations included the use and storage of hazardous substances at both the Queen Property and the Ferry Property. Before EPA became involved at the Site, Absorbent Technologies, Inc. had filed a Chapter 11 Bankruptcy petition. On or about October 11, 2013, Absorbent Technologies, Inc., ceased operations at and essentially abandoned both the Queen Property and Ferry Property. On October 15, 2013, the City of Albany requested that EPA assist it in addressing threats posed by the Site. EPA initiated its efforts on the Site on October 15, 2013, when it performed an initial evaluation of conditions at the Queen Property. After evaluating conditions at the Queen Property, EPA performed an emergency removal action at the Queen Property between October 16 and October 20, 2013. Absorbent Technologies, Inc. converted its bankruptcy proceeding from Chapter 11 to Chapter 7 on October 23, 2013. The settling parties conducted additional response actions at both the Queen Property and Ferry Property between October 21, 2013 and January 31, 2014 within the Site under the oversight of EPA. Between October 15, 2103 and January 31, 2014, EPA incurred approximately $399,151.14 performing or overseeing the performance of response actions at the Site. The settling parties include Absorbent Technologies Inc., the owners and operators of the Queen Property and the owner of the Ferry Property. David L. Ellis, Pamela L. Ellis, and Farouk H. Al-Hadi owned the Queen Property during the time period covered by the settlement agreement. Lombard Foods, Inc. owns the Ferry Property. Pursuant to the terms of the Settlement Agreement for Recovery of Response Costs, the settling parties will pay EPA $250,000. In return for the payment of this amount, EPA covenants not to sue the settling parties for response costs it incurred between October 15, 2013 and January 31, 2014. EPA continues to incur response costs at the Site, and EPA's covenant not to sue does not include costs incurred by EPA after January 31, 2014. In addition, pursuant to the terms of the Settlement Agreement, EPA agrees not to file claims against the Bankruptcy Estate of Absorbent Technologies, Inc. in its bankruptcy proceeding.

Dated: April 21, 2014.

Richard Albright,

Director, Office of Environmental Cleanup, U.S. Environmental Protection Agency, Region 10.

[FR Doc. 2014–10844 Filed 5–9–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[CERCLA–04–2014–3756: FRL 9910–60–OSWER]

Chemfax Inc. Superfund Site; Gulfport, Harrison County, Mississippi; Notice of Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of settlement.

SUMMARY: Under 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency has entered into a settlement with the State of Mississippi concerning the Chemfax Inc. Superfund Site located in Gulfport, Harrison County, Mississippi. The settlement addresses costs from a fund-lead Removal Action taken by the EPA, a fund lead RI/FS and various enforcement work performed at the Site.

DATES: The Agency will consider public comments on the settlement until June 11, 2014. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the amended settlement is inappropriate, improper, or inadequate.

ADDRESSES: Copies of the settlement are available from the Agency by contacting Ms. Paula V. Painter, Environmental Protection Specialist using the contact information provided in this notice. Comments may also be submitted by referencing the Site's name through one of the following methods:

- Internet: *www.epa.gov/region4/superfund/programs/enforcement/enforcement.html*.
- U.S. Mail: U.S. Environmental Protection Agency, Superfund Division, Attn: Paula V. Painter, 61 Forsyth Street SW., Atlanta, Georgia 30303.
- Email: *Painter.Paula@epa.gov*.

FOR FURTHER INFORMATION CONTACT: Paula V. Painter at 404/562–8887.

Dated: April 21, 2014.

Anita L. Davis,

Chief, Superfund Enforcement & Information Management Branch, Superfund Division.

[FR Doc. 2014–10804 Filed 5–9–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority, Comments Requested

AGENCY: Federal Communications Commission.

ACTION: Notice; request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden(s) 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(s); 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 OMB Control Number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before July 11, 2014. If you anticipate that you will be submitting PRA 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 Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at: (202) 395–5167 or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to Leslie F. Smith, Office of Managing Director (OMB), Federal Communications Commission (FCC), via the Internet at *Leslie.Smith@fcc.gov*. To submit your PRA comments by email, please send them to: *PRA@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: Leslie F. Smith, Office of Managing Director (OMB), Federal Communications Commission (FCC), (202) 418–0217, or via the Internet at *Leslie.Smith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0862.

Title: Handling Confidential Information.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; not-for-profit institutions; Federal Government; and State, Local, or Tribal Government

Number of Respondents and Responses: 2,400 respondents; 2,400 responses.

Estimated Time per Response: 1 to 2 hours.

Obligation to Respond: Required to obtain or retain benefits.

Frequency of Response: Recordkeeping; on occasion reporting requirement; third party disclosure.

Total Annual Burden: 4,900 hours.

Total Annual Cost: $0.00.

Privacy Impact Assessment: N/A.

Nature of Extent of Confidentiality: The Commission is not requesting that the respondents submit confidential information to the FCC. Respondents may, however, request confidential treatment for information they believe to be confidential under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: On August 4, 1998, the FCC released a *Report and Order* (R&O), Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, CG Docket No. 96–55. The R&O included a Model Protective Order (MPO) that is used, when appropriate, to grant limited access to information that the Commission determines should not be routinely available for public inspection. The party granted access to the confidential information materials must keep a written record of all copies made and provide this record to the submitted of the confidential materials upon request. This approach was adopted to facilitate the use of confidential materials under an MPO, instead of restricting access to materials. In addition, the FCC amended 47 CFR 0.459(b) to set forth the type of information that should be included when a party submits information to the Commission for which it seeks confidential treatment. This listing of types of information to be submitted was adopted to provide guidance to the public for confidentiality requests.

Federal Communications Commission.

Marlene H. Dortch,

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

[FR Doc. 2014–10821 Filed 5–9–14; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: HHS–OS–0945–New–30D]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, has submitted an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB) for review and approval. The ICR is for a new collection. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public on this ICR during the review and approval period.

DATES: Comments on the ICR must be received on or before June 11, 2014.

ADDRESSES: Submit your comments to *OIRA_submission@omb.eop.gov* or via facsimile to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690–6162.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the Information Collection Request Title and document identifier HHS–OS–0945–New–30D for reference.

Information Collection Request Title: HIPAA Covered Entity and Business Associate Pre-Audit Survey

Abstract: This information collection consists of a survey of up to 1200 Health Insurance Portability and Accountability Act of 1996 (HIPAA) covered entities (health plans, health care clearinghouses, and certain health care providers) and business associates (entities that provider certain services to a HIPAA covered entity) to determine suitability for the Office for Civil Rights (OCR) HIPAA Audit Program. The survey will gather information about respondents to enable OCR to assess the size, complexity, and fitness of a respondent for an audit. Information collected includes, among other things, recent data about the number of patient visits or insured lives, use of electronic information, revenue, and business locations.

Need and Proposed Use of the Information: The Office for Civil Rights (OCR) is mandated to conduct periodic audits to assess the compliance of covered entities and business associates with the HIPAA Privacy, Security, and Breach Notification Rules. This information collection will enable OCR to assess the suitability of respondent covered entities and business associates for audits.

Likely Respondents: Respondents will include both HIPAA covered entities and business associates.

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	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
OCR Pre-Audit Survey	Covered Entity	800	1	30/60	400
OCR Pre-Audit Survey	Business Associate	400	1	30/60	200
Total		1200	1	30/60	600

Darius Taylor,

Information Collection Clearance Officer.

[FR Doc. 2014–10829 Filed 5–9–14; 8:45 am]

BILLING CODE 4153–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Meeting of the Presidential Commission for the Study of Bioethical Issues

AGENCY: Office of the Secretary, Office of the Assistant Secretary for Health, Presidential Commission for the Study of Bioethical Issues, Department of Health and Human Services.

ACTION: Notice of meeting.

SUMMARY: The Presidential Commission for the Study of Bioethical Issues (the Commission) will conduct its seventeenth meeting on June 9–10, 2014. At this meeting, the Commission will discuss the BRAIN Initiative and ongoing work in neuroscience.

DATES: The meeting will take place Monday, June 9, 2014, from 9 a.m. to approximately 5 p.m. and Tuesday, June 10, 2014, from 9 a.m. to approximately 1 p.m.

ADDRESSES: The Lawrence P. and Ann Estes Klamon Room, Rollins School of Public Health, Emory University, Claudia Nance Rollins Building, 1518 Clifton Road NE., Atlanta, GA 30322.

FOR FURTHER INFORMATION CONTACT: Hillary Wicai Viers, Communications Director, Presidential Commission for the Study of Bioethical Issues, 1425 New York Avenue NW., Suite C–100, Washington, DC 20005. Telephone: 202–233–3960. Email: *Hillary.Viers@bioethics.gov.* Additional information may be obtained at *www.bioethics.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act of 1972, Public Law 92–463, 5 U.S.C. app. 2, notice is hereby given of the seventeenth meeting of the Commission. The meeting will be open to the public with attendance limited to space

available. The meeting will also be webcast at *www.bioethics.gov.*

Under authority of Executive Order 13521, dated November 24, 2009, the President established the Commission. The Commission is an expert panel of not more than 13 members who are drawn from the fields of bioethics, science, medicine, technology, engineering, law, philosophy, theology, or other areas of the humanities or social sciences. The Commission advises the President on bioethical issues arising from advances in biomedicine and related areas of science and technology. The Commission seeks to identify and promote policies and practices that ensure scientific research, health care delivery, and technological innovation are conducted in a socially and ethically responsible manner.

The main agenda item for the Commission's seventeenth meeting is to discuss the BRAIN Initiative and ongoing work in neuroscience.

The draft meeting agenda and other information about the Commission, including information about access to the webcast, will be available at *www.bioethics.gov.*

The Commission welcomes input from anyone wishing to provide public comment on any issue before it. Respectful debate of opposing views and active participation by citizens in public exchange of ideas enhances overall public understanding of the issues at hand and conclusions reached by the Commission. The Commission is particularly interested in receiving comments and questions during the meeting that are responsive to specific sessions. Written comments will be accepted at the registration desk and comment forms will be provided to members of the public in order to write down questions and comments for the Commission as they arise. To accommodate as many individuals as possible, the time for each question or comment may be limited. If the number of individuals wishing to pose a question or make a comment is greater than can reasonably be accommodated during the scheduled meeting, the Commission may make a random selection.

Written comments will also be accepted in advance of the meeting and are especially welcome. Please address written comments by email to *info@bioethics.gov,* or by mail to the following address: Public Commentary, Presidential Commission for the Study of Bioethical Issues, 1425 New York Avenue NW., Suite C–100, Washington, DC 20005. Comments will be publicly available, including any personally identifiable or confidential business information that they contain. Trade secrets should not be submitted.

Anyone planning to attend the meeting who needs special assistance, such as sign language interpretation or other reasonable accommodations, should notify Esther Yoo by telephone at (202) 233–3960, or email at *Esther.Yoo@bioethics.gov* in advance of the meeting. The Commission will make every effort to accommodate persons who need special assistance.

Dated: April 29, 2014.

Lisa M. Lee,

Executive Director, Presidential Commission for the Study of Bioethical Issues.

[FR Doc. 2014–10761 Filed 5–9–14; 8:45 am]

BILLING CODE 4154–06–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''*Updating and Expanding the AHRQ QI Toolkit for Hospitals.''* In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by July 11, 2014.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by email at *doris.lefkowitz@ahrq.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@ahrq.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Updating and Expanding the AHRQ QI Toolkit for Hospitals

AHRQ has developed sets of Quality Indicators (QIs) that can be used to document quality and safety conditions at U.S. hospitals. Three sets of QIs are particularly relevant for hospitals and include: The Inpatient Quality Indicators (IQIs), the Patient Safety Indicators (PSIs), and the Pediatric Quality Indicators (PDIs). The IQIs contain measures of volume, mortality, and utilization for common medical conditions and major surgical procedures. The PSIs are a set of measures to screen for potentially preventable adverse events that patients may experience during hospitalization. The PDIs measure the quality of pediatric health care, mainly focusing on preventable complications that occur as a consequence of hospitalization among pediatric patients. These QIs have been previously developed and evaluated by AHRQ, and are in use at a number of hospitals throughout the country. The QIs and supportive documentation on how to work with them are posted on AHRQ's Web site at *www.qualityindicators.ahrq.gov.*

Despite the availability of the QIs as tools to help hospitals assess their performance, many U.S. hospitals have limited experience with the use of such measurement tools, or in using quality improvement methods to improve their performance as assessed by these measures. To this end, RAND has previously contracted with AHRQ to develop an AHRQ Quality Indicators Toolkit for Hospitals (Toolkit). This Toolkit is publicly available and is posted on AHRQ's Web site at *http://www.ahrq.gov/professionals/systems/hospital/qitoolkit/index.html.* The Toolkit assists hospitals in both using the QIs and improving the quality and safety of the care they provide, as measured by those indicators. As such, the Toolkit includes: (1) Instruction on how a hospital can apply the QIs to its inpatient data to estimate rates for each indicator; (2) methods the hospital can use to evaluate these QI rates for identifying opportunities for improvement; (3) strategies for implementing interventions (or evidence-based best practices); (4) methods to measure progress and performance on the QIs; (5) tools for evaluating the cost-effectiveness of these changes; and (6) discussion of the value of using the QIs for quality improvement as well as potential challenges and barriers to quality improvement efforts that incorporate the QIs and how to help overcome them.

OMB approval was obtained for the development and evaluation of the original Toolkit in 2012, Development and Evaluation of AHRQ's Quality Indicators Improvement Toolkit (OMB # 0935–0164), which consisted of a protocol very similar to the one described in this statement.

Since the release of the Toolkit in 2012, the QIs have been updated and expanded, best practices have advanced, and many hospitals have improved their understanding of their quality improvement needs as well as increased their familiarity with the use of the Toolkit. These factors all point to the critical need to update the Toolkit. AHRQ has funded RAND, which partners with the University HealthSystem Consortium (UHC), to update and expand the Toolkit, and field test the updated Toolkit with hospitals as they carry out initiatives designed to improve performance on the QIs.

This research has the following goals:

(1) To assess the usability of the updated Toolkit for hospitals—with an emphasis on the Pediatric Quality Indicators (PDI)—in order to improve the Toolkit, and

(2) To examine hospitals' experiences in implementing interventions to improve their performance on the AHRQ QIs, the results of which will be used to guide successful future applications of the Toolkit.

This study is being conducted by AHRQ through its contractor, the RAND Corporation, under contract number HHSA290201000017I, pursuant to AHRQ's statutory authority to conduct and support research on healthcare and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and value of healthcare services and with respect to quality measurement and improvement. 42 U.S.C. 299a(a)(1) and (2).

Method of Collection

To achieve the goals of this project the following data collections will be implemented:

(1) Pre/post-test interview protocol—consisting of both open and closed ended questions will be administered prior to implementation of the Toolkit and again post implementation. The purpose of this data collection is to obtain data on the steps the hospitals took to implement actions to improve performance on the QIs; their plans for making process changes; and their experiences in achieving changes and perceptions regarding lessons learned that could be shared with other hospitals.

(2) Update protocol—consisting of both open and closed ended questions will be administered three times during the study (quarterly during the implementation year). The purpose of this data collection is to capture longitudinal data regarding hospitals' progress in implementing changes, successes and challenges, and plans for subsequent actions. These data will include descriptive information on changes over time in the hospitals' implementation actions and how they are using the Toolkit, as well as experiential information on the perceptions of participants regarding the improvement implementation process and its effects. It also ensures the collection of information close to pertinent events, which avoids the recall bias associated with retrospective reporting of experiences.

(3) Usability testing protocol—also consisting of both open and closed ended questions will be administered once at the end of the evaluation period. The purpose of this data collection is to gather information from the hospitals on how they used each tool in the updated Toolkit, the ease of use of each tool, which tools were most helpful, suggested changes to improve each tool, and suggestions for other tools to add to the updated Toolkit. This information will be used in the revisions of the updated Toolkit following the end of the field test.

All the information obtained from the proposed data collection will be used to strengthen the updated Toolkit before finalizing and disseminating it to hospitals for their use. First, information will be collected from the six hospitals participating in the Toolkit field test about their experiences in implementing performance improvements related to the AHRQ QIs, which will be used to prepare experiential case examples for inclusion in the Toolkit as a resource for other hospitals. Second, feedback will be elicited from them about the usability of the Toolkit, which will be applied to modify and refine the Toolkit so that it is as responsive as possible to the needs and priorities of the hospitals for which it is intended.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the respondents' time to participate in this information collection. Three protocols will be used to collect data from respondents in interviews that will take one hour each. The pre/post-test interview protocol will be administered twice—at the beginning and end of the field-test year. The pre-test interviews will be performed as one-hour group interviews with the six hospitals' implementation teams at the start of the year. Each hospital's implementation team is expected to consist of about 5 people. At the end of the year, post-test interviews that last one hour each and use the same protocol as the pre-test interviews will be conducted during site visits at the six hospitals with the implementation team. Thus these 5 people of the implementation team at each hospital will be interviewed twice, both pre- and post-field test. At the post-test site visits, data will also be collected through one-hour interviews performed separately with 4 key stakeholder groups—physicians, nurses, clerks, and others—that are not on the implementation team. Each stakeholder group is expected to consist of about 5 people. Thus these 20 people from the 4 stakeholder groups at each hospital will be interviewed once for one hour post-field test. Interviewing these additional stakeholder groups will ensure that we gather information on stakeholder variations in perceptions and experiences, of which the implementation teams might not be aware.

The quarterly update protocol will be administered quarterly to 2 hospital staff members from each hospital during the year (in months 3, 6, and 9). The usability testing protocol will be administered to 4 staff members once at the end of the evaluation period. The total burden is estimated to be 240 hours.

Exhibit 2 shows the estimated annualized cost burden associated with the respondents' time to participate in the evaluation. The total cost burden is estimated to be $7,179.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Data collection	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Pre/Post-Test Interview Protocol with Implementation Team	30	2	1	60

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Data collection	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Pre/Post-Test Interview Protocol with Stakeholder Groups	120	1	1	120
Quarterly Update Protocol	12	3	1	36
Usability Testing Protocol	24	1	1	24
Total	186	NA	NA	240

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Data collection	Number of respondents	Total burden hours	Average hourly wage rate *	Total cost burden
Pre/Post-Test Interview Protocol (Implementation Team and Stakeholder Groups)	150	180	$29.91	$5,384
Quarterly Update Protocol	12	36	29.91	1,077
Usability Testing Protocol	24	24	29.91	718
Total	186	240	NA	7,179

* Based upon the mean of the average wages taken from an average of hourly rates for occupations likely to be involved in the QI process (registered nurses, nurse practitioners, medical records and health information technicians, statisticians, and health technologists and technicians). Statistics are taken from the General Medical and Surgical Hospitals industry category in the May 2012 National Industry-Specific Occupational Employment and Wage Estimates from the Bureau of Labor Statistics, U.S. Department of Labor, accessed on January 22, 2014 [*www.bls.gov/oes/*].

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: May 1, 2014.

Richard Kronick,

AHRQ Director.

[FR Doc. 2014–10752 Filed 5–9–14; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meetings

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of Five AHRQ Subcommittee Meetings.

SUMMARY: The subcommittees listed below are part of AHRQ's Health Services Research Initial Review Group Committee. Grant applications are to be reviewed and discussed at these meetings. Each subcommittee meeting will commence in open session before closing to the public for the duration of the meeting. These meetings will be closed to the public in accordance with 5 U.S.C. App. 2 section 10(d), 5 U.S.C. 552b(c)(4), and 5 U.S.C. 552b(c)(6).

DATES: See below for dates of meetings:

1. Healthcare Safety and Quality Improvement Research (HSQR)

Date: June 17–18, 2014 (Open from 8:00 a.m. to 8:30 a.m. on June 17 and closed for remainder of the meeting).

2. Healthcare Effectiveness and Outcomes Research (HEOR)

Date: June 18, 2014 (Open from 8:00 a.m. to 8:30 a.m. on June 18 and closed for remainder of the meeting).

3. Health Care Research and Training (HCRT)

Date: June 19–20, 2014 (Open from 8:00 a.m. to 8:30 a.m. on June 19 and closed for remainder of the meeting).

4. Healthcare Information Technology Research (HITR)

Date: June 25–27, 2014 (Open from 5:30 p.m. to 6:00 p.m. on June 25 and closed for remainder of the meeting).

5. Health System and Value Research (HSVR)

Date: June 26, 2014 (Open from 8:30 a.m. to 9:00 a.m. on June 26 and closed for remainder of the meeting).

ADDRESSES: Hilton Washington DC/Rockville Hotel & Executive Meeting Center, 1750 Rockville Pike, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: (To obtain a roster of members, agenda or minutes of the non-confidential portions of the meetings.)

Mrs. Bonnie Campbell, Committee Management Officer, Office of Extramural Research Education and Priority Populations, AHRQ, 540 Gaither Road, Suite 2000, Rockville, Maryland 20850, Telephone (301) 427–1554.

SUPPLEMENTARY INFORMATION: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), AHRQ announces meetings of the scientific peer review groups listed above, which are subcommittees of AHRQ's Health

Services Research Initial Review Group Committees. Each subcommittee meeting will commence in open session before closing to the public for the duration of the meeting. The subcommittee meetings will be closed to the public in accordance with the provisions set forth in 5 U.S.C. App. 2 section 10(d), 5 U.S.C. 552b(c)(4), and 5 U.S.C. 552b(c)(6). 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.

Agenda items for these meetings are subject to change as priorities dictate.

Dated: May 1, 2014.

Richard Kronick,

AHRQ Director.

[FR Doc. 2014–10750 Filed 5–9–14; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1616–NC]

Medicare and Medicaid Programs; Announcement of Application From a Hospital Requesting Waiver for Organ Procurement Service Area

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice with comment period.

SUMMARY: A hospital has requested a waiver of statutory requirements that would otherwise require the hospital to enter into an agreement with its designated Organ Procurement Organization (OPO). The request was made in accordance with the Social Security Act (the Act). This notice requests comments from OPOs and the general public for our consideration in determining whether we should grant the requested waiver.

DATES: *Comment Date:* To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on July 11, 2014.

ADDRESSES: In commenting, refer to file code CMS–1616NC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1616–NC, P.O. Box 8010, Baltimore, MD 21244–1850.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1616–NC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments to a regulations staff member ONLY to the following addresses:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Patricia Taft, (410) 786–4561.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

Organ Procurement Organizations (OPOs) are not-for-profit organizations that are responsible for the procurement, preservation, and transport of organs to transplant centers throughout the country. Qualified OPOs are designated by the Centers for Medicare & Medicaid Services (CMS) to recover or procure organs in CMS-defined exclusive geographic service areas, pursuant to section 371(b)(1) of the Public Health Service Act (42 U.S.C. 273(b)(1)) and our regulations at 42 CFR 486.306. Once an OPO has been designated for an area, hospitals in that area that participate in Medicare and Medicaid are required to work with that OPO in providing organs for transplant, pursuant to section 1138(a)(1)(C) of the Social Security Act (the Act) and our regulations at 42 CFR 482.45.

Section 1138(a)(1)(A)(iii) of the Act provides that a hospital must notify the designated OPO (for the service area in which it is located) of potential organ donors. Under section 1138(a)(1)(C) of the Act, every participating hospital must have an agreement only with its designated OPO to identify potential donors.

However, section 1138(a)(2)(A) of the Act provides that a hospital may obtain a waiver of the above requirements from the Secretary of the Department of Health and Human Services (the Secretary) under certain specified conditions. A waiver allows the hospital to have an agreement with an OPO other than the one initially designated by CMS, if the hospital meets certain conditions specified in section 1138(a)(2)(A) of the Act. In addition, the Secretary may review additional criteria

described in section 1138(a)(2)(B) of the Act to evaluate the hospital's request for a waiver.

Section 1138(a)(2)(A) of the Act states that in granting a waiver, the Secretary must determine that the waiver—(1) is expected to increase organ donations; and (2) will ensure equitable treatment of patients referred for transplants within the service area served by the designated OPO and within the service area served by the OPO with which the hospital seeks to enter into an agreement under the waiver. In making a waiver determination, section 1138(a)(2)(B) of the Act provides that the Secretary may consider, among other factors: (1) Cost-effectiveness; (2) improvements in quality; (3) whether there has been any change in a hospital's designated OPO due to the changes made in definitions for metropolitan statistical areas; and (4) the length and continuity of a hospital's relationship with an OPO other than the hospital's designated OPO. Under section 1138(a)(2)(D) of the Act, the Secretary is required to publish a notice of any waiver application received from a hospital within 30 days of receiving the application, and to offer interested parties an opportunity to submit comments during the 60-day comment period beginning on the publication date in the **Federal Register**.

The criteria that the Secretary uses to evaluate the waiver in these cases are the same as those described above under sections 1138(a)(2)(A) and (B) of the Act and have been incorporated into the regulations at § 486.308(e) and (f).

II. Waiver Request Procedures

In October 1995, we issued a Program Memorandum (Transmittal No. A–95–11) detailing the waiver process and discussing the information hospitals must provide in requesting a waiver. We indicated that upon receipt of a waiver request, we would publish a **Federal Register** notice to solicit public comments, as required by section 1138(a)(2)(D) of the Act.

According to these requirements, we will review the comments received. During the review process, we may consult on an as-needed basis with the Health Resources and Services Administration's Division of Transplantation, the United Network for Organ Sharing, and our regional offices. If necessary, we may request additional clarifying information from the applying hospital or others. We will then make a final determination on the waiver request and notify the hospital and the designated and requested OPOs.

III. Hospital Waiver Request

As permitted by § 486.308(e), the following hospital has requested a waiver to enter into an agreement with a designated OPO other than the OPO designated for the service area in which the hospital is located:

Humbolt General Hospital, Winnemucca, Nevada, is requesting a waiver to work with: California Transplant Donor Network, 1000 Broadway, Suite 600, Oakland, California 94607–4099.

The Hospital's Designated OPO is: Nevada Donor Network, 2061 E Sahara Ave., Las Vegas, Nevada 89104.

IV. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

V. Response to Public Comments

We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble.

Dated: May 2, 2014.

Marilyn Tavenner,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2014–10639 Filed 5–9–14; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1618–NC]

Medicare and Medicaid Programs; Announcement of Application From a Hospital Requesting Waiver for Organ Procurement Service Area

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice with comment period.

SUMMARY: A hospital has requested a waiver of statutory requirements that would otherwise require the hospital to enter into an agreement with its designated Organ Procurement Organization (OPO). The request was made in accordance with the Social Security Act (the Act). This notice requests comments from OPOs and the general public for our consideration in determining whether we should grant the requested waiver.

DATES: *Comment Date:* To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on July 11, 2014.

ADDRESSES: In commenting, refer to file code CMS–1618–NC. Because of staff and resource limitations, we cannot accept comments by facsimile (Fax) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1618–NC, P.O. Box 8010, Baltimore, MD 21244–1850.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By Express or Overnight Mail.* You may send written comments to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1618–NC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By Hand or Courier.* Alternatively, you may deliver (by hand or courier) your written comments to a regulations staff member only to the following addresses:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Patricia Taft, (410) 786–4561.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

Organ Procurement Organizations (OPOs) are not-for-profit organizations that are responsible for the procurement, preservation, and transport of organs to transplant centers throughout the country. Qualified OPOs are designated by the Centers for Medicare & Medicaid Services (CMS) to recover or procure organs in CMS-defined exclusive geographic service areas, pursuant to section 371(b)(1) of the Public Health Service Act (42 U.S.C. 273(b)(1)) and our regulations at 42 CFR 486.306. Once an OPO has been designated for an area, hospitals in that area that participate in Medicare and Medicaid are required to work with that OPO in providing organs for transplant, pursuant to section 1138(a)(1)(C) of the Social Security Act (the Act) and our regulations at 42 CFR 482.45.

Section 1138(a)(1)(A)(iii) of the Act provides that a hospital must notify the designated OPO (for the service area in which it is located) of potential organ donors. Under section 1138(a)(1)(C) of the Act, every participating hospital must have an agreement only with its designated OPO to identify potential donors.

However, section 1138(a)(2)(A) of the Act provides that a hospital may obtain a waiver of the above requirements from the Secretary of the Department of Health and Human Services (the Secretary) under certain specified conditions. A waiver allows the hospital to have an agreement with an OPO other than the one initially designated by CMS, if the hospital meets certain conditions specified in section 1138(a)(2)(A) of the Act. In addition, the Secretary may review additional criteria described in section 1138(a)(2)(B) of the Act to evaluate the hospital's request for a waiver.

Section 1138(a)(2)(A) of the Act states that in granting a waiver, the Secretary must determine that the waiver—(1) is expected to increase organ donations; and (2) will ensure equitable treatment of patients referred for transplants within the service area served by the designated OPO and within the service area served by the OPO with which the hospital seeks to enter into an agreement under the waiver. In making a waiver determination, section 1138(a)(2)(B) of the Act provides that the Secretary may consider, among other factors: (1) Cost-effectiveness; (2) improvements in quality; (3) whether there has been any change in a hospital's designated OPO due to the changes made in definitions for metropolitan statistical areas; and (4) the length and continuity of a hospital's relationship with an OPO other than the hospital's designated OPO. Under section 1138(a)(2)(D) of the Act, the Secretary is required to publish a notice of any waiver application received from a hospital within 30 days of receiving the application, and to offer interested parties an opportunity to submit comments during the 60-day comment period beginning on the publication date in the **Federal Register**.

The criteria that the Secretary uses to evaluate the waiver in these cases are the same as those described above under sections 1138(a)(2)(A) and (B) of the Act and have been incorporated into the regulations at § 486.308(e) and (f).

II. Waiver Request Procedures

In October 1995, we issued a Program Memorandum (Transmittal No. A–95–11) detailing the waiver process and discussing the information hospitals must provide in requesting a waiver. We indicated that upon receipt of a waiver request, we would publish a **Federal Register** notice to solicit public comments, as required by section 1138(a)(2)(D) of the Act.

According to these requirements, we will review the comments received. During the review process, we may consult on an as-needed basis with the Health Resources and Services Administration's Division of Transplantation, the United Network for Organ Sharing, and our regional offices. If necessary, we may request additional clarifying information from the applying hospital or others. We will then make a final determination on the waiver request and notify the hospital and the designated and requested OPOs.

III. Hospital Waiver Request

As permitted by § 486.308(e), the following hospital has requested a waiver to enter into an agreement with a designated OPO other than the OPO designated for the service area in which the hospital is located:

Banner Churchill Community Hospital, Fallon, Nevada, is requesting a waiver to work with: California Transplant Donor Network, 1000 Broadway, Suite 600, Oakland, California 94607–4099.

The Hospital's Designated OPO is: Nevada Donor Network, 2061 E Sahara Ave., Las Vegas, Nevada 89104.

IV. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

V. Response to Public Comments

We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble.

Dated: May 2, 2014.

Marilyn Tavenner,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2014–10638 Filed 5–9–14; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1615–NC]

Medicare Program; Request for an Exception to the Prohibition on Expansion of Facility Capacity Under the Hospital Ownership and Rural Provider Exceptions to the Physician Self-Referral Prohibition

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice with comment period.

SUMMARY: Under section 1877(i) of the Social Security Act (the Act), a physician-owned hospital is effectively prohibited from expanding facility capacity, unless the Secretary grants the hospital's request for an exception to that prohibition after considering input on the hospital's request from individuals and entities in the community where the hospital is located. The Centers for Medicare & Medicaid Services (CMS) has received a request from a physician-owned hospital for an exception to the prohibition against expansion of facility capacity. This notice solicits comments on the request from individuals and entities in the community in which the physician-owned hospital is located. Community input may inform our determination regarding whether the requesting hospital qualifies for an exception to the prohibition against expansion of facility capacity.

DATES: *Comment Date:* To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on June 11, 2014.

ADDRESSES: In commenting, please refer to file code CMS–1615–NC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of three ways (please choose only one of the ways listed):

1. Electronically. You may submit electronic comments on this exception request to *http://www.regulations.gov.* Follow the instructions under the ''More Search Options'' tab.

2. By regular mail. You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1615–NC, P.O. Box 8010, Baltimore, MD 21244–1850.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Department of Health and Human Services, Attention: CMS–1615–NC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Patricia Taft, (410) 786–4561 or Teresa Walden, (410) 786–3755.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments:

All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

We will allow stakeholders 30 days from the date of this notice to submit written comments. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of this notice, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, please phone 1–800–743–3951.

I. Background

Section 1877 of the Social Security Act (the Act), also known as the physician self-referral law—(1) prohibits a physician from making referrals for certain ''designated health services'' (DHS) payable by Medicare to an entity with which he or she (or an immediate family member) has a financial relationship (ownership or compensation), unless an exception applies; and (2) prohibits the entity from filing claims with Medicare (or billing another individual, entity, or third party payer) for those DHS furnished as a result of a prohibited referral.

Section 1877(d)(3) of the Act provides an exception, known as the ''whole hospital exception,'' for physician ownership or investment interests held in a hospital located outside of Puerto Rico, provided that the referring physician is authorized to perform services at the hospital and the ownership or investment interest is in the hospital itself (and not merely in a subdivision of the hospital).

Section 1877(d)(2) of the Act provides an exception for physician ownership or investment interests in rural providers (the ''rural provider exception''). In order for an entity to qualify for the rural provider exception, the DHS must be furnished in a rural area (as defined in section 1886(d)(2) of the Act) and substantially all the DHS furnished by the entity must be furnished to individuals residing in a rural area.

Section 6001(a)(3) of the Patient Protection and Affordable Care Act (Pub. L. 111–148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152) (hereafter referred to together as ''the Affordable Care Act'') amended the whole hospital and rural provider exceptions to the physician self-referral prohibition to impose additional restrictions on physician ownership and investment in hospitals and rural providers. Since March 23, 2010, a physician-owned hospital that seeks to avail itself of either exception is prohibited from expanding facility capacity unless it qualifies as an ''applicable hospital'' or ''high Medicaid facility'' (as defined in sections 1877(i)(3)(E), (F) of the Act and 42 CFR 411.362(c)(2), (3) of our regulations) and has been granted an exception to the prohibition by the Secretary. Section 1877(i)(3)(A)(ii) of the Act provides that individuals and entities in the community in which the provider requesting the exception is located must have an opportunity to provide input with respect to the provider's application for the exception. For further information, visit our Web site at: *http://www.cms.gov/Medicare/Fraud-and-Abuse/PhysicianSelfReferral/Physician_Owned_Hospitals.html.*

II. Exception Request Process

On November 30, 2011, we published a final rule in the **Federal Register** (76 FR 74122, 74517 through 74525) that, among other things, finalized § 411.362(c), which specified the process for submitting, commenting on, and reviewing a request for an exception to the prohibition on expansion of facility capacity. We specified that prior to our review of the request, we will solicit community input on the request for an exception by publishing a notice of the request in the **Federal Register** (see § 411.362(c)(5)). We also stated that individuals and entities in the hospital's community have 30 days to submit comments on the request. Community input must take the form of written comments and may include documentation demonstrating that the physician-owned hospital requesting the exception does or does not qualify as an ''applicable hospital'' or ''high Medicaid facility,'' as such terms are defined in § 411.362(c)(2) and (3). Although we gave examples of community input, such as documentation demonstrating that the hospital does not satisfy one or more of the data criteria or that the hospital discriminates against beneficiaries of Federal health programs, we noted that

these were examples only and that we will not restrict the type of community input that may be submitted (76 FR 74522). If we receive timely comments from the community, we will notify the hospital, and the hospital has 30 days after such notice to submit a rebuttal statement (§ 411.362(c)(5)(ii)).

A request for an exception to the facility expansion prohibition is considered complete and ready for CMS review if no comments from the community are received by the close of the 30-day comment period. If we receive timely comments from the community, we consider the request to be complete 30 days after the hospital is notified of the comments. If we grant the request for an exception to the prohibition on expansion of facility capacity, the expansion may occur only in facilities on the hospital's main campus and may not result in the number of operating rooms, procedure rooms, and beds for which the hospital is licensed exceeding 200 percent of the hospital's baseline number of operating rooms, procedure rooms, and beds (§ 411.362(c)(6)). Our decision to grant or deny a hospital's request for an exception to the prohibition on expansion of facility capacity will be published in the **Federal Register** in accordance with our regulations at § 411.362(c)(7).

III. Hospital Exception Request

As permitted by section 1877(i)(3) of the Act and our regulations at § 411.362(c), the following physician-owned hospital has requested an exception to the prohibition on expansion of facility capacity:

Name of Facility: Lake Pointe Medical Center

Location: 6800 Scenic Drive, Rowlett, Texas 75088–4552 (Rockwall County)

Basis for Exception Request: High Medicaid Facility

We seek comments on this request from individuals and entities in the community in which the hospital is located. We encourage interested parties to review the hospital's request, which is posted on the CMS Web site at: *http://www.cms.gov/Medicare/Fraud-and-Abuse/PhysicianSelfReferral/Physician_Owned_Hospitals.html*. We especially welcome comments regarding whether the hospital qualifies as a ''high Medicaid facility.'' Under § 411.362(c)(3), a ''high Medicaid facility'' is a hospital that satisfies all of the following criteria:

- The hospital is not the sole hospital in the county in which it is located;
- The hospital does not discriminate against beneficiaries of Federal health care programs and does not permit physicians practicing at the hospital to discriminate against such beneficiaries; and
- With respect to each of the 3 most recent fiscal years for which data are available as of the date the hospital submits its request, the hospital has an annual percent of total inpatient admissions under Medicaid that is estimated to be greater than such percent with respect to such admissions for any other hospital located in the county in which the hospital is located.

We note that our regulations require the requesting hospital to use filed hospital cost report discharge data to estimate its annual percentage of total inpatient admissions under Medicaid and the annual percentages of total inpatient admissions under Medicaid for every other hospital located in the county in which the hospital is located.

Individuals and entities wishing to submit comments on the hospital's request should review the **DATES** and **ADDRESSES** sections above and state whether or not they are in the community in which the hospital is located.

IV. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

V. Response to Public Comments

We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

Dated: May 6, 2014.

Marilyn Tavenner,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2014–10872 Filed 5–9–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request Proposed Projects:

Title: Multistate Financial Institution Data Match with Federally Assisted State Transmitted Levy (FIDM/FAST Levy)

OMB No.: 0970–0196.

Description: State child support enforcement agencies are required to attach and seize an obligor's assets in financial institutions to satisfy any current support obligation and arrearage when the obligor owes past-due support. To locate an obligor's account, state child support enforcement agencies are required to enter into data matching agreements with financial institutions doing business in their state. State child support enforcement agencies use the results of data matches to secure information leading to the enforcement of the support obligation. The federal Office of Child Support Enforcement (OCSE) assists states to fulfill the data matching requirements with multistate financial institutions by facilitating matching through the Federal Parent Locator Service's Multistate Financial Institution Data Match (MSFIDM) program.

To further assist states to meet this statutory requirement, the OCSE enhanced the Federal Parent Locator Service by developing the Federally Assisted State Transmitted (FAST) Levy application that provides a secure and automated method of collecting and disseminating electronic levy notices between state child support enforcement agencies and multistate financial institutions. This increases states' efficiency to secure financial assets.

The FIDM/FAST Levy information collection activities are authorized by: 42 U.S.C. 652(l) which authorizes OCSE, through the Federal Parent Locator Service, to aid state child support agencies and financial institutions doing business in two or more states in reaching agreements regarding the receipt from financial institutions, and the transfer to the state child support agencies, of information pertaining to the location of accounts held by obligors who owe past-due support; 42 U.S.C. 666 (a)(2) and (c)(1)(G)(ii) which require state child support agencies in cases in which there is an arrearage to establish procedures to secure assets to satisfy any current support obligation and the

arrearage by attaching and seizing assets of the obligor held in financial institutions; (2) 42 U.S.C. 666(a)(17), which requires state child support agencies to establish procedures under which the state child support agencies shall enter into agreements with financial institutions doing business in the state to develop and operate, in coordination with financial institutions and the Federal Parent Locator Service (in the case of financial institutions doing business in two or more states), a data match system, using automated data exchanges to the maximum extent feasible, in which a financial institution is required to quarterly provide information pertaining to a noncustodial parent owing past-due support who maintains an account at the institution; and (ii) in response to a notice of lien or levy, encumber or surrender, assets held; (3) 42 U.S.C. 652(a)(7), which requires OCSE to provide technical assistance to state child support enforcement agencies to help them establish effective systems for collecting child and spousal support; and (4) 45 CFR 303.7(a)(5), which requires state child support agencies to transmit requests for information and provide requested information electronically to the greatest extent possible.

Respondents: Multistate Financial Institutions and State Child Support Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Financial Data Match Result File	112	4	.33	147.84
Election Form	30	1	0.5	15
FAST Levy Response Withhold Record Specifications: State Child Support Enforcement Agencies	7	1	317.5	2,222.5
FAST Levy Response Withhold Record Specifications: Multistate Financial Institutions	5	1	317.5	1,587.5

Estimated Total Annual Burden Hours: 3,972.84.

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 2014–10788 Filed 5–9–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Case Plan Requirement, Title IV–E of the Social Security Act.

OMB No.: 0970–0428.

Description: Under section 471(a)(16) of title IV–E of the Social Security Act (the Act), to be eligible for payments, states and tribes must have an approved title IV–E plan that provides for the development of a case plan for each child for whom the State or Tribe receives foster care maintenance payments and that provides a case review system that meets the requirements in section 475(5) and 475(6) of the Act.

The case review system assures that each child has a case plan designed to achieve placement in a safe setting that is the least restrictive (most family-like) setting available and in close proximity to the child's parental home, consistent with the best interest and special needs of the child. Through these requirements, States and Tribes also comply, in part, with title IV–B section 422(b) of the Act, which assures certain protections for children in foster care.

The case plan is a written document that provides a narrative description of the child-specific program of care. Federal regulations at 45 CFR 1356.21(g) and section 475(1) of the Act delineate the specific information that should be addressed in the case plan. The Administration for Children and Families (ACF) does not specify a recordkeeping format for the case plan nor does ACF require submission of the document to the Federal government. Case plan information is recorded in a format developed and maintained by the State or Tribal child welfare agency.

Respondents: State and Tribe title IV–B and title IV–E agencies

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Case Plan	511,915	1	4.00	2,054,390

Estimated Total Annual Burden Hours: 2,054,390.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the

information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2014–10791 Filed 5–9–14; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0001]

Ophthalmic Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Ophthalmic Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on June 6, 2014, from 8 a.m. to 6 p.m.

Location: Hilton Washington, DC North/Gaithersburg, salons A, B, C, and D, 620 Perry Pkwy., Gaithersburg, MD 20877. The hotel telephone number is 301–977–8900.

Contact Person: Natasha Facey, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1552, Silver Spring, MD 20993, 301–796–5290, *Natasha.Facey@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: On June 6, 2014, the committee will discuss, make recommendations, and vote on information related to the premarket approval application for the KAMRA Inlay (Model ACI 7000) (KAMRA Inlay) submitted by applicant AcuFocus, Inc. The KAMRA Inlay is a permanent corneal implant that is placed intrastromally in a corneal pocket or under a corneal flap. The opaque annulus of the inlay reduces the aperture of the eye, which improves near vision by providing an increased depth of focus in the implanted eye. The proposed indication for use states that the KAMRA Inlay is indicated for the improvement of near and intermediate vision in presbyopic patients who require near or intermediate correction. The KAMRA Inlay is intended to be placed intrastromally in the cornea, on the visual axis, by way of a femtosecond laser-created pocket using a spot/line separation of 6x6 microns (μ) or less. The KAMRA Inlay should be placed at a depth equal to or greater than 180 μ.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before May 30, 2014. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. on June 6, 2014. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before May 21, 2014. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by May 27, 2014.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact James Clark at *James.Clark@fda.hhs.gov* or 301–796–5293 at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 6, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–10803 Filed 5–9–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0505]

Proteomics in the Clinic; Public Workshop; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments.

The Food and Drug Administration (FDA) is announcing the following public workshop entitled ''Proteomics in the Clinic.'' FDA seeks input from interested stakeholders on how best to develop a regulatory framework targeted toward the complex issues involved in transforming research-level assays into validated in vitro diagnostics (IVDs) that can be used with patients. The topic to be discussed is the state of the art and challenges surrounding validation of proteomic methodologies for IVD tests.

DATE AND TIME: The public workshop will be held on June 13, 2014, from 8:30 a.m. to 5 p.m.

Location: The public workshop will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Entrance for the public workshop participants (non-FDA employees) is through Building 1 where routine security check procedures will be performed. For parking and security information, please refer to *http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.*

Contact Person: Julia Tait Lathrop, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5564, Silver Spring, MD 20993–0002, 240–402–5034, email: *julia.lathrop@fda.hhs.gov.*

Registration: Registration is free and available on a first-come, first-served basis. Persons interested in attending this public workshop must register online by 4 p.m. on June 4, 2014. Early registration is recommended because facilities are limited and, therefore, FDA may limit the number of participants from each organization. If time and space permits, onsite registration on the day of the public workshop will be provided beginning at 7:30 a.m.

If you need special accommodations due to a disability, please contact Susan Monahan, Center for Devices for Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave. Bldg. 66, Rm. 4321, Silver Spring, MD 20993–0002, 301–796–5661, email: *susan.monahan@fda.hhs.gov* no later than 4 p.m. on May 30, 2014.

To register for the public workshop, please visit FDA's Medical Devices News & Events—Workshops & Conferences calendar at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm.* (Select this public workshop from the posted events list.) Please provide complete contact information for each attendee, including name, title, affiliation, email, and telephone number. Those without Internet access should contact Julia Tait Lathrop to register (see *Contact Person*). Registrants will receive confirmation after they have been accepted. You will be notified if you are on a waiting list.

Streaming Webcast of the Public Workshop: This public workshop will also be Webcast. Persons interested in viewing the Webcast must register online by 4 p.m. on June 4, 2014. Early registration is recommended because Webcast connections are limited. Organizations are requested to register all participants, but to view using one connection per location. Webcast participants will be sent technical system requirements after registration and will be sent connection access information after June 9, 2014. If you have never attended a Connect Pro event before, test your connection at *https://collaboration.fda.gov/common/help/en/support/meeting_test.htm.* To get a quick overview of the Connect Pro program, visit *http://www.adobe.com/go/connectpro_overview.* (FDA has verified the Web site addresses in this document, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

Comments: FDA is holding this public workshop to discuss with interested stakeholders the issues surrounding validation of proteomic methodologies for IVD tests. In order to permit the widest possible opportunity to obtain public comment, FDA is soliciting either electronic or written comments on all aspects of the workshop topics. The deadline for submitting comments related to this public workshop is July 11, 2014.

Regardless of attendance at the public workshop, interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. In addition, when responding to specific questions as outlined in section II of this document, please identify the question you are addressing. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

Transcripts: Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov.* It may be viewed at the Division of Dockets Management (see *Comments*). A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to the Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857. A link to the transcripts will also be available approximately 45 days after the public workshop on the Internet at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm.* (Select this public workshop from the posted events list).

SUPPLEMENTARY INFORMATION:

I. Background

Basic research in proteomics, the study of all of the proteins and their interactions in an individual, has led to new understanding of proteins' contributions to health and disease. It has also driven the advancement of powerful analytical technologies used to explore these contributions. Translating these discoveries and technologies into IVD tests presents expanded opportunities to improve patient care; however, the complexity of these technologies raises challenging questions on how to evaluate the safety and effectiveness of these tests. FDA is holding this public workshop to invite discussion with industry, academia, government, and the public on how best to adapt current regulatory strategies to the challenges presented by proteomic approaches to IVDs, while still accelerating and supporting the introduction of innovative diagnostic tests into the clinic.

Over the past 20 years, basic proteomic research has spurred intense innovation in biochemical analytic technologies (e.g., mass spectrometry, multiplex arrays, bioinformatics). This research has led to new insights into how proteins interact to maintain health and to cause disease; however, it is only recently that these technologies have

matured to the point that their introduction into the clinic appears practical and useful. Fundamental to using IVDs in the clinic is the need to demonstrate that the tests are safe and effective—that the results claimed are accurate and precise and that the interpretation of the results are supported by science. FDA's regulatory process is designed to ensure that intended use claims are supported with appropriate data. However, the range of variables that can be included in proteomic IVDs such as technological approaches, variety of sample types and preparation methods, data capture, and analysis algorithms, poses unique regulatory challenges, as more complex the information gathered, more challenging is the validation of results. At this point, what we need is a regulatory framework, tuned to proteomic technologies, which will facilitate the introduction of validated IVDs into the clinic.

The intent of this workshop is not to discuss the limitations and strengths of the proteomic discovery process. The theoretical analytical performance of proteomic technologies have been well demonstrated, and in the past few years a number of initiatives have been launched to bring standardization and quality control to the discovery and pre-clinical development of proteomic-based assays. However, this level of quality control does not ensure that these assays have been validated for their intended use as IVDs tests that are used for diagnosis of disease and clinical management of patients; e.g., assessment of risk, monitoring of disease, prediction of response to therapy, and selection of treatment.

Strategies are needed that will guide the successful transfer of research and discovery-level assays into the clinic. This includes their use in clinical trials, so that the analytical and clinical validity of the test procedure and outcome are assured. As a general rule, the requirements for analytical and clinical validation of IVDs are much greater than the studies that are commonly performed in a research and development setting. To support the least burdensome approach to assay development, FDA is willing to discuss unconventional approaches to IVD validation driven by, for example, the theoretical precision of multiple reaction monitoring assays. However, theoretical performance must be balanced by the recognition that there are few, if any, recognized reference standards for the analytes or the assays with which to assess the performance of proteomic IVDs. The impact of the lack of standards may be substantial: Assays that combine the measurements of several, if not dozens, of individual analytes into a single, actionable ''score'' may require validation of each individual analyte separately and in combination. Thus, the objective of this public workshop is to obtain feedback from academia, government, industry, clinical laboratories, and other stakeholders on the development of a regulatory approach that may reduce the burden of assay validation while assuring that the assays are safe and effective.

II. Topics for Discussion at the Public Workshop

We plan to include the following topics at the public workshop.

- State of the art: Current state of proteomic IVD landscape and FDA's perspectives;
- Community initiatives: Overview of community (governmental and non-governmental) initiatives to help standardize proteomic technologies and provide quality control to discovery;
- Success stories: Description of FDA experience in the clearance of IVDs that use proteomic technologies, with lessons learned and challenges discovered in bringing proteomic-based assays to the clinic; and
- Case study open discussion: In an open discussion, FDA will present a hypothetical case study that includes assay design and validation issues with which FDA has experience. The goal is to stimulate discussion with attendees regarding what expectations from FDA are reasonable, what validation by manufacturers is possible and other challenges inherent in bringing these tests to the clinic and the Agency. Possible points of discussion will be solicited from the attendees, and may include:
  - How can or should the FDA use community-developed reference standards/assays to assess IVD validity?
  - How can manufacturers assess accuracy in a multiplex/multipeak assay without a reference standard for the analytes?
  - Are there general rules for assay validation that cannot or should not be applied to different platforms?
  - How can or should late-stage validation considerations be incorporated into early-stage assay development?

Dated: May 7, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–10787 Filed 5–9–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Health Resources and Services Administration (HRSA) has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period.

DATES: Comments on this ICR should be received no later than June 11, 2014.

ADDRESSES: Submit your comments, including the Information Collection Request Title, to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to 202–395–5806.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–1984.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Rural Health Care Services Outreach Supplement Performance Measures.

OMB No.: 0915–xxxx—NEW.

Abstract: The fiscal year (FY) 2013 Supplemental Funding to the Rural Health Care Services Outreach Program grantees is a one-time supplemental funding under Section 330A(e) of the Public Health Service (PHS) Act (42 U.S.C. 254c(e)) to promote rural health care services outreach by expanding the delivery of health care services to include new and enhanced services in rural areas. The supplemental funding will specifically focus on supporting the current scope of their project, allowing grantees to further enhance outreach and enrollment assistance activities in their communities. This supplemental funding will support the Affordable Care Act's outreach and enrollment activities to the Health Insurance Marketplaces. Grantees will be able to raise awareness of affordable insurance options and provide assistance and

information to the uninsured about enrolling in available sources of insurance, such as Medicare, Medicaid, the Children's Health Insurance Program, and private insurance in the Marketplace through this supplemental funding.

The overarching goal is to increase the number of eligible individuals educated about their coverage options and enrollees to the Health Insurance Marketplaces or other available sources of insurance, such as Medicare, Medicaid, and the Children's Health Insurance Program as a result of this supplemental funding.

Need and Proposed Use of the Information: For this program, performance measures were drafted to provide data to the program and to enable HRSA to provide aggregate program data. These measures cover the principal topic areas of interest to the Office of Rural Health Policy, including: (a) Organizational information; (b) outreach and enrollment personnel; (c) outreach and education; (d) enrollment; and (e) additional resources. Several measures will be used for this program. A 60-day **Federal Register** notice was published in the **Federal Register** on February 18, 2014 (see, 79 Fed. Reg. 9235). There were no comments.

Likely Respondents: The respondents would be recipients of the Rural Health Care Services Outreach supplemental funding award.

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	Total responses	Average burden per response (in hours)	Total burden hours
Rural Health Care Services Outreach Supplement Performance Measures	52	1	52	1.5	78
Total	52	1	52	1.5	78

Dated: May 6, 2014.

Bahar Niakan,

Director, Division of Policy and Information Coordination.

[FR Doc. 2014–10875 Filed 5–9–14; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects (Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995), the Health Resources and Services Administration (HRSA) announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this Information Collection Request must be received no later than July 11, 2014.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 10–29, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call the HRSA Information Collection Clearance Officer at (301) 443–1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information request collection title for reference.

Information Collection Request Title: Health Education Assistance Loan (HEAL) Program: Lender's Application for Insurance Claim Form and Request for Collection Assistance Form OMB No. 0915–0036—Extension.

Abstract: The clearance request is for an extension of two forms that are currently approved by OMB. HEAL lenders use the Lenders Application for Insurance Claim to request payment from the federal government for federally insured loans lost due to borrowers' death, disability, bankruptcy, or default. The Request for Collection Assistance form is submitted by HEAL lenders to request federal assistance with the collection of delinquent payments from HEAL borrowers.

Need and Proposed Use of the Information: Lender's Application for Insurance Claim Form—This form is used to obtain information about the claim and to determine if the lending institution has complied with statutory and regulatory requirements for payment of the insurance claim.

Failure to submit the required documentation or not filing the form promptly may result in a claim being penalized or denied. *Request for Collection Assistance Form*—When a borrower is 90 days delinquent, the lender must immediately request pre-claims assistance from the Public Health Service. Pre-claims assistance consists of three progressively stronger letters urging the borrower to contact his or her lender before litigation is initiated against the borrower. The Secretary does not pay a default claim if the lender fails to request pre-claims assistance.

Likely Respondents: HEAL Lenders and Servicers.

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 Information Collection Request are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Lender's Application for Insurance Claim Form 510	15	20	300	.500	150
Request for Collection Assistance Form 513	15	303	4,545	.167	759
Total	30				909

HRSA 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.

Dated: April 28, 2014.

Jackie Painter,

Deputy Director, Division of Policy and Information Coordination.

[FR Doc. 2014–10877 Filed 5–9–14; 8:45 am]

BILLING CODE 4165–15–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: Center for Scientific Review Special Emphasis Panel, Shared Instrumentation Grant Program: Biomolecular Interaction Analysis Instruments.

Date: June 3, 2014.

Time: 3:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sergei Ruvinov, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, 301–435–1180, *ruvinser@csr.nih.gov*.

Name of Committee: Vascular and Hematology Integrated Review Group Hypertension and Microcirculation Study Section.

Date: June 5, 2014.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC 20036.

Contact Person: Ai-Ping Zou, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, 301–408–9497, *zouai@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Hypertension and Microcirculation.

Date: June 5, 2014.

Time: 5:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Luis Espinoza, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7814, Bethesda, MD 20892, 301–435–0952, *espinozala@mail.nih.gov*.

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group, Drug Discovery and Molecular Pharmacology Study Section.

Date: June 6, 2014.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Dupont Circle Hotel, 1500 New Hampshire Avenue NW., Washington, DC 20036.

Contact Person: Jeffrey Smiley, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 7804, Bethesda, MD 20892, 301–594–7945, *smileyja@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bioinformatics in Surgical Sciences, Imaging and Independent Living.

Date: June 6, 2014.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Torrance Marriott South Bay, 3635 Fashion Way, Torrance, CA 90503.

Contact Person: Guo Feng Xu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5122, MSC 7854, Bethesda, MD 20892, 301–237–9870, *xuguofen@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: May 6, 2014.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–10780 Filed 5–9–14; 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: Emerging Technologies and Training Neurosciences Integrated Review Group; Bioengineering of Neuroscience, Vision and Low Vision Technologies Study Section.
Date: June 2, 2014.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hotel Monaco, 700 F Street NW., Washington, DC 20001.
Contact Person: Robert C. Elliott, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5190, MSC 7846, Bethesda, MD 20892, 301–435–3009, *elliotro@csr.nih.gov*.

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Community Influences on Health Behavior Study Section.
Date: June 2–3, 2014.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites DC Convention Center, 900 10th Street NW., Washington, DC 20001.
Contact Person: Wenchi Liang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, MSC 7770, Bethesda, MD 20892, 301–435–0681, *liangw3@csr.nih.gov*.

Name of Committee: Vascular and Hematology Integrated Review Group; Molecular and Cellular Hematology Study Section.
Date: June 2–3, 2014.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hotel Kabuki, 1625 Post Street, San Francisco, CA 94115.
Contact Person: Luis Espinoza, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6183, MSC 7804, Bethesda, MD 20892, 301–495–1213, *espinozala@mail.nih.gov*.

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group; Biodata Management and Analysis Study Section.
Date: June 2, 2014.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Courtyard by Marriott, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Mark Caprara, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7844, Bethesda, MD 20892, 301–435–1042, *capraramg@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Biochemistry and Biophysics of Membranes and Membrane Bound Proteins.
Date: June 3, 2014.
Time: 12:00 p.m. to 1:00 p.m.
Agenda: To review and evaluate grant applications.
Place: St. Gregory Hotel, 2033 M Street NW., Washington, DC 20036.
Contact Person: David R. Jollie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4166, MSC 7806, Bethesda, MD 20892, (301) 437–7927, *jollieda@csr.nih.gov*.

Name of Committee: Emerging Technologies and Training Neurosciences Integrated Review Group; Neuroscience and Ophthalmic Imaging Technologies Study Section.
Date: June 4, 2014.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hotel Palomar Washington, DC, 2121 P Street NW., Washington, DC 20815.
Contact Person: Yvonne Bennett, Ph.D., 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: Digestive, Kidney and Urological Systems Integrated Review Group; Kidney Molecular Biology and Genitourinary Organ Development.
Date: June 5, 2014.
Time: 8:00 a.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Crowne Plaza Washington National Airport, 1489 Jefferson Davis Hwy, Arlington, VA 22202.
Contact Person: Ryan G. Morris, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4205, MSC 7814, Bethesda, MD 20892, 301–435–1501, *morrisr@csr.nih.gov*.

Name of Committee: Immunology Integrated Review Group Transplantation, Tolerance, and Tumor Immunology Study Section.
Date: June 5–6, 2014.
Time: 8:00 a.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Renaissance Washington DC, Dupont Circle, 1143 New Hampshire Avenue NW., Washington, DC 20037.
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: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review, Group, Biomedical Imaging Technology a Study Section.
Date: June 5–6, 2014.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Crowne Plaza St. Louis—Downtown, 200 N. Fourth Street, St. Louis, MO 63102.
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: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review, Group, Clinical Molecular Imaging and Probe Development.
Date: June 5, 2014.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Crowne Plaza St. Louis—Downtown, 200 N. Fourth Street, St. Louis, MO 63102.
Contact Person: David L Williams, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5110, MSC 7854, Bethesda, MD 20892, (301)435–1174, *williamsdl2@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: May 5, 2014.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–10781 Filed 5–9–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2014 Funding Opportunity

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of intent to award a single source grant to Special Service for Groups, Inc. (SSG)

SUMMARY: This notice is to inform the public that the Substance Abuse and Mental Health Services Administration (SAMHSA) intends to award $520,000 (total costs) per year for the remaining two years of the APAIT Health Center grant. The original grant was awarded to APAIT Health Center in FY 2013 in response to the Request for Applications (RFA) TI–13–011: Substance Abuse Treatment for Racial/Ethnic Minority Women at High Risk for HIV/AIDS (TCE:HIV Minority Women). Additional information on this program can be found in the original funding announcement, TI–13–011, *http://www.samhsa.gov/grants/2013/ti-13-011.aspx*.

APAIT Health Center relinquished their grant in November 2013 and Special Service for Groups, Inc. took

over APAIT's operations and activities in the same geographic area as APAIT Health Center. SSG submitted an application in response to SAMHSA's Request for Applications (RFA) #TI–14–011, in which SSG provided documentation of their capabilities to maintain a comprehensive, integrated, trauma-informed, women-centered outpatient substance abuse treatment system of care. SSG and their partnering provider organizations meet the needs of the population of focus, as stated in the original application. Special Service for Groups, Inc. must continue to use awarded funds to provide a comprehensive, integrated, trauma-informed, women-centered outpatient substance abuse treatment service system of care as described in the 2013 RFA. SSG will use awarded funds to conduct the required activities as stated in the original application.

Funding Opportunity Title: TI–14–011.

Catalog of Federal Domestic Assistance (CFDA) Number: 93.243.

Authority: Section 509 of the Public Health Service Act, as amended.

Justification: Eligibility for this award is limited to Special Service for Groups, Inc. SSG is in the unique position to assume the FY 2013 TCE–HIV: Minority Women grant relinquished by APAIT Health Center because:

- Special Service for Groups, Inc. has been approved by SAMHSA/CSAT Grants Management as the replacement grantee for the remainder of the current budget period (12–18–2013 to 8–30–2014).
- SSG's service delivery includes the necessary and required integrated system of care to provide each of the services described in the original application.
- SSG has taken over the operations of APAITH Health Center and is similar to APAITH Health Center; it is also located at the same geographic area as APAIT Health Center, serving individuals within the same county which allows for the continued provision of services without interruption.
- SSG's proposed key personnel have experience as key personnel on current and previous SAMHSA TCE–HIV grants.

Contact: Cathy Friedman, Substance Abuse and Mental Health Services Administration, 1 Choke Cherry Road, Room 8–1097, Rockville, MD 20857; telephone: (240) 276–2316; email: *cathy.friedman@samhsa.hhs.gov*.

Cathy J. Friedman,

SAMHSA Public Health Analyst.

[FR Doc. 2014–10835 Filed 5–9–14; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0060]

Agency Information Collection Activities: Form N–648, Extension, Without Change, of a Currently Approved Collection; Comment Request

ACTION: 60-Day Notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (i.e. the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until July 11, 2014.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0060 in the subject box, the agency name and e-Docket ID USCIS–2008–0021. To avoid duplicate submissions, please use only one of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal Web site at *www.regulations.gov* under e-Docket ID USCIS–2008–0021;

(2) *Email.* Submit comments to *USCISFRComment@uscis.dhs.gov*;

(3) *Mail.* Submit written comments to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140.

SUPPLEMENTARY INFORMATION:

Comments: Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov*, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov*.

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do*, or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension, without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Medical Certification for Disability Exceptions.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* N–648; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or*

households. USCIS uses Form N–648 to substantiate an applicant's claim for an exception to the requirements of section 312 (a) of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 17,302 responses at 2 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 34,604 annual burden hours.

If you need a copy of the information collection instrument with instructions, or additional information, please visit the Federal eRulemaking Portal site at: *http://www.regulations.gov.* We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, Telephone number 202–272–8377.

Dated: May 6, 2014.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2014–10763 Filed 5–9–14; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0109]

Agency Information Collection Activities: E-Notification of Application/Petition Acceptance, Form G–1145; Extension, Without Change, of a Currently Approved Collection

ACTION: 30-Day Notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on February 12, 2014, at 79 FR 8470, allowing for a 60-day public comment period. USCIS did not any comment(s) in connection with the 60-day notice.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until June 11, 2014. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *oira_submission@omb.eop.gov.* The comments submitted to the OMB USCIS Desk Officer may also be submitted to DHS via the Federal eRulemaking Portal Web site at *http://www.regulations.gov* under e-Docket ID number USCIS–2009–0027 or via email at *uscisfrcomment@uscis.dhs.gov.* All submissions received must include the agency name and the OMB Control Number 1615–0109.

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov*, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do*, or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* E-Notification of Application/Petition Acceptance.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* G–1145; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. If an applicant or petitioner wants to be notified via email and/or text message on their cell phone that their application or petition has been accepted, they are requested to provide their email address and/or cell phone number on the E-Notification of Application/Petition Acceptance, Form G–1145, and attach this form to the application or petition.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,180,000 responses at 3 minutes (0.05 hour) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 59,000 annual burden hours.

If you need a copy of the information collection instrument with supplementary documents, or need additional information, please visit *http://www.regulations.gov.* We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140; Telephone 202–272–8377.

Dated: May 6, 2014.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2014–10762 Filed 5–9–14; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of NMC Global Corporation as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of NMC Global Corporation as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that NMC Global Corporation has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes for the next three years as of August 1, 2013.

DATES: The accreditation and approval of NMC Global Corporation as commercial gauger and laboratory became effective on August 1, 2013. The next triennial inspection date will be scheduled for August 2016.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that NMC Global Corporation, 650 Groves Road, Suite 111, Thorofare, NJ 08086, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. NMC Global Corporation is approved for the following gauging procedures for petroleum and certain petroleum products set forth by the American Petroleum Institute (API):

API Chapters	Title
3	Gauging.
7	Temperature Determination.
8	Sampling.
9	Density Determination.
12	Calculation of Petroleum Quantities.
17	Marine Measurements.

NMC Global Corporation is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–48	ASTM D–4052	Standard test method for density and relative density of liquids by digital density meter.
27–13	ASTM D–4294	Standard test method for sulfur in petroleum and petroleum products by energy-dispersive x-ray fluorescence spectrometry.
27–04	ASTM D–95	Standard test method for water in petroleum products and bituminous materials by distillation.
27–11	ASTM D–445	Standard test method for kinematic viscosity of transparent and opaque liquids (and calculations of dynamic viscosity).

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://www.cbp.gov/sites/default/files/documents/gaulist_3.pdf

Dated: May 2, 2014.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2014–10843 Filed 5–9–14; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Intertek USA, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Intertek USA, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Intertek USA, Inc., has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes for the next three years as of July 31, 2013.

DATES: *Effective Dates:* The accreditation and approval of Intertek USA, Inc., as commercial gauger and laboratory became effective on July 31, 2013. The next triennial inspection date will be scheduled for July 2016.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Intertek USA, Inc., 327 Erickson Ave., Essington, PA 19029, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Intertek USA, Inc., is approved for the following gauging procedures for petroleum and certain petroleum products set forth by the American Petroleum Institute (API):

API Chapters	Title
3	Gauging.
7	Temperature Determination.
8	Sampling.
9	Density Determination.
12	Calculation of Petroleum Quantities.
17	Marine Measurements.

Intertek USA, Inc., is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–01	ASTM D 287	Standard test method for API Gravity of crude petroleum products and petroleum products (Hydrometer Method).
27–04	ASTM D 95	Standard test method for water in petroleum products and bituminous materials by distillation.
27–06	ASTM D 473	Standard test method for sediment in crude oils and fuel oils by the extraction method.
27–08	ASTM D 86	Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.
27–11	ASTM D 445	Standard test method for kinematic viscosity of transparent and opaque liquids (and calculations of dynamic viscosity).
27–13	ASTM D 4294	Standard test method for sulfur in petroleum and petroleum products by energy-dispersive x-ray fluorescence spectrometry.
27–58	ASTM D 5191	Standard Test Method for Vapor Pressure of Petroleum Products (Mini Method).

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/sites/default/files/documents/gaulist_3.pdf.*

Dated: May 2, 2014.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2014–10838 Filed 5–9–14; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Intertek USA, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Intertek USA, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Intertek USA, Inc., has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of August 22, 2013.

DATES: *Effective Dates:* The accreditation and approval of Intertek USA, Inc., as commercial gauger and laboratory became effective on August 22, 2013. The next triennial inspection date will be scheduled for September 2016.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Intertek USA, Inc., 312 Carolan St., Savannah, GA 31415, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Intertek USA, Inc. is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API Chapters	Title
3	Tank gauging.
7	Temperature determination.
8	Sampling.
9	Density Determinations.
12	Calculations.
17	Maritime measurement.

Intertek USA, Inc. is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–03	D4006	Standard Test Method for Water in Crude Oil by Distillation.
27–04	D95	Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.
27–06	D473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27–08	D86	Standard Test Method for Distillation of Petroleum Products.
27–11	D445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids.
27–13	D4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry.
27–48	D4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
27–57	D7039	Standard Test Method for Sulfur in Gasoline and Diesel Fuel by Monochromatic Wavelength Dispersive X-Ray Fluorescence Spectrometry.
27–58	D5191	Standard Test Method For Vapor Pressure of Petroleum Products.

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or

gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

Dated: April 30, 2014.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2014–10840 Filed 5–9–14; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5752–N–46]

Notice of Submission of Proposed Information Collection to OMB; Emergency Comment Request Applications for Housing Assistance Payments; Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Chief Information Officer.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 19, 2014.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within seven (7) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Lanier M. Hylton, Housing Program Manager, Office of Program Systems Management, Office of Multifamily Housing Programs, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 402–2510 (this is not a toll free number) for copies of the proposed forms and other available information.

Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Hylton.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the U.S. Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, an information collection package with respect to this information collected on information collection number 2502–0182 relative to system enhancements to the Tenant Rental Assistance Certification System (TRACS). The Department solicited stakeholder input through TRACS Industry Working Group sessions to identify enhancements for TRACS Release 202D.

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

A. Overview of Information Collection

1. HUD-Form Number, Title of Information Collection, and OMB Approval Number:

Form No.	Title of Information Collection Under No. 2502–0182
HUD–52670	Housing Owner's Certification and Application for Housing Assistance Payments.
HUD–52670–A Part 1	Schedule of Tenant Assistance Payments Due.
HUD–52670–A Part 2	Special Claims Schedule.
HUD–52670–A Part 3	Adjustments to Schedule of Tenant Assistance Payments Due.
HUD–52670–A Part 4	Misc. Accounting Requests for Schedule of Tenant Assistance Payments Due.
HUD–52670–A Part 5	Approved Special Claims for Schedule of Tenant Assistance Payments Due.
HUD–52670–A Part 6	Repayment Agreements for Schedule of Tenant Assistance Payments Due.
HUD–52670–A	Special Claims for Unpaid Rent/Damages.
HUD–52670–B	Special Claims for Vacancies During Rent-up.
HUD–52670–C	Special Claims for Regular Vacancies.
HUD–52670–D	Special Claims for Debt Service.
HUD–93742	Senior Preservation Rental Assistance Contract (SPRAC I).
HUD–93742a	Senior Preservation Rental Assistance Contract (SPRAC II).

2. Description of the Need for the Information Collection and Proposed Use:

HUD's Office of Multifamily Housing Programs needs to collect this information in order to establish an applicant's eligibility for admittance to subsidized housing, specify which eligible applicants may be given priority over others, and prohibit racial discrimination in conjunction with selection of tenants and unit assignments.

HUD must specify tenant eligibility requirements as well as how tenants' incomes, rents and assistance must be verified and computed so as to prevent HUD from making improper payments to owners on behalf of assisted tenants. These information collections are essential to ensure the reduction of improper payments standard in providing $9.5 billion in rental assistance to low-income families in HUD Multifamily properties.

a. These collections are authorized by the following statutes:

- Section 8 (42 U.S.C. 1437 et seq.).
- Rent Supplement (12 U.S.C. 1701s).
- Rental Assistance Payments (12 U.S.C. 1715z-1).
- Section 236 (12 U.S.C. 1172z-1).
- Section 221(d) (3) Below Market Interest Rate (12 U.S.C. 1715l).
- Title VI of the Civil Rights Act of 1964.
- Title VIII of the Civil Rights Act of 1968, as amended (Section 808).
- Executive Order 11063, Equal Opportunity in Housing
- Social Security Numbers (42 U.S.C. 3543).
- Section 562 of the Housing and Community Development Act of 1987.
- Section 202 of the Housing Act of 1959, as amended.
- Section 811 of the National Affordable Housing Act of 1980.
- Computer Matching and Privacy Protection Act of 1988 (102 Statute 2507).
- Privacy Act of 1974 (5 U.S.C. 552a), Records Maintained on Individuals
- Quality Housing and Work Responsibility Act of 1998 (QHWRA)
- Section 658 of Title VI of Subtitle D of the Housing and Community Development Act of 1992.
- Executive Order 13520 of November 20, 2009, The Improper Payments Elimination and Recovery Act (IPERA)
- Executive Order 13515 of October 14, 2009, Increasing Participation of Asian Americans and Pacific Islanders in Federal Programs

b. These collections are covered by the following regulations:

- Section 8: 24 CFR Part 5, 24 CFR 880, 24 CFR 884, 24 CFR 886, 24 CFR 891 Subpart E.
- Section 236 and Rental Assistance Payments: 24 CFR 236.
- Section 221(d) (3): 24 CFR 221.
- Racial, Sex, Ethnic Data: 24 CFR 121.
- Nondiscrimination and Equal Opportunity in Housing: 24 CFR 107.
- Nondiscrimination in Federal Programs: 24 CFR 1.
- Social Security Numbers: 24 CFR Part 5.
- Procedures for Obtaining Wage and Claim Information Agencies: 24 CFR Part 760.
- Implementation of the Privacy Act of 1974: 24 CFR Part 16.
- Mandated use of HUD's Enterprise Income Verification (EIV) System: 24 CFR 5.233

3. Describe Respondents

The primary users of TRACS or its data outputs include:

Internal

- HUD Multifamily Housing 63 Field Offices
- HUD Headquarters Multifamily Housing Staff
- Office of the Chief Financial Officer (CFO)
- Office of Housing—Office of Finance and Accounting (OFA)
- Office of Chief Financial Officer—Office of Budget (OB)
- Office of Policy Development & Research (PD&R)
- Federal Housing Administration (FHA)/Comptroller's Office
- Departmental Enforcement Center (DEC)
- Real Estate Enforcement Center (REAC)
- Office of Multifamily Housing—Office of Affordable Housing
- HUD Office of the Inspector General (OIG)

External

- Performance Based Contract Administrators
- Contract Administrators
- Owners and Property Management Agents
- State Housing Finance Agencies
- Public Housing Authorities (PHA)
- The Government Accountability Office
- U. S. Census Bureau
- Office of Management and Budget (OMB)
- Congress/Public Requests (Under FOIA)

TRACS Industry Working Group

HUD established a working group in February 2012 to identify enhancements for TRACS Release 202D. The working group consists of 123 members from HUD Industry Partners (Contract Administrators, Occupancy Trainers, Owners, Property Management Agents, state housing finance agencies, and Occupancy Software Vendors) and HUD staff. The working group conducted eighteen work sessions to determine the requirements for TRACS Release 202D. During these sessions, forms relative to 2502–0204 were finalized for OMB forms approval (see Exhibit 1 for TRACS Industry Working Group Members.)

On January 14 and 15, 2014, HUD held the Quarterly TRACS Industry Meeting in Washington DC for approximately 130 Industry Partners (Contract Administrators, Owners/Agents, Service Bureaus, Trainers and Software Vendors). During the Industry Meeting, a special session was conducted where each form relative to 2502–0204 were presented to the attendees for open discussion. After the Industry Meeting, the Form Presentation was posted to the HUD TRACS Announcement Web page for review. On February 20, 2014, HUD held a Virtual Meeting with 115 Contract Administrators and HUD staff where the forms and TRACS 202D enhancements were presented followed by a question and answer period. No comments from the Quarterly TRACS Industry Meeting, Postings or Virtual Meeting resulted in changes to the forms being submitted to OMB for review and final approval.

HUD consulted with the following industry partners to discuss ways in which the burden to owners/management agents and tenants can be reduced and the impact these revised collections will have on the tenant certification and subsidy payment processes. After discussion, the conclusion was reached that these revised collections had been fully documented in the TRACS Monthly Activity Transaction (MAT) Guide and software vendors would have very little impact due to the fact that the requirements are already in place and the provision of HUD forms, notices, leases, etc., in lieu of using documents they or their software contractor have developed, ensures their compliance with the revised program requirements.

The new TRACS MAT Guide for TRACS 202(d) has been approved by industry partners and is located at: *http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/trx/trxsum.*

TRACS Software Vendors

TRACS collections are 100% electronic, which required HUD to coordinate system development with 21 software firms through a defined system development lifecycle:

Company name	Point of contact	Business telephone number	E-mail address
Bostonpost Technology	Jed Greaf	440–409–2942	*jed.graef@mrisoftware.com.*
BP Software	Ron Barlean	800–344–7611	*ronbarlean@gmail.com.*
CGI	Gregg Sargi	216–416–6454	*gregg.sargi@cgifederal.com.*

Company name	Point of contact	Business telephone number	E-mail address
Emphasys Software	Paul Maltby	800–899–4227 EXT 1102	*pmaltby@emphasys-software.com.*
HAB	Jill Fularczyk	608–785–4950	*jill.fularczyk@habinc.com.*
Hopewell Software	Richard Hilton	954–353–9242	*richard@ hopewellsoftwaresolutions.com.*
Housing Development Software	Charlene Vassil	954–217–9597 EXT 218	*charlene.vassil@hdsoftware.com.*
IPM Software	Dan Dulleba	802–985–9319	*ddulleba@ipm-software.net.*
Lindsey Software, Inc	John Lindsey	501–372–5324	*john_lindsey@lindseysoftware.com.*
MultiSite Systems, LLC	Brent Lawrence	888–409–5393	*brentl@multisitesystems.com.*
PHA Web	Nathan Hoff	608–784–0354	*nathan@pha-web.com.*
PM Services, LLC	Maura Harris	314–496–8005	*maura.harris@att.net.*
Property Solutions	Janel Gamin	801–375–5522 EXT 5729	*jganim@propertysolutions.com.*
RealPage Inc	Gaye Williamson	972–820–3265	*gaye.williamson@realpage.com.*
SACS Software	Grant Dark	256–329–1205	*grant@sacssoftware.com.*
ShofCorp LLC	Frank Shofner	800–824–1657 EXT 31	*frank@shofcorp.com.*
Simply Computer Software, Inc	Craig Tinsley	800–626–2431 EXT 3	*craig@simplycomputer.net.*
Tenmast Software	Julie Rutherford	877–359–5492 EXT 1406	*julier@tenmast.com.*
Tracker Systems, Inc	Stephen Vigeant	508–485–4160	*steve@trackersys.com.*
Yardi Systems, Inc	Jenny Dyer	770–729–0007 EXT 6265	*jenny.dyer@yardi.com.*

TRACS 202(d) Development Lifecycle

Each of the 21 software vendors listed above agreed to systems development life cycle composed of the following defined and distinct work phases which are used by systems engineers and systems developers to plan for, design, build, test, and deliver information systems (includes all OMB approved data collections forms under 2502–0204):

- Preliminary analysis: The objective of phase 1 is to conduct a preliminary analysis, propose alternative solutions, describe costs and benefits and submit a preliminary plan with recommendations.
- Systems analysis, requirements definition: Defines project goals into defined functions and operation of the intended application and OMB approved forms.
- Systems design: Describes desired features and operations in detail, including screen layouts, business rules, process diagrams, pseudo-code and other documentation.
- Development: The real code is written here.
- Integration and testing: Brings all the pieces together into a special TRACS testing environment hosted within HUD's infrastructure, then TRACS checks each vendor's software for errors, bugs and interoperability.
- Acceptance, installation, deployment: The final stage of initial development, TRACS 202(d) Release software was put into production.

Note: The 21 software vendors listed above cannot implement TRACS 202(d) until OMB approves the HUD-Forms under collection number 2502–0204.

HUD Seeks Approval Not To Display the Expiration

Date for OMB Approval of the Information Collection

All forms will be posted on HUD's Web site (*www.hudclips.org*) and will contain the OMB expiration date. However, HUD requests forms produced by automated systems do not display or print the OMB expiration date.

HUD is seeking an extension not to display/print the expiration date on forms included in these information collections. To reduce this burden on Software Vendors, HUD is requesting an extension for Vendor software applications to reference/display the HUDCLIPS URL (*www.hudclips.org*). HUDCLIPS contains official HUD forms depicting the OMB expiration date and OMB control number. When OMB changes an expiration date on a form, HUD loads the form with the new expiration date onto HUDCIPS. Allowing Vendor's to use screens, facsimiles and reference HUDCLIPS eliminates the need for software vendors to change their existing applications to accommodate new OMB mandated expiration dates.

Whenever a HUD form changes or a new form is added, Industry Software Vendors must perform the software development life cycle phases (Analysis, Design, Development, Testing and Implementation, etc.) to ensure the change gets implemented at roughly 26,800 HUD Business Partner sites. With a number of HUD forms being relatively static, only the form expiration date changes over time. Software Vendors incur unnecessary cost when modifying their software applications to accommodate changing expiration dates. An expiration date change in vendor software adds no value.

4. Estimated Number of Respondents, Estimated Number of Responses, Frequency of Response, Average Hours per Response, and Total Estimated Burdens:

Form No.	Estimated number of respondents	Estimated number of responses	Frequency of response	Average hours per response	Total estimated burden
HUD–52670				0.50	
HUD–52670–A Part 1				0.125	
HUD–52670–A Part 2				0.125	

Form No.	Estimated number of respondents	Estimated number of responses	Frequency of response	Average hours per response	Total estimated burden
HUD–52670–A Part 3				0.125	
HUD–52670–A Part 4				0.125	
HUD–52670–A Part 5				0.125	
HUD–52670–A Part 6				0.125	
Total HUD–Form 52670	22,731	272,772	Monthly	1.125	306,869
HUD–52671–A	321	3,852	Monthly	1.33	5,123
HUD–52671–B	11	132	Monthly	1.33	176
HUD–52671–C	2,742	44,904	Monthly	1.33	59,722
HUD–52670–D	38	456	Monthly	1.33	607
HUD–92742	12	12	Annually	.50	6
HUD–92743a	12	12	Annually	.25	3
Total	25,867	322,140			372,506

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(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;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: May 6, 2014.

Colette Pollard,

Departmental Reports Manager.

[FR Doc. 2014–10868 Filed 5–9–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–IA–2014–N086; FXIA16710900000–145–FF09A30000]

Interim Suspension of Imports of Elephant Trophies From Zimbabwe

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Interim Suspension on Importation of Zimbabwean Elephant Trophies.

SUMMARY: On April 4, 2014, the U.S. Fish and Wildlife Service (Service) announced an interim suspension on importation of sport-hunted African elephant trophies taken in Zimbabwe during the 2014 season (on April 17, 2014, the Service revised this finding, primarily to clarify that the suspension applied only to elephants hunted on or after April 4, 2014). The decision to suspend importation of African elephant trophies taken in Zimbabwe was due primarily to the Service having insufficient information on the status of elephants in Zimbabwe and the current management program in Zimbabwe to determine that the killing of the animal whose trophy is intended for import into the United States would enhance the survival of the species.

DATES: The temporary suspension described in this document went into effect April 4, 2014, and will remain in effect until we provide further notice.

ADDRESSES: Timothy J. Van Norman, Chief, Branch of Permits, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or email *DMAFR@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Timothy J. Van Norman, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

Background

The African Elephant (*Loxodonta africana*) is listed as threatened under the Endangered Species Act (ESA), 16 U.S.C. 1531 *et seq.,* and is regulated under a special rule found at 50 CFR 17.40(e). The special rule includes specific requirements for the import of sport-hunted trophies, including marking requirements for ivory. Under § 17.40(e)(3)(iii)(C), in order for the U.S. Fish and Wildlife Service (Service) to authorize the import of a sport-hunted elephant trophy, the Service must find that the killing of the animal whose trophy is intended for import into the United States would enhance the survival of the species.

Zimbabwe has had an active elephant hunting program for more than 20 years and imports of elephant trophies into the United States have occurred at least since 1997, when the Zimbabwe elephant population, along with populations in Botswana and Namibia, was downlisted to Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). When the population was downlisted, the Service published a **Federal Register** notice that acknowledged that, as these elephants were classified as an Appendix II population, no U.S. import permit would be required to import trophies. However, we did state that in accordance with the special rule under the ESA, the requirement for an enhancement finding would continue to apply (62 FR 44627, 44633, August 22, 1997). In that **Federal Register** notice, we stated that in making the required enhancement finding for import of sport-hunted trophies, the Service would review the status of the elephant population and the total management program for elephants in each country to ensure the program was promoting the conservation of the species. The notice also stated that the Service would make such findings on a periodic basis upon receipt of new information on the species' population or management. If, based on new information, the conditions of the special rule are no longer met, the Service explained that it would publish a notice in the **Federal Register** of any change.

Need for Current Data

Although African elephant conservation issues have received significant attention within CITES over the last 10 or more years, the Service

has limited information on elephant management programs, efforts to control poaching, and the effects of legal hunting in Zimbabwe. While the Service is aware of a 1997 national elephant management plan, we are not aware of any updates to the plan, or whether an adaptive management approach has been taken in implementing the plan. In 2007, the Service sent a letter to the Parks and Wildlife Management Authority of Zimbabwe requesting additional information. While we did receive some information at that time, we have not received any additional updates directly from government officials since that time. Service representatives have met in person with Zimbabwean representatives at various times in the past 6 years, but again, little new or additional information has been obtained. As stated, with African elephants being a prominent species within CITES discussions, the Service has received information through documents produced in association with CITES activities. However, this information has focused more on the ivory trade and poaching, with less about regulatory mechanisms in place that would allow for appropriate management of elephants, sustainable utilization of elephants, and how elephant management is integrated into human communities to reduce human–elephant conflicts and support elephant populations.

According to the International Union for Conservation of Nature *(IUCN) Species Survival Commission, African Elephant Database report ''2013Africa*'', the elephant population in Zimbabwe in 2007 was 84,416, but as of 2013, that population had been reduced to 47,366. However, until very recently, the Government continued to provide population estimates exceeding 100,000 elephants. The summary in the IUCN report indicates that, of recent surveys, only about 1% of the country has been covered by more reliable aerial or ground surveys for population estimates, while about 50% was covered by less accurate sample counts or dung counts. For a substantial portion of the country, no recent surveys have occurred, and most estimates are based on 2001 figures. Even problem areas such as Hwange National Park where poaching appears to have significantly reduced the numbers of elephants do not appear to have been surveyed since 2001.

Several areas that were covered in the current surveys (2006–2010) indicate a substantial decline in the population; whether this decline is related to habitat degradation or poaching is unknown. Figures presented at the 16th Meeting of the Conference of the Parties to CITES in Bangkok, Thailand, March 3–14, 2013, indicates that, from 2002–2011, the number of elephants illegally killed annually increased significantly. While the numbers for 2012 and 2013 are not yet available, the trend would indicate a higher percentage of illegal killings and a population in decline. However, without further information, the Service is unable to determine the reliability of these numbers and what influence such a decline, if accurate, is having on the elephant population and its habitat in Zimbabwe.

The Service recognizes that Zimbabwe has established the Parks and Wild Life Act, as well as other laws and regulations, which provide a strong legal basis for regulating utilization and management of elephants within the country. However, with the limited information available to the Service at the time the decision to suspend imports occurred, it is not clear if resources and governance are adequate to successfully implement and enforce the established regulations. Based on available information, it appears that the Zimbabwe Parks and Wildlife Department receives no funding from the central Zimbabwean Government and must rely primarily on hunting revenues. A 2013 CITES Panel of Experts raised concerns as to the status of the Zimbabwe Parks and Wildlife Department relating to its weak financial base, lack of management skills, inadequate and old equipment, and poor infrastructure. However, the Service has little information as to funding levels or the available financial base, management skills, equipment, or infrastructure.

Without current data on population numbers and trends, government efforts to manage elephant populations, government efforts to address human-elephant conflicts and poaching, and the state of the hunting program within the country, the Service is currently unable to make a finding that sport-hunting in Zimbabwe is enhancing the survival of the species and that imports of trophies from that sport hunting would meet the criteria established under the ESA for African elephants. However, we recognize that our inability to make a finding is based primarily on a lack of information, not on specific information that shows that Zimbabwe's management is not enhancing the survival of the species. Therefore, the Service is actively pursuing additional information from the Government of Zimbabwe, as well as other sources, in an effort to make a final determination on whether African elephant sport-hunted trophies taken in 2014 could be imported into the United States.

Recent Action

Until sufficient additional information can be obtained, the Service has established an interim suspension on imports of elephant trophies taken from Zimbabwe on or after April 4, 2014, the date the suspension was announced through a press release and posting on the Service's Web page. Until the Service is able to issue a finding that the sport hunting of African elephants in Zimbabwe enhances the survival of the species, U.S. hunters are on notice that, while no ESA permit is currently required for the import of sport-hunted trophies, such imports cannot occur at this time. The current enhancement finding has been posted at *http://www.fws.gov/international/pdf/enhancement-finding-2014-elephant-Zimbabwe.PDF*. In addition, the press release announcing the interim suspension and frequently asked questions is available at on the Service's Web page (*www.fws.gov/international*).

The Service has requested the information necessary to make a final decision from the Government of Zimbabwe. After the Service has an opportunity to review new information and obtain additional information, if necessary, we will make a final decision. If the Service finds that sport hunting of African elephants in Zimbabwe enhances the survival of the species, the suspension will be lifted. If, after reviewing the new information, the Service finds that sport hunting of African elephants in Zimbabwe does not enhance the survival of the species, the suspension will continue until the Service receives new information in the future that would allow it to make a positive enhancement finding. Either way, the final finding will be published in the **Federal Register** and made available on the Service's Web page.

Interim Suspension

This suspension does not prohibit U.S. hunters from traveling to Zimbabwe and participating in an elephant hunt. The ESA special rule for African elephants does not prohibit take (e.g., hunting) outside the United States, but it does prohibit import of sport-hunted trophies unless all requirements have been met. Therefore, it is possible that a hunter that hunted in Zimbabwe and took an elephant after April 4 could import his or her trophy at a later date if the Service can determine in the final finding that imports meet the criteria under the ESA. Nonetheless, the Service cannot ensure that such imports will ever be authorized in the future.

Further, this suspension on imports does not affect elephant taken in Zimbabwe prior to April 4, 2014. Elephants hunted in previous hunting seasons are still eligible to be imported, provided all CITES and other import requirements are met.

Dated: May 7, 2014.

Timothy J. Van Norman,

Chief, Branch of Permits, Division of Management Authority, U.S. Fish and Wildlife Service.

[FR Doc. 2014–10890 Filed 5–9–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCON06000–L16100000.DQ0000]

Notice of Resource Advisory Council Meeting for the Dominguez-Escalante National Conservation Area Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meeting

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) Dominguez-Escalante National Conservation Area (NCA) Advisory Council (Council) will meet as indicated below.

DATES: The meeting will be held on Wednesday, July 23, 2014, from 3 p.m. to approximately 6 p.m. Any adjustments to this meeting will be posted on the Dominguez-Escalante NCA Resource Management Plan (RMP) Web site: *http://www.blm.gov/co/st/en/nca/denca/denca_rmp.html.*

ADDRESSES: The meeting will be held in Conference Room 40 at the Mesa County Central Services Building, 200 S. Spruce Street, Grand Junction, CO 81501.

FOR FURTHER INFORMATION CONTACT: Collin Ewing, Advisory Council Designated Federal Official, 2815 H Road, Grand Junction, CO 81506. Phone: (970) 244–3049. Email: *cewing@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, seven 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 10-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the RMP process for the Dominguez-Escalante NCA and Dominguez Canyon Wilderness.

Topics of discussion during the meeting may include informational presentations from various resource specialists working on the RMP as well as Council reports on the following topics: recreation, fire management, land-use planning process, invasive species management, travel management, wilderness, land exchange criteria, cultural resource management and other resource management topics of interest to the Council that were raised during the planning process.

These meetings are anticipated to occur quarterly and may occur as frequently as every two weeks during intensive phases of the planning process. Dates, times and agendas for additional meetings may be determined at future Council meetings and will be published in the **Federal Register**, announced through local media and on the BLM's Web site for the Dominguez-Escalante planning effort, *www.blm.gov/co/st/en/nca/denca/denca_rmp.html.*

These meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will have time allocated at the middle and end of each meeting to hear public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited at the discretion of the chair.

Ruth Welch,

BLM Colorado Acting State Director.

[FR Doc. 2014–10786 Filed 5–9–14; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVC02000 L57000000.BX0000; 241A; MO# 4500063716]

Temporary Closures of Public Land in Washoe County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: As authorized under the provisions of the Federal Land Policy and Management Act of 1976, certain public land near Stead, Nevada, will be temporarily closed to all public use to provide for public safety during the 2014 Reno Air Racing Association Pylon Racing Seminar and the Reno National Championship Air Races.

DATES: The temporary closure periods are June 11 through June 14, 2014, and September 6 through September 14, 2014.

FOR FURTHER INFORMATION CONTACT: Leon Thomas, 775–885–6000, email: *l70thoma@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact Mr. Thomas during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question for Mr. Thomas. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This closure applies to all public use, including pedestrian use and vehicles. The public lands affected by this closure are described as follows:

Mount Diablo Meridian

T. 21 N., R. 19 E.,
Sec. 8, E½E½, NW¼NE¼;
Sec. 16, SW¼SW¼NE¼, NW¼, W½SE¼.
The area described contains 450 acres, more or less, in Washoe County, Nevada.

The closure notice and map of the closure area will be posted at the BLM Carson City District Office, 5665 Morgan Mill Road, Carson City, Nevada and on the BLM Web site: *http://www.blm.gov/nv/st/en/fo/carsoncity_field.html.* Roads leading into the public lands under the closure will be posted to notify the public of the closure. Under the authority of Section 303(a) of the Federal Lands Policy and Management Act of 1976 (43 U.S.C. 1733(a)), 43 CFR 8360.9–7 and 43 CFR 8364.1, the Bureau of Land Management will enforce the following rules in the area described above: All public use, whether motorized, on foot, or otherwise, is prohibited.

Exceptions: Closure restrictions do not apply to event officials, medical and rescue personnel, law enforcement, and agency personnel monitoring the events.

Penalties: Any person who fails to comply with the closure orders is subject to arrest and, upon conviction, may be fined not more than $1,000 and/or imprisonment for not more than 12 months under 43 CFR 8360.0–7. Violations may also be subject to the provisions of Title 18, U.S.C. 3571 and 3581.

Authority: 43 CFR 8360.0–7 and 8364.1.

James W. Schroeder,

Acting Field Office Manager, Sierra Front Field Office.

[FR Doc. 2014–10834 Filed 5–9–14; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVS00000 L51010000 ER0000 LVRWF1301100; 13–08807; MO# ; TAS:]

Notice of Availability of the Record of Decision for the Moapa Solar Energy Center Project, Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD) for the Moapa Solar Energy Center Project. The Principal Deputy Assistant Secretary for Land and Minerals Management signed the ROD on May 1, 2014, which constitutes the final decision of the Department.

ADDRESSES: Copies of the ROD are available upon request and for public inspection at the Southern Nevada District Office, Bureau of Land Management, 4701 N. Torrey Pines Drive, Las Vegas, NV 89130 or on the Internet at *http://www.moapasolarenergycentereis.com/*.

FOR FURTHER INFORMATION CONTACT: Gregory Helseth, Renewable Energy Project Manager, telephone 702–515–5173; address 4701 N. Torrey Pines Drive, Las Vegas, NV 89130; email *ghelseth@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact Mr. Helseth during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question for Mr. Helseth. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Moapa Solar, LLC, applied to the BLM for a right-of-way grant on public lands to develop ancillary facilities for the 200 MW project on tribal lands. These ancillary facilities consit of roads, transmission lines, and a water pipeline. The generation-interconnection lines and access road would be located on approximately 167.2 acres of Federal lands managed by the BLM south of the site within Mount Diablo Meridian, Township 17 South, Range 63 East, Sections 29 thru 32. The water pipeline associated with the Project would be located on approximately 46.7 acres within the Moapa River Indian Reservation, northeast of the Moapa Solar Energy Center Project in Township 16 South, Range 64 East, Sections 28, 32, and 33. The Moapa Solar Energy Center Project is located approximately 20 miles northeast of Las Vegas in Clark County, Nevada.

The Environmental Protection Agency (EPA) and the BLM published the Notice of Availability of the Draft Environmental Impact Statement (EIS) concurrently in the **Federal Register** by the Bureau of Indian Affairs (BIA) on September 13, 2013 (78 FR 56695).

The EPA published the Notice of Availability of the Final EIS in the **Federal Register** by the BIA on February 14, 2014 (79 FR 8986). Printed and electronic copies of the Draft and Final EIS are available at the Southern Nevada District Office and are posted on the Internet at *http://www.moapasolarenergycentereis.com.* The Final EIS analyzed five action alternatives and a No Action Alternative. The Proposed Action alternative is the BLM preferred alternative. This alternative is the applicant's original proposal (as described in its Plan of Development dated February 26, 2013). The ROD approves the construction, operation, maintenance, and decommissioning of an access road, water pipeline, and 230kV and 500 kV transmission lines on BLM-managed lands analyzed as part of the Proposed Action in the Final EIS for the Moapa Solar Energy Center. The ROD conditions the BLM's approval on all mitigation measures identified in the Final EIS and additional mitigation measures identified in the ROD.

Because this decision is approved by the Secretary of the Interior, it is not subject to administrative appeal (43 CFR 4.410(a)(3)).

Authority: 40 CFR 1506.6 and 40 CFR 1506.10.

Linda Lance,

Deputy Director, Programs and Policy, Bureau of Land Management.

[FR Doc. 2014–10805 Filed 5–9–14; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NERO–GATE–15188; PPNEGATEB0, PPMVSCS1Z.Y00000]

Gateway National Recreation Area Fort Hancock 21st Century Advisory Committee

AGENCY: National Park Service, Interior.

ACTION: Notice of renewal.

SUMMARY: The Secretary of the Interior is giving notice of renewal of the Gateway National Recreation Area Fort Hancock 21st Century Advisory Committee. The Committee provides advice on the development of a specific reuse plan and on matters relating to the future uses of the Fort Hancock Historic Landmark District within the Sandy Hook Unit of Gateway National Recreation Area.

FOR FURTHER INFORMATION CONTACT: Robert A. Vohden, Special Park and Land Use Manager, Gateway National Recreation Area, Public Affairs Office, 210 New York Avenue, Staten Island, New York 10305, (718) 354–4606.

SUPPLEMENTARY INFORMATION: In accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. Appendix 1–16) and with the concurrence of the General Services Administration, the Department of the Interior is announcing the renewal of an advisory committee for the Gateway National Recreation Area Fort Hancock Historic Landmark District. The Committee is a discretionary advisory committee established under the authority of the Secretary of the Interior.

The Committee provides guidance to the National Park Service in developing a plan for reuse of more than 30 historic buildings that the NPS has determined are excess to its needs and eligible for lease under 16 U.S.C. 1 *et seq.,* particularly 16 U.S.C. 1a–2(k), and 16 U.S.C. 470h–3, or under agreement through appropriate authorities.

The Committee will include representatives from, but not limited to, the following interest groups: The natural resource community, the business community, the cultural resource community, the real estate community, the recreation community, the education community, the scientific community, and hospitality organizations. The Committee will also consist of representatives from the following municipalities: The Borough of Highlands, the Borough of Sea Bright, the Borough of Rumson, Middletown Township, and Monmouth County Freeholders.

Certification Statement: I hereby certify that the renewal of the Gateway National Recreation Area Fort Hancock 21st Century Advisory Committee is necessary and in the public interest, established under the authority of the Secretary of the Interior.

Dated: April 8, 2014.

Sally Jewell,

Secretary of the Interior.

[FR Doc. 2014–10794 Filed 5–9–14; 8:45 am]

BILLING CODE 4310–WV–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–SER–CHCH–15252; PPSESEROC3, PPMPSAS1Y.YP0000]

General Management Plan Amendment/Environmental Impact Statement, Lookout Mountain Battlefield, Chickamauga and Chattanooga National Military Park, Tennessee and Georgia

AGENCY: National Park Service, Interior.

ACTION: Notice of Termination of Environmental Impact Statement.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the National Park Service (NPS) is terminating preparation of an environmental impact statement (EIS) for a general management plan (GMP) for Chickamauga and Chattanooga National Military Park (Park), Tennessee and Georgia. Instead, the NPS will prepare two environmental assessments (EA) to support amendments to the 1987 general management plan, one for the Lookout Mountain Battlefield unit and one for the Moccasin Bend unit.

DATES: The Lookout Mountain Battlefield GMP Amendment EA is expected to be distributed for public comment in summer 2014. The NPS will notify the public by mail, local and regional media, Web site, and other means, of public review periods and meetings associated with the EA; all announcements will include information on where and how to obtain a copy of the EA, how to comment on the EA, and the length of the public comment period. All public review and other written public information will be made available online through the NPS Planning, Environment, and Public Comment (PEPC) Web site at *http://parkplanning.nps.gov/chch* and the Park Web site at *www.nps.gov/chch.* At this point in time, the NPS does not have an anticipated release date for the Moccasin Bend GMP Amendment EA.

ADDRESSES: Chickamauga and Chattanooga National Military Park, P.O. Box 2128, Fort Oglethorpe, GA 30742.

FOR FURTHER INFORMATION CONTACT: Jim Szyjkowski at the address above, or by telephone at (423) 752–5213, extension 121.

SUPPLEMENTARY INFORMATION: A Notice of Intent to prepare an EIS for a GMP for the entire Park was published in the **Federal Register** on December 15, 2008 (73 FR 241, Pages 76054 and 76055). The NPS then engaged in a scoping process which included extensive public involvement and consultation with federally recognized tribes, and the initial development of a range of management alternatives. Subsequent to that process, the NPS determined the focus of the overall planning effort should address only specific areas within the Park that have the greatest need for management guidance. These areas are the Lookout Mountain National Battlefield and Moccasin Bend National Archeological District, both of which include new lands added to the Park since the last GMP was completed and could benefit from updated planning guidance particularly related to resource protection and visitor use. The NPS determined that the current planning process should continue immediately for the Lookout Mountain Battlefield unit followed by later planning at Moccasin Bend to better phase the work between the two units. The results of these efforts will amend the 1987 GMP related to management of both units. A separate planning process for the Moccasin Bend National Archeological District will be initiated at a later date.

The NPS has determined that an EA rather than an EIS is the appropriate level of documentation for the Lookout Mountain Battlefield GMP amendment. The EA for the GMP amendment for Lookout Mountain Battlefield unit will consider three alternatives and their related impacts. The no-action alternative would continue the present management direction as guided by the 1987 GMP. Two action alternatives would focus primarily on improving the visitor experience, increasing operational efficiency and providing access to the new lands. Preliminary analysis of the alternatives shows there is no potential for significant impacts to park resources and values and no concerns or issues were expressed during the public scoping process for the GMP that have the potential for highly controversial impacts. In February 2013, the NPS issued a newsletter that described these alternatives. The NPS also held an open house on February 28, 2013, to discuss the alternatives with the public. Many comments were received on the alternatives. While the NPS may modify the alternatives based on the comments received, none of the comments or any potential changes to the alternatives would result in anticipated significant impacts to natural or cultural resources in the Park or to visitor experience. For these reasons, the NPS determined the proposal would not constitute a major federal action requiring an EIS.

The responsible official for this Draft EIS is the Regional Director, NPS Southeast Region, 100 Alabama Street SW., 1924 Building, Atlanta, Georgia 30303.

Dated: April 30, 2014.

Sarah Craighead,

Acting Regional Director, Southeast Region.

[FR Doc. 2014–10793 Filed 5–9–14; 8:45 am]

BILLING CODE 4310–JD–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–SERO–BISO–15482; PPSESEROC3, PPMPSAS1Y.YP0000]

Notice of Intent To Prepare an Environmental Impact Statement for Contaminated Mine Drainage and Treatment Systems in the Big South Fork National River and Recreation Area, Kentucky and Tennessee

AGENCY: National Park Service, Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the NPS will prepare an Environmental Impact Statement (EIS) for the Contaminated Mine Drainage and Treatment Systems in the Big South Fork National River and Recreation Area. This notice initiates the pubic scoping process for this EIS.

DATES: The date, time, and location of public meetings will be announced through the NPS Planning, Environment, and Public Comment (PEPC) Web site *http://parkplanning.nps.gov/biso*, the Big South Fork National River and Recreation Area Web site, and in local media outlets. The NPS will conduct public meetings in the local area to receive input from interested parties on issues, concerns, and suggestions pertinent to coal mine drainage mitigation and treatment. The comment period will be announced at the meetings and will be published on the following Web site *http://parkplanning.nps.gov/biso.*

ADDRESSES: Interested individuals, organizations, and agencies are encouraged to provide written comments regarding the scope of issues to be addressed in the EIS. Written comments may be sent to: Niki Stephanie Nicholas, Superintendent, Big South Fork National River and Recreation Area, 4564 Leatherwood Road, Oneida, TN 37841.

FOR FURTHER INFORMATION CONTACT: Tom Blount, Chief of Natural Resources, Big South Fork National River and

Recreation Area, 4564 Leatherwood Road, Oneida, TN, 423–569–9778.

SUPPLEMENTARY INFORMATION: The Big South Fork National River and Recreation Area is within the Cumberland Plateau area and straddles the Kentucky and Tennessee state line. This region has been extensively mined for coal since the early 1900s and mining waste materials were typically dumped near the mines. Surface and ground water that comes in contact with mine spoils or that is discharged from the mines is often acidic and has elevated (toxic) concentrations of heavy metals. Contaminated mine drainage pollutes aquatic systems and is considered to be partly responsible for a reduction in biological diversity of lakes and streams in the Big South Fork area.

The NPS developed mitigation and treatment systems for nine specific sites to a conceptual level during a prior environmental assessment effort. During that effort it was recommended that an EIS be prepared due to the scope and complexity of the project. As a result, the NPS is now preparing a Contaminated Mine Drainage Mitigation and Treatment System EIS. The purpose of this project is to address contaminated mine drainage (CMD) at nine sites within the McCreary County, Kentucky portion of BISO and to create a programmatic approach to considering future treatment options at former mining sites throughout Big South Fork National River and Recreation Area. These actions will address the need to improve water quality in tributaries of the Big South Fork River. As part of this effort, the NPS will consider adjusting or refining the preliminary engineering plans to install mine drainage mitigation and treatment systems at the nine sites that were studied in the earlier environmental assessment. A draft EIS will be prepared and presented to the public for review and comment, followed by preparation and availability of the Final Contaminated Mine Drainage Mitigation and Treatment System EIS.

A scoping brochure will be available summarizing the purpose, need and objectives of the EIS. Copies of that information may be obtained by visiting the NPS public comment and planning Web site at *http://parkplanning.nps.gov/biso*, or from the Office of the Superintendent, Niki Stephanie Nicholas, Big South Fork National River and Recreation Area, 4564 Leatherwood Road, Oneida, TN, 423–569–9778.

If you wish to comment during the scoping process, you may use any one of several methods. The preferred method for submitting comments is on the NPS PEPC Web site at *http://parkplanning.nps.gov/biso.* You may also mail or hand-deliver your comments to: Big South Fork National River and Recreation Area, Attention: Coal Mine Drainage Treatment and Mitigation EIS, 4564 Leatherwood Road, Oneida, TN 37841

Comments will also be accepted during public meetings; however, comments in any format (hard copy or electronic) submitted on behalf of others will not be accepted. Before including your address, phone number, email address, or other personal identifying information in any 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.

The responsible official for this Coal Mine Drainage Mitigation and Treatment System EIS is the Regional Director, NPS Southeast Region, 100 Alabama Street SW., 1924 Building, Atlanta, Georgia 30303.

Dated: April 30, 2014.

Sarah Craighead,

Acting Regional Director, Southeast Region.

[FR Doc. 2014–10792 Filed 5–9–14; 8:45 am]

BILLING CODE 4310–JD–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NER–NERI–15235; PPNENERIS0/PPMPSPD1Z.YM00000[REMOVED PRIVATE FIELD]]

Establishment of a New Fee Area at New River Gorge National River

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: This notice is to comply with section 804 of the Federal Lands Recreation Enhancement Act of 2004 (Pub. L. 108–447). The act requires agencies to give the public advance notice (6 months) of the establishment of a new recreation fee area. New River Gorge National River in West Virginia plans to collect the following expanded amenity recreation fees at the newly constructed Meadow Creek Campground beginning in late summer of 2014: $28 per night for an RV site with Electric and Water Hook-ups; $24 per night for an RV site with Electric Hook-ups but no site-specific water; $18 per night for a Tent Only site with Electric Hook-ups, but no site-specific water; $10 per night for a Tent Only site with No Hook-ups. Communal water spigots will be available to all campers, regardless of site type. Revenue will be used to cover the cost of collections at the campground and for deferred maintenance in the park.

DATES: Collection of fees will be effective 6 months after publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Jamie Fields, Planner, New River Gorge National River, P.O. Box 246, Glen Jean, WV 25846–0246; telephone (304) 465–6527.

SUPPLEMENTARY INFORMATION: These fees were determined through a comparability study of similar sites in the area at Federal, state, and private recreation areas and will only be charged at Meadow Creek Campground. In accordance with NPS public involvement guidelines, the park engaged numerous individuals, organizations, and local, state, and Federal government representatives while planning for the implementation of this fee.

Dated: April 30, 2014.

Lena McDowall,

Associate Director, Business Services.

[FR Doc. 2014–10795 Filed 5–9–14; 8:45 am]

BILLING CODE 4310–WV–P

INTERNATIONAL TRADE COMMISSION

Submission for OMB Review; Comment Request Aency proposal for the collection of information submitted to the Office of Management and Budget (OMB) for review; comment request.

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: In accordance with the provisions of the Paperwork Reduction Act of 1995 (P.L. 104–13), the Commission has submitted a proposal for the collection of information to OMB for approval. The proposed information collection is a 3-year extension of the current ''generic clearance'' (approved by the Office of Management and Budget under control No. 3117–0016) under which the Commission can issue information collections (specifically, producer, importer, purchaser, and foreign producer questionnaires and certain institution notices) for the following types of import injury investigations: Antidumping,

countervailing duty, escape clause, market disruption, NAFTA safeguard, and ''interference with programs of the USDA.'' Any comments submitted to OMB on the proposed information collection should be specific, indicating which part of the questionnaires or study plan are objectionable, describing the issue in detail, and including specific revisions or language changes.

DATES: To be assured of consideration, comments should be submitted to OMB within 30 days of the date this notice appears in the **Federal Register**.

ADDRESSES: Comments about the proposal should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Attention: Wendy Liberante, Desk Officer for U.S. International Trade Commission. Copies of any comments should be provided to Jeremy Wise (U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436).

FOR FURTHER INFORMATION CONTACT: Copies of the proposed collection of information and supporting documentation may be obtained from Jennifer Brinckhaus (U.S. International Trade Commission, tel. no. 202–205–3188). 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*).

SUPPLEMENTARY INFORMATION:

(1) The proposed information collection consists of five forms, namely the *Sample Producers', Sample Importers', Sample Purchasers', and Sample Foreign Producers' questionnaires* (separate forms are provided for questionnaires issued for the five-year reviews) and *Sample Notice of Institution for Five-Year Reviews.*

(2) The types of items contained within the sample questionnaires and institution notice are largely determined by statute. Actual questions formulated for use in a specific investigation depend upon such factors as the nature of the industry, the relevant issues, the ability of respondents to supply the data, and the availability of data from secondary sources.

(3) The information collected through questionnaires issued under the generic clearance for import injury investigations is consolidated by Commission staff and forms much of the statistical base for the Commission's determinations. Affirmative Commission determinations in antidumping and countervailing duty investigations result in the imposition of duties on imports entering the United States, determined by the Department of Commerce, which are in addition to any normal customs duties. If the Commission makes an affirmative determination in a five-year review, the existing antidumping or countervailing duty order remains in place. The data developed in escape-clause, market disruption, and interference-with-USDA-program investigations (if the Commission finds affirmatively) are used by the President/U.S. Trade Representative to determine the type of relief, if any, to be provided to domestic industries.

The submissions made to the Commission in response to the notices of institution of five-year reviews form the basis for the Commission's determination as to whether a full or expedited review should be conducted.

(4) Likely respondents consist of businesses (including foreign businesses) or farms that produce, import, or purchase products under investigation. Estimated total annual reporting burden for the period July 2014-June 2017 that will result from the collection of information is presented below.

TABLE 1—PROJECTED ANNUAL BURDEN DATA, BY TYPE OF INFORMATION COLLECTION, JULY 2014–JUNE 2017

Item	Producer questionnaires	Importer questionnaires	Purchaser questionnaires	Foreign producer questionnaires	Institution notices for 5-year reviews	Total
Number of respondents ...	930	1,395	1,260	1,116	228	4,929
Frequency of response	1	1	1	1	1	1
Total annual responses ...	930	1,395	1,260	1,116	228	4,929
Hours per response	49	36	25	39	10	35.1
Total hours	45,570	50,220	31,500	43,524	2,280	173,094

No record keeping burden is known to result from the proposed collection of information.

By order of the Commission.

Issued: May 6, 2014.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2014–10766 Filed 5–9–14; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Silicon Tuners and Products Containing Same, Including Television Tuners DN 3011;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at EDIS [1], and will be available for inspection during official

[1] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at USITC [2]. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at EDIS [3]. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Silicon Laboratories, Inc. on May 6, 2014. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain silicon tuners and products containing same, including television tuners. The complaint name as respondents Cresta Technology Corporation of Santa Clara, CA; Hauppauge Digital, Inc. of Hauppauge, NY; Hauppauge Computer Works, Inc. of Hauppauge, NY; PCTV Systems S.a.r.l., Luxembourg of Luxembourg; and PCTV Systems S.a.r.l. of Germany. The complainant requests that the Commission issue a general exclusion order and a cease and desist order.

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 3011'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [4]). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS [5].

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: May 6, 2014.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2014–10764 Filed 5–9–14; 8:45 am]

BILLING CODE 7020–02–P

[2] United States International Trade Commission (USITC): *http://edis.usitc.gov.*

[3] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[4] Handbook for Electronic Filing Procedures: *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.*

[5] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–750]

Certain Mobile Devices and Related Software Thereof; Commission Decision To Remand Investigation to the Chief Administrative Law Judge Pursuant To Remand From the U.S. Court of Appeals for the Federal Circuit

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to remand the above-captioned investigation to the Chief Administrative Law Judge for assignment to an administrative law judge (''ALJ'') for an initial determination on remand (''RID'') concerning validity, infringement, and domestic industry following remand from the U.S. Court of Appeals for the Federal Circuit (''Federal Circuit'').

FOR FURTHER INFORMATION CONTACT: Megan M. Valentine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–2301. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on November 30, 2010, based on a complaint filed by Apple Inc., f/k/a Apple Computer, Inc., of Cupertino, California (''Apple''). 75 *FR* 74081–82. The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain mobile devices and related software by reason of infringement of certain claims of U.S. Patent Nos. 7,812,828 (''the '828 Patent''); 7,663,607 (''the '607 Patent''); and 5,379,430 (''the '430 Patent''). The Commission's notice of investigation named Motorola, Inc. n/k/a Motorola Solutions of Schaumburg, Illinois (''Motorola Solutions'') and Motorola Mobility, Inc. (''Motorola'') of Libertyville, Illinois as respondents. The Office of Unfair Import Investigation was named as a participating party. The Commission subsequently terminated Motorola Solutions as a respondent based on withdrawal of allegations pursuant to Commission Rule 210.21(a)(1) (19 CFR 210.21(a)(1)). Notice (Aug. 31, 2011).

On January 13, 2012, the ALJ issued his final ID, finding no violation of Section 337. Specifically, the ALJ determined that the accused products do not infringe the asserted claims of the '828 Patent either literally or under the doctrine of equivalents (''DOE''). The ALJ also found that the asserted claims of the '828 Patent are not invalid. The ALJ further found that the accused products literally infringe the asserted claims of the '430 and '607 patents, but do not infringe under DOE. The ALJ also found that the asserted claims of the '430 Patent are invalid under 35 U.S.C. 102 for anticipation, and that the asserted claims of the '607 Patent are invalid under 35 U.S.C. 102 for anticipation and under 35 U.S.C. 103 for obviousness. The ALJ further found that Apple has standing to assert the '430 Patent, and that Motorola is not licensed to practice the '430 Patent. The ALJ also found that Apple satisfied the domestic industry requirement.

On January 30, 2012, Apple filed a petition for review of certain aspects of the ID's findings concerning claim construction infringement, and validity. Also on January 30, 2012, Motorola filed a contingent petition for review of certain aspects of the ID's findings concerning claim construction, infringement, validity, and domestic industry. On February 7, 2012, Motorola and Apple filed responses to each other's petitions. Also on February 7, 2012, the Commission investigative attorney (''IA'') filed a joint response to both Apple's and Motorola's petitions.

On March 16, 2012, the Commission issued a notice, determining to review the ID in part, and on review, to affirm the ALJ's determination of no violation and to terminate the investigation. 77 *FR* 16860–62. Specifically, the Commission determined to review, and on review to affirm, the ALJ's finding that the asserted claims of the '828 patent are not infringed. The Commission did not review the ID's construction of the limitation ''mathematically fit[ting] an ellipse to at least one of the [one or more] pixel groups'' in claims 1 and 10 of the '828 patent. The Commission also determined to review the ALJ's finding that the asserted claims of the '607 patent are invalid for obviousness under 35 U.S.C. 103, and on review, to affirm with modification the ID's finding of obviousness. The Commission did not review the ID's finding that the asserted claims of the '607 patent are anticipated under 35 U.S.C. 102(e).

On April 13, 2012, Apple timely appealed the Commission's final determination of no violation of section 337 as to the '607 and '828 patents to the Federal Circuit. Specifically, Apple appealed the ALJ's unreviewed finding that the asserted claims of the '607 patent are anticipated by U.S. Patent No. 7,372,455 to Perski (''Perski '455''). Apple also appealed the Commission's determination that the asserted claims of the '607 patent are invalid for obviousness in view of the prior art reference ''SmartSkin: An Infrastructure for Freehand Manipulation on Interactive Surfaces'' by Jun Rekimoto (''SmartSkin'') in combination with Japan Unexamined Patent Application Publication No. 2002–342033A to Jun Rekimoto (''Rekimoto '033''). Apple further appealed the ALJ's unreviewed construction of the claim limitation ''mathematically fit[ting] an ellipse to . . . pixel groups'' in the asserted claims of the '828 patent and the Commission's resulting determination of non-infringement.

On August 7, 2013, the Federal Circuit affirmed-in-part, reversed-in-part, and vacated-in-part the Commission's decision and remanded for further proceedings. *Apple, Inc.* v. *Int'l Trade Comm'n.,* 725 F.3d 1356 (Fed. Cir. 2013). Specifically, the Court affirmed the Commission's determination that Perski '455 anticipates claims 1–7 of the '607 patent but reversed the Commission's determination that Perski '455 anticipates claim 10 of the '607 patent. *Id.* at 1361–63. The Court also vacated and remanded the Commission's determination that claim 10 of the '607 patent is invalid for obviousness in view of the SmartSkin reference in combination with Rekimoto '033, holding that the Commission failed to perform the necessary analysis of secondary considerations before finding the claim invalid for obviousness although the Court agreed with the Commission's finding that the combined prior art references disclose all of the limitations of claim 10. *Id.* at 1364–67. The Court also reversed the Commission's construction of the limitation ''mathematically fit[ting] an ellipse'' in the asserted claims of the '828 patent and remanded the issue of infringement for the Commission to make a determination in light of the Court's construction of that claim limitation. *Id.* at 1367–68.

On September 6, 2013, intervenor Motorola filed a combined petition for panel rehearing and rehearing en banc concerning the panel's holding that the Commission failed to consider secondary considerations in finding claim 10 of the '607 patent invalid for obviousness. On November 8, 2013, the Court denied the petition. The mandate issued on November 15, 2013, returning jurisdiction to the Commission.

On January 7, 2014, the Commission issued an Order directing the parties to submit comments regarding what further proceedings must be conducted to comply with the Federal Circuit's remand. On January 22, 2014, Apple, Motorola, and the IA submitted initial comments. On January 29, 2014, the parties submitted response comments.

Having examined the record of this investigation, including the ALJ's final ID, the petitions for review, the responses thereto, and the parties' comments on remand, the Commission has determined to remand the investigation to the Chief ALJ for assignment to a presiding ALJ to determine certain outstanding issues concerning violation of section 337 set forth below.

With respect to the '607 patent, the Commission remands the issue of whether Perski '455 anticipates claim 10 of the '607 patent. Specifically, the ALJ should determine whether Apple can establish an earlier priority date for claim 10 of the '607 patent than the filing date of Perski '455 such that Perski '455 is prior art to claim 10 in light of the Commission's prior determination that Perski '455 discloses all of the limitations of claim 10. The Commission further remands the issue of whether claims 10 of the '607 patent is invalid for obviousness in view of Smartskin in combination with Rekimoto '033. Specifically, the ALJ

should determine whether Apple's evidence of secondary considerations requires a finding of nonobviousness with respect to the '607 patent in light of the Commission's determination, as affirmed by the Federal Circuit, that SmartSkin in combination with Rekimoto '033 discloses all limitations of claim 10. In deciding the issue of obviousness, the ALJ should also determine whether there is a nexus between Apple's evidence of secondary considerations and the invention recited in claim 10 of the '607 patent. The Commission also remands the issue of domestic industry to the ALJ. Specifically, the ALJ should determine whether Apple's iPhone 4 practices all of the limitations of claim 10 of the '607 patent.

With respect to the '828 patent, the Commission remands the issue of infringement. Specifically, the ALJ should determine whether Motorola's accused products infringe the asserted claims of the '828 patent under the Federal Circuit's construction of the claim limitation ''mathematically fit[ting] an ellipse.'' The Commission further remands the issue of anticipation. Specifically, the ALJ should determine whether U.S. Patent No. 5,825,352 to Bisset anticipates claims 1 and 10 of the '828 patent under the Federal Circuit's construction of the claim limitation ''mathematically fit[ting] an ellipse.''

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: May 6, 2014.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2014–10769 Filed 5–9–14; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1105–0101]

Agency Information Collection Activities; Proposed eCollection; eComments requested

AGENCY: Office of Tribal Justice, Department of Justice. Tribal Requests for Accelerated Exercise of Jurisdiction Under Section 204(a) of the Indian Civil Rights Act of 1968, as Amended.

ACTION: 30-day notice.

SUMMARY: The Department of Justice, Office of Tribal Justice, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** Volume 79, Number 43, pages 12527–12528, on March 5, 2014, allowing for a 60 day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 days until June 11, 2014.

FOR FURTHER INFORMATION CONTACT: If you have comments, especially on the estimated public burden or associated response time, suggestions, or need additional information, please contact Mr. Tracy Toulou, Director, Office of Tribal Justice, Department of Justice, 950 Pennsylvania Avenue NW., Room 2310, Washington, DC 20530; telephone: (202) 514–8812.

SUPPLEMENTARY INFORMATION: This process is conducted in accordance with 5 CFR 1320.10. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Request for Accelerated Authority to Exercise Special Domestic Violence Criminal Jurisdiction.

(3) *Agency form number:* Not applicable.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Tribal governments. Other: None.

Abstract: The Violence Against Women Reauthorization Act of 2013 (VAWA 2013) was signed into law on March 7, 2013. Section 904 of VAWA 2013 recognizes the inherent power of ''participating tribes'' to exercise special domestic violence criminal jurisdiction over certain defendants, regardless of their Indian or non-Indian status, who commit acts of domestic violence or dating violence or violate certain protection orders in Indian country. Section 904 also specifies the rights that a participating tribe must provide to defendants in special domestic violence criminal jurisdiction cases. Section 908(b)(1) provides that tribes generally cannot exercise the special jurisdiction until March 7, 2015, but Section 908(b)(2) establishes a pilot project that authorizes the Attorney General, in the exercise of his discretion, to grant a tribe's request to be designed as a ''participating tribe'' on an accelerated basis and to commence exercising the special jurisdiction on a date (prior to March 7, 2015) set by the Attorney General, after coordinating with the Secretary of the Interior, consulting with affected tribes, and concluding that the tribe's criminal justice system has adequate safeguards in place to protect defendants' rights, consistent with Section 204 of the Indian Civil Rights Act, as amended, 25 U.S.C. 1304. The Department of Justice has published a notice seeking comments on procedures for an Indian tribe to request designation as a ''participating tribe'' on an accelerated basis), and for the Attorney General to act on such requests, 78 FR 35961 (June 14, 2013). Pursuant to the notice, the Attorney General has delegated to the Associate Attorney General the authority to decide whether to grant the request of a tribe to be designated as a ''participating tribe'' prior to March 7, 2015. The purpose of the collection is to provide information from the requesting tribe sufficient for the Associate Attorney General to make that decision.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Fewer than 40 respondents; average of 16 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 640 total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and

Planning Staff, Two Constitution Square, 145 N Street NE., Room 3E.405B, Washington, DC 20530.

Dated: May 7, 2014.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2014–10790 Filed 5–9–14; 8:45 am]

BILLING CODE 4410–A5–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

Annual Determination of Average Cost of Incarceration

AGENCY: Bureau of Prisons, Justice.

ACTION: Notice.

SUMMARY: The fee to cover the average cost of incarceration for Federal inmates in Fiscal Year 2013 was $29,291.25 ($80.25 per day). (**Please note:** There were 365 days in FY 2013.) The average annual cost to confine an inmate in a Residential Re-entry Center for Fiscal Year 2013 was $26,612.15 ($72.91 per day).

DATES: *Effective Date:* May 12, 2014

ADDRESSES: Office of General Counsel, Federal Bureau of Prisons, 320 First St. NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, (202) 307–2105.

SUPPLEMENTARY INFORMATION: 28 CFR part 505 allows for assessment and collection of a fee to cover the average cost of incarceration for Federal inmates. We calculate this fee by dividing the number representing Bureau of Prisons facilities' monetary obligation (excluding activation costs) by the number of inmate-days incurred for the preceding fiscal year, and then by multiplying the quotient by 365. Under § 505.2, the Director of the Bureau of Prisons determined that, based upon fiscal year 2013 data, the fee to cover the average cost of incarceration for Federal inmates in Fiscal Year 2013 was $29,291.25 ($80.25 per day). (**Please note:** There were 365 days in FY 2013.) The average annual cost to confine an inmate in a Residential Re-entry Center for Fiscal Year 2013 was $26,612.15 ($72.91 per day).

Charles E. Samuels, Jr.,

Director, Bureau of Prisons.

[FR Doc. 2014–10859 Filed 5–9–14; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Concrete and Masonry Construction Standard

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) titled, ''Concrete and Masonry Construction Standard,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before June 11, 2014.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201402-1218-002* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064 (these are not toll-free numbers), or by email at *DOL_PRA_PUBLIC@dol.gov*.

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–6881 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov*. Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor—OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov*.

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064 (these are not toll-free numbers), or by email at *DOL_PRA_PUBLIC@dol.gov*.

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Concrete and Masonry Construction Standard information collection requirements specified in regulations 29 CFR part 1929, subpart Q. An Occupational Safety and Health Act (OSHAct) covered construction firm engaged in the erection of concrete formwork must post warning signs/barriers, in accordance with 29 CFR 1926.701(c)(2), to reduce exposure of non-essential employees to the hazards of post-tensioning operations. Paragraphs 29 CFR 1926.702(a)(2), (j)(1), and (j)(2) are general lockout/tagout measures to protect workers from injury associated with equipment and machinery. Paragraph 29 CFR 1926.703(a)(2) requires an employer to make available drawings or plans for jack layout, formwork, working decks and scaffolds. Paragraph 1926.705(b) requires an employer to mark the rated capacity of jacks and lifting units. The OSHAct authorizes this information collection. *See* 29 U.S.C. 651, 655, 657.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1218–0095.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on May 31, 2014. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on January 31, 2014 (79 FR 5461).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate

consideration, comments should mention OMB Control Number 1218–0095. The OMB is particularly interested in comments that:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–OSHA.

Title of Collection: Concrete and Masonry Construction Standard.

OMB Control Number: 1218–0095.

Affected Public: Private sector—businesses or other for-profits.

Total Estimated Number of Respondents: 159,632.

Total Estimated Number of Responses: 159,632.

Total Estimated Annual Time Burden: 12,771 hours.

Total Estimated Annual Other Costs Burden: $0.

Dated: May 6, 2014.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2014–10765 Filed 5–9–14; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Disclosures to Workers Under the Migrant and Seasonal Agricultural Worker Protection Act

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Wage and Hour Division (WHD) sponsored information collection request (ICR) revision titled, ''Disclosures to Workers Under the Migrant and Seasonal Agricultural Worker Protection Act,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before June 11, 2014.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201312-1235-001* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov*.

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–WHD, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–6881 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov*. Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor—OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov*.

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov*.

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks approval under the PRA for revisions to the forms that agricultural employers and associations and farm labor contractors may use to make the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) required disclosure of employment terms and conditions, wage statements, and housing terms and conditions to migrant/seasonal agricultural workers. This information collection has been classified as a revision, because the WHD seeks to make changes to the forms that will clarify what is expected in some disclosures and make compliance easier for the regulated community.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1235–0002. The current approval is scheduled to expire on June 30, 2013; however, the DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. New requirements would only take effect upon OMB approval. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on January 28, 2014 (79 FR 4508).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1235–0002. The OMB is particularly interested in comments that:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–WHD.

Title of Collection: Disclosures to Workers Under the Migrant and

Seasonal Agricultural Worker Protection Act.

OMB Control Number: 1235–0002.

Affected Public: Private sector—businesses or other for-profits and farms.

Total Estimated Number of Respondents: 107,706.

Total Estimated Number of Responses: 84,206,505.

Total Estimated Annual Time Burden: 1,417,594 hours.

Total Estimated Annual Other Costs Burden: $3,368,260.

Dated: May 6, 2014.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2014–10802 Filed 5–9–14; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–83,177]

JP Morgan Chase & Company, Mortgage Banking Division, Solicitation Prework Group, Escrow Department, Special Loans Department, and Assumptions Department, Florence, South Carolina; 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 December 26, 2013, applicable to workers of JP Morgan Chase and Company, Mortgage Banking Division, Solicitation Prework Group, Florence, South Carolina. The Department's notice of determination was published in the **Federal Register** on January 16, 2014 (79 FR 2902).

The Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to the supply of mortgage solicitation services.

A review by The Department revealed that workers in the Escrow Department, Special Loans Department, and Assumptions Department of JP Morgan Chase and Company, Mortgage Banking Division, Florence, South Carolina were affected by the same shift of services to a foreign country that contributed importantly to the workers' separations in the Solicitation Prework group.

The amended notice applicable to TA–W–83,177 is hereby issued as follows:

All workers of JP Morgan Chase and Company, Mortgage Banking Division, Solicitation Prework Group, Escrow Department, Special Loans Department, and Assumptions Department, Florence, South Carolina, who became totally or partially separated from employment on or after October 28, 2012 through December 26, 2015 and all workers in the group threatened with total or partial separation from employment on the date of certification through December 26, 2015, 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 25th day of April, 2014.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2014–10727 Filed 5–9–14; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–82,900; TA–W–82,900A; TA–W–82,900B]

Honeywell International, Inc., Aerospace Order Management Division, and Process Solutions, in Circuit Test Engineers, Including On-Site Leased Workers From Tapfin-Manpower Group Solutions, Three Locations in Phoenix, Arizona; Honeywell International, Inc., Aerospace Order Management Division, Including On-Site Leased Workers From Tapfin-Manpower Group Solutions, Tempe, Arizona; Honeywell International, Inc., Aerospace Order Management Division, Including On-Site Leased Workers From Tapfin-Manpower Group Solutions, Tulsa, Oklahoma; 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 November 1, 2013, applicable to workers of Honeywell International, Inc., Aerospace Order Management Division, including on-site leased workers from, Tapfin-Manpower Group Solutions, three locations in Phoenix, Arizona, (TA–W–82,900), Honeywell International, Inc., Aerospace Order Management Division, including on-site leased workers from Tapfin-Manpower Group Solutions, Tempe, Arizona, (TA–W–82,900A), and Honeywell International, Inc., Aerospace Order Management Division, including on-site leased workers from Tapfin-Manpower Group Solutions, Tulsa, Oklahoma, (TA–W–82,900B). The Department's notice of determination was published in the **Federal Register** on November 21, 2013 (Volume 78, No. 225 FR 69881).

At the request of State Workforce Official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to the supply of order management services and in circuit testing services. The investigation confirmed that worker separations in the Process Solutions, In Circuit Test Engineers group in Phoenix, Arizona are attributable to an acquisition of services from a foreign country, as were separations in the Aerospace Order Management Division.

The amended notice applicable to TA–W–82,900 is hereby issued as follows:

All workers of Honeywell International, Inc., Aerospace Order Management Division and Process Solutions, In Circuit Test Engineers, including on-site leased workers from, Tapfin-Manpower Group Solutions, three locations in Phoenix, Arizona, (TA–W–82,900), Honeywell International, Inc., Aerospace Order Management Division, including on-site leased workers from Tapfin-Manpower Group Solutions, Tempe, Arizona, (TA–W–82,900A), and Honeywell International, Inc., Aerospace Order Management Division, including on-site leased workers from Tapfin-Manpower Group Solutions, Tulsa, Oklahoma, (TA–W–82,900B), who became totally or partially separated from employment on or after July 11, 2012 through November 1, 2015, and all workers in the group threatened with total or partial separation from employment on the date of certification through November 1, 2015, 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 25th day of April, 2014.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2014–10726 Filed 5–9–14; 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 April 21, 2014 through April 25, 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) Not withstanding 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
83,197	Quad Graphics LLC, Dubuque Division, Quad Graphics, Inc	Dubuque, IA	October 23, 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
83,241	Caterpillar, Inc., Integrated Manufacturing Operations Division (IMOD), Guardsmark, Aramark.	South Milwaukee, WI.	
83,241A	Caterpillar, Inc., Integrated Manufacturing Operations Division (IMOD)	Milwaukee, WI.	

I hereby certify that the aforementioned determinations were issued during the period of April 21, 2014 through April 25, 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 30th day of April, 2014.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2014–10725 Filed 5–9–14; 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 May 22, 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 May 22, 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 1st day of May 2014.

Hope D. Kinglock,

Certifying Officer, Office of Trade Adjustment Assistance.

APPENDIX

[18 TAA petitions instituted between 4/21/14 and 4/25/14]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
85247	MoneyGram International (Workers)	Brooklyn Center, MN	04/21/14	04/18/14
85248	Great Northern Paper (State/One-Stop)	East Millinocket, ME	04/21/14	04/18/14
85249	Mitel, Inc. (Workers)	Mesa, AZ	04/21/14	04/19/14
85250	Dell Inc. (Workers)	Round Rock, TX	04/21/14	04/16/14
85251	Hewlett Packard (Workers)	Boise, ID	04/21/14	04/18/14
85252	YP, LLC (Workers)	Southfield, MI	04/21/14	04/21/14
85253	ArcSoft, Inc. (State/One-Stop)	Fremont, CA	04/22/14	04/21/14
85254	Sony Electronics Inc (Company)	San Diego, CA	04/22/14	04/21/14
85255	Citigroup (Workers)	Tampa, FL	04/22/14	04/10/14
85256	Novelis Corporation (Company)	Terre Haute, IN	04/22/14	04/21/14
85257	Avery Products Corporation Headquarters (State/One-Stop).	Brea, CA	04/22/14	04/22/14
85258	Philips Electronics North America Corporation (Workers)	Pittsburgh, PA	04/23/14	04/22/14
85259	Pentair (Company)	Ashland, OH	04/24/14	04/23/14
85260	RMC USA (Workers)	Jefferson, OH	04/24/14	04/21/14
85261	Hibu Inc. (Company)	King of Prussia, PA	04/24/14	04/18/14
85262	Lafarge North America (State/One-Stop)	Baltimore, MD	04/24/14	04/23/14
85263	RG Steel (State/One-Stop)	Sparrows Point, MD	04/24/14	04/23/14
85264	Cloud Cap Technology, Inc. (State/One-Stop)	Hood River, OR	04/25/14	04/24/14

[FR Doc. 2014–10728 Filed 5–9–14; 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 and Alternative Trade 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 (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of April 21, 2014 through April 25, 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. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. the sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. there has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. the country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. there has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected 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(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

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.

None.

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade 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) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

85,086, Bayer CropScience LP, Institute, West Virginia, February 4, 2014.
85,126, Louisville Ladder, Little Rock, Arkansas. March 7, 2013.
85,128, FrigoGlass North America Limited Co. Spartanburg, South Carolina. March 10, 2014.
85,130, Siemens Medical Solutions USA, Martinez, California, April 6,2014.
85,135, Premier Lakewood, Lakewood, New York. February 20,2013.
85,140, Carolina Furniture Works, Inc., Sumter, South Carolina. March 11, 2013.
85,151, Kodak Alaris Colorado, Windsor, Colorado. March 15, 2013.
85,169, Cargill, Inc., Raleigh, North Carolina. February 14, 2013.
85,178, Cardinal Health 200, LLC., Woodbury, Minnesota. February 21, 2013.
85,211, OSRAM Sylvania, Central Falls, Rhode Island. April 4, 2013.
85,215, Fruit of The Loom, Jamestown, Kentucky. April 8, 2013.
85,233, Littlefuse, Inc., Chicago, Illinois. February 17, 2014.
85,234, Nordyne, Poplar Bluff, Missouri. April 14, 2013.

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

None.

Negative Determinations for Worker Adjustment Assistance and Alternative Trade 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.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

85,086A, Bayer CropScience LP, Institute, West Virginia.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

85,114, Predator Systems, Inc., Boca Raton, Florida.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

85,181, Innovative Hearth Products, LLC., Union City, Tennessee.
85,137, LexisNexis, Miamisburg, Ohio.
85,137A, LexisNexis, Albany, New York.
85,137B, LexisNexis, Charlotteville, Virginia.
85,137C, LexisNexis, Colorado Spings, Colorado.
85,137D, LexisNexis, Dayton, Ohio.
85,137E, LexisNexis, Springfield, Ohio.
85,137F, LexisNexis, New Providence, New Jersey.
85,137G, LexisNexis, New York, New York.
85,137I, LexisNexis, Orem, Utah.
85,137H, LexisNexis, San Francisco, California.
85,167, Dell Marketing L.P.and Dell USA LP, Plano, Texas.
85,180, Hewlett Packard, Boise, Idaho.
85,183, Hyundai America Shipping Agency, Inc., Itasca, Illinois.

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 USC 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.

85,110, LMH Industries, Redmond, Oregon.

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.

85,253, ArcSoft, Inc., Fremont, California.

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.

85,063, EPIC Technologies, LLC., El Paso, Texas.

85,230, ITT Cannon, LLC., Santa Ana, California.

The following determinations terminating investigations were issued because the Department issued a negative determination on petitions related to the relevant investigation period applicable to the same worker group. The duplicative petitions did not present new information or a change in circumstances that would result in a reversal of the Department's previous negative determination, and therefore, further investigation would duplicate efforts and serve no purpose.

85,258, Philips Electronics North America Corporation, Pittsburgh, Pennsylvania.

I hereby certify that the aforementioned determinations were issued during the period of April 21, 2014 through April 25, 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 30th day of April 2014.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance .

[FR Doc. 2014–10724 Filed 5–9–14; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Arts Advisory Panel Meeting

AGENCY: National Endowment for the Arts, National Foundation on the Arts and Humanities.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Arts Advisory Panel to the National Council on the Arts will be held by teleconference at the National Endowment for the Arts, Washington, DC 20506 as follows (all meetings are Eastern time and ending times are approximate):

Museums (application review): This meeting will be closed.

DATES: May 29, 2014. 2:00 p.m. to 3:00 p.m.

FOR FURTHER INFORMATION CONTACT: Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506; *plowitzk@arts.gov,* or call 202/682–5691.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of February 15, 2012, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Dated: May 6, 2014.

Kathy Plowitz-Worden,

Panel Coordinator, National Endowment for the Arts.

[FR Doc. 2014–10742 Filed 5–9–14; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2014–0022]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on February 19, 2014.

1. *Type of submission, new, revision, or extension:* Extension.
2. *The title of the information collection:* NUREG/BR–0254, Payment Methods; and NRC Form 629, ''Authorization for Payment by Credit Card.''
3. *Current OMB approval number:* 3150–0190.
4. *The form number if applicable:* NRC Form 629.
5. *How often the collection is required:* As needed to process credit card payments.
6. *Who will be required or asked to report:* Anyone doing business with the NRC including licensees, applicants and individuals who are required to pay a fee for inspections and licenses.
7. *An estimate of the number of annual responses:* 545.
8. *The estimated number of annual respondents:* 545.
9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 45.4 hours.
10. *Abstract:* The U.S. Department of Treasury encourages the public to pay monies owed to the government through use of the Automated Clearinghouse Network and credit cards. These two methods of payment are used by licensees, applicants, and individuals to pay civil penalties, full cost licensing fees, and annual fees to the NRC.

The public may examine and have copied for a fee publicly-available documents, including the final supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The OMB clearance requests are available at the NRC's Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/*. The document will be available on the NRC's home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by June 11, 2014. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Danielle Y. Jones, Desk Officer, Office of Information and Regulatory Affairs (3150–0190), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be emailed to *Danielle_Y_Jones@omb.eop.gov* or submitted by telephone at 202–395–1741.

The Acting NRC Clearance Officer is Kristen Benney, telephone: 301–415–6355.

Dated at Rockville, Maryland, this 6th day of May, 2014.

For the Nuclear Regulatory Commission.

Kristen Benney,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. 2014–10758 Filed 5–9–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–341; NRC–2014–0109]

Fermi 2

AGENCY: Nuclear Regulatory Commission.

ACTION: License renewal application; receipt.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has received an application, from DTE Electric Company, dated April 24, 2014, filed pursuant to the Atomic Energy Act of 1954, as amended, and the NRC's regulations, to renew the operating license for Fermi 2.

ADDRESSES: Please refer to Docket ID NRC–2014–0109 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–2014–0109. 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 notice (if that document is available in ADAMS) is provided the first time that a document is referenced. The copy of the license renewal application is available in ADAMS under Accession No. ML14121A554.
- *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: Daneira Meléndez-Colón, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3301; email: *Daneira.Melendez-Colon@nrc.gov*.

SUPPLEMENTARY INFORMATION: The U.S. Nuclear Regulatory Commission (NRC) has received an application, from DTE Electric Company, dated April 24, 2014, filed pursuant to Section 103 of the Atomic Energy Act of 1954, as amended, and Part 54 of Title 10 of the *Code of Federal Regulations,* to renew the operating licenses for Fermi 2. Renewal of the license would authorize the applicant to operate the facility for an additional 20-year period beyond the period specified in the respective current operating license. The current operating license for Fermi 2 (NPF–43) expires at midnight on March 20, 2025. Fermi 2 is a boiling-water reactor designed by General Electric and is located near Frenchtown Township, Monroe County, MI. The acceptability of the tendered application for docketing, and other matters, including an opportunity to request a hearing, will be the subject of subsequent **Federal Register** notices.

A copy of the license renewal application for Fermi 2 is also available to local residents near the site at the Ellis Library and Reference Center, 3700 South Custer Road, Monroe, MI 48161.

Dated at Rockville, Maryland, this 5th day of May 2014.

For the Nuclear Regulatory Commission.

John W. Lubinski,

Director, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2014–10828 Filed 5–9–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2014–0001]

Sunshine Act Meeting Notice

DATES: Weeks of May 12, 19, 26, June 2, 9, 16, 2014.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of May 12, 2014

Monday, May 12, 2014

9:30 a.m. Briefing on NRC International Activities (Closed—Ex. 1 & 9)

2:30 p.m. Briefing on NRC International Activities (Closed—Ex. 9)

Week of May 19, 2014—Tentative

There are no meetings scheduled for the week of May 19, 2014.

Week of May 26, 2014—Tentative

Wednesday, May 28, 2014

9:00 a.m. Joint Meeting of the Federal Energy Regulatory Commission (FERC) and the Nuclear Regulatory Commission (NRC) on Grid Reliability (Part 1) (Public Meeting) (Contact: Jacob Zimmerman, 301–415–1220)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

10:45 a.m. Joint Meeting of the Federal Energy Regulatory Commission (FERC) and the Nuclear Regulatory Commission (NRC) on Grid Reliability (Part 2) (Closed—Ex. 3)

Thursday, May 29, 2014

9:00 a.m. Briefing on Human Reliability Program Activities and Analyses (Public Meeting) (Contact: Sean Peters, 301–251–7582)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of June 2, 2014—Tentative

Tuesday, June 3, 2014

9:00 a.m. Briefing on Results of the Agency Action Review Meeting (AARM) (Public Meeting) (Contact: Michael Balazik, 301–415–2856)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Wednesday, June 4, 2014

9:00 a.m. Briefing on NFPA 805 Fire Protection (Public Meeting) (Contact: Barry Miller, 301–415–4117)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of June 9, 2014—Tentative

There are no meetings scheduled for the week of June 9, 2014.

Week of June 16, 2014—Tentative

There are no meetings scheduled for the week of June 16, 2014.

* * * * *

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—301–415–1292. Contact person for more information: Rochelle Bavol, 301–415–1651.

* * * * *

ADDITIONAL INFORMATION

By a vote of 5–0 on May 7 and 8, 2014, the Commission determined pursuant to U.S.C. 552b(e) and '9.107(a) of the Commission's rules that the above referenced Briefing on NRC International Activities (Closed—Ex. 9) on May 12, 2014, at 2:30 p.m., be held with less than one week notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0727, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an email to *Darlene.Wright@nrc.gov.*

Dated: May 8, 2014.

Rochelle Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2014–10929 Filed 5–8–14; 4:15 pm]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72101; File No. SR–EDGX–2014–15]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGX Exchange, Inc. Fee Schedule

May 6, 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 May 1, 2014, EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') 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 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 its fees and rebates applicable to Members[3] of the Exchange pursuant to EDGX Rule 15.1(a) and (c) (''Fee Schedule'') to: (i) Amend Flag RC, which routes to the National Stock Exchange, Inc. (''NSX'') and adds liquidity; and (ii) delete Flag RW, which routes to the CBOE Stock Exchange, LLC (''CBSX'') and adds liquidity. The text of the proposed rule change is available on the Exchange's Internet Web site at *www.directedge.com,* at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Member'' is defined as ''any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange. A Member will have the status of a ''member'' of the Exchange as that term is defined in Section 3(a)(3) of the Act.'' *See* Exchange Rule 1.5(n).

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule to: (i) Amend Flag RC, which routes to the NSX and adds liquidity; and (ii) delete Flag RW, which routes to the CBSX and adds liquidity.

Flag RC

In securities priced at or above $1.00, the Exchange currently charges a fee of $0.0018 per share for Members' orders that yield Flag RC, which routes to the NSX and adds liquidity. The Exchange proposes to amend its Fee Schedule to decrease the fee to $0.0001 per share for Members' orders that yield Flag RC. The proposed change is in response to NSX's May 2014 fee change where the NSX decreased its fee to $0.0001 per share for orders that add liquidity on the NSX.[4] The fee for orders that yield Flag RC represents a pass through of the rate that Direct Edge ECN LLC (d/b/a DE Route) (''DE Route''), the Exchange's affiliated routing broker-dealer, is charged for routing orders that add liquidity to NSX when it does not qualify for a volume tiered reduced fee. When DE Route routes to and adds liquidity on the NSX, it will be charged a standard rate of $0.0001 per share.[5] DE Route will pass through this rate on NSX to the Exchange and the Exchange, in turn, will pass through this rate to its Members.

Flag RW

The Exchange proposes to amend its Fee Schedule to delete Flag RW in response to CBSX's announcement that it will cease market operations and its last day of trading will be Wednesday, April 30, 2014.[6] In securities priced at or above $1.00, the Exchange currently charges a fee of $0.0030 per share in securities priced at or above $1.00 and 0.30% of the trade's dollar value in securities priced below $1.00 for Members' orders that yield Flag RW, which routes to the CBSX and adds liquidity. The fee for orders that yield Flag RW represents a pass through of the rate that DE Route, the Exchange's affiliated routing broker-dealer, is charged for routing orders that add liquidity to CBSX. As of May 1, 2014, the Exchange, via DE Route, will no longer be able to route orders to CBSX because it ceased operations, and, therefore, proposes to remove Flag RW from its Fee Schedule.

Implementation Date

The Exchange proposes to implement these amendments to its Fee Schedule on May 1, 2014.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[7] in general, and furthers the objectives of Section 6(b)(4),[8] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

Flag RC

The Exchange believes that its proposal to decrease the fee to $0.0001 per share for Members' orders that yield Flag RC represents an equitable allocation of reasonable dues, fees, and other charges among Members and other persons using its facilities because the Exchange does not levy additional fees or offer additional rebates for orders that it routes to NSX through DE Route. In May 2014, NSX decreased its fee to $0.0001 per share for Members' orders that add liquidity.[9] Therefore, the Exchange believes that the proposed change to Flag RC to decrease its fee to $0.0001 per share for orders that yield Flag RC is equitable and reasonable because it accounts for the pricing change on the NSX. In addition, the proposal allows the Exchange to charge its Members a pass-through rate for orders that are routed to the NSX and add liquidity. Furthermore, the Exchange notes that routing through DE Route is voluntary. Lastly, the Exchange also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

Flag RW

The Exchange believes that its proposal to delete Flag RW in its Fee Schedule represents an equitable allocation of reasonable dues, fees, and other charges among Members and other persons using its facilities. The proposed change is in response to CBSX's announcement that it will cease market operations and its last day of trading will Wednesday, April 30, 2014.[10] As of May 1, 2014, the Exchange, via DE Route, will no longer be able to route orders to CBSX and, therefore, proposes to remove Flag RW from its Fee Schedule. The Exchange believes that the proposed amendment is intended to make the Fee Schedule clearer and less confusing for investors and eliminate potential investor confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes its proposed amendments to its Fee Schedule would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed change represents a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Additionally, Members may opt to disfavor EDGX's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets.

Flag RC

The Exchange believes that its proposal to pass through a fee of $0.0001 per share for Members' orders that yield Flag RC would increase intermarket competition because it offers customers an alternative means to route to NSX for the same price as entering orders on NSX directly. The Exchange believes that its proposal would not burden intramarket competition because the proposed rate would apply uniformly to all Members.

Flag RW

The Exchange believes that its proposal to delete Flag RW in its Fee Schedule would not affect intermarket nor intramarket competition because this change is not designed to amend any fee or rebate or alter the manner in

[4] *See* NSX, Information Circular 14–043 dated April 25, 2014, *available at http://www.nsx.com/resources/content/7/documents/Information Circular14-043.pdf.*

[5] The Exchange notes that to the extent DE Route does or does not achieve any volume tiered reduced fee on NSX, its rate for Flag RC will not change.

[6] *See* CBSX, Regulatory Circular RG14–046 dated April 2, 2014, *available at http://www.cbsx.com/publish/RegCir/RG14-046.pdf.*

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

[9] *See* NSX, Information Circular 14–043 dated April 25, 2014, *available at http://www.nsx.com/resources/content/7/documents/Information Circular14-043.pdf.*

[10] *See* CBSX, Regulatory Circular RG14–046 dated April 2, 2014, *available at http://www.cbsx.com/publish/RegCir/RG14-046.pdf.*

which the Exchange assesses fees or calculates rebates. It is simply proposed in response to CBSX ceasing market operations trading on May 1, 2014.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(2) [12] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–EDGX–2014–15 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGX–2014–15. 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–EDGX–2014–15, and should be submitted on or before June 2, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–10774 Filed 5–9–14; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72098; File No. SR–ISE–2014–23]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 2, Regarding the Short Term Option Series Program

May 6, 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 April 22, 2014, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I and II below, which items have been prepared by the self-regulatory organization. On May 1, 2014, the Exchange filed Amendment No. 2 to the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 2, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to amend its rules governing the Short Term Option Series Program to introduce finer strike price intervals for standard expiration contracts in option classes that also have short term options listed on them (''related non-short term options''), and to remove obsolete rule text concerning the listing of new series during the week of expiration. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its rules governing the Short Term Option Series Program to introduce finer strike price intervals for related non-short term options. In particular, the Exchange proposes to amend its rules to permit the listing of related non-short term options during the month prior to expiration in the same strike price intervals as allowed for short term option series. The Exchange also proposes to remove obsolete rule text concerning the listing of new short term option series, including related non-short term option series, during the week of expiration.

Under the ISE's current rules, the Exchange may list short term options in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 was filed on April 29, 2014 and withdrawn on May 1, 2014. In Amendment No. 2, the Exchange modified *Exhibit 1* to add an additional sentence to Section II.A.1 to clarify when the Exchange may add additional series pursuant to the proposed rule change.

up to fifty option classes,[4] including up to thirty index option classes,[5] in addition to option classes that are selected by other securities exchanges that employ a similar program under their respective rules. For each of these option classes, the Exchange may list five short term option expiration dates at any given time, not counting monthly or quarterly expirations.[6] Specifically, on any Thursday or Friday that is a business day, the Exchange may list short term option series in designated option classes that expire at the close of business on each of the next five Fridays that are business days and are not Fridays in which monthly or quarterly options expire.[7] These short term option series, which can be several weeks or more from expiration, may be listed in strike price intervals of $0.50, $1, or $2.50, with the finer strike price intervals being offered for lower priced securities, and for options that trade in the Exchange's dollar strike program.[8] More specifically, the ISE may list short term options in $0.50 intervals for strike prices less than $75, or for option classes that trade in one dollar increments in the related non-short term option, $1 intervals for strike prices that are between $75 and $150, and $2.50 intervals for strike prices above $150.[9]

The Exchange may also list standard expiration contracts, which are listed in accordance with the regular monthly expiration cycle. These standard expiration contracts must be listed in wider strike price intervals of $2.50, $5, or $10,[10] though the ISE also operates strike price programs, such as the dollar strike program mentioned above,[11] that allow the Exchange to list a limited number of option classes in finer strike price intervals. In general, the ISE must list standard expiration contracts in $2.50 intervals for strike prices of $25 or less, $5 intervals for strike prices greater than $25, and $10 intervals for strike prices greater than $200.[12] During the week prior to expiration only, the Exchange is permitted to list related non-short term option contracts in the narrower strike price intervals available for short term option series.[13] Since this exception to the standard strike price intervals is available only during the week prior to expiration, however, standard expiration contracts regularly trade at significantly wider intervals than their weekly counterparts, as illustrated below.

For example, assume ABC is trading at $56.54 and the monthly expiration contract is three weeks to expiration. Assume also that the ISE has listed all available short term option expirations and thus has short term option series listed on ABC for weeks one, two, four, five, and six. Each of the five weekly ABC expiration dates can be listed with strike prices in $0.50 intervals, including, for example, the $56.50 at-the-money strike. Because the monthly expiration contract has three weeks to expiration, however, the near-the-money strikes must be listed in $5 intervals unless those options are eligible for one of the ISE's other strike price programs. In this instance, that would mean that investors would be limited to choosing, for example, between the $55 and $60 strike prices instead of the $56.50 at-the-money strike available for short term options. This is the case even though contracts on the same option class that expire both several weeks before and several weeks after the monthly expiration are eligible for finer strike price intervals. Under the proposed rule change, the Exchange would be permitted to list the related non-short term option on ABC, which is less than a month to expiration, in the same strike price intervals as allowed for short term option series. Thus, the Exchange would be able to list, and investors would be able to trade, all expirations described above with the same uniform $0.50 strike price interval.

As proposed, the ISE would be permitted to begin listing the monthly expiration contract in these narrower intervals at any time during the month prior to expiration, which begins on the first trading day after the prior month's expiration date, subject to the provisions of Rule 504(f). For example, since the April 2014 monthly option expired on Saturday, April 19, the proposed rule change would allow the Exchange to list the May 2014 monthly option in short term option intervals starting Monday, April 21.

The ISE believes that introducing consistent strike price intervals for short term options and related non-short term options during the month prior to expiration will benefit investors by giving them more flexibility to closely tailor their investment decisions. The Exchange also believes that the proposed rule change will provide the investing public and other market participants with additional opportunities to hedge their investments, thus allowing these investors to better manage their risk exposure.

In addition, the Exchange notes that it recently adopted rule text that states that, notwithstanding any language to the contrary, short term options may be added up to and including on the expiration date.[14] Other exchanges that have adopted similar rule text have, correspondingly, deleted related language that restricts the opening of additional short term option series, including additional series of the related non-short term option, during the week of expiration.[15] Consistent with the rules proposed by other options exchanges, the ISE proposes to delete rule text that prohibits the opening of additional series listed pursuant to Supplementary Material .12 to Rule 504 and Supplementary Material .05 to Rule 2009 during the week of expiration.

2. Statutory Basis

The Exchange believes that the proposed rule change 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.[16] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[17] because is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

As noted above, standard expiration options currently trade in wider intervals than their weekly counterparts, except during the week prior to expiration. This creates a situation where contracts on the same option class that expire both several weeks

[4] *See* Supplementary Material .02(a) to Rule 504.

[5] *See* Supplementary Material .01(a) to Rule 2009.

[6] *See* Supplementary Material .02 to Rule 504; Supplementary Material .01 to Rule 2009.

[7] *Id.*

[8] *See* Supplementary Material .12 to Rule 504; Supplementary Material .05 to Rule 2009.

[9] *Id.* Strike price intervals of $2.50 are only available for non-index options. Short term index option contracts are subject to the same strike price intervals as non-short term options for strike prices above $150. *See* Securities Exchange Act Release No. 71034 (December 11, 2013), 78 FR 76363 (December 17, 2013) (SR–ISE–2013–69).

[10] *See* Rule 504(d).

[11] *See* Supplementary Material .01 to Rule 504, which allows the ISE to designate up to 150 option classes on individual stocks to be traded in $1 strike price intervals where the strike price is between $50 and $1. *See* also Rule 504(g) ($2.50 Strike Program) and Supplementary .05 to Rule 504 ($0.50 Strike Program).

[12] *See* Rule 504(d).

[13] *See* Supplementary Material .02(e) to Rule 504; Supplementary Material .01(e) to Rule 2009.

[14] *See* Securities Exchange Act Release No. 71033 (December 11, 2013), 78 FR 76375 (December 17, 2013) (SR–ISE–2013–68).

[15] *See* SR–BATS–2014–13 (citation pending publication by the Commission).

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

before and several weeks after the standard expiration are eligible to trade in strike price intervals that the standard expiration contract is not. When the ISE originally filed to list related non-short term options in the same intervals as short term options in the same option class during the week prior to expiration,[18] the Exchange was limited to listing one short term option expiration date at a time. Thus, there was no inconsistency between standard expiration contracts, which traded in finer intervals in the week prior to expiration, and short term options, which were only listed on the week prior to expiration. The Short Term Option Series Program has since grown in response to customer demand, and the ISE is now permitted to list up to five short term option expiration dates in addition to standard expiration options.[19] There is continuing strong customer demand to have the ability to execute hedging and trading strategies in the finer strike price intervals available in short term options, and the Exchange believes that the proposed rule change will increase market efficiency by harmonizing strike price intervals for contracts that are close to expiration, whether those contracts happen to be listed pursuant to weekly or monthly expiration cycles.

The Exchange notes that, in addition to listing standard expiration contracts in short term option intervals during the expiration week, it already operates several programs that allow for strike price intervals for standard expiration contracts that range from $0.50 to $2.50.[20] The Exchange believes that each of these programs has been successful but notes that limitations on the number of option classes that may be selected for each of these programs means that many standard expiration contracts must still be listed in wider intervals than their short term option counterparts. For example, the $0.50 strike price program, which offers the narrowest strike price interval, only permits the ISE to designate up to 20 option classes to trade in $0.50 intervals in addition to option classes selected by other exchanges that employ a similar program.[21] Thus, the proposed rules are necessary to fill the gap between strike price intervals allowed for short term options and related non-short term options. The Exchange believes that the proposed rule change, like the other strike price programs currently offered by the ISE, will benefit investors by giving them more flexibility to closely tailor their investment and hedging decisions.

Furthermore, the Exchange continues to believe that the ability to list new series during the week of expiration is appropriate given the short lifespan of short term options. The proposed change clarifies that the Exchange may open additional series listed pursuant to Supplementary Material .12 to Rule 504 and Supplementary Material .05 to Rule 2009 during the week of expiration, consistent with changes proposed by other exchanges.

With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority (''OPRA'') have the necessary systems capacity to handle any potential additional traffic associated with this proposed rule change. The Exchange believes that its members will not have a capacity issue as a result of this proposal. The Exchange also represents that it does not believe this expansion will cause fragmentation of liquidity.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposed rule change will result in additional investment options and opportunities to achieve the investment objectives of market participants seeking efficient trading and hedging vehicles, to the benefit of investors, market participants, and the marketplace in general. Specifically, the Exchange believes that investors will benefit from the availability of strike price intervals in standard expiration contracts that match the intervals currently permitted for short term options with a similar time to expiration, and from the clarification regarding the listing of additional series during the week of expiration.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the publication date of this notice or within such longer period (1) as the Commission may designate up to 45 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (2) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve or disapprove such proposed rule change; or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 2, 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–ISE–2014–23 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2014–23. 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.,

[18] *See* Securities Exchange Act Release No. 67754 (August 29, 2012), 77 FR 54629 (September 5, 2012) (SR–ISE–2012–33) (Approval); 67083 (May 31, 2012), 77 FR 33543 (June 6, 2012) (SR–ISE–2012–33) (Notice).

[19] *See* Securities Exchange Act Release No. 68318 (November 29, 2013), 77 FR 72426 (December 5, 2012) (SR–ISE–2012–90); 71033 (December 11, 2013), 78 FR 76375 (December 17, 2013 (SR–ISE–2013–68).

[20] *See* supra note 11.

[21] *See* Supplementary .05 to Rule 504.

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–ISE–2014–23 and should be submitted on or before June 2, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–10771 Filed 5–9–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72103; File No. SR–Phlx–2014–26]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Mini Options

May 6, 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 April 24, 2014, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Commentary .13 to Rule 1012 (Series of Options Open for Trading), entitled ''Mini Options Contracts.'' Specifically, the Exchange proposes to replace the reference to ''GOOG'' to ''GOOGL.''

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Commentary .13 to Rule 1012, regarding Mini Options traded on Phlx, to replace the reference to ''GOOG'' to ''GOOGL.'' This filing is similar to filings made by the International Securities Exchange, LLC (''ISE''), BOX Options Exchange LLC (''BOX'') and the Chicago Board Options Exchange, Incorporated (''CBOE'').[3]

The Exchange is proposing to make a change to Supplementary Material .08 [sic] to enable the continued trading of Mini Options on Google's class A shares. The Exchange is proposing to make this change because, on April 2, 2014, Google issued a new class of shares (class C) to its shareholders in lieu of a cash dividend payment. The new Google Class C shares were given the old Google ticker symbol, ''GOOG,'' and the new [sic] class A shares have been given a new ticker symbol of ''GOOGL.'' The Exchange is proposing to change the Google ticker referenced in Chapter IV [sic], Section 6 [sic] from ''GOOG'' to ''GOOGL.''

The purpose of this change is to ensure that Commentary .13 to Rule 1012 properly reflects the intention and practice of the Exchange to trade Mini Options on only an exhaustive list of underlying securities outlined in Commentary .13 to Rule 1012. This change is meant to continue the inclusion of class A shares of Google in the current list of underlying securities that Mini Options can be traded on, while making it clear that class C shares of Google are not part of that list as that class of options has not been approved for Mini Options trading. As a result, the proposed change will also help avoid confusion.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[4] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[5] 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)[6] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In particular, the proposed rule change to change the Google class A ticker to its new designation is consistent with the Act because the proposed change is merely updating the corresponding ticker to allow for continued mini option trading on Google's class A shares. The proposed change will allow for continued benefit to investors by providing them with additional investment alternatives.

B. Self-Regulatory Organization's Statement on Burden on Competition

Phlx does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change does not impose any burden on intramarket competition because it applies to all members and member organizations. There is no burden on intermarket competition as the proposed change is merely attempting to update the new ticker for Google class A for Mini Options. As a result, there will be no substantive

[22] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Release Nos. 71873 (April 4, 2014), 79 FR 19953 (April 10, 2014) (SR–BOX–2014–13); 71848 (April 2, 2014), 79 FR 19405 (April 8, 2014) (SR–CBOE–2014–030); SR–ISE–2014–021 (not yet published).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] *Id.*

changes to the Exchange's operations or its rules.

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.

II. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the 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 [7] and Rule 19b–4(f)(6) thereunder.[8]

A proposed rule change filed under Rule 19b–4(f)(6) [9] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii) [10] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will help to ensure that market participants are properly informed as to the underlying securities eligible for trading of Mini Options contracts on the Exchange. For this reason, the Commission designates the proposed rule change to be operative upon filing.[11]

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–Phlx–2014–26 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR-Phlx–2014-26. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2014–26 and should be submitted on or before June 2, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–10776 Filed 5–9–14; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72097; File No. SR–CME–2014–16]

Self-Regulatory Organizations; Chicago Mercantile Exchange Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Changes Making Changes in the Position Limits and Accountability Levels of CME Cleared OTC FX Spot, Forward and Swap Contracts

May 6, 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 April 22, 2014, Chicago Mercantile Exchange Inc. (''CME'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II and III below, which Items have been prepared by CME. CME filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(4)(ii) [4] thereunder, so that the proposal was effective upon filing with 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

CME is filing proposed rule changes that are limited to its business as a derivatives clearing organization (''DCO''). More specifically, the proposed rule changes contain amendments to position limits and position accountability levels of certain CME Cleared Over-the-Counter Foreign Exchange Spot, Forward and Swap Contracts.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CME included statements concerning

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4)(ii).

the purpose 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. CME 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

CME is registered as a DCO with the Commodity Futures Trading Commission and offers clearing services for many different futures and swaps products. The proposed rule changes that are the subject of this filing are limited to CME's business as a DCO offering clearing services for CFTC-regulated swaps products.

CME currently lists 73 foreign exchange futures contracts and 31 companion option contracts for trading via open outcry and CME Globex and for submission for clearing through CME ClearPort. In addition, CME lists certain cleared-only OTC FX contracts on 38 different currency pairs. These CME Cleared OTC FX Spot, Forward and Swap Contracts are non-deliverable foreign currency forward contracts and, as such, are considered to be ''swaps'' under applicable regulatory definitions.[5] CME currently aggregates the position limits/accountability levels of exchange-traded FX futures and options with the position limits/accountability levels of cleared only OTC FX products on the same currency pair.

The proposed rule changes make amendments to the Position Limit, Position Accountability and Reportable Level Table and Header Notes located in the Interpretations and Special Notices Section of Chapter 5 of the CME Rulebook. The amendments reflect changes in the position limits and accountability levels of CME Cleared OTC FX Spot, Forward and Swap Contracts. The proposed amendments would establish independent position accountability levels for all CME Cleared OTC FX Spot, Forward and Swap Contracts that will be distinct from the position limits and position accountability levels of the Exchange's FX futures and options contracts, which shall remain unchanged. In addition, the amendments provide that CME will group Cleared OTC FX Spot, Forward and Swap Contracts for the same currency pair as a single product group. For each OTC FX currency pair, CME will define position accountability on an ''all months combined futures-equivalent contract'' basis and spot or single month position accountability for CME Cleared OTC FX Spot, Forward and Swap Contracts will cease to exist. Lastly, CME will aggregate and net position accountability levels for each OTC FX currency pair by trading account holder.

The changes that are described in this filing are limited to CME's business as a DCO clearing products under the exclusive jurisdiction of the CFTC and do not materially impact CME's security-based swap clearing business in any way. The changes will be effective on filing. CME notes that it has also certified the proposed rule changes that are the subject of this filing to its primary regulator, the Commodity Futures Trading Commission (''CFTC''), in a separate filing, CME Submission No. 14–103R. The text of the CME proposed rule amendments is attached, with additions underlined and deletions in brackets.

CME believes the proposed rule changes are consistent with the requirements of the Exchange Act including Section 17A of the Exchange Act.[6] CME is amending the CME Rulebook to establish independent position accountability levels for all CME Cleared OTC FX Spot, Forward and Swap Contracts that will be distinct from the position limits and position accountability levels of the Exchange's FX futures and options contracts and to provide that CME will group CME Cleared OTC FX Spot, Forward and Swap Contracts for the same currency pair as a single product group. CME will also aggregate and net position accountability levels for each OTC FX currency pair by trading account holder under the proposed changes. The proposed changes will enhance CME's self-regulatory function and as such are designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivatives agreements, contracts, and transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, and, in general, to protect investors and the public interest consistent with Section 17A(b)(3)(F) of the Exchange Act.[7]

Furthermore, the proposed changes are limited in their effect to products offered under CME's authority to act as a DCO. The products that are the subject of this filing are under the exclusive jurisdiction of the CFTC. As such, the proposed CME changes are limited to CME's activities as a DCO clearing swaps that are not security-based swaps and forwards that are not security forwards; CME notes that the policies of the CFTC with respect to administering the Commodity Exchange Act are comparable to a number of the policies underlying the Exchange Act, such as promoting market transparency for over-the-counter derivatives markets, promoting the prompt and accurate clearance of transactions and protecting investors and the public interest.

Because the proposed changes are limited in their effect to OTC FX products offered under CME's authority to act as a DCO, the proposed changes are properly classified as effecting a change in an existing service of CME that:

(a) Primarily affects the clearing operations of CME with respect to products that are not securities, including futures that are not security futures, swaps that are not security-based swaps or mixed swaps; and forwards that are not security forwards; and

(b) Does not significantly affect any securities clearing operations of CME or any rights or obligations of CME with respect to securities clearing or persons using such securities-clearing service.

As such, the changes are therefore consistent with the requirements of Section 17A of the Exchange Act[8] and are properly filed under Section 19(b)(3)(A)[9] and Rule 19b–4(f)(4)(ii)[10] thereunder.

B. Self-Regulatory Organization's Statement on Burden on Competition

CME does not believe that the proposed rule change will have any impact, or impose any burden, on competition. The proposed changes simply establish independent position accountability levels for all CME Cleared OTC FX Spot, Forward and Swap Contracts that will be distinct from the position limits and position accountability levels of the Exchange's FX futures and options contracts.

[5] See Commodity Futures Trading Commission and Securities and Exchange Commission Joint Final Rule Defining ''Swap,'' ''Security-Based Swap,'' and ''Security-Based Swap Agreement''; Mixed Swaps; Security-Based Swap Agreement Recordkeeping; Final Rule, 77 FR 48207, 48255 (August 13, 2012).

[6] 15 U.S.C. 78q–1.

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 15 U.S.C. 78q–1.

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(4)(ii).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

CME has not solicited, and does not intend to solicit, comments regarding this proposed rule change. CME has not received any unsolicited written comments from interested parties.

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) [11] of the Act and paragraph (f)(4)(ii) of Rule 19b–4 [12] 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 No. SR–CME–2014–16 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File Number SR–CME–2014–16. 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 or 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 CME and on CME's Web site at *http://www.cmegroup.com/market-regulation/rule-filings.html.*

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–CME–2014–16 and should be submitted on or before June 2, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–10770 Filed 5–9–14; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(4)(ii).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72106; File No. SR–NSX–2014–12]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Fee and Rebate Schedule To Change Certain Fees Applicable to Liquidity Providers, Eliminate a Rebate and Adopt a Fee for Removing Liquidity, and Reducing a Fee for Routed Orders, All With Respect to Securities Priced at $1.00 or Greater

May 6, 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 April 30, 2014, National Stock Exchange, Inc. (''NSX®'' or the ''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 is proposing to amend its Fee and Rebate Schedule (the ''Fee Schedule'') issued pursuant to Exchange Rule 16.1. Specifically, the Exchange is seeking to amend Section I. (Transaction Fees and Rebates) to provide that Exchange Equity Trading Permit (''ETP'') [3] Holders will be charged a fee for providing liquidity and for removing liquidity in securities priced at $1.00 or greater. The Exchange proposes to eliminate rebates paid to ETP Holders removing liquidity in securities priced at $1.00 or greater. The Exchange also proposes to amend Section II. of the Fee Schedule (Other Services), subsection A., Order Routing (All Tapes), to reduce the fee for orders in securities priced at $1.00 or greater that are routed to other trading centers.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nsx.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 Exchange is proposing to amend the Fee Schedule, Section I. to change the fee and rebate structure applicable to ETP Holders providing and removing liquidity on the Exchange in securities priced at $1.00 and above across all Tapes.[4] Specifically, the Exchange

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Exchange Rule 1.5 defines ''ETP'' as the Equity Trading Permit issued by the Exchange for effecting approved securities transactions on the Exchange's trading facilities.

[4] The term ''Tapes'' refers to the designation assigned in the Consolidated Tape Association (''CTA'') Plan for reporting trades with respect to securities in Networks A, B and C. Tape A

proposes to: (i) Reduce the fee charged to ETP Holders providing liquidity (a ''Maker'') from $0.0018 per executed share to $0.0001. An ETP Holder providing liquidity through the use of any Zero Display Reserve Order will be charged a fee of $0.0002.[5]

The Exchange is also proposing to eliminate rebates to ETP Holders removing liquidity (''Taker'') in securities priced at $1.00 or greater and is proposing to instead charge ETP Holders removing liquidity a fee of $0.0001 per executed share. An ETP Holder removing any Zero Display Reserve Order will be charged a fee of $0.0002 per executed share.

The Exchange believes that its proposal to eliminate rebates for removing liquidity in securities priced at $1.00 or greater and instead charge fees to Takers of liquidity, combined with its proposal to reduce the fees charged to ETP Holders providing liquidity from $0.0018 to $0.0001, or $0.0002 when providing liquidity through the use of Zero Display Reserve Orders, advances its goal of providing market participants with a high-quality and cost-effective execution venue. The proposed pricing model also represents a determination by the Exchange that it is reasonable and appropriate to move away from a pricing structure for securities priced at $1.00 and above that employs a rebate to draw Takers to the Exchange.

The Exchange further believes that its proposal to lower the per share fee for executions of orders adding liquidity from $0.0018 to $0.0001, or $0.0002 for executions through the use of Zero Display Reserve Orders, will incentivize ETP Holders to provide more liquidity which, in turn, will enhance opportunities for price improvement and better overall execution quality (*i.e.,* market participants seeking to remove liquidity will benefit from the anticipated higher execution rates at better prices resulting from more available liquidity posted on the NSX Book[6]).

The Exchange also proposes to amend Section II.A. of the Fee Schedule, Order Routing (All Tapes), to reduce the fee for orders in securities priced at $1.00 or greater that are routed to other trading centers from $0.0025 to $0.0020. The Exchange believes that, in conjunction with its proposal to reduce fees to liquidity providers and eliminate rebates and charge fees to Takers, this reduction in the fee for routed orders is an appropriate amendment that will operate to draw more liquidity to the Exchange while operating to reduce costs incurred by ETP Holders.

The Exchange submits that the proposed Fee Schedule changes will operate to provide an economic incentive to ETP Holders to post more liquidity on the NSX Book and draw more Takers to access such liquidity. The Exchange anticipates that increased activity by liquidity providers and liquidity removers will result in improved price discovery, enhanced price improvement, and better overall execution quality while at the same time providing a cost effective execution venue.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,[7] in general and, in particular, Section 6(b)(4) of the Act,[8] which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities; and with Section 6(b)(5) of the Act,[9] which requires, among other things, that the rules of a national securities exchange not permit unfair discrimination between customers, issuers, brokers, or dealers, and be designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange submits that its proposals to change its pricing model in securities priced at $1.00 and above to reduce the fees charged to liquidity providers that post liquidity on the NSX Book, eliminate rebates and adopt fees for Takers, and reduce the fee for routed orders, meet the requirement of Section 6(b)(4) of the Act that fees assessed by the Exchange be reasonable. By proposing lower fees charged to ''Makers'' for adding liquidity, the Exchange seeks to expand its liquidity pool by incentivizing ETP Holders to post more liquidity on the NSX Book. The Exchange anticipates that more liquidity will improve price discovery and execution quality and will draw more Takers to the Exchange.

In eliminating rebates to Takers and instead adopting a fee for removing liquidity, the Exchange is seeking to assure that there is equilibrium in its Fee Schedule by having the fees applicable to both ''Makers'' and ''Takers'' align. The Exchange aspires to provide a reasonable economic incentive for ETP Holders to post liquidity on the NSX Book, or seek to remove such liquidity. The Exchange believes that the proposed structure promotes marketplace efficiency and informed decision-making about a choice of execution venues. All ETP Holders posting liquidity, removing liquidity, or entering orders that are routed away, in securities priced at $1.00 and above, will be subject to the same fees. Accordingly, the Exchange submits that its proposal meets the requirements of Section 6(b)(4) of the Act.

The Exchange further submits that its proposal meets the requirements of Section 6(b)(5) of the Act. By seeking to attract more liquidity to the NSX market through the proposed amendment, the Exchange aspires to improve execution quality, price discovery and cost-effectiveness. In addition, the Exchange submits that the amendments to the Fee Schedule will benefit market participants through a competitive pricing model that will be attractive to investors. These factors further the purposes of Section 6(b)(5) of the Act in that they do not to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Exchange believes, in fact, that the proposed change will operate to enhance rather than burden competition by continuing to position the Exchange as a cost-efficient and high quality execution venue with a reasonable and transparent pricing structure.

Specifically, the Exchange believes that its pricing proposal will enhance competition by reducing the fees charged per executed share to ETP Holders for providing liquidity in securities priced at $1.00 or greater from $0.0018 to $0.0001, or $0.0002 for adding liquidity using Zero Display

securities are those listed on the New York Stock Exchange, Inc.; Tape B securities are listed on NYSE MKT, formerly NYSE Amex, and regional exchanges. Tape C securities are those listed on the NASDAQ Stock Market LLC.

[5] Exchange Rule 11.11(c)(2)(A) defines a Zero Display Reserve Order as a Reserve Order with zero display quantity. The price of a Zero Display Reserve Order may be set or ''pegged'' to track the buy-side of the Protected Best Bid or Offer (''BBO''), the sell side of the Protected BBO, or the midpoint of the Protected BBO. The PBBO is defined in Exchange Rule 1.5P.(3) as the better of: (a) The Protected National Best Bid or Offer; or (b) the displayed top of the NSX Book.

[6] The ''NSX Book'' is the electronic file of orders posted on the Exchange. (*See* Exchange Rules 1.5N.(1) and 1.5S.(4).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78(f)(b)(4) [sic].

[9] 15 U.S.C. 78f(b)(5).

Reserve Orders. For liquidity ''Takers'' the Exchange is proposing to eliminate a rebate of $0.0017 per executed share and charge a fee of $0.0001, or $0.0002 for removing any Zero Display Reserve Order. The Exchange anticipates that eliminating the rebates paid to ETP Holders removing liquidity places it in a unique competitive position among equity exchanges. Similarly, the Exchange submits that its proposal to reduce the fee for routed orders from $0.0025 to $0.0020 enhances its position as a cost-efficient trading venue and supports the Exchange's belief that its proposed pricing model promotes rather than burdens competition.

The Exchange submits that the proposed fee changes aspire to enhance the Exchange's competitive position by offering a cost-efficient, high-quality execution venue that provides for pricing that responds to the concerns expressed by market participants and others about the impact of rebates on the selection of execution venue. The Exchange submits that its proposal poses no burden on competition and, in fact, seeks to foster greater competition among trading venues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited or received written comments on the proposed rule change from ETP Holders or others.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has taken effect upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act [10] and subparagraph (f)(2) of Rule 19b–4.[11] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–NSX–2014–12 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NSX–2014–12. 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–NSX–2014–12 and should be submitted on or before June 2, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–10779 Filed 5–9–14; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR.240.19b–4.

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72105; File No. SR–NASDAQ–2014–043]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Mini Options

May 6, 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 April 24, 2014, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by NASDAQ. 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

NASDAQ proposes to amend Supplementary Material .08 to Chapter IV, Section 6 (Series of Options Contracts Open for Trading), entitled ''Mini Options Contracts'' on The NASDAQ Options Market (''NOM''), NASDAQ's facility for executing and routing standardized equity and index options. Specifically, the Exchange proposes to replace the reference to ''GOOG'' to ''GOOGL.''

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaq.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 proposes to amend Supplementary Material .08 to Chapter IV, Section 6, regarding Mini Options traded on NASDAQ, to replace the reference to ''GOOG'' to ''GOOGL.'' This filing is similar to filings made by the International Securities Exchange, LLC (''ISE''), BOX Options Exchange LLC (''BOX'') and the Chicago Board Options Exchange, Incorporated (''CBOE'').[3]

The Exchange is proposing to make a change to Supplementary Material .08 to enable the continued trading of Mini Options on Google's class A shares. The Exchange is proposing to make this change because, on April 2, 2014, Google issued a new class of shares (class C) to its shareholders in lieu of a cash dividend payment. The new Google Class C shares were given the old Google ticker symbol, ''GOOG,'' and the new [sic] class A shares have been given a new ticker symbol of ''GOOGL.'' The Exchange is proposing to change the Google ticker referenced in Chapter IV, Section 6 from ''GOOG'' to ''GOOGL.''

The purpose of this change is to ensure that Supplementary Material .08 to Chapter IV, Section 6 properly reflects the intention and practice of the Exchange to trade Mini Options on only an exhaustive list of underlying securities outlined in Supplementary Material .08 to Chapter IV, Section 6. This change is meant to continue the inclusion of class A shares of Google in the current list of underlying securities that Mini Options can be traded on, while making it clear that class C shares of Google are not part of that list as that class of options has not been approved for Mini Options trading. As a result, the proposed change will also help avoid confusion.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[4] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[5] 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)[6] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In particular, the proposed rule change to change the Google class A ticker to its new designation is consistent with the Act because the proposed change is merely updating the corresponding ticker to allow for continued mini option trading on Google's class A shares. The proposed change will allow for continued benefit to investors by providing them with additional investment alternatives.

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.

II. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the 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[7] and Rule 19b–4(f)(6) thereunder.[8]

A proposed rule change filed under Rule 19b–4(f)(6)[9] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii)[10] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will help to ensure that market participants are properly informed as to the underlying securities eligible for trading of Mini Options contracts on the Exchange. For this reason, the Commission designates the proposed rule change to be operative upon filing.[11]

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–NASDAQ–2014–043 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2014–043. 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* Securities Exchange Release Nos. 71873 (April 4, 2014), 79 FR 19953 (April 10, 2014) (SR–BOX–2014–13); 71848 (April 2, 2014), 79 FR 19405 (April 8, 2014) (SR–CBOE–2014–030); SR–ISE–2014–021 (not yet published).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] *Id.*

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(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–NASDAQ–2014–043 and should be submitted on or before June 2, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–10778 Filed 5–9–14; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72104; File No. SR–BX–2014–020]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX BX, Inc. Relating to Mini Options

May 6, 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 April 24, 2014, NASDAQ OMX BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Supplementary Material .08 to Chapter IV, Section 6 (Series of Options Contracts Open for Trading), entitled ''Mini Options Contracts.'' Specifically, the Exchange proposes to replace the reference to ''GOOG'' to ''GOOGL.''

The text of the proposed rule change is 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.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Supplementary Material .08 to Chapter IV, Section 6, regarding Mini Options traded on BX, to replace the reference to ''GOOG'' to ''GOOGL.'' This filing is similar to filings made by the International Securities Exchange, LLC (''ISE''), BOX Options Exchange LLC (''BOX'') and the Chicago Board Options Exchange, Incorporated (''CBOE'').[3]

The Exchange is proposing to make a change to Supplementary Material .08 to enable the continued trading of Mini Options on Google's class A shares. The Exchange is proposing to make this change because, on April 2, 2014, Google issued a new class of shares (class C) to its shareholders in lieu of a cash dividend payment. The new Google Class C shares were given the old Google ticker symbol, ''GOOG,'' and the new [sic] class A shares have been given a new ticker symbol of ''GOOGL.'' The Exchange is proposing to change the Google ticker referenced in Chapter IV, Section 6 from ''GOOG'' to ''GOOGL.''

The purpose of this change is to ensure that Supplementary Material .08 to Chapter IV, Section 6 properly reflects the intention and practice of the Exchange to trade Mini Options on only an exhaustive list of underlying securities outlined in Supplementary Material .08 to Chapter IV, Section 6. This change is meant to continue the inclusion of class A shares of Google in the current list of underlying securities that Mini Options can be traded on, while making it clear that class C shares of Google are not part of that list as that class of options has not been approved for Mini Options trading. As a result, the proposed change will also help avoid confusion.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[4] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [5] 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) [6] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In particular, the proposed rule change to change the Google class A ticker to its new designation is consistent with the Act because the proposed change is merely updating the corresponding ticker to allow for continued mini option trading on Google's class A shares. The proposed change will allow for continued benefit to investors by

[3] *See* Securities Exchange Release Nos. 71873 (April 4, 2014), 79 FR 19953 (April 10, 2014) (SR–BOX–2014–13); 71848 (April 2, 2014), 79 FR 19405 (April 8, 2014) (SR–CBOE–2014–030); SR–ISE–2014–021 (not yet published).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] *Id.*

providing them with additional investment alternatives.

B. Self-Regulatory Organization's Statement on Burden on Competition

The [sic] does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change does not impose any burden on intramarket competition because it applies to all Participants. There is no burden on intermarket competition as the proposed change is merely attempting to update the new ticker for Google class A for Mini Options. As a result, there will be no substantive changes to the Exchange's operations or its rules.

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

Because the 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 [7] and Rule 19b–4(f)(6) thereunder.[8]

A proposed rule change filed under Rule 19b–4(f)(6) [9] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii) [10] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will help to ensure that market participants are properly informed as to the underlying securities eligible for trading of Mini Options contracts on the Exchange. For this reason, the Commission designates the proposed rule change to be operative upon filing.[11]

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–2014–020 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2014–020. 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–BX–2014–020 and should be submitted on or before June 2, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–10777 Filed 5–9–14; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72107; File No. SR–NSX–2014–14]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Cease Trading on Its Trading System

May 6, 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 May 1, 2014, National Stock Exchange, Inc. (''NSX'' or the ''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 is proposing to amend Exchange Rule 11.1 to add new section .01 under *Interpretations and Policies* to permit NSX to cease trading activity on the Exchange's Trading System (the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

''System'') [3] as of the close of business on May 30, 2014 (the ''Closing Date'').

The text of the proposed rule change is also available on the Exchange's Web site at *www.nsx.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NSX, a corporation organized under the laws of the State of Delaware, is a registered national securities exchange under Section 6 of the Exchange Act [4] and operates as a self-regulatory organization governed by the requirements of Section 19 of the Exchange Act.[5] Pursuant to a transaction approved by the Commission on December 29, 2011, NSX has operated as a wholly-owned subsidiary of CBOE Stock Exchange, LLC (''CBSX'').[6] This rule filing is not proposing any change to the ownership structure of the Exchange and is not intended to alter any of the existing obligations of CBSX or its owners, directors, officers, employees or agents with respect to CBSX's ownership of NSX, or with respect to the self-regulatory responsibilities of NSX, as described, *inter alia,* in Sections 5.7(b) and 6.15 of the Third Amended and Restated Operating Agreement of CBOE Stock Exchange, LLC, dated December 30, 2011 (the ''Operating Agreement'').[7]

The Exchange is proposing to cease trading activity on the System as of the close of business on the Closing Date. In that regard, the Exchange proposes to add new .01, *Interpretations and Policies* under Rule 11.1 (Hours of Trading). The new text will provide that, as of the close of business on May 30, 2014, NSX shall cease trading activity on the System; that all NSX Rules will remain in full force and effect through and after the Closing Date; and that the Exchange shall file a proposed rule change pursuant to Rule 19b–4 of the Exchange Act prior to any resumption of trading on the Exchange pursuant to Chapter XI (Trading Rules).

After trading ceases on the System as of the close of business on the Closing Date, the Exchange will continue to be registered as a national securities exchange and will continue to retain its status as a self-regulatory organization. The Exchange represents that it will fully discharge all of its obligations as a self-regulatory organization pursuant to the Act through and after the Closing Date, and will assure that it maintains adequate funding for this purpose. The Exchange is not the Designated Examining Authority (''DEA'') for any of its ETP Holders and there are no ''NSX only'' ETP Holders (*i.e.,* all NSX ETP Holders are members of other self-regulatory organizations).[8]

Further, all NSX rules shall remain in full force and effect through and after the Closing Date and the Exchange will retain disciplinary jurisdiction over all ETP Holders and persons associated with ETP Holders [9] pursuant to Chapter VIII. of the Exchange's Rules and, specifically, Rule 8.1(b). That rule generally provides that any ETP Holder or person associated with an ETP Holder shall continue to be subject to the disciplinary jurisdiction of the Exchange following the termination of such person's ETP status or association with an ETP Holder with respect to matters that occurred prior to such termination; provided that written notice of the commencement of an inquiry into such matters is given by the Exchange to such former ETP Holder or former associated person within one year of receipt by the Exchange of the latest written notice of the termination of such person's status as an ETP Holder or person associated with an ETP Holder. Such notice requirement does not apply to a person who at any time after a termination again becomes subject to the disciplinary jurisdiction of the Exchange by becoming an ETP Holder or a person associated with an ETP Holder.[10] Pursuant to this rule, after the Closing Date, the Exchange will enforce any rule violation that occurred prior to the close of business on the System on the Closing Date.

Upon the filing of the instant rule proposal with the Commission, the Exchange will inform all ETP Holders by Information Circular that NSX will end trading operations as of the close of business on the Closing Date. The Information Circular will also inform all

[3] Exchange Rule 1.5S.(4) defines the ''System'' as the electronic securities communications and trading facility designated by the Board through which orders of Users are consolidated for ranking and execution.

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78s.

[6] *See* Exchange Act Release No. 66071 (December 29, 2011), 77 FR 521 (January 5, 2012)(SR–CBOE–2011–107 and SR–NSX–2011–14) (Order Granting Accelerated Approval to Proposed Rule Changes in Connection with the Proposed Acquisition of the National Stock Exchange, Inc. by the CBOE Stock Exchange, LLC).

[7] Section 5.7(b) of the Operating Agreement generally provides that for so long as CBSX shall control NSX, and only to the extent related to the activities of NSX, the Owners, Board of Directors, officers and employees of CBSX shall give due regard to the preservation of the independence of the self-regulatory function of NSX and its obligations to investors and the general public and shall not take actions that any such person knows or reasonably should have known would interfere with the decisions of NSX relating to its regulatory functions (including disciplinary matters) or which would interfere with NSX's ability to fulfill its obligations under the Act. Section 5.7(b) further requires CBSX, its officers, directors and employees to cooperate with the Commission and NSX with respect to the Commission's oversight responsibilities regarding NSX. Section 6.15 of the Operating Agreement (Books, Records and Jurisdiction), subsections (a) and (b) generally provide that the books, records, premises, officers, directors, agents and employees of CBSX are deemed to be those of NSX, to the extent they relate to the activities of NSX, for the purpose of and subject to oversight pursuant to the Act. Section 6.15(c) of the Operating Agreement provides that CBSX, its Owners and their respective officers, directors, agents, and employees irrevocably submit to the jurisdiction of the U.S. federal courts, the SEC, CBOE, and NSX, for the purposes of any suit, action or proceeding pursuant to U.S. federal securities laws or the rules or regulations thereunder, commenced or initiated by the SEC arising out of, or relating to, CBSX or the Company's control of NSX, as applicable (and shall be deemed to agree that CBSX may serve as the U.S. agent for purposes of service of process in such suit, action or proceeding), and that they waive, and agree not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that they are not personally subject to the jurisdiction of the SEC, that the suit, action or proceeding is an inconvenient forum or that the venue of the suit, action or proceeding is improper, or that the subject matter thereof may not be enforced in or by such courts or agency.

[8] The Exchange represents that it will move to amend or cancel its participation in any existing Exchange Act Rule 17d–2 Plans for Allocation of Regulatory Responsibilities for NSX as appropriate in connection with the conclusion of all open matters relating to the Exchange's regulatory responsibilities with respect to NSX.

[9] Exchange Rule 1.5P.(1) provides that ''[t]he terms ''person associated with an ETP Holder'' or ''associated person of an ETP Holder'' mean any partner, officer, director, or branch manager of an ETP Holder (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with an ETP Holder, or any employee of such ETP Holder, except that any person associated with an ETP Holder whose functions are solely clerical or ministerial shall not be included in the meaning of such terms.''

[10] The Exchange notes that, because all NSX rules will remain in effect after the Closing Date, NSX Rule 11.18, which limits the liability of the Exchange, will also remain in effect.

ETP Holders that the Exchange will terminate the ETP status of any remaining ETP Holders as of May 30, 2014. Once the proposed rule change is operative, NSX will no longer accept new ETP applications or further consider any pending ETP applications.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) [11] of the Exchange Act. Specifically, the Exchange believes that the proposed rule change is consistent with the requirement of Section 6(b)(5) [12] 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) requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule change will allow NSX to cease trading activity on the System as of the close of business on the Closing Date and continue to maintain adequate funding to fulfill its regulatory obligations under the Exchange Act, including enforcing any rule violations that occurred through the close of trading on the Closing Date. Because all ETP Holders are members of other exchanges, after the Closing Date they will to be able to direct their orders to other national securities exchanges and other trading venues, including alternative trading systems and the over-the-counter market generally.

Under the proposal, in addition to this rule filing being made available on the NSX Web site, *www.nsx.com*, ETP Holders will receive written notice by Information Circular, issued upon the instant rule filing being filed with the Commission, advising them of the Exchange's intention to cease trading activity on the System as of the close of business on the Closing Date. Accordingly, the Exchange believes that ETP Holders will have sufficient time prior to the Closing Date to determine the exchanges and trading venues to which they will direct their orders after the Closing Date and make any necessary adjustments in their respective trading systems. Moreover, all ETP Holders will receive prior notice that NSX will terminate their ETP Status as of May 30, 2014, unless the ETP Holder voluntarily terminates its status as such prior to such date in accordance with Exchange rules.

The Exchange submits that proposed rule change is therefore consistent with the requirements of Section 6(b)(5) of the Exchange Act that rules of an exchange be designed to facilitate 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.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The NSX's decision to cease trading activity on the System as of the close of business on the Closing Date will result in one less operational trading venue for equity securities. The Exchange notes that there are numerous stock exchanges and trading platforms on which market participants may trade equity securities. NSX currently has approximately .20% of market share among national stock exchanges. In light of the trading volume on NSX and the ability of ETP Holders to trade equity securities on other trading venues, the Exchange does not believe that its proposal will have any substantial competitive impact.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited or received written comments on the proposed rule change from ETP Holders or others.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the 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 [13] and Rule 19b–4(f)(6)(iii) 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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NSX–2014–14 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NSX–2014–14. 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

[11] 15 U.S.C. 78(f)(b) [sic].

[12] 15 U.S.C. 78(f)(b)(5) [sic].

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6)(iii). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSX–2014–14, and should be submitted on or before June 2, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–10785 Filed 5–9–14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72102; File No. SR–NYSEARCA–2014–50]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Commentary .01 to Rule 6.3. To Replace the Reference to ''GOOG'' With ''GOOGL''

May 6, 2014.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on April 23, 2014, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Commentary .01 to Rule 6.3. to replace the reference to ''GOOG'' with ''GOOGL''. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Commentary .01 to Rule 6.3 (Options Contracts to [sic] Traded) to replace the reference to ''GOOG'' with GOOGL''. This filing is based on a proposal recently submitted by the Chicago Board Options Exchange, Inc. (''CBOE'').[4]

The Exchange is proposing to amend Commentary .01 to Rule 6.3 to reflect a change to the ticker symbol for Class A shares of Google Inc. (''Google''). On April 2, 2014, Google issued a new class of shares (Class C) to its shareholders in lieu of a cash dividend payment. Additionally, this new Class C of shares was given the former Google ticker symbol, ''GOOG''. As a result, a new ticker symbol, ''GOOGL'', was assigned to the Class A shares. The Exchange proposes to change the Google ticker symbol referenced in Rule 6.3 from ''GOOG'' to ''GOOGL''. The purpose of this change is to ensure that Exchange rules properly reflect the intention and practice of the Exchange to trade mini options on a specified list of underlying securities outlined in Commentary .01 of Rule 6.3. This change will make it clear that the current list of underlying securities that mini options can be traded on includes the Google Class A shares, while at the same time making it clear that Google Class C shares are not part of that list. The Exchange therefore believes that the proposed rule change will help avoid confusion regarding which Google shares are eligible for mini options.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5),[6] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

In particular, the proposed rule change to revise the Google Class A ticker symbol to its new designation is consistent with the Act because the proposed change is merely updating the corresponding ticker symbol to properly reflect the applicable ticker symbol for Google's Class A shares. This change should provide clarity to market participants when making investment decisions regarding mini options contracts overlying Google Class A shares.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In this regard and as indicated above, the Exchange notes that the rule change being proposed is substantially similar in all material respects to a rule change recently adopted by the CBOE.[7] The proposed change does not impose any burden on intramarket competition because it applies to all Participants. There is no burden on intermarket competition as the proposed change is merely attempting to update the new ticker symbol for Google Class A shares. As a result, there will be no substantive changes to the Exchange's operations or its rules.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No.71848 (April 2, 2014) 79 FR 19405 (April 8, 2014) (Notice of Filing and Immediate Effectiveness of SR–CBOE–2014–030).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] *Supra* n.4.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the 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 [8] and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed under Rule 19b–4(f)(6) [10] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii) [11] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will help to ensure that market participants are properly informed as to the underlying securities eligible for trading of mini options contracts on the Exchange. For this reason, the Commission designates the proposed rule change to be operative upon filing.[12]

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–NYSEARCA–2014–50 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2014–50. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2014–50 and should be submitted on or before June 2, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–10775 Filed 5–9–14; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72100; File No. SR–EDGA–2014–13]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGA Exchange, Inc. Fee Schedule

May 6, 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 May 1, 2014, EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') 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 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 its fees and rebates applicable to Members [3] of the Exchange pursuant to EDGA Rule 15.1(a) and (c) (''Fee Schedule'') to: (i) Amend Flag RC, which routes to the National Stock Exchange, Inc. (''NSX'') and adds liquidity; and (ii) delete Flag RW, which routes to the CBOE Stock Exchange, LLC (''CBSX'') and adds liquidity. The text of the proposed rule change is available on the Exchange's Internet Web site at *www.directedge.com*, at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Member'' is defined as ''any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange. A Member will have the status of a ''member'' of the Exchange as that term is defined in Section 3(a)(3) of the Act.'' *See* Exchange Rule 1.5(n).

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule to: (i) Amend Flag RC, which routes to the NSX and adds liquidity; and (ii) delete Flag RW, which routes to the CBSX and adds liquidity.

Flag RC

In securities priced at or above $1.00, the Exchange currently charges a fee of $0.0018 per share for Members' orders that yield Flag RC, which routes to the NSX and adds liquidity. The Exchange proposes to amend its Fee Schedule to decrease the fee to $0.0001 per share for Members' orders that yield Flag RC. The proposed change is in response to NSX's May 2014 fee change where the NSX decreased its fee to $0.0001 per share for orders that add liquidity on the NSX.[4] The fee for orders that yield Flag RC represents a pass through of the rate that Direct Edge ECN LLC (d/b/a DE Route) (''DE Route''), the Exchange's affiliated routing broker-dealer, is charged for routing orders that add liquidity to NSX when it does not qualify for a volume tiered reduced fee. When DE Route routes to and adds liquidity on the NSX, it will be charged a standard rate of $0.0001 per share.[5] DE Route will pass through this rate on NSX to the Exchange and the Exchange, in turn, will pass through this rate to its Members.

Flag RW

The Exchange proposes to amend its Fee Schedule to delete Flag RW in response to CBSX's announcement that it will cease market operations and its last day of trading will be Wednesday, April 30, 2014.[6] In securities priced at or above $1.00, the Exchange currently charges a fee of $0.0030 per share in securities priced at or above $1.00 and 0.30% of the trade's dollar value in securities priced below $1.00 for Members' orders that yield Flag RW, which routes to the CBSX and adds liquidity. The fee for orders that yield Flag RW represents a pass through of the rate that DE Route, the Exchange's affiliated routing broker-dealer, is charged for routing orders that add liquidity to CBSX. As of May 1, 2014, the Exchange, via DE Route, will no longer be able to route orders to CBSX because it ceased operations, and, therefore, proposes to remove Flag RW from its Fee Schedule.

Implementation Date

The Exchange proposes to implement these amendments to its Fee Schedule on May 1, 2014.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[7] in general, and furthers the objectives of Section 6(b)(4),[8] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

Flag RC

The Exchange believes that its proposal to decrease the fee to $0.0001 per share for Members' orders that yield Flag RC represents an equitable allocation of reasonable dues, fees, and other charges among Members and other persons using its facilities because the Exchange does not levy additional fees or offer additional rebates for orders that it routes to NSX through DE Route. In May 2014, NSX decreased its fee to $0.0001 per share for Members' orders that add liquidity.[9] Therefore, the Exchange believes that the proposed change to Flag RC to decrease its fee to $0.0001 per share for orders that yield Flag RC is equitable and reasonable because it accounts for the pricing change on the NSX. In addition, the proposal allows the Exchange to charge its Members a pass-through rate for orders that are routed to the NSX and add liquidity. Furthermore, the Exchange notes that routing through DE Route is voluntary. Lastly, the Exchange also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

Flag RW

The Exchange believes that its proposal to delete Flag RW in its Fee Schedule represents an equitable allocation of reasonable dues, fees, and other charges among Members and other persons using its facilities. The proposed change is in response to CBSX's announcement that it will cease market operations and its last day of trading will Wednesday, April 30, 2014.[10] As of May 1, 2014, the Exchange, via DE Route, will no longer be able to route orders to CBSX and, therefore, proposes to remove Flag RW from its Fee Schedule. The Exchange believes that the proposed amendment is intended to make the Fee Schedule clearer and less confusing for investors and eliminate potential investor confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes its proposed amendments to its Fee Schedule would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed change represents a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Additionally, Members may opt to disfavor EDGA's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets.

Flag RC

The Exchange believes that its proposal to pass through a fee of $0.0001 per share for Members' orders that yield Flag RC would increase intermarket competition because it offers customers an alternative means to route to NSX for the same price as entering orders on NSX directly. The Exchange believes that its proposal would not burden intramarket competition because the proposed rate would apply uniformly to all Members.

Flag RW

The Exchange believes that its proposal to delete Flag RW in its Fee Schedule would not affect intermarket nor intramarket competition because this change is not designed to amend any fee or rebate or alter the manner in

[4] *See* NSX, Information Circular 14–043 dated April 25, 2014, *available at http://www.nsx.com/resources/content/7/documents/InformationCircular14-043.pdf.*

[5] The Exchange notes that to the extent DE Route does or does not achieve any volume tiered reduced fee on NSX, its rate for Flag RC will not change.

[6] *See* CBSX, Regulatory Circular RG14–046 dated April 2, 2014, *available at http://www.cbsx.com/publish/RegCir/RG14-046.pdf.*

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

[9] *See* NSX, Information Circular 14–043 dated April 25, 2014, *available at http://www.nsx.com/resources/content/7/documents/InformationCircular14-043.pdf.*

[10] *See* CBSX, Regulatory Circular RG14–046 dated April 2, 2014, *available at http://www.cbsx.com/publish/RegCir/RG14-046.pdf.*

which the Exchange assesses fees or calculates rebates. It is simply proposed in response to CBSX ceasing market operations trading on May 1, 2014.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(2) [12] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–EDGA–2014–13 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGA–2014–13. 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–EDGA–2014–13, and should be submitted on or before June 2, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–10773 Filed 5–9–14; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4 (f)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72099; File No. SR–BATS–2014–007]

Self-Regulatory Organizations; BATS Exchange, Inc.; Order Granting Approval of a Proposed Rule Change To List and Trade Shares of Certain Funds of the ProShares Trust

May 6, 2014.

I. Introduction

On March 13, 2014, BATS Exchange, Inc. (''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of certain funds of the ProShares Trust (''Trust'') under BATS Rule 14.11(i). The proposed rule change was published for comment in the **Federal Register** on March 24, 2014.[3] The Commission received no comments on the proposal. This order grants approval of the proposed rule change.

II. Description of the Proposal

The Exchange proposes to list and trade the Shares of the ProShares CDS North American HY Credit ETF, ProShares CDS Short North American HY Credit ETF, ProShares CDS North American IG Credit ETF, ProShares CDS Short North American IG Credit ETF, ProShares CDS European HY Credit ETF, ProShares CDS Short European HY Credit ETF, ProShares CDS European IG Credit ETF, and the ProShares CDS Short European IG Credit ETF (individually, ''Fund,'' and collectively, ''Funds'') under BATS Rule 14.11(i), which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by the Trust, which was established as a Delaware statutory trust on May 29, 2002. The Trust is registered with the Commission as an open-end investment company and has filed a registration statement on behalf of the Funds on Form N–1A (''Registration Statement'') with the Commission.[4] ProShare Advisors LLC is the investment adviser (''Adviser'') to the Funds. JPMorgan Chase Bank, National Association is the administrator, custodian, fund account agent, index receipt agent, and transfer agent for the Trust. SEI Investments Distribution Co. serves as the distributor for the Trust. The Exchange represents that the Adviser is not a registered broker-dealer, but is currently affiliated with a broker-dealer, and that Adviser personnel who make decisions regarding the Funds' portfolios are subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the Funds' portfolios.[5]

The Exchange has made the following representations and statements in describing the Funds and their

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 71736 (March 18, 2014), 79 FR 16073 (''Notice'').

[4] *See* Registration Statement on Form N–1A for the Trust, dated May 31, 2013 (File Nos. 333–89822 and 811–21114). *See also* Investment Company Act Release No. 30562 (June 18, 2013) (File No. 812–14041).

[5] *See* BATS Rule 14.11(i)(7). The Exchange further represents that in the event that (a) the Adviser becomes a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding such portfolio.

respective investment strategies, including other portfolio holdings and investment restrictions.[6]

Description of the Funds

The Funds will be actively managed funds that seek to provide exposure (or inverse exposure) to the credit of a segment of the fixed income markets by selecting a broadly diversified, liquid credit derivative portfolio.

A. Principal Investments

To meet its respective investment objective, under normal market circumstances,[7] each Fund intends to invest at least 80% of its net assets in centrally cleared, index-based credit default swaps (''CDS'').[8] The Exchange represents that the Funds will be structured to address concerns regarding counterparty risk and the use of leverage in CDS. To limit counterparty risk, the Funds will utilize centrally cleared CDS contracts. In addition, the Funds will seek to obtain only non-leveraged long or short credit exposure, as applicable (*i.e.,* exposure equivalent to Fund assets).

ProShares CDS North American HY Credit ETF

The investment objective of the Fund is to provide long exposure to credit by investing primarily in a broadly diversified, liquid portfolio of index-based CDS for which the reference entities are North American high yield (*i.e.,* below investment grade or ''junk bond'') debt issuers. The Fund seeks to increase in value when the North American high yield credit market improves (*i.e.,* the likelihood of payment by North American high yield debt issuers increases), while also seeking to limit the impact of a change in the credit quality of any single high yield debt issuer. To achieve its objective, the Fund will invest, under normal circumstances, at least 80% of its net assets in centrally cleared index-based CDS. The Adviser intends to utilize CDS to sell credit protection, thus obtaining long exposure to North American high yield credit. The Fund's investments in CDS will be consistent with the Fund's investment objective and will not be used to create leverage. The Fund will seek to obtain long credit exposure equivalent to its assets and will not provide leveraged exposure to credit.

The Adviser will actively manage the Fund, selecting credit derivatives based on the following primary considerations: Diversification; liquidity; and sensitivity to changes in credit quality. The Adviser may, at times, also consider other factors such as the relative value of one credit derivative versus another. The Fund will typically have exposure to individual sectors to the same extent as the index-based instruments in which it invests.

ProShares CDS Short North American HY Credit ETF

The investment objective of the Fund is to provide inverse exposure to credit by investing primarily in a broadly diversified, liquid portfolio of index-based CDS for which the reference entities are North American high yield (*i.e.,* below investment grade or ''junk bond'') debt issuers. The Fund seeks to increase in value when the North American high yield credit market declines (*i.e.,* the likelihood of payment by North American high yield debt issuers decreases), while also seeking to limit the impact of a change in the credit quality of any single high yield debt issuer. To achieve its objective, the Fund will invest, under normal circumstances, at least 80% of its net assets in centrally cleared index-based CDS. The Adviser intends to utilize CDS to buy credit protection, thus obtaining inverse exposure to North American high yield credit. The Fund's investments in CDS will be consistent with the Fund's investment objective and will not be used to create leverage. The Fund will seek to obtain short credit exposure equivalent to its assets and will not provide leveraged exposure to credit.

The Adviser will actively manage the Fund, selecting credit derivatives based on the following primary considerations: Diversification; liquidity; and sensitivity to changes in credit quality. The Adviser may, at times, also consider other factors such as the relative value of one credit derivative versus another. The Fund will typically have exposure to individual sectors to the same extent as the index-based instruments in which it invests.

ProShares CDS North American IG Credit ETF

The investment objective of the Fund is to provide long exposure to credit by investing primarily in a broadly diversified, liquid portfolio of index-based CDS for which the reference entities are North American investment grade debt issuers. The Fund seeks to increase in value when the North American investment grade credit market improves (*i.e.,* the likelihood of payment by North American investment grade debt issuers increases), while also seeking to limit the impact of a change in the credit quality of any single investment grade debt issuer. To achieve its objective, the Fund will invest, under normal circumstances, at least 80% of its net assets in centrally cleared index-based CDS. The Adviser intends to utilize CDS to sell credit protection, thus obtaining exposure to North American investment grade credit. The Fund's investments in CDS will be consistent with the Fund's investment objective and will not be used to create leverage. The Fund will seek to obtain long credit exposure equivalent to its assets and will not provide leveraged exposure to credit.

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[6] The Commission notes that additional information regarding the Trust, the Funds, and the Shares, including information on credit default swaps, in particular, investment strategies, risks, net asset value (''NAV'') calculation, creation and redemption procedures, portfolio holdings, disclosure policies, distributions and taxes, among other information, is included in the Notice and the Registration Statement, as applicable. *See* Notice and Registration Statement, *supra* notes 3 and 4, respectively.

[7] The term ''under normal circumstances'' includes, but is not limited to, the absence of adverse market, economic, political, or other conditions, including extreme volatility or trading halts in the CDS markets, the related futures markets, or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

[8] CDS provide exposure to the credit of one or more debt issuers referred to as ''reference entities.'' These instruments are designed to reflect changes in credit quality, including events of default. CDS are most commonly discussed in terms of buying or selling credit protection with respect to a reference entity. Selling credit protection is equivalent to being ''long'' credit. Buying credit protection is equivalent to being ''short'' credit. Index-based CDS provide credit exposure, through a single trade, to a basket of reference entities. A variety of index-based CDS with different characteristics are currently available in the marketplace with new issuances occurring periodically. Issuances typically vary in terms of underlying reference entities and maturity and, thus, can have significant differences in performance over time. As with exchange-traded futures contracts, holders of centrally cleared swaps do have counterparty risk relative to their Futures Commission Merchant (''FCM''). The Funds will select one or more large, well-capitalized institutions to act as their FCM.

ProShares CDS Short North American IG Credit ETF

The investment objective of the Fund is to provide inverse exposure to credit by investing primarily in a broadly diversified, liquid portfolio of index-based CDS for which the reference entities are North American investment grade debt issuers. The Fund seeks to increase in value when the North American investment grade credit market declines (*i.e.,* the likelihood of payment by North American investment grade debt issuers decreases), while also seeking to limit the impact of a change in the credit quality of any single investment grade debt issuer. To achieve its objective, the Fund will invest, under normal circumstances, at least 80% of its net assets in centrally cleared index-based CDS. The Adviser intends to utilize CDS to buy credit protection, thus obtaining inverse exposure to North American investment grade credit. The Fund's investments in CDS will be consistent with the Fund's investment objective and will not be used to create leverage. The Fund will seek to obtain short credit exposure equivalent to its assets and will not provide leveraged exposure to credit.

The Adviser will actively manage the Fund, selecting credit derivatives based on the following primary considerations: Diversification; liquidity; and sensitivity to changes in credit quality. The Adviser may, at times, also consider other factors such as the relative value of one credit derivative versus another. The Fund will typically have exposure to individual sectors to the same extent as the index-based instruments in which it invests.

ProShares CDS European HY Credit ETF

The investment objective of the Fund is to provide long exposure to credit by investing primarily in a broadly diversified, liquid portfolio of index-based CDS for which the reference entities are European high-yield (*i.e.,* below investment grade or ''junk bond'') debt issuers. The Fund seeks to increase in value when the European high yield credit market improves (*i.e.,* the likelihood of payment by European high yield debt issuers increases), while also seeking to limit the impact of a change in the credit quality of any single high yield debt issuer. To achieve its objective, the Fund will invest, under normal circumstances, at least 80% of its net assets in centrally cleared index-based CDS. The Adviser intends to utilize CDS to sell credit protection, thus obtaining exposure to European high yield credit. The Fund's investments in CDS will be consistent with the Fund's investment objective and will not be used to create leverage. The Fund will seek to obtain long credit exposure equivalent to its assets and will not provide leveraged exposure to credit.

The Adviser will actively manage the Fund, selecting credit derivatives based on the following primary considerations: Diversification; liquidity; and sensitivity to changes in credit quality. The Adviser may, at times, also consider other factors such as the relative value of one credit derivative versus another. The Fund will typically have exposure to individual sectors to the same extent as the index-based instruments in which it invests.

ProShares CDS Short European HY Credit ETF

The investment objective of the Fund is to provide inverse exposure to credit by investing primarily in a broadly diversified, liquid portfolio of index-based CDS for which the reference entities are European high yield (*i.e.,* below investment grade or ''junk bond'') debt issuers. The Fund seeks to increase in value when the European high yield credit market declines (*i.e.,* the likelihood of payment by European high yield debt issuers decreases), while also seeking to limit the impact of a change in the credit quality of any single high yield debt issuer. To achieve its objective, the Fund will invest, under normal circumstances, at least 80% of its net assets in centrally cleared index-based CDS. The Adviser intends to utilize CDS to buy credit protection, thus obtaining inverse exposure to European high yield credit. The Fund's investments in CDS will be consistent with the Fund's investment objective and will not be used to create leverage. The Fund will seek to obtain short credit exposure equivalent to its assets and will not provide leveraged exposure to credit.

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ProShares CDS European IG Credit ETF

The investment objective of the Fund is to provide long exposure to credit by investing primarily in a broadly diversified, liquid portfolio of index-based CDS for which the reference entities are European investment grade debt issuers. The Fund seeks to increase in value when the European investment grade credit market improves (*i.e.,* the likelihood of payment by European investment grade debt issuers increases), while also seeking to limit the impact of a change in the credit quality of any single investment grade debt issuer. To achieve its objective, the Fund will invest, under normal circumstances, at least 80% of its net assets in centrally cleared index-based CDS. The Adviser intends to utilize CDS to sell credit protection, thus obtaining long exposure to European investment grade credit. The Fund's investments in CDS will be consistent with the Fund's investment objective and will not be used to create leverage. The Fund will seek to obtain long credit exposure equivalent to its assets and will not provide leveraged exposure to credit.

The Adviser will actively manage the Fund, selecting credit derivatives based on the following primary considerations: Diversification; liquidity; and sensitivity to changes in credit quality. The Adviser may, at times, also consider other factors such as the relative value of one credit derivative versus another. The Fund will typically have exposure to individual sectors to the same extent as the index-based instruments in which it invests.

ProShares CDS Short European IG Credit ETF

The investment objective of the Fund is to provide inverse exposure to credit by investing primarily in a broadly diversified, liquid portfolio of index-based CDS and for which the reference entities are European investment grade debt issuers. The Fund seeks to increase in value when the European investment grade credit market declines (*i.e.,* the likelihood of payment by European investment grade debt issuers decreases), while also seeking to limit the impact of a change in the credit quality of any single investment grade debt issuer. To achieve its objective, the Fund will invest, under normal circumstances, at least 80% of its net assets in centrally cleared index-based CDS. The Adviser intends to utilize CDS to buy credit protection, thus obtaining inverse exposure to European investment grade credit. The Fund's investments in CDS will be consistent with the Fund's investment objective and will not be used to create leverage. The Fund will seek to obtain short credit exposure equivalent to its assets

and will not provide leveraged exposure to credit.

The Adviser will actively manage the Fund, selecting credit derivatives based on the following primary considerations: Diversification; liquidity; and sensitivity to changes in credit quality. The Adviser may, at times, also consider other factors such as the relative value of one credit derivative versus another. The Fund will typically have exposure to individual sectors to the same extent as the index-based instruments in which it invests.

B. Other Portfolio Holdings

In addition to the instruments described above, the Funds may also invest, to a more limited extent and in a manner consistent with its investment objective, in exchange-traded futures contracts linked to index-based CDS (also known as ''credit index futures''), which are also centrally cleared.[9] Each Fund will also invest in money market instruments [10] in a manner consistent with its investment objective in order to generate additional return, to help manage cash flows in and out of the Fund, such as in connection with payment of dividends or expenses, to satisfy margin requirements, and to provide collateral or to otherwise back investments in CDS and futures contracts.

C. The Funds' Investment Restrictions

Each Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment) deemed illiquid by the Adviser [11] under the Investment Company Act of 1940 (''1940 Act''). Each Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include assets subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

Each Fund intends to qualify each year as a regulated investment company (''RIC'') under Subchapter M of the Internal Revenue Code of 1986, as amended. Each Fund will invest its assets, and otherwise conduct its operations, in a manner that is intended to satisfy the qualifying income, diversification, and distribution requirements necessary to establish and maintain RIC qualification under Subchapter M. Each Fund will not invest in options or non-U.S. equity securities.

III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal to list and trade the Shares is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.[12] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,[13] which requires, among other things, that the Exchange's rules 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 notes that the Funds and the Shares must comply with the requirements of BATS Rule 14.11(i) for the Shares to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Exchange Act,[14] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotation and last-sale information for the Shares will be available on the facilities of the Consolidated Tape Association (''CTA''). On each business day, before commencement of trading in Shares during the Regular Trading Hours[15] on the Exchange, the Funds will disclose on their Web sites the Disclosed Portfolio that will form the basis for the Funds' calculation of NAV at the end of the business day.[16] The NAV of the Shares of the CDS North American HY Credit ETF, the CDS Short North American HY Credit ETF, the CDS North American IG Credit ETF, and the CDS Short North American IG Credit ETF will generally be determined at 3:00 p.m. Eastern Time each business day when the BATS Exchange is open for trading. The NAV of the CDS European HY Credit ETF, the CDS Short European HY Credit ETF, the CDS European IG Credit ETF, and the CDS Short European IG Credit ETF will generally be determined at 11:00 a.m. Eastern Time (or such time as equals 4:00 p.m. London Time) on each business day that the BATS Exchange is open.[17] In addition, for the Funds, an estimated value, defined in BATS Rule 14.11(i)(3)(C) as the ''Intraday Indicative Value,'' that reflects an estimated intraday value of the individual Fund's

[9] As a general matter, futures contracts are standardized contracts traded on, or subject to the rules of, an exchange that call for the future delivery of a specified quantity and type of asset at a specified time and place or, alternatively, may call for cash settlement. Credit index futures provide exposure to the credit of a number of reference entities. Unlike CDS, certain credit index futures do not provide protection against events of default.

[10] For each of the Funds, the specific money market instruments are Treasury securities and repurchase agreements and, in the future, may include money market fund shares.

[11] In reaching liquidity decisions, the Adviser may consider the following factors: The frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace trades (*e.g.,* the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer).

[12] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[15] Regular Trading Hours are 9:30 a.m. to 4:00 p.m. Eastern Time.

[16] The Disclosed Portfolio will include, as applicable, the names (including the credit derivative series or contract), quantity, exposure value (notional value + gains/losses), and market value of CDS, futures, and other assets held by the Funds and the characteristics of such assets. The Web sites and information will be publicly available at no charge. Under accounting procedures followed by the Funds, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Accordingly, the Funds will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[17] Securities and other assets will generally be valued at their market price using information provided by a pricing service or market quotations. Certain short-term securities will be valued on the basis of amortized cost. CDS will generally be valued on the basis of market prices, generally the mid-point between the bid/ask quotes, obtained from a third-party pricing service as of the time a Fund calculates its NAV. Futures contracts, such as the credit index futures, will generally be valued at their last sale price prior to the time at which the NAV per Share of a class of Shares of a Fund is determined. Of the money market instruments held by the Funds, repurchase agreements will generally be valued at cost. U.S. government securities will generally be priced at a quoted market price from an active market, generally the mid-point between the bid/ask quotes. For U.S. government securities that mature within sixty days, amortized cost may be used to approximate fair value. Money market funds will generally be valued at their current NAV per share, typically $1.00 per share. Alternatively, fair valuation procedures may be applied if deemed more appropriate. Routine valuation of certain other derivatives is performed using procedures approved by the Board of Trustees.

portfolio, will be disseminated. The Intraday Indicative Value will be based upon the current value for the components of the Disclosed Portfolio and will be updated and widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Regular Trading Hours.[18] According to the Exchange, intraday price quotations on CDS of the type held by the Funds, as well as repurchase agreements and Treasury instruments, are available from major broker-dealer firms and from third-parties, which may provide prices free with a time delay, or ''live'' with a paid fee. For futures contracts, such intraday information is available directly from the applicable listing exchange. Intraday price information is also available through subscription services, such as Bloomberg and Thomson Reuters, which can be accessed by authorized participants and other investors. Money market fund shares are not generally priced or quoted on an intraday basis. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be available daily in the print and online financial press. In addition, the Funds' Web sites will include a form of the prospectus for the Funds, as well as information relating to NAV and other quantitative information.

The Commission also believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Exchange will obtain a representation from the issuer of the Shares that the NAV per share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. The Exchange will halt trading in the Shares under the conditions specified in BATS Rule 11.18. In addition, trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the CDS, futures, and/or the financial instruments composing the Disclosed Portfolio of the Funds; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[19] Trading in the Shares also will be subject to Rule 14.11(i)(4)(B)(iv), which sets forth specific circumstances under which Shares of the Funds may be halted. The Exchange prohibits the distribution of material non-public information by its employees. The Commission notes that, as represented by the Exchange, the Adviser is not a registered broker-dealer, but is currently affiliated with a broker-dealer, and that Adviser personnel who make decisions regarding the Funds' portfolios are subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the Funds' portfolios.[20] In addition, the Commission notes that, consistent with BATS Rule 14.11(i)(4)(B)(ii)(b), the Reporting Authority, as defined in BATS Rule 14.11(i)(3)(D), must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of each Fund's portfolio. The Exchange may obtain information regarding trading in the Shares and the underlying futures via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members or affiliates of the ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement.[21] In addition, the Exchange is able to access, as needed, trade information for certain fixed income instruments reported to FINRA's Trade Reporting and Compliance Engine.

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.[22]

(2) The Shares will be subject to BATS Rule 14.11(i), which sets forth the initial and continued listing criteria applicable to Managed Fund Shares.

(3) Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Managed Fund Shares, and that these procedures are adequate to properly monitor Exchange trading of the Shares during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. In addition, all of the futures contracts in the Disclosed Portfolio for the Funds will trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

(4) Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) BATS Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (3) how information regarding the Intraday Indicative Value is disseminated; (4) the risks involved in trading the Shares during the Pre-Opening and After Hours Trading Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (5) the requirement that members deliver a

[18] The Exchange represents that several major market data vendors display or make widely available Intraday Indicative Values published via the CTA or other data feeds.

[19] *See* BATS Rule 14.11(i)(4)(B)(iii) (setting forth certain circumstances under which the Exchange will consider the suspension of trading in or removal from listing of a series of Managed Fund Shares).

[20] *See supra* note 5 and accompanying text. The Commission notes that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (''Advisers Act''). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[21] For a list of the current members and affiliate members of ISG, *see www.isgportal.com*. The Exchange has noted that not all components of the Disclosed Portfolio for the Funds may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[22] *See supra* note 15. The Pre-Opening Session is from 8:00 a.m. to 9:30 a.m. Eastern Time. The After Hours Trading Session is from 4:00 p.m. to 5:00 p.m. Eastern Time.

prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

(5) For initial and/or continued listing, the Funds must be in compliance with Rule 10A–3 under the Act.[23]

(6) Each Fund's investments in CDS will be consistent with its respective investment objective and will not be used to create leverage. The Funds will seek to obtain only non-leveraged long or short credit exposure, as applicable (*i.e.,* exposure equivalent to Fund assets). To limit counterparty risk, the Funds will utilize centrally cleared CDS contracts.

(7) Each Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets.

(8) A minimum of 100,000 Shares for each Fund will be outstanding at the commencement of trading on the Exchange.

This approval order is based on all of the Exchange's representations, including those set forth above and in the Notice, and the Exchange's description of the Funds.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[24] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[25] that the proposed rule change (SR–BATS–2014–007), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–10772 Filed 5–9–14; 8:45 am]

BILLING CODE 8011–01–P

[23] *See* 17 CFR 240.10A–3.

[24] 15 U.S.C. 78f(b)(5).

[25] 15 U.S.C. 78s(b)(2).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Imaging Diagnostic Systems, Inc.; Order of Suspension of Trading

May 8, 2014.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Imaging Diagnostic Systems, Inc. (''Imaging'') because it has not filed certain periodic reports with the Commission.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EDT, on May 8, 2014 through 11:59 p.m. EDT, on May 21, 2014.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2014–10922 Filed 5–8–14; 4:15 pm]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13967 and #13968]

Alabama Disaster #AL–00054

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Alabama (FEMA–4176–DR), dated 05/02/2014.

Incident: Severe Storms, Tornadoes, Straight-line Winds, and Flooding.

Incident Period: 04/28/2014 and continuing.

Effective Date: 05/02/2014

Physical Loan Application Deadline Date: 07/01/2014.

Economic Injury (EIDL) Loan Application Deadline Date: 02/02/2015.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 05/02/2014, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Baldwin, Jefferson, Lee, Limestone.

Contiguous Counties (Economic Injury Loans Only):

Alabama: Bibb, Blount, Chambers, Clarke, Escambia, Lauderdale, Lawrence, Macon, Madison, Mobile, Monroe, Morgan, Russell, Saint Clair, Shelby, Tallapoosa, Tuscaloosa, Walker, Washington.

Florida: Escambia.

Georgia: Harris, Muscogee.

Tennessee: Giles, Lincoln.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	4.375
Homeowners Without Credit Available Elsewhere	2.188
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 13967B and for economic injury is 139680.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Joseph P. Loddo,

Acting Associate Administrator, for Disaster Assistance.

[FR Doc. 2014–10744 Filed 5–9–14; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Announcement of Growth Accelerator Fund Competition

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Notice.

SUMMARY: The U.S. Small Business Administration (SBA) announces a Growth Accelerator Fund Competition to accelerators and similar organizations to fund their operations costs and allow them to scale up or bring new ideas to life.

DATES: The submission period for entries begins 12:00 p.m. e.d.t., May 12, 2014 and ends August 2, 2014 @ 11:59 p.m. e.d.t. Winners will be announced no later than September 12, 2014.

FOR FURTHER INFORMATION CONTACT: Kim Peyser, Special Advisor to the Associate Administrator, Office of Investment and Innovation, U.S. Small Business Administration, 409 Third Street SW., 6th Floor, Washington, DC 20416, (202) 205–6981, *accelerators@sba.gov.*

SUPPLEMENTARY INFORMATION:

Competition Details

1. *Subject of Challenge Competition:* For the purposes of this competition, Growth Accelerators include accelerators, incubators, co-working startup communities, shared tinker-spaces or other models to accomplish similar goals. Regardless of the specific model employed, Growth Accelerators focus on helping entrepreneurs and their startups speed the launch, growth and scale of their businesses. A broad set of models used to support start-ups will better serve the entire entrepreneurial ecosystem. Whether an accelerator is industry focused, technology focused, product centric, cohort based or more long term, all are valuable players in the nation's high-growth entrepreneurial ecosystem that ultimately creates jobs.

2. *Eligibility Rules for Participating in the Competition:* We expect that models participating in this competition will include most, if not all, of the following elements:

- Selective process to choose participating startups.
- Regular networking opportunities offered to startups.
- Introductions to customers, partners, suppliers, advisory boards and other players.
- High-growth and tech-driven startup mentorship and commercialization assistance.
- Shared working environments focused on building a strong startup community.
- Resource sharing and co-working arrangements for startups.
- Opportunities to pitch ideas and startups to investors along with other capital formation avenues to startups.
- Small amounts of angel money, seed capital or structured loans to startups.
- Service to underserved communities, such as women, veterans, and economically disadvantaged individuals.

Lastly, models must be organized, and maintain a primary place of business, in the United States and must not have an outstanding, unresolved financial obligation to the U.S. government or be currently suspended or debarred by the U.S. government.

3. *Registration Process for Participants:* Competition participants will submit their application through an online form which will be available on challenge.gov. Winners will be required to create an account in System for Award Management (SAM) to receive the award.

4. *Amount of Prize:* Through our Growth Accelerator Fund competition, we will be giving away $50,000 prizes to accelerators to fund their operations costs and allow them to scale up or bring new ideas to life.

5. *Payment of Prize:* Winners will be paid in a lump sum via Automated Clearing House (ACH).

6. *Basis Upon Which Winner Will Be Selected:* Winners will be selected based upon how well they address the criteria identified in Items 2 and 7 of this announcement.

7. *Additional Information:* In addition to the basic details to be collected in the short application, please complete a deck, like one you would use in a pitch competition, which must address all of the items below.

Mission & Vision

1. What is your accelerator's mission in one sentence?
2. Why is your accelerator model unique?
3. What specific elements make your accelerator model innovative/new?
4. What experiences prepare your founding team for this award?

Impact

1. What gaps will your accelerator fill?
2. What are the specifics of your model and how it will accomplish the above?
3. For existing accelerators, what has been your success/metrics so far?

Implementation

1. What is your specific plan for utilizing the prize money if you win?
2. If you are an existing accelerator using the funds to scale up, provide details of current operations, phases for scale up and Web site; or
3. If you are creating a new accelerator, provide basics of business plan and phases for implementation.
4. Aside from the founding team members, what will you look for in any new staff?
5. What are the largest risk factors that could derail your plan?

Metrics

1. What are your fundraising goals?
2. Aside from metrics required by SBA, what are the 5 key metrics you will use to self-evaluate?
3. What does success look like?

Award Approving Official: Javier Saade, Associate Administrator, Office of Investment and Innovation, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416.

Authority: Public Law 111–358 (2011).

Dated: April 29, 2014.

Javier Saade,

Associate Administrator, Office of Investment and Innovation.

[FR Doc. 2014–10558 Filed 5–9–14; 8:45 a.m.]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 8729]

30-Day Notice of Proposed Information Collection: DS 4053, Department of State Mentor Protégé Program Application

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments directly to the Office of Management and Budget (OMB) up to June 11, 2014.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Nikki Burley, A/SDBU, SA–6 Room L–500, Washington, DC 20522–0602, who may be reached on or at *burleynb@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* 30-Day Notice of Proposed Information Collection: DS 4053, Department of

State Mentor-Protégé Program Application.

- *OMB Control Number:* OMB 1405–0161.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* Bureau of Administration, Office of Small and Disadvantaged Business Utilization-A/SDBU.
- *Form Number:* DS–4053.
- *Respondents:* Small and large businesses planning to team together in an official mentor-protégé capacity to enhance the capabilities of the protégé firms to perform as prime contractors and subcontractors on Department of State procurements.
- *Estimated Number of Respondents:* 20.
- *Estimated Number of Responses:* 20.
- *Average Time per Response:* 12 hours.
- *Total Estimated Burden Time:* 240 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Voluntary.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of proposed collection: This information collection facilitates the Mentor-Protégé Program per Department of State Acquisition Regulations (DOSAR) 48 CFR 619.202–70, which encourages business agreements between small and large for-profit companies, for the purpose of forming a mentor-protégé relationship that will provide developmental assistance and to enhance the capabilities of the protégé firms to perform as prime contractors and subcontractors on Department of State procurements. The burden hour estimate includes an initial application (8 hours) and an annual report (4 hours), both to be filled out by Mentors.

Methodology: Respondents may submit the information by email using the DS–4053, or by letter using fax or postal mail.

Dated: May 6, 2014.

Shapleigh C. Drisko,

Office of Small Disadvantage Business Utilization Director, A–SDBU, Department of State.

[FR Doc. 2014–10819 Filed 5–9–14; 8:45 am]

BILLING CODE 4710–15–P

DEPARTMENT OF STATE

[Public Notice: 8727]

In the Matter of the Review of the Designation of al-Qa'ida in the Islamic Maghreb (and Other Aliases) as a Foreign Terrorist Organization Pursuant to Section 219 of the Immigration and Nationality Act, as Amended

Based upon a review of the Administrative Record assembled pursuant to Section 219(a)(4)(C) of the Immigration and Nationality Act, as amended (8 U.S.C. 1189(a)(4)(C)) (''INA''), and in consultation with the Attorney General and the Secretary of the Treasury, I conclude that the circumstances that were the basis for the 2009 decision to maintain the designation of the aforementioned organization as a Foreign Terrorist Organization have not changed in such a manner as to warrant revocation of the designation and that the national security of the United States does not warrant a revocation of the designation.

Therefore, I hereby determine that the designation of the aforementioned organization as a Foreign Terrorist Organization, pursuant to Section 219 of the INA (8 U.S.C. 1189), shall be maintained.

This determination shall be published in the **Federal Register**.

Dated: May 1, 2014.

John F. Kerry,

Secretary of State, Department of State.

[FR Doc. 2014–10817 Filed 5–9–14; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: FAA Safety Briefing Readership Survey

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The survey will help the editors learn more about the target audience and how they elect to improve their safety skills/practices, and what they need to know to improve their safety skills/practices. With this information, the editors can craft FAA Safety Briefing content targeted to its audience to help accomplish the FAA and Department of Transportation's mission of improving safety.

DATES: Written comments should be submitted by July 11, 2014.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0747

Title: FAA Safety Briefing Readership Survey

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: The bimonthly print and online publication FAA Safety Briefing is designed to improve general aviation safety by: (a) Making the community aware of FAA resources, (b) helping readers understand safety and regulatory issues, and (c) encouraging continued training. It is targeted to members of the non-commercial general aviation community, primarily pilots and mechanics. This survey is intended to help the editors of FAA Safety Briefing better understand the target audience.

Respondents: Approximately 7,000 pilots, flight instructors, mechanics, and repairmen.

Frequency: One time per respondent.

Estimated Average Burden per Response: Approximately 10 minutes per survey.

Estimated Total Annual Burden: An estimated 1,017 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, ASP–110, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on May 6, 2014.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, ASP–110.

[FR Doc. 2014–10837 Filed 5–9–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Tenth Meeting: RTCA Special Committee 227, Standards of Navigation Performance

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

ACTION: Meeting Notice of RTCA Special Committee 227, Standards of Navigation Performance.

SUMMARY: The FAA is issuing this notice to advise the public of the tenth meeting of the RTCA Special Committee 227, Standards of Navigation Performance

DATES: The meeting will be held June 16, 2014 from 9:00 a.m.–4:30 p.m.

ADDRESSES: RTCA Headquarters, 1150 18th Street NW., Suite 910, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 330–0662 or (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.* In addition, Sophie Bousquet may be contacted directly at email: *sbousquet@rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 227. The agenda will include the following:

June 16, 2014

- Welcome/Introductions/ Administrative Remarks
- Agenda Overview
- Overview of Planned Work Program for the Week
  - MASPS DO–236C Change 1 FRAC Resolution
  - MOPS Rev DO–283 Change Proposals
- Plenary Review—MASPS/MOPS (all week)
  - Planned Work Schedule (Note, schedule subject to change based upon progress/pace/issue)
  - Review/Release of Change 1 to DO–236C
  - 9:00 a.m. to 4:30 p.m. each day
- Technical Requirements Breakout Sessions (as needed)
- Other Business

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 5, 2014.

Paige Williams,

Management Analyst, NextGen, Business Operations Group, Federal Aviation Administration.

[FR Doc. 2014–10886 Filed 5–9–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Seventy Eighth Meeting: RTCA Special Committee 147, Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance Systems Airborne Equipment

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

ACTION: Meeting Notice of RTCA Special Committee 147, Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance Systems Airborne Equipment.

SUMMARY: The FAA is issuing this notice to advise the public of the Seventy Eighth meeting of RTCA Special Committee 147, Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance Systems Airborne Equipment.

DATES: The meeting will be held June 3–5, 2014, from 9:00 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at Boeing, Classroom 35 (22L18), Building 25–01, 1301 SW. 16th St., Renton, WA 98057.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 147. The agenda will include the following:

June 3

- All day, Surveillance Working Group
- All day, Threat Working Group

June 4

- All day, Surveillance Working Group
- All day, Threat Working Group

June 5

- Opening Plenary Session
  - Chairmen's Opening Remarks/ Introductions
  - Approval of Minutes from 78th meeting of SC–147
  - Approval of Agenda
  - Update from Eurocontrol/WG–75
- Interaction with SC 228—MOPS for Unmanned Aerial Systems
  - Approval of SC–228/SC–147 ISRA
  - Status update and feedback from SC 228 plenary briefing
- SESAR Activity Updates
  - Update on SESAR work update & progress (4.8.2/9.47)—TBD
- RTCA Involvement in Run 13 Tuning Process
  - Lunch (12:15–01:00)
- Report from WG–1 (Surveillance and Tracking) on progress on the ACAS X MOPS
  - Report from CSG
  - TA/RA Downlink Proposal
- Report from WG–2 (Threat Resolution) on progress on the ACAS X MOPS
- Kickoff of ACAS X Safety WG
- Additional business
- New Business
- Closing Session
  - Next Meeting Location
  - Action Item review
  - End Meeting
- Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person

listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 6, 2014.

Paige Williams,

Management Analyst, NextGen, Business Operations Group, Federal Aviation Administration.

[FR Doc. 2014–10885 Filed 5–9–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Twenty-Fifth Meeting: RTCA Special Committee 224, Airport Security Access Control Systems

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

ACTION: Meeting Notice of RTCA Special Committee 224, Airport Security Access Control Systems.

SUMMARY: The FAA is issuing this notice to advise the public of the twenty-fifth meeting of the RTCA Special Committee 224, Airport Security Access Control Systems.

DATES: The meeting will be held on June 3, 2014 from 10:00 a.m.–12:00 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1150 18th Street NW., Suite 910, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 224. The agenda will include the following:

June 3, 2014

- Welcome/Introductions/Administrative Remarks
- Review/Approve Summary—Twenty-Fourth Meeting.
- Updates from the TSA
- Review and Discussion of PMC Decisions on DO–230D—*Standard for Airport Security Access Control Systems*
- Review of DO–230D Sections—Determine Required Update Sequence
- Terms of Reference—Discuss Possible Revisions
- Discussion—Obtain New Committee Members
- Time and Place of Next Meeting
- Any Other Business
- Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 5, 2014.

Paige Williams,

Management Analyst, NextGen, Business Operations Group, Federal Aviation Administration.

[FR Doc. 2014–10887 Filed 5–9–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Twelfth Meeting: RTCA NextGen Advisory Committee (NAC)

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

ACTION: Twelfth Meeting Notice of RTCA NextGen Advisory Committee.

SUMMARY: The FAA is issuing this notice to advise the public of the twelfth meeting of the RTCA NextGen Advisory Committee.

DATES: The meeting will be held June 3, 2014 from 9:00 a.m.–3:00 p.m.

ADDRESSES: The meeting will be held at RTCA Headquarters, 1150 18th Street NW., Suite 910, Washington, DC, 20036.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC, 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.* Andy Cebula, NAC Secretary can also be contacted at *acebula@rtca.org* or 202–330–0652.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 224. The agenda will include the following:

June 3

- Opening of Meeting/Introduction of NAC Members—Chairman Bill Ayer
- Official Statement of Designated Federal Official—The Honorable Mike Whitaker, FAA Deputy Administrator
- Review and Approval of February 2014 Meeting Summary
- Chairman's Report—Chairman Ayer
- FAA Report—Mr. Whitaker
- NextGen Integration Working Group—Interim Report and approval of initial recommendations from the work of the four Teams addressing the NextGen capabilities derived from the NAC Prioritization recommendation.
- PBN Blueprint Task Group—Interim Report on the Blueprint for Performance-Based Navigation Procedures Implementation Tasking from the FAA on lessons learned from prior PBN implementations.
- PBN Implementation Experiences—Briefings from FAA and industry representatives on specific recent implementations of PBN.
- Recap of Meeting and Anticipated Issues for NAC consideration and action at the next meeting, October TBD 2014, Washington, DC.
- Other business
- Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 5, 2014.

Paige Williams,

Management Analyst, NextGen, Business Operations Group, Federal Aviation Administration.

[FR Doc. 2014–10888 Filed 5–9–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–2013–0021]

National Bridge Inspection Standards Review Process; Notice

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: This Notice finalizes guidance that describes the FHWA internal procedures for review of State compliance with the National Bridge Inspection Standards. It also describes how the FHWA will implement the related statutory penalties against noncompliant States. The FHWA proposed this guidance in a Notice on June 7, 2013. Here, the FHWA updates and finalizes the guidance and responds to the 12 commenters.

FOR FURTHER INFORMATION CONTACT: For questions about the program discussed herein, contact, Thomas D. Everett, Principal Bridge Engineer, FHWA Office of Bridges and Structures, (202) 366–4675 or via email at *Thomas.Everett@dot.gov.* For legal questions, please contact Robert Black, Office of the Chief Counsel, (202) 366–1359, or via email at *Robert.Black@dot.gov.* Office hours are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

This notice, the notice requesting comment, related documents, and all comments received may be viewed online through the Federal eRulemaking portal at: *http://www.regulations.gov.* The Web site is available 24 hours each day, 365 days each year. Please follow the instructions. Electronic submission and retrieval help and guidelines are available under the help section of the Web site. An electronic copy of this document may also be downloaded from the Office of the Federal Register's home page at: *http://www.archives.gov* and the Government Printing Office's Web page at: *http://www.access.gpo.gov/nara.*

Purpose of This Notice

The FHWA is providing responses to comments received on the Notice published at 78 FR 34424 on June 7, 2013, and publishing the internal administrative processes FHWA uses to review State compliance with the National Bridge Inspection Standards (NBIS) and implement statutory penalties for noncompliance.

Background

For more than 30 years, the FHWA has annually assessed each State's bridge inspection program to evaluate compliance with the NBIS as codified at 23 CFR 650 Subpart C. Historically, the depth and scope of the reviews varied based upon the FHWA's knowledge of the State's inspection program and the experience of the FHWA staff. In 2009, the Office of Inspector General (OIG) issued an audit report, National Bridge Inspection Program: Assessment of FHWA's Implementation of Data-Driven, Risk-Based Oversight,[1] summarizing its review of the FHWA oversight of the National Bridge Inspection Program. One of the five OIG recommendations from this audit was for the FHWA to develop and implement minimum requirements for data-driven, risk-based, bridge oversight during bridge engineers' annual NBIS compliance reviews. In Senate Report 110–418,[2] strong support was given to the OIG recommendations and the need for prompt action by FHWA. In addition, the U.S. House of Representatives Conference Report 111–366,[3] directed FHWA to improve its oversight of bridge safety and conditions.

In response to the OIG recommendations and congressional direction, FHWA developed a new systematic, data-driven, risk-based oversight process for monitoring State compliance with the NBIS. The process utilizes 23 metrics, or measures, to define (1) the levels of compliance, (2) items from the NBIS to be measured, and (3) how those measurements would affect the levels of compliance. Each metric can be traced directly to wording in 23 CFR Part 650, Subpart C. The 23 metrics were developed over a 2-year period by a committee which consisted of FHWA Division, Resource Center, and Headquarters bridge engineers. Refinements were made to the metrics based upon feedback received during implementation. The finalized 23 metrics described in this Notice are contained in the document entitled Metrics for the Oversight of the National Bridge Inspection Program (April 1, 2013) which is available on the docket (docket number FHWA–2013–0021) through the Federal eRulemaking portal at: *http://www.regulations.gov.*

In 2010, the FHWA initiated a pilot program using the new process in nine States. The FHWA made adjustments to the process following the pilot in preparation for nationwide implementation in February 2011.

After the nationwide implementation, a joint FHWA/American Association of State Highway and Transportation Officials (AASHTO) task force was established in the fall of 2011 to identify possible modifications and opportunities to improve the assessment process. One of the first steps the task force completed was gathering input and feedback on the assessment process from all States and interested Federal agencies. The FHWA collected information from internal staff, and AASHTO gathered information from the States. The information collected was used to help identify and prioritize process improvements. The joint task force efforts resulted in FHWA implementing several improvements to the oversight process in April 2012.

On July 6, 2012, President Obama signed into law the Moving Ahead for Progress in the 21st Century Act (MAP–21) (Pub. L. 112–141). Section 1111 of MAP–21 amended 23 U.S.C. 144(h)(3)(A)(i) to include provisions for the Secretary to establish, in consultation with the States, Federal agencies, and interested and knowledgeable private organizations and individuals, procedures to conduct reviews of State compliance with the NBIS. The MAP–21 also modified 23 U.S.C. 144(h)(5) to establish a penalty for States in noncompliance with the NBIS.

The FHWA developed and implemented the current process to review a State's bridge inspection program for compliance with the NBIS prior to the requirements of MAP–21, Section 1111. The development of the review process included consultation with stakeholders through the pilot project, the joint FHWA/AASHTO task force, as well as with individual States and Federal agencies during the initial implementation of the process in 2011. The FHWA will continue to use the current risk-based, data-driven review process to evaluate State compliance with the NBIS as required by 23 U.S.C. 144(h)(4)(A). The FHWA will implement the specific penalty provisions in 23 U.S.C. 144(h)(5) using the process described below.

On June 7, 2013, at 78 FR 34424, the FHWA published a Notice requesting comment on the process the FHWA uses to conduct reviews of State compliance with the NBIS and the associated penalty process for findings of noncompliance. The NBIS Review Process Notice outlined the data-driven, risk-based process used by each FHWA Division to review a State's compliance with the NBIS. The yearly review of a State DOT's highway bridge inspection program focuses on 23 metrics, or specific measures required by the current NBIS regulations at 23 CFR 650 Subpart C. The FHWA Division conducting the review looks at each of the 23 metrics and assigns them one of four compliance level ratings: 1. Compliant (meets criteria); 2. Substantially compliant (meets most criteria except for minor deficiencies); 3. Noncompliant (does not meet one or more of the substantial compliance criteria); or 4. Conditionally compliant (State is adhering to a FHWA approved plan of corrective action for the metric).

If a State highway bridge inspection program receives a ''noncompliant rating'' for any metric, the State must address the finding in 45 days or

[1] Report MH–2009–013; *http://www.oig.dot.gov/sites/dot/files/pdfdocs/BRIDGE_I_REPORT_FINAL.pdf.*

[2] Senate Report 110–418; *http://www.gpo.gov/fdsys/pkg/CRPT-110srpt418/pdf/CRPT-110srpt418.pdf.*

[3] House of Representatives Conference Report 111–366; *http://www.gpo.gov/fdsys/pkg/CRPT-111hrpt366/pdf/CRPT-111hrpt366.pdf.*

prepare a Plan of Corrective Action (PCA) to remedy the noncompliance. The PCA describes the process and timelines to correct the noncompliance. The FHWA must approve the PCA. For deficiencies identified in a substantial compliance determination for a metric, the State prepares an Improvement Plan (IP) that documents the agreement with FHWA for corrective action to correct the deficiencies. The IP is usually limited to 12 months or less. Through these measures, the FHWA is assured that the State DOT is addressing parts of its highway bridge inspection program that do not comply with the NBIS regulations at 23 CFR Part 650 Subpart C.

To simplify the reporting of the results of the review, especially for the benefit of parties unfamiliar with the process, FHWA assigns a performance rating for each of the 23 metrics of satisfactory, actively improving, or unsatisfactory. A satisfactory rating means that the State is adhering to the NBIS regulations with perhaps a few minor, isolated deficiencies that do not affect the overall effectiveness of the program. A rating of actively improving means that there is a PCA in place to improve noncompliant metrics. The FHWA will rate the State bridge inspection program as unsatisfactory if metrics rated as noncompliant do not have a PCA or a State is not actively complying with an existing PCA.

The FHWA received 15 sets of comments in response to the Notice published June 7, 2013, from 12 different commenters representing 8 State Transportation Departments, 1 Federal agency, 1 private engineering firm, 1 professional organization, 1 private citizen and AASHTO.

Response to Comments

General

The FHWA would like to clarify that the internal administrative process described in this Notice is presently followed by FHWA in its review of compliance with the NBIS regulation. The process described in this Notice does not change the current statutory or regulatory requirements of the NBIS.

In accordance with the requirements of MAP–21, FHWA will be updating the NBIS regulation. Comments concerning proposed changes to the NBIS received in this Notice will be considered in the update to the NBIS.

1. Several States and AASHTO commented that significant effort and resources have been directed towards the review process, but question if it is improving overall bridge safety.

The National Bridge Inspection Program ensures the safety of the Nation's bridges. The FHWA's review process merely verifies whether States and Federal agencies are meeting the minimum requirements of the NBIS, which were established to ensure overall bridge safety.

Unfortunately, FHWA has discovered several issues regarding compliance with the NBIS. Examples include the following:

- Critical inspection findings that were not being addressed;
- Overdue inspections;
- Scour critical bridges without plans of action (POA) as identified in 23 CFR 650.313(e)(3);
- Scour critical bridges for which the POA was not properly implemented;
- Unqualified team leaders performing inspections;
- Bridges not being load rated for State legal loads and/or routine permits; and
- Inadequate or nonexistent inspection procedures.

The FHWA recognizes that the review process requires significant effort from FHWA, States, and Federal agencies. As compliance with the NBIS rises to the level expected by the public and Congress, this effort should decrease. Presently, the burden placed on FHWA, a State, or a Federal agency as a result of the review process is commensurate with the level of compliance with the regulation.

2. The Bureau of Land Management suggested a separate evaluation process for Federal bridge owners, with FHWA in a supporting role.

The NBIS apply equally to all States and Federal agencies. Our goal is national consistency; therefore, it is necessary and appropriate that all agencies are held to the same standards.

3. The Iowa DOT suggested that the FHWA should review State and local agencies separately.

The Federal-aid highway program is State-administered and federally assisted. The fundamental relationship under the law is between FHWA and the State. States may delegate functions defined in the NBIS; however, the responsibility for NBIS compliance remains with the State.

The FHWA oversight process reviews both State and local agencies, but the resolution of review findings is between FHWA and the State.

4. Iowa and South Dakota DOTs commented that if a State cannot take action against a bridge owner, action should not be taken against a State for that bridge. Iowa went on to comment that FHWA should take action directly against the bridge owner.

The Federal-aid highway program is State-administered and federally assisted. The fundamental relationship under the law is between FHWA and the State. States may delegate functions defined in the NBIS; however, the responsibility for NBIS compliance remains with the State.

5. The South Dakota DOT commented that the metrics requirements for bridge inspections described in the Notice are likely to result in additional resources being dedicated to bridge inspection, decreasing funds available for structure preservation and replacement needs. The South Dakota DOT stated that ''the additional requirements have resulted in an approximately 44% increase in bridge inspection costs for local governments in South Dakota.''

The review process proposed did not establish any new regulatory requirements. The 23 metrics are requirements of the NBIS that have been in place since 2004. The metrics are FHWA's means of objectively determining how well a State DOT has complied with the NBIS. The costs of the inspection program should not increase for States that were in compliance with the NBIS requirements prior to implementation of the review process.

6. The Virginia DOT commented that the overall NBIS review process is acceptable, but recommended that FHWA ''periodically update the NBIS review process based on lessons learned from the review of different State programs and as issues or conflicts arise.''

The FHWA agrees with the comment. The review process was updated for the 2013 and 2014 review cycles based on lessons learned.

7. The Idaho DOT raised concerns about stability of the review process because the metrics have changed since the 2011 implementation.

The FHWA implemented the changes for the 2013 and 2014 review cycles to address the comments received from the joint FHWA/AASHTO task force and lessons learned. The FHWA anticipates the metric review process established in this Notice will remain stable.

8. The Idaho, North Dakota, and Missouri DOTs, and AASHTO commented that the consistency in FHWA Divisions' performance of the review process can be improved.

The FHWA considers consistency in the review process a priority. To improve consistency in the review process, FHWA has and will continue to clearly document processes; train staff; provide feedback to field offices; hold frequent teleconferences with field staff; utilize standardized reports, forms, and

checklists; conduct annual quality assurance reviews; and provide targeted technical assistance. Quality assurance reviews indicate that there has been marked improvement in the consistency of the FHWA's assessment of State compliance with the NBIS since the process was introduced in 2011.

9. The North Dakota and Iowa DOTs commented that the review process leaves little room for engineering judgment.

The review process is completely aligned with the NBIS, which establish minimum national standards for bridge inspection programs. Engineering judgment is appropriately applied by bridge owners in deciding when it is warranted to exceed the NBIS minimum standards.

10. The Professional Engineers in California Government (PECG) commented that they firmly believe that the inspection function, especially on critically important infrastructure such as bridges, is inherently governmental in nature and should be performed by public servants. The PECG recommended that FHWA require States to use their own professional staff to perform bridge inspection functions except in very narrowly defined circumstances.

The FHWA does not believe, under the authority of 23 U.S.C. 144, that it can prohibit States from using qualified private consultants to perform inspection duties. The FHWA can set the inspection standards that States must meet in inspecting bridges, but it cannot, without statutory direction, dictate to the States who they must hire to perform inspections.

11. The PECG commented that the bridge inspection organization metric should disallow the State from further delegating bridge inspection responsibilities to local governments.

Many local governments own and maintain the highway bridges within their territorial limits. The State is responsible for ensuring that these bridges are inspected in accordance with all aspects of the NBIS. If a State DOT does not believe the local governmental entity is complying with the NBIS regulations, then the State can address the problem in many different ways. Each State has its own legal relationship between it and local governmental entities.

Metrics Section Comments

12. The North Dakota and Michigan DOTs commented that the terms used to define the four compliance levels for each metric may lead to confusion for parties not familiar with the process. Instead they recommend using the performance level terms.

The FHWA agrees that the four compliance levels could be misinterpreted by parties unfamiliar with the process. The FHWA proposed in the Notice, and has used the terms ''satisfactory,'' ''actively improving,'' and ''unsatisfactory'' for clarity. The plain language avoids confusion in expressing to parties unfamiliar with the process if a State is complying with the metrics. Satisfactory equates to ''compliant'' and ''substantially compliant''; Actively Improving equates to ''Conditionally Compliant''; and Unsatisfactory equates to ''Noncompliant.''

13. The Idaho and Iowa DOTs commented that the thresholds for compliance are not attainable.

The NBIS are required by Federal law and are defined in regulation. The compliance thresholds identified in the 23 metrics are provisions of the NBIS. The FHWA can change compliance requirements only through a rulemaking process, which is not the intent of this Notice. In accordance with MAP–21, FHWA will update the NBIS. At that time, consideration will be given to recommendations for changes to the regulation as part of the rulemaking process.

14. The Iowa DOT commented that many of the issues found are National Bridge Inventory (NBI) data entry errors and the findings of the review should be based on findings of inspection problems.

The NBI is a very important part of the NBIS. Quality data within the NBI is vital to ensuring that bridge safety is being appropriately monitored, reported, and maintained. It is also necessary to maintain quality data in order to comply with the Office of Management and Budget guidelines established under Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554 app. C; 114 Stat. 2763, 2763A–154), commonly known as the Information Quality Act. It is FHWA's position that NBI data submitted by the State should be correct. If it is determined that the source of a compliance issue is data entry errors, in most cases, FHWA can make a final determination of ''compliant'' once the data issues have been corrected.

15. The North Dakota DOT commented that the review process emphasizes the metrics, ''rather than increasing the effectiveness of the program or determining how the bridge inspection program can be improved.''

The annual review is conducted to verify compliance with the requirements of the NBIS. Compliance with all aspects of the NBIS would reflect a highly effective bridge inspection program. The findings of the review are used to address areas which are not in compliance.

16. The North Dakota DOT questioned if all the metrics have equal value and weight.

Yes. The joint FHWA/AASHTO task force discussed this point and agreed that each part of the NBIS is important and should carry equal value and weight.

17. The Michigan DOT commented that it is not clear when the Minimum Assessment Level will be performed.

As identified in the Review Cycle and Schedule section of the Notice, a minimum level review will be performed if an intermediate or in-depth level review is not performed that year. Each metric will have an intermediate level review performed at least once over a 5-year cycle.

18. The Michigan DOT raised the concern that FHWA Division Bridge staff changes will adversely affect FHWA's ability to perform the Minimum Assessment Level.

The FHWA has internal guidance which addresses review requirements when there is a change in staff. This guidance takes into consideration the risk associated with the inspection program and the new FHWA Division Bridge staff knowledge of the program.

19. The Michigan DOT is also concerned that FHWA may not have adequate staff to implement this oversight process in a timely manner.

The FHWA has made this process a priority and has hired additional staff to help implement the process. The FHWA notes that the review process is now in its third year.

20. The Iowa and Michigan DOTs questioned how FHWA will assess element level data for National Highway System (NHS) in the metrics.

The current FHWA review process does not assess element level inspection data. Once FHWA begins collecting element level data for bridges on the NHS, the assessment process will be revisited to determine the criteria to be used to ensure that quality element data is being reported. We anticipate that the assessment will be very similar to that currently used in the assessment of other data currently reported in the NBI.

21. The South Dakota DOT commented that Metric 1 states under Compliance Levels that a State will be in noncompliance with this metric if it is out of compliance with any of the other 22 metrics.

South Dakota's interpretation of Metric 1 is incorrect. The commentary

for Metric 1 states that ''[i]f other metrics are noncompliant, a careful evaluation should be done to determine whether or not those noncompliance issues stem from the organizational structure itself. If so, then a finding of substantial compliance or noncompliance would be appropriate.''

22. The Michigan DOT commented that FHWA should consider combining the Metrics 2–5 which assess qualifications into to one metric—Qualifications of Personnel.

These metrics are separate to maintain clear and consistent alignment with the NBIS regulation. Each position in a State DOT's bridge inspection organization is important, and Metrics 2–5 are measuring differing qualifications.

23. A commenter from Aason Engineering did not agree with what he interpreted to be a ''new bridge inspection frequency criteria stating that a bridge must be inspected no more than 30 days past the required frequency time.'' He claimed that ''[i]n years past, [he] had the flexibility to inspect bridges at any time during May through October.''

This comment validates one of the reasons the metric-based review process was implemented. The inspection interval criteria defined in the NBIS have not changed. The 2004 NBIS Final Rule clarified that there is not a 30-day grace period for the inspection interval. Prior to FHWA's implementation of this review process, this was not uniformly understood or applied. In general, the concerns that commenters made for inspection schedule flexibility will be considered in the NBIS regulation update required by MAP–21.

24. The Virginia DOT commented that using the National Bridge Inventory (NBI) condition code for a substructure rating of poor or worse to place the bridges in the high risk requirement for underwater inspections is overly broad. The high-risk designation should be based on the condition of the substructure below water.

If a bridge substructure has a low condition rating, the FHWA cannot determine from the NBI data if the defect is above or below water. Therefore, to err on the side of safety, these bridges will be included in the higher risk category.

25. The Michigan DOT commented that Metric 12 should not require an additional check of team leader qualifications. Since the State provides a list of team leaders, Metric 12 should be a brief check to verify that a team leader was performing the inspection.

The FHWA agrees with this comment. It is the intent that Metric 12 only verify that a team leader is on site. Some States do not maintain a list of active team leaders, in which case it must be confirmed that the person responsible for the inspection is a qualified team leader.

26. The South Dakota DOT recommended deleting the requirement to load rate existing box culverts and pipes.

The NBIS require that all bridges, including bridge-length box culverts and pipes, be load rated in accordance with the AASHTO Manual for Bridge Evaluation. A change to Metric 13—Load Rating, does not change the underlying regulation requirement or the AASHTO Manual for Bridge Evaluation. The FHWA encourages South Dakota DOT to address such technical recommendations to the AASHTO Subcommittee on Bridges and Structures. If the Subcommittee changed this point in the Manual, the FHWA may consider changing the requirement in the NBIS.

27. The Iowa DOT commented on Metric 15—Bridge Files, that when the State has delegated inspection responsibility to local agencies, the State's only option to address deficiencies is to notify local agencies of documentation requirements. The Iowa DOT recommended that notification constitute State compliance because it believes that ''[t]here is no reasonable plan of action that can be taken to guarantee all bridge files will have all the significant documents.''

The FHWA disagrees that merely informing the owner of the documentation requirements adequately addresses noncompliance issues. Additional steps are needed to verify that corrective actions taken have effectively addressed the noncompliance issues. In the example provided, it is not the FHWA's expectation that the State would check every bridge file. There are several possible solutions to this, one of which could be statistical sampling.

28. The North Dakota DOT commented that ''[t]here are instances where grading performance and determining compliance is based on past performance and situations that existed prior to the metrics being developed. For many older county bridges, the information required is not, and will not be available.''

The metrics are based upon the requirements of the NBIS. The NBIS have existed for many years and have remained essentially unchanged since 2004. The metrics did not create new requirements nor did they modify the existing NBIS. It is understood that there may be situations where historical information may not be available; this should only impact Metric 15—Bridge Files. This issue is discussed in the commentary for Metric 15.

29. The Iowa DOT commented that Metric 17—Inspection Procedures, Underwater, should differentiate ''between bridges that require divers and ones that don't. For bridges that require divers, the inspection should be reviewed to make sure the divers had inspection training, the inspection was performed within the frequency required, and the final report contains adequate information.''

The NBIS definition of ''underwater inspection'' includes clarification that an underwater inspection generally requires diving, and cannot be accomplished visually by wading or probing. Metric 17 assesses only those bridges which require an underwater inspection under that definition. Inspector qualifications and inspection reporting are reviewed in other metrics.

30. The Iowa DOT commented that the tolerances for Metric 22 should be made available to the States.

The FHWA agrees with this comment. The field review form used to assess Metric 22 provides the associated tolerance for each item. This form has been added to the Docket and is available from FHWA Division offices.

31. The Iowa DOT requested the specific data checks FHWA uses for the annual NBI submittal.

The FHWA agrees with the comment and made data checks available at *http://www.fhwa.dot.gov/bridge/nbi.cfm.* The FHWA strongly recommends that States check their data by running the data check programs made available to them at the above mentioned Web site or identified in the annual call for NBI data.

32. The North Dakota DOT commented that the '' 'one size fits all' philosophy is not appropriate. A county bridge in North Dakota with less than 200 ADT is treated the same as a bridge located in another part of the country with over 50,000 ADT.''

The FHWA disagrees. When it comes to safety of the traveling public, the timely and proper inspection of all bridges is important.

33. The North Dakota DOT commented that ''[r]isk does not seem to be factored into the importance of each metric. The inspection frequency for an 80 year old bridge is the same as a bridge that was just constructed.''

The NBIS establish the minimum bridge inspection standards for the Nation and the thresholds are identified in the regulations, as reflected in the 23 metrics. This comment will be considered when FHWA, in accordance

with MAP–21, updates the NBIS to consider a risk-based approach to determine the frequency of bridge inspections.

34. The Michigan DOT commented that ''[f]or duration and completion dates of [Plans of Corrective Action (PCAs)], the code is silent on implementation timeliness. The Michigan DOT believes the FHWA should include language and/or guidance that the States are to work with their local FHWA Division on implementing the appropriate timeframes on a case by case basis.''

As stated in the Findings of Noncompliance section of the Notice, the PCA must contain the duration and completion dates for each action and be approved by FHWA. As each issue of noncompliance is unique, it is FHWA's expectation that the Division will coordinate with the State on the review and approval of those dates. For national consistency, a Bridge Safety Engineer from FHWA Headquarters office will review each PCA.

35. California and Iowa suggested removing the requirement for a written reply for a finding of substantial compliance.

The FHWA disagrees with this suggestion. If a State is not in full compliance with the regulation, there should be documentation of a plan to achieve full compliance.

36. California suggested that FHWA submit a signed, written report to the State for findings of noncompliance or conditional compliance by December 31.

The FHWA agrees that there should be a signed document for metrics determined to be noncompliant or in conditional compliance. The process has been changed to incorporate this comment.

Penalty Provision Comments

37. The Missouri DOT suggested that the August 1 date triggering noncompliance penalties and the August 1 date for submitting an analysis of actions needed to correct the noncompliance should not be the same date.

States are notified by December 31 of a noncompliance issue and have 45 days to address areas of noncompliance or develop a PCA as defined in 23 U.S.C. 144(h)(4)(B). The penalty provision applies when a State remains noncompliant from the December 31 notification until August 1. During this 7-month period FHWA will continue to work with the State to resolve the issue. The State will be aware well in advance of August 1 that an analysis is needed. In addition, by having the analysis completed by August 1, there will be time to dedicate apportioned funds as of October 1, as required by the statute.

38. The Iowa DOT commented on the penalty for noncompliance. In its view, ''[s]hifting funds away from needed bridge repair, rehabilitation, or replacement projects seems to be counter intuitive to providing safe bridges for the traveling public. A Non-Compliance issue may have less impact on the safety of the traveling public than cancelled or delayed projects.''

The FHWA recognizes the challenges associated with improving bridge conditions through repair, rehabilitation, and replacement while also maintaining the overall safety for the traveling public. Priority must be given to keeping existing bridges in safe operational condition, which is assured through regular inspections in accordance with the NBIS. When noncompliance occurs, the decision as to the source of funds to be used to address the issue of noncompliance belongs to the State. As with any shifting of funding for unforeseen issues, States should have a process for assessing and amending the State Transportation Improvement Program and, if needed, the appropriate Transportation Improvement Plan so that critical safety needs do not go unaddressed.

39. The Iowa DOT commented that the ''FHWA would be better served if they provided assistance to a State or Local agency that has a compliance issue, rather than imposing penalties. Providing assistance to correct problems would be looked upon more favorably than simply imposing penalties.''

The FHWA has a longstanding history of working with our State partners to resolve issues of noncompliance. The penalty provision established by Congress only applies when a State remains noncompliant from the December 31 notification until August 1, without developing an acceptable PCA. The FHWA will work aggressively with any State that faces noncompliance in order to exhaust all options for avoiding the penalty.

40. The Iowa DOT commented that the analysis plan identified in the penalty for noncompliance should be approved by the FHWA Division office.

The FHWA agrees with this comment. Division offices will be responsible for approving the analysis. This responsibility has been clarified in the description of the process within the Notice.

41. The Iowa DOT questioned if the funding is split 80 percent Federal/20 percent State or 100 percent Federal for the noncompliance penalty.

Under 23 U.S.C. 144(h)(5)(A), the FHWA will require noncompliant States to dedicate their apportioned National Highway Performance Program (NHPP) and Surface Transportation Program (STP) funds to correct the noncompliance. The Federal share payable on account of any project or activity carried out under the NHPP and STP is specified under 23 U.S.C. 120. In general, the Federal share payable on account of any project on the Interstate System is 90 percent and for other projects is 80 percent. In the case of a State that does not develop and implement a State asset management plan consistent with 23 U.S.C. 119(e), the Federal share payable on account of any project carried out under the NHPP is 65 percent.

42. The California DOT and a private citizen questioned if there is a process for States to appeal the compliance determination.

Appeals of compliance determinations should be directed to the local FHWA Division Office.

Review Process Overview

Each FHWA Division Office annually assesses State compliance with 23 individual metrics that are directly aligned with the existing NBIS regulation. The risk-based assessment process followed during this annual assessment utilizes objective data and employs statistical sampling of data and inspection records. The FHWA Division Office uses the established criteria contained in the Metrics for the Oversight of the National Bridge Inspection Program for assessing compliance for each metric. The State is notified by FHWA of any metric which has a finding of noncompliance no later than December 31. In accordance with the requirements of 23 U.S.C. 144(h)(4)(B) as established by MAP–21, within 45 days of the FHWA notification of noncompliance, the State will correct the noncompliance or submit to the FHWA a PCA which outlines how noncompliant findings will be corrected. The FHWA will have 45 days to review, comment, and, if appropriate, accept the PCA. The FHWA will make final compliance determinations for each of the 23 metrics no later than March 31. If a State remains in noncompliance for any of the 23 metrics on August 1 following a final determination of noncompliance, FHWA will implement a penalty provision which requires the State to dedicate funds to correct the noncompliance, in accordance with 23 U.S.C. 144(h)(5). This annual process allows FHWA to assess whether each State's bridge inspection program

complies with the NBIS and to implement any required penalties for metrics which remain in noncompliance in a nationally consistent manner.

Metrics

The metrics, or specific measures required by the current NBIS regulations, are examined to assess each State's compliance with the NBIS. The following is a list of the 23 metrics which are existing requirements of the NBIS and have been established to provide an assessment of compliance with the NBIS. The complete metrics document entitled Metrics for the Oversight of the National Bridge Inspection Program (April 1, 2013) is available on the docket (docket number FHWA–2013–0021) through the Federal eRulemaking portal at: *http://www.regulations.gov.* Each metric is equally important; noncompliance by the State DOT with any metric can result in FHWA assessing a penalty.

Metric #1: Bridge inspection organization: 23 CFR 650.307
Metric #2: Qualifications of personnel—Program manager: 23 CFR 650.309(a) & 650.313(g)
Metric #3: Qualifications of personnel—Team leader(s): 23 CFR 650.309(a) & 650.313(g)
Metric #4: Qualifications of personnel—Load rating engineer: 23 CFR 650.309(c)
Metric #5: Qualifications of personnel—Underwater bridge inspection diver: 23 CFR 650.309(d)
Metric #6: Routine inspection frequency—Lower risk bridges: 23 CFR 650.311(a)
Metric #7: Routine inspection frequency—Higher risk bridges: 23 CFR 650.311(a)
Metric #8: Underwater inspection frequency—Lower risk bridges: 23 CFR 650.311(b)
Metric #9: Underwater inspection frequency—Higher risk bridges: 23 CFR 650.311(b)
Metric #10: Inspection frequency—Fracture critical member: 23 CFR 650.311(c)
Metric #11: Inspection frequency—Frequency criteria: 23 CFR 650.311(a)(2), (b)(2), (c)(2), (d)
Metric #12: Inspection procedures—Quality inspections: 23 CFR 650.313(a) & (b)
Metric #13: Inspection procedures—Load rating: 23 CFR 650.313(c)
Metric #14: Inspection procedures—Post or restrict: 23 CFR 650.313(c)
Metric #15: Inspection procedures—Bridge files: 23 CFR 650.313(d)
Metric #16: Inspection procedures—Fracture critical members: 23 CFR 650.313(e)(1)
Metric #17: Inspection procedures—Underwater: 23 CFR 650.313(e) & (e)(1)
Metric #18: Inspection procedures—Scour critical bridges: 23 CFR 650.313(e)
Metric #19: Inspection procedures—Complex bridges: 23 CFR 650.313(f)
Metric #20: Inspection procedures—Quality Control/Quality Assessment: 23 CFR 650.313(g)
Metric #21: Inspection procedures—Critical findings: 23 CFR 650.313(h)
Metric #22: Inventory—Prepare and maintain: 23 CFR 650.315(a)
Metric #23: Inventory—Timely updating of data: 23 CFR 650.315(a), (b), (c) & (d)

Each metric consists of four parts: (1) NBIS component to be reviewed; (2) evaluation criteria; (3) compliance levels; and (4) assessment levels.

(1) NBIS Component To Be Reviewed

This section of the metric identifies the relevant provisions of the NBIS and focuses on a key inspection area for which compliance will be assessed.

(2) Evaluation Criteria

This section of the metric identifies the criteria for evaluation of compliance.

(3) Compliance Levels

Each of the 23 metrics is annually assessed by FHWA and assigned one of four compliance levels—compliant, substantially compliant, noncompliant, or conditionally compliant—based upon specific thresholds or measures for each compliance level for each metric. These specific thresholds or measures are contained in the NBIS Oversight Program document entitled Metrics for the Oversight of the National Bridge Inspection Program (April 1, 2013). The degrees of compliance are described as follows:

Compliant—Adhering to the NBIS regulation.

Substantially Compliant—Adhering to the NBIS regulation with minor deficiencies, as set forth in the Metrics for the Oversight of the National Bridge Inspection Program (April 1, 2013). These deficiencies do not adversely affect the overall effectiveness of the program and are isolated in nature. Documented deficiencies are provided to the State with the expectation that they will be corrected within 12 months or less, unless the deficiencies are related to issues that would most efficiently be corrected during the next inspection. An Improvement Plan describing the expected corrective action is required. Metrics which are determined to be substantially compliant will not invoke the penalty for noncompliance.

Noncompliant—Not adhering to the NBIS regulation. In general, failing to meet one or more of the substantial compliance criteria for a metric. Identified deficiencies may adversely affect the overall effectiveness of the program. Failure to adhere to an approved PCA is also considered noncompliance. Metrics which remain as noncompliant will invoke the penalty for noncompliance.

Conditionally Compliant—Taking corrective action in conformance with an FHWA-approved PCA to achieve compliance with the NBIS. Deficiencies, if not corrected, may adversely affect the overall effectiveness of the program. Metrics which are determined to be conditionally compliant will not invoke the penalty for noncompliance.

The following definitions apply to actions taken to address findings of substantial compliance and noncompliance, respectively:

Improvement Plan (IP)—A written response by the State which documents the agreement for corrective actions to address deficiencies identified in a substantial compliance determination. The completion timeframe for such agreements is limited to 12 months or less, unless the deficiencies are related to issues that would most efficiently be corrected during the next inspection cycle.

Plan of Corrective Action (PCA)—A documented actions agreement prepared and submitted by the State and approved by FHWA describing the process and timelines to correct noncompliant NBIS metrics. The term ''corrective action plan'' in MAP–21 is interchangeable with PCA. An agreed-upon PCA for a noncompliant metric removes the possibility of a penalty based upon that metric.

For each of the 23 metrics, FHWA will assign the following performance levels:

Satisfactory—Adhering to the intent of the NBIS regulation. There may be minor deficiencies, but these deficiencies do not adversely affect the overall effectiveness of the program and are isolated in nature.

Actively Improving—A PCA is in place to improve the areas identified as not meeting the requirements of the NBIS.

Unsatisfactory—Not adhering to the NBIS. Deficiencies exist that may adversely affect the overall effectiveness of the inspection program.

(4) Assessment Levels

The assessment levels represent a key part of the data-driven, risk-based

approach to compliance review that FHWA has implemented. The FHWA will conduct the yearly compliance review for each metric at one of three assessment levels. Assessment levels define the scope of FHWA's review necessary to make a compliance determination for a specific metric. There are three assessment levels:

Minimum Assessment Level—A review based on information from past assessments and the FHWA Division Bridge Engineer's knowledge of the current practice as it relates to the metric. For some metrics, a minimum level assessment is enhanced with interviews and/or data review. The minimum assessment can range from a very brief consideration of the metric with respect to any changes in the program since the last assessment to a more detailed look at summary data from bridge inventories, pertinent lists, and a review of historical trends.

Intermediate Assessment Level—Verifying the minimum level assessment through random sampling of inspection records, analysis of bridge inventories, site visits, interviews, and documentation. The intermediate level assessment involves Tier 1 random sampling using a margin of error (MOE) of 15 percent and a level of confidence (LOC) of 80 percent to review bridge records or as directed in the individual metrics. A Tier 2 random sampling, utilizing a MOE of 10 percent and LOC of 80 percent, is used when the results of the Tier 1 sample are inconclusive.

In-depth Assessment Level—Supplementing the intermediate assessment with larger random sample sizes, more interviews, and research of records and documentation, and/or history. The in-depth assessment involves a Tier 1 random sampling using an MOE of 15 percent and LOC of 90 percent or as directed in the individual metrics. A Tier 2 random sampling, utilizing an MOE of 10 percent and LOC of 90 percent, is used when the results of the Tier 1 sample are inconclusive.

Random samples are selected from the population identified for the specific metric.

A copy of the metrics document entitled Metrics for the Oversight of the National Bridge Inspection Program (April 1, 2013) is available on the docket (docket number FHWA–2013–0021) through the Federal eRulemaking portal at: *http://www.regulations.gov.*

Annual Review Schedule and 5 Year Review Cycle

In accordance with 23 U.S.C. 144(h)(4), the FHWA will annually review State compliance with the NBIS.

Annual Review Schedule

Each FHWA Division Office will conduct an annual assessment of the State's compliance with the NBIS. Key dates are as follows:

(a) April 1—The FHWA begins annual NBIS assessment.

(b) By December 31—The FHWA makes a compliance assessment, referred to as the ''December 31 Compliance Determination'' for each metric and issues a signed report to each State detailing issues of noncompliance.

(c) March 31—Final compliance determination completed for all metrics. The final determination is based on the resolution of compliance issues or development of an acceptable PCA following the December 31 notification.

The proposed schedule may need to be modified on a case-by-case basis when unique and unexpected extenuating circumstances arise. The FHWA will address this issue on a case-by-case basis when it arises.

5-Year Review Cycle

The FHWA will take the following actions as part of the 5-year review cycle:

(a) Assess each of the 23 metrics annually at the minimum level if an intermediate or in-depth level is not to be performed that year.

(b) Assess each of the 23 metrics at the intermediate or in-depth level at least once within the 5-year cycle.

(c) Adopt a 5-year plan which identifies the review strategy and schedule based upon the consideration of risk. The assessment level for each metric will vary at the discretion of the FHWA Division Office from minimum, intermediate, or in-depth, or as directed at the national level. The FHWA will update the 5-year plan as necessary based on the risks identified during the annual metric assessments.

(d) In year five, examine the 5-year review history to identify trends in each metric area, to identify any gaps in the program or review process, and to develop a review strategy for the next 5 years.

(e) At the completion of a PCA, assess the metric at the intermediate level or in-depth level.

The determination of either an intermediate or in-depth level review after completion of a PCA is at the discretion of the FHWA Division Office.

Findings of Noncompliance

The FHWA Division Office will issue a signed report to the State detailing the issues of noncompliance for a metric determined to be noncompliant by December 31 of the review period. The report will list the regulatory code and title for each noncompliance deficiency, identify the deficiency, and specify that the deficiency has to be corrected, or a PCA submitted, within 45 calendar days of notification. The State will have 45 days to either correct the issue of noncompliance or submit a PCA to FHWA as required by 23 U.S.C. 144(h)(4)(B). The PCA should, at a minimum, include the following information:

(a) Identify area of noncompliance;

(b) Identify the date FHWA notified State of noncompliance;

(c) Identify actions to be taken to address areas of noncompliance;

(d) Estimate duration and completion date for each action;

(e) Define frequency and reporting format which will be used to monitor; progress towards successful completion of the PCA; and

(f) Identify what the State considers to be successful completion of PCA.

After the State submits a PCA, FHWA will have 45 calendar days to review and if appropriate, accept the submitted PCA. Upon FHWA acceptance of the PCA, the final compliance determination for the associated metric will be conditionally compliant. If the PCA is not submitted to FHWA in 45 calendar days after notification of noncompliance, or the PCA does not address the issues of noncompliance, the final compliance determination for the associated metric will be noncompliant.

Where an issue of noncompliance with the NBIS is identified outside the review procedures above, FHWA will notify the State of the noncompliance and will work with the State to establish a timeframe in which the issue of noncompliance must be addressed or an acceptable PCA submitted.

Penalty for Noncompliance

The FHWA will continue to encourage the State to address the noncompliance issues following the final noncompliance determination and expiration of the period allowed to develop a PCA. If a State remains in noncompliance for any of the 23 metrics on August 1 following a final compliance determination of noncompliance, FHWA will require the State to dedicate funds to correct the noncompliance, in accordance with 23 U.S.C. 144(h)(5). The State must submit an analysis of actions needed to correct the noncompliance to the FHWA Division Office no later than August 1. The analysis must identify the actions to be taken, estimate a duration and completion date for each action, and itemize an amount of funds to be

directed for each action. The analysis plan will require the approval of the FHWA Division Office. The FHWA will require on October 1 of that year, and each year thereafter as may be necessary, the State to dedicate funds apportioned to the State under sections 23 U.S.C. 119 and 23 U.S.C. 133 to correct the issue of noncompliance.

Authority: 23 U.S.C. 144 and 315; 23 CFR 1.32, and 650 Subpart C; 49 CFR 1.85.

Issued on: May 5, 2014.

Gregory G. Nadeau,

Deputy Administrator, Federal Highway Administration.

[FR Doc. 2014–10800 Filed 5–9–14; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2010–0167]

RIN 2126–AB20

Electronic Logging Devices and Hours of Service Supporting Documents; Evaluating the Potential Safety Benefits of Electronic Hours-of-Service Recorders

ACTION: Notice of availability of research report.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) announces the availability of a new final report, ''Evaluating the Potential Safety Benefits of Electronic Hours-of-Service Recorders.'' The study quantitatively evaluated whether trucks equipped with Electronic Hours-of-Service Recorders (EHSRs) have a lower (or higher) crash and hours-of-service (HOS) violation rate than those without EHSRs. The safety benefits of EHSRs were quantitatively evaluated by comparing the crash risk for two exposure groups (i.e., EHSRs were considered to improve safety if the trucks with EHSRs showed a lower crash risk than trucks without EHSRs). For this project, EHSRs were defined as any device that electronically records drivers' HOS. The study is an effort to further quantify the safety benefits of electronic logging devices (ELDs) and provides results that are consistent with the Agency's estimates of safety benefits of an ELD mandate, as proposed on March 28, 2014. A copy of the report has been placed in the docket referenced at the beginning of this notice.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2010–0167 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m. Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *www.regulations.gov*, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line Federal document management system is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

FOR FURTHER INFORMATION CONTACT: For information concerning this study, please contact Mr. Albert Alvarez, Research Division of the Office of Analysis, Research, and Technology, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001 or by telephone at 202–385–2377.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2010–0167), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and put the docket number, ''FMCSA–2010–0167'' in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on ''Comment Now!'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period and may change this notice based on your comments.

Viewing Comments and Documents

To view comments, as well as other documents available in the docket, go to *http://www.regulations.gov* and insert the docket number, ''FMCSA–2010–0167'' in the ''Keyword'' box and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document listed to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

Privacy Act

All comments received will be posted without change to *http://*

www.regulations.gov and will include any personal information you have provided. Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

II. The Study

The purpose of the study was to assess the benefits of installed EHSRs on safety and HOS violations related to Class 7 and 8 trucks as they operated during normal revenue-producing deliveries. Data were obtained through a third-party vendor that compiled previously-generated compliance data regarding participating motor carriers. Although the final data sets included data from 11 carriers representing small, medium, and large carriers (including a total of 82,943 crashes, 970 HOS violations, and 224,034 truck-years that drove a total of 15.6 billion miles), the data set in the study was skewed toward larger, for-hire carriers and may not represent the overall U.S. trucking population. After controlling for year, carriers in the data set, onboard safety system (OBSS) status, and long-haul/regional indicator, EHSR-equipped trucks had a significantly lower total crash rate (11.7 percent reduction) and a significantly lower preventable crash rate (5.1 percent reduction) than trucks not equipped with an EHSR. Small sample sizes limited the power to detect a significant difference between the EHSR cohort and the non-EHSR cohort for U.S. Department of Transportation (USDOT)-recordable and fatigue-related crashes. This result is primarily attributed to the lack of sufficient data (in terms of the number of these types of crashes) to be able to detect safety benefits with statistical significance at the observed level.

After controlling for year, carrier index, OBSS status, and long-haul/regional indicator, EHSR-equipped trucks had a 53 percent lower driving-related HOS violation rate and a 49 percent lower non-driving-related HOS violation rate than trucks not equipped with EHSRs. The results show a clear safety benefit, in terms of crash and HOS violation reductions, for trucks equipped with EHSRs.

The Center for Truck and Bus Safety at the Virginia Tech Transportation Institute conducted the study on behalf of FMCSA. This study was mentioned in the Friday, March 28, 2014 Supplemental Notice of Proposed Rulemaking (SNPRM) (79 FR 17656, 17665), and the findings of this study are consistent with the estimate of safety benefits presented in the ELD SNPRM.

FMCSA makes the ''Evaluating the Potential Safety Benefits of Electronic Hours-of-Service Recorders'' available to the public and places this study in the docket for the ELD rulemaking, because FMCSA seeks comments from the public on this study as it relates to the SNPRM. The docket for this rulemaking closes on May 27, 2014.

Issued on: April 29, 2014.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2014–10813 Filed 5–9–14; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2014–0071]

Hours of Service of Drivers: McKee Foods Transportation, LLC, Application for Exemption

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

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that it has received an application from McKee Foods Transportation, LLC (MFT) for an exemption from certain provisions of the Agency's hours-of-service (HOS) regulations. MFT proposes that its team drivers engaged in delivery and backhaul operations be granted an exemption from the HOS rules pertaining to use of a sleeper berth (SB). Current HOS rules require that all SB rest regimens include, in part, the regular use of a SB period for at least 8 hours—combined with a separate period of at least 2 hours, either in the SB, off-duty or some combination of both—to gain the equivalent of at least 10 consecutive hours off duty. MFT proposes that its team drivers be allowed to take the equivalent of 10 consecutive hours off duty by splitting SB time into two periods totaling 10 hours, provided neither of the two periods is less than 3 hours. FMCSA requests public comment on MFT's application for exemption.

DATES: Comments must be received on or before June 11, 2014.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA–2014–0071 by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number. For detailed instructions on submitting comments and additional information on the exemption process, see the *Public Participation* heading below. Note that all comments received will be posted without change to *www.regulations.gov,* including any personal information provided. Please see the *Privacy Act* heading below.

Docket: For access to the docket to read background documents or comments received, go to *www.regulations.gov,* and follow the online instructions for accessing the dockets, or go to the street address listed above.

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 a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public participation: The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the ''help'' section of the Federal eRulemaking Portal Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online. Comments received after the comment closing date will be included in the docket and will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202–366–4325. Email: *MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Request for Exemption

McKee Foods Transportation, LLC (MFT) is a private carrier that sells fresh snack products under the Little Debbie, Sunbelt, and Drake's brands. MFT delivers products in interstate commerce to 48 states and parts of Canada from three manufacturing distribution centers and one stand-alone distribution center. MFT employs approximately 650 drivers, using more than 300 tractor-trailer combinations. MFT uses team drivers on customer delivery trips to maximize efficiency. Their average driver is on duty approximately 35–45 hours per week with the majority of the on-duty time split between driving and unloading the trailer. A typical trip averages six stops. A percentage of the trips make backhauls—both private and for-hire. The average round trip is about 1,000 miles. A team usually delivers two trailer loads per week, with time at home between most trips.

MFT states that it operates on a routine weekly cycle. Each workweek contains a regular subset of daily cycles dispatching and returning long-, medium- and short-range trips. MFT advises that it has a constant flow of outbound and inbound trucks that allow it to continuously ship fresh-baked goods and return with backhauls of raw materials and other for-hire loads. The routine cycles allow most of the drivers to have regular schedules. Many of MFT's drivers are off duty at least 48 consecutive hours every week while many others are off duty at least 72 consecutive hours. MFT's tractors are equipped with double-bunk sleepers in the event both drivers need or want to rest at the same time. Drivers are allowed to make their own decisions about when and where to take short rest breaks based on their personal needs and preferences in conformance with current regulatory requirements. MFT asserts that it takes safety, health and wellness seriously, and hires well-qualified drivers who go through a comprehensive orientation/new hire training program. MFT's trucks are equipped with Electronic On-Board Recorders (EOBRs) which include electronic logs.

MFT requests an exemption from the current regulations for its delivery shipments and backhaul activity operations to eliminate the requirement that SB time include a period of at least 8 but less that 10 consecutive hours in the SB and a separate period of at least 2 but less than 10 consecutive hours either in the SB or off duty, or any combination thereof (49 CFR 395.1(g)(1)(ii)(A)(1)). MFT proposes that these team drivers be allowed to split SB time into two periods totaling at least 10 hours, provided neither of the two periods is less than 3 hours in length. The request would be limited to team drivers.

MFT states that the activities of its team drivers involve both driving and offloading product to its customers. The drivers average approximately 53 hours per week on the road away from home. Approximately 30 percent of this time is spent in the sleeper. MFT contends that the experience of its drivers has demonstrated that sleeping in a moving vehicle is more difficult than in a stopped truck. According to MFT, having the flexibility to switch with a partner allows each driver to take advantage of shorter time periods when they may feel fatigued. Further, this will result in a more flexible work pattern, allowing both drivers to perform warehouse functions together (to reduce driver unloading time, improve maneuvering in the warehouse), and improving personal and vehicular safety.

MFT states that it is committed to maintaining its outstanding safety record by focusing on continuous improvement, promoting technologies to enhance safety, conducting thorough inspections and having well-communicated policies in place to address both safety and compliance-related topics. MFT identified some countermeasures it would take to maintain safe operations if the exemption is granted. The safeguards include, but are not limited to:

- Every week, all transportation operations shut down one hour prior to sundown on Friday until one hour after sundown on Saturday, resulting in an automatic minimum 26 hour off-duty home time for all drivers in addition to two or three days home time during the week;
- All tractors are equipped with speed limiters;
- Drivers use EOBRs to track their duty time and HOS compliance;
- Drive time is reduced from 11 hours to 10 hours. Team drivers are limited to 10 hours of driving prior to completing their required 10 hours total SB.
- Behavior-based event data is monitored from the EOBR to enhance safety measures already in place to help reduce the probability of accidents on the road.

MFT believes that by allowing its team drivers to exercise flexibility in their SB requirements, the drivers would experience more quality rest. To support its request for the exemption, MFT cited the results of an FMCSA-sponsored study entitled ''Investigation of the Effects of Split Sleep Schedules on Commercial Vehicle Driver Safety and Health'' by Belenky (2012). The report noted ''. . . that when consolidated nighttime sleep is not possible, split sleep is preferable to consolidated daytime sleep.'' (*http://ntl.bts.gov/lib/51000/51200/51254/12-003-Split-Sleep_Investigation-of-the-Effects-of-Split-Sleep-Schedules-on-Commercial-Vehicle-Driver-Safety-and-Health-508.pdf.*)

A copy of MFT's application for exemption is available for review in the docket for this notice.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b)(4), FMCSA requests public comment on MFT's application for an exemption from certain provisions of the driver's HOS rules in 49 CFR part 395. The Agency will consider all comments received by close of business on June 11, 2014. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will consider to the extent practicable comments received in the public docket after the closing date of the comment period.

Issued on: April 28, 2014.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2014–10825 Filed 5–9–14; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1999–6480; FMCSA–2000–7006; FMCSA–2000–7363; FMCSA–2004–17195; FMCSA–2006–23773; FMCSA–2010–0050]

Qualification of Drivers; Exemption Applications; Vision

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

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 15 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective June 3, 2014. Comments must be received on or before June 11, 2014.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: Docket No. [Docket No. FMCSA–1999–6480; FMCSA–2000–7006; FMCSA–2000–7363; FMCSA–2004–17195; FMCSA–2006–23773; FMCSA–2010–0050], using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov*, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316).

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 15 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 15 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Dean R. Allen (OR)
James C. Askin (FL)
Ernie E. Black (NC)
Gary O. Brady (WV)
Stephen H. Goldcamp (OH)
Wai F. King (IL)
Dennis E. Krone (IL)
Richard J. McKenzie, Jr. (MD)
Christopher J. Meerten (OR)
Robert J. Mohorter (NY)
James A. Mohr (MT)
Tommy L. Ray, Jr. (AL)
George S. Rayson (OH)
Kevin L. Routin (KY)
Raul R. Torres (CA)

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 15 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (64 FR 68195; 65 FR 20245; 65 FR 20251; 65 FR 45817; 65 FR 57230; 65 FR 77066; 67 FR 17102; 67 FR

38311; 68 FR 1654; 69 FR 17263; 69 FR 17267; 69 FR 26291; 69 FR 31447; 70 FR 7545; 71 FR 6826; 71 FR 16410; 71 FR 16902; 71 FR 27033; 73 FR 11989; 73 FR 28186; 75 FR 14656; 75 FR 27623; 75 FR 28682; 77 FR 29447). Each of these 15 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements.

These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by June 11, 2014.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 15 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket numbers FMCSA–1999–6480; FMCSA–2000–7006; FMCSA–2000–7363; FMCSA–2004–17195; FMCSA–2006–23773; FMCSA–2010–0050 and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this proposed rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–1999–6480; FMCSA–2000–7006; FMCSA–2000–7363; FMCSA–2004–17195; FMCSA–2006–23773; FMCSA–2010–0050 and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to the proposed rulemaking.

Issued on: April 28, 2014.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2014–10808 Filed 5–9–14; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2014 0071]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel ELEGANTE; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before June 11, 2014.

ADDRESSES: Comments should refer to docket number MARAD–2014–0071. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel ELEGANTE is:

Intended Commercial Use of Vessel: ''Private Vessel Charters, Passengers Only''.

Geographic Region: ''California''.

The complete application is given in DOT docket MARAD–2014–0071 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

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 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: May 6, 2014.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2014–10818 Filed 5–9–14; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2014 0073]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel OVERSEAS OFFICE; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before June 11, 2014.

ADDRESSES: Comments should refer to docket number MARAD–2014–0073. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel OVERSEAS OFFICE is:

Intended Commercial Use of Vessel: ''Private Charter for ½ Day or Full Day with owner, Captain Charles V. Giambalvo operating his vessel and owner, Karen L. Giambalvo as First Mate for a maximum of 12 passengers. (No Barefoot Charters)''.

Geographic Region: ''Florida, Georgia, South Carolina, North Carolina, Virginia, Maryland, Delaware, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, New Hampshire, and Maine''.

The complete application is given in DOT docket MARAD–2014–0073 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

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 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: May 6, 2014.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2014–10810 Filed 5–9–14; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2014 0070]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel SEVENTH WAVE; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before June 11, 2014.

ADDRESSES: Comments should refer to docket number MARAD–2014–0070. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for

inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SEVENTH WAVE is:

Intended Commercial Use of Vessel: ''Sunset sails, sailing charters''.

Geographic Region: ''Florida''.

The complete application is given in DOT docket MARAD–2014–0070 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

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 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: May 6, 2014.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2014–10820 Filed 5–9–14; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2014 0072]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel MALOLO; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before June 11, 2014.

ADDRESSES: Comments should refer to docket number MARAD–2014–0072. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel MALOLO is:

Intended Commercial Use of Vessel: ''charter sailing and fishing, research''.

Geographic Region: ''Hawaii''.

The complete application is given in DOT docket MARAD–2014–0072 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

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 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: May 6, 2014.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2014–10816 Filed 5–9–14; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2014 0069]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel MELUSINA; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before June 11, 2014.

ADDRESSES: Comments should refer to docket number MARAD–2014–0069. Written comments may be submitted by hand or by mail to the Docket Clerk,

U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov*.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel MELUSINA is:

Intended Commercial Use of Vessel: ''I intend to host small private parties/events aboard my sailboat, skippered either by myself or another designated captain. Examples of these events include: Birthday brunches, engagements/anniversaries, exclusive wine tastings, corporate business development events, etc. The maximum number of passengers would be 10, to allow for a captain and a crew member. The boat will be based in the Washington DC area on the Potomac River, which includes use of DC, Virginia, and Maryland water, which is why all three states are listed for intended operation and trade.''

Geographic Region: Washington, DC; Maryland; Virginia.

The complete application is given in DOT docket MARAD–2014–0069 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

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 (Volume 65, Number 70; Pages 19477–78).

Dated: May 5, 2014.

By Order of the Maritime Administrator.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2014–10826 Filed 5–9–14; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2014–0049]

Reports, Forms, and Record Keeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on proposed collection of information.

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 collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before July 11, 2014.

ADDRESSES: You may submit comments identified by DOT Docket ID Number NHTSA–2014–0049 using any of the following methods:

- *Electronic submissions:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility, M–30, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the Docket number for this Notice. Note that all comments received will be posted without change to *http://www.regulations.gov* including any personal information provided. Please see the Privacy Act heading below.

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 (Volume 65, Number 70; pages 19477–78) or you may visit *http://dot.gov/privacy.html or http://DocketsInfo.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Gary R. Toth, Office of Data Acquisitions (NVS–410), Room W53–505, 1200 New Jersey Avenue SE., Washington, DC 20590. Mr. Toth's telephone number is (202) 366–5378 and his email address is *gary.toth@dot.gov*.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, 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 each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5CFR 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 following proposed collections of information:

Title: Crash Investigation Sampling System (CISS).

Type of Request: Collection of motor vehicle crash data.

OMB Control Number: None.

Affected Public: Passenger Motor Vehicle Operators.

Abstract: The collection of crash data that support the establishment and enforcement of motor vehicle regulations that reduce the severity of injury and property damage caused by motor vehicle crashes is authorized under the National Traffic and Motor Vehicle Safety Act of 1966 (Pub. L. 89–563, Title 1, Sec. 106, 108, and 112). The National Highway Traffic Safety Administration has been investigating motor vehicle traffic crashes and collecting crash data through its National Automotive Sampling System (NASS) Crashworthiness Data System (NASS–CDS) and Special Crash Investigation (SCI) programs. The NASS was designed in the 1970's to collect data from the originally planned 75 data collection sites. Due to demographic changes, the crash population has changed in the country. At the same time, the data needs of the transportation community have increased and significantly changed over the last three decades. For example, the primary focus of the original NASS design was to enhance crashworthiness by providing detailed information about crush damage, restraint system performance and injury mechanisms. In recent years, however, the transportation community has been increasingly more interested in adding data elements related to what happens before a crash and related crash avoidance safety countermeasures. The scope of traffic safety studies has also been expanding. More data is needed from crashes which are not currently included in NASS–CDS, such as those involving large trucks, motorcycles, and pedestrians.

Recognizing the importance as well as the limitations of the current NASS system, NHTSA is undertaking a modernization effort to upgrade our data systems by improving the information technology infrastructure, updating the data we collect and reexamining the sample sites. The goal of this overall modernization effort is to develop a new crash data system that meets current and future data needs. Several data acquisitions systems will be designed to collect record-based information and investigation-based information. The redesigned investigation-based acquisition process will focus on detailed investigation of passenger vehicle crashes and will be referred to as the Crash Investigation Sampling System (CISS).

For the investigation-based acquisition process, once a crash has been selected for investigation, crash technicians locate, visit, measure, and photograph the crash scene; locate, inspect, and photograph vehicles; conduct a telephone or personal interview with the involved individuals or surrogate; and obtain and record injury information received from various medical data sources. These data are used to describe and analyze circumstances, mechanisms, and consequences of high severity motor vehicle crashes in the United States. The collection of interview data aids in this effort.

Estimated Annual Burden: 5,605 hours.

Number of respondents: 9,450.

Terry T. Shelton,

Associate Administrator, National Center for Statistics and Analysis.

[FR Doc. 2014–10784 Filed 5–9–14; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 6, 2014.

The Department of the Treasury is planning to submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13.

DATES: Comments should be received on or before July 11, 2014 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to Robert Dahl, Departmental Clearance Officer, U.S. Department of the Treasury, Suite 8111, 1750 Pennsylvania Ave. NW., Washington, DC 20006. (202) 622–3119.

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 622–3119, email at *PRA@treasury.gov,* or the entire information collection request maybe found at *www.reginfo.gov.*

Small Business Lending Fund (SBLF)

OMB Number: 1505–0246.

Type of Review: Reinstatement.

Title: Small Business Lending Fund—Lending Survey.

Abstract: Treasury plans to collect information from SBLF participants about the small business lending supported by SBLF's investment. SBLF will request information from participants on changes in small business lending policies, dollar amounts and number of loans extended across different categories of small business lending, actions taken using SBLF funds, and outreach undertaken to expand lending to small businesses owned by women, minorities and veterans, over the past year.

Annual Responses: 332.

Burden Hours: 2,656.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. 2014–10751 Filed 5–9–14; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1099–G

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1099–G, Certain Government Payments.

DATES: Written comments should be received on or before July 11, 2014 to be assured of consideration.

ADDRESSES: Direct all written comments to Christie Preston, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Kerry Dennis, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Kerry.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Certain Government Payments.
OMB Number: 1545–0120.
Form Number: 1099–G.
Abstract: Form 1099–G is used to report government payments such as unemployment compensation, state and local income tax refunds, credits, or offsets, reemployment trade adjustment assistance (RTAA) payments, taxable grants, agricultural payments, or for payments received on a Commodity Credit Corporation (CCC) loan.
Current Actions: There are no changes made to the form, however the agency has adjusted its estimated number of responses (61,000,000 to 87,527,400) based on the most recent data which results in a change in the estimated total annual burden previously reported to OMB.
Type of Review: Revision of a currently approved collection.
Affected Public: Federal, state, local or tribal governments.
Estimated Number of Responses: 87,527,400.
Estimated Time per Response: 18 minutes.
Estimated Total Annual Burden Hours: 26,258,220.
The following paragraph applies to all of the collections of information covered by this notice:
An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.
Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 5, 2014.

Christie Preston,

IRS Reports Clearance Officer.

[FR Doc. 2014–10851 Filed 5–9–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning discharge of liens.

DATES: Written comments should be received on or before July 11, 2014 to be assured of consideration.

ADDRESSES: Direct all written comments to Christie Preston, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for copies of the information collection should be directed to Kerry Dennis, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet, at *Kerry.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:
Title: Discharge of Liens.
OMB Number: 1545–0854.
Regulation Project Number: T.D. 9410.
Abstract: The Internal Revenue Service needs this information in processing a request to sell property subject to a tax lien to determine if the taxpayer has equity in the property. This information will be used to determine the amount, if any, to which the tax lien attaches.
Current Actions: There is no change to this existing regulation.
Type of Review: Extension of a currently approved collection.
Affected Public: Individuals, business or other for-profit organizations, and farms.
Estimated Number of Respondents: 500.
Estimated Time per Respondent: 24 minutes.
Estimated Total Annual Burden Hours: 200.
The following paragraph applies to all of the collections of information covered by this notice:
An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.
Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 5, 2014.

Christie Preston,

IRS Reports Clearance Officer.

[FR Doc. 2014–10852 Filed 5–9–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995,

Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). The IRS is soliciting comments concerning information collection requirements related to diesel fuel and kerosene excise tax; dye injection.

DATES: Written comments should be received on or before July 11, 2014 to be assured of consideration.

ADDRESSES: Direct all written comments to Christie Preston, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Kerry Dennis at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Kerry.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Diesel Fuel and Kerosene Excise Tax; Dye Injection.

OMB Number: 1545–1418. Regulation Project Number: REG–154000–04 (T.D. 9199)

Abstract: In order for diesel fuel and kerosene that is used in a nontaxable use to be exempt from tax under section 4082(a), it must be indelibly dyed by use of a mechanical dye injection system that satisfies the requirements in the regulations.

Current Actions: There are no changes being made to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 200.

Estimated Time per Respondent: 7 hours.

Estimated Total Annual Burden Hours: 1,400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 5, 2014.

Christie Preston,

IRS Reports Clearance Officer.

[FR Doc. 2014–10853 Filed 5–9–14; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

Vol. 79 Monday,

No. 91 May 12, 2014

Part II

Department of the Interior

Fish and Wildlife Service

Department of Commerce

National Oceanic and Atmospheric Administration

Policy Regarding Implementation of Section 4(b)(2) of the Endangered Species Act; Notice; Interagency Cooperation—Endangered Species Act of 1973, as Amended; Definition of Destruction or Adverse Modification of Critical Habitat; Listing Endangered and Threatened Species and Designating Critical Habitat; Implementing Changes to the Regulations for Designating Critical Habitat; Proposed Rules

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. FWS–R9–ES–2011–0104; Docket No. 120206102–336501; 4500030114]

RIN 1018–AX87; 0648–BB82

Policy Regarding Implementation of Section 4(b)(2) of the Endangered Species Act

AGENCIES: U.S. Fish and Wildlife Service (FWS), Interior; National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Announcement of draft policy and solicitation of public comment.

SUMMARY: We, the U.S Fish and Wildlife Service and the National Marine Fisheries Service, announce a draft policy on exclusions from critical habitat under the Endangered Species Act. This draft policy provides the Services' position on how we consider partnerships and conservation plans, conservation plans permitted under section 10 of the Act, tribal lands, national security and homeland security impacts and military lands, Federal lands, and economic impacts in the exclusion process. This draft policy is meant to complement the amendments to our regulations regarding impact analyses of critical habitat designations and is intended to clarify expectations regarding critical habitat and provide for a credible, predictable, and simplified critical-habitat-exclusion process.

DATES: We will accept comments from all interested parties until July 11, 2014. Please note that if you are using the Federal eRulemaking Portal (see **ADDRESSES** section below), the deadline for submitting an electronic comment is 11:59 p.m. Eastern Standard Time on this date.

ADDRESSES: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. In the Search box enter the Docket number for this proposed policy, which is FWS–R9–ES–2011–0104. You may enter a comment by clicking on ''Comment Now!.'' Please ensure that you have found the correct document before submitting your comment.
- *U.S. mail or hand delivery:* Public Comments Processing, Attn: Docket No. FWS–R9–ES–2011–0104; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, PDM–2042; Arlington, VA 22203.

We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the Request for Information section below for more information).

FOR FURTHER INFORMATION CONTACT: Douglas Krofta, U.S. Fish and Wildlife Service, Division of Conservation and Classification, 4401 N Fairfax Drive, Suite 420, Arlington, VA, 22203, telephone 703/358–2171; facsimile 703/358–1735; or Marta Nammack, National Marine Fisheries Service, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910, telephone 301/713–1401; facsimile 301/713–0376. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION: Today, we publish in the **Federal Register** three related documents that are now open for public comment. We invite the public to comment individually on these documents as instructed in their preambles. This document is one of the three, of which two are proposed rules and one is a draft policy:

- A proposed rule to amend the existing regulations governing section 7 consultation under the Endangered Species Act to revise the definition of ''destruction or adverse modification'' of critical habitat. The current regulatory definition has been invalidated by several courts for being inconsistent with the language of the Act. This proposed rule would revise title 50 of the Code of Federal Regulations (CFR) at part 402. The Regulatory Identifier Number (RIN) is 1018–AX88, and the proposed rule may be found on *http://www.regulations.gov* at Docket No. FWS–R9–ES–2011–0072.
- A proposed rule to amend existing regulations governing the designation of critical habitat under section 4 of the Act. A number of factors, including litigation and the Services' experience over the years in interpreting and applying the statutory definition of critical habitat, have highlighted the need to clarify or revise the current regulations. This proposed rule would revise 50 CFR part 424. It is published under RIN 1018–AX86 and may be found on *http://www.regulations.gov* at Docket No. FWS–HQ–ES–2012–0096.
- A draft policy pertaining to exclusions from critical habitat and how we consider partnerships and conservation plans, conservation plans permitted under section 10 of the Act, tribal lands, national security and homeland security impacts and military lands, Federal lands, and economic impacts in the exclusion process. This policy is meant to complement the proposed revisions to 50 CFR part 424 and to provide for a simplified exclusion process. The policy is published under RIN 1018–AX87 and may be found on *http://www.regulations.gov* at Docket No. FWS–R9–ES–2011–0104.

Background

The National Marine Fisheries Service (NMFS) and Fish and Wildlife Service (FWS) are charged with implementing the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), the goal of which is to provide a means to conserve the ecosystems upon which listed species depend and a program for listed species conservation. Critical habitat is one tool in the Act that Congress established to achieve species conservation. In section 3(5)(A) of the Act Congress defined ''critical habitat'' as:

(i) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of this Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and

(ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of this Act, upon a determination by the Secretary that such areas are essential for the conservation of the species.

Specifying the geographic location of critical habitat helps facilitate implementation of section 7(a)(1) by identifying areas where Federal agencies can focus their conservation programs and utilize their authorities to further the purposes of the Act. In addition to serving as a notification tool, the designation of critical habitat also provides a significant regulatory protection—the requirement that Federal agencies consult with the Services under section 7(a)(2) to insure their actions are not likely to destroy or adversely modify critical habitat.

Section 4 of the Act requires the Services to designate critical habitat and sets out standards and processes for determining critical habitat. Congress authorized the Secretaries to ''exclude any area from critical habitat if [s]he determines that the benefits of exclusion outweigh the benefits of specifying such

area as part of the critical habitat, unless he determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned'' (section 4(b)(2)).

Over the years there have been legal challenges to the Services' process for considering exclusions. Several court decisions have addressed the Services' implementation of section 4(b)(2). In 2008, the Solicitor of the Department of the Interior issued a legal opinion on implementation of section 4(b)(2) (*http://www.doi.gov/solicitor/opinions.html*). That opinion is based on the text of the Act and principles of statutory interpretation and relevant case law. The opinion explained the legal considerations that guide the Secretary's exclusion authority and discussed and elaborated on the application of these considerations to the circumstances commonly faced by the Services (e.g., habitat conservation plans, Tribal lands).

To provide predictability and transparency regarding how the Services consider exclusions under section 4(b)(2), the Services are announcing a draft policy on several issues that frequently arise in the context of exclusions. The draft policy on implementation of specific aspects of section 4(b)(2) does not cover the entire range of factors that may be considered as the basis for an exclusion in any given designation, nor does it serve as a comprehensive interpretation of all the provisions of section 4(b)(2).

This draft policy, when finalized, will set forth the Services' position regarding how we consider partnerships and conservation plans, conservation plans permitted under section 10 of the Act, tribal lands, national security and homeland security impacts and military lands, Federal lands, and economic impacts in the exclusion process. The Services intend to apply this policy when considering exclusions from critical habitat. That being said, under the terms of the policy as proposed, the Services retain a great deal of discretion in making decisions with respect to exclusions from critical habitat.

Implementation of Section 4(b)(2) of the Act

On August 24, 2012 (77 FR 51503) the Services published a proposed rule to revise 50 CFR 424.19. In that rule the Services proposed to elaborate on the process and standards for implementing section 4(b)(2) of the Act. The final rule was published on August 28, 2013 (78 FR 53058). This draft policy is meant to complement those revisions to 50 CFR 424.19 and provides further clarification as to how we will implement section 4(b)(2) when designating critical habitat.

Section 4(b)(2) of the Act provides that:

> The Secretary shall designate critical habitat, and make revisions thereto, under subsection (a)(3) on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned.

In 1982, Congress added this provision to the Act, both to require the Services to consider the broader impacts of designation of critical habitat and to provide a means for the Services to ameliorate potentially negative impacts of designation by excluding, in appropriate circumstances, particular areas from a designation. The first sentence of section 4(b)(2) sets out a mandatory requirement that the Services consider the economic impact, impact on national security, and any other relevant impacts prior to designating an area as part of a critical habitat designation. The Services will always consider such impacts, as required under this sentence, for each and every designation of critical habitat. Although the term ''homeland security'' was not in common usage in 1982, the Services acknowledge that homeland security is fairly embodied within the mandatory requirement that the Services consider impacts on national security within the intent and meaning of section 4(b)(2).

The second sentence of section 4(b)(2) outlines a separate, discretionary process by which the Secretaries may elect to go further in order to determine whether to exclude such an area from the designation, by performing an exclusion analysis. The Services use their compliance with the first sentence of section 4(b)(2), their consideration of whether to engage in the discretionary exclusion analysis under the second sentence of section 4(b)(2), and any exclusion analysis that the Services undertake, as the primary basis for satisfying the provisions of Executive Orders 12866 and 13563. E.O. 12866 (and incorporated by E.O. 13563) requires agencies to assess the costs and benefits of a rule, and, to the extent permitted by law, to propose or adopt the rule only upon a reasoned determination that the benefits of the intended regulation justify the costs.

Conducting an exclusion analysis under section 4(b)(2) involves balancing or weighing the benefits of excluding a specific area from a designation of critical habitat against the benefits of including that area in the designation. If the benefits of exclusion outweigh the benefits of inclusion, the Secretaries may exclude the specific area so long as an explicit determination is made that an exclusion of the specific area would not result in the extinction of the species concerned. The discretionary 4(b)(2) exclusion analysis is fully consistent with the E.O. requirements in that it permits excluding an area where the benefits of exclusion outweigh the benefits of inclusion, and not excluding an area when the benefits of exclusion do not outweigh the benefits of inclusion. This draft policy sets forth specific categories of information that we often consider when we enter into the discretionary 4(b)(2) exclusion analysis and exercise the Secretaries' discretion to exclude areas from critical habitat. We do not intend to cover in these examples all the categories of information that may be relevant, or to limit the Secretaries' discretion under this section to weight the benefits as appropriate.

Moreover, revisions to 50 CFR 424.19 further explain how the Services clarify the exclusion process for critical habitat and address statutory changes and case law. The revisions to 50 CFR 424.19 state that the Secretaries have the discretion to exclude any particular area from the critical habitat upon a determination that the benefits of such exclusion outweigh the benefits of specifying the particular area as part of the critical habitat. Furthermore, the Secretaries may consider any relevant benefits, and the weight and consideration given to those benefits is within the discretion of the Secretaries. The revisions to 50 CFR 424.19 provide the framework for how the Services intend to implement section 4(b)(2) of the Act. This draft policy further details the discretion available to the Services (acting for the Secretaries) and provides detailed examples of how we consider partnerships and conservation plans, conservation plans permitted under section 10 of the Act, tribal lands, national security and homeland security impacts and military lands, Federal lands, and economic impacts in the exclusion process when we undertake a discretionary exclusion analysis.

a. The Services' Discretion

The Act affords a great degree of discretion to the Services in

implementing section 4(b)(2). This discretion is applicable to a number of aspects of section 4(b)(2). Most significant is that the decision to exclude is always completely discretionary, as the Act states that the Secretaries ''may'' exclude areas. In no circumstance is exclusion required under the second sentence of section 4(b)(2).

It is the general practice of the Services to exercise this discretion to exclude an area when the benefits of exclusion outweigh the benefits of inclusion, and not exclude an area when the benefits of exclusion do not outweigh the benefits of inclusion. In articulating this general practice, the Services do not intend to limit in any manner the discretion afforded to the Secretaries by the statute.

b. Private or Other Non-Federal Conservation Plans and Partnerships, in General

We sometimes exclude specific areas from critical habitat designations in part based on the existence of private or other non-Federal conservation plans or partnerships. A conservation plan describes actions that minimize and/or mitigate impacts to species and their habitats. Conservation plans can be developed by private entities with no Service involvement, or in partnership with the Services. In the case of a habitat conservation plan (HCP), safe harbor agreement (SHA), or a candidate conservation agreement with assurances (CCAA), a plan or agreement is developed in partnership with the Services for the purposes of attaining a permit under section 10 of the Act. See paragraph C, below, for a discussion of HCPs, SHAs, and CCAAs.

In determining how the benefits of exclusion and the benefits of inclusion are affected by the existence of private or other non-Federal conservation plans and partnerships, when we undertake a discretionary exclusion analysis, we evaluate a variety of factors. These factors include:

(i) The degree to which the record supports a conclusion that a critical habitat designation would impair the realization of benefits expected from the plan, agreement, or partnership;

(ii) The extent of public participation in the development of the conservation plan;

(iii) The degree to which there has been agency review and required determinations;

(iv) Whether National Environmental Policy Act (NEPA) compliance was required;

(v) The demonstrated implementation and success of the chosen mechanism;

(vi) The degree to which the plan or agreement provides for the conservation of the essential physical or biological features for the species;

(vii) Whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan or agreement will be implemented; and

(viii) Whether the plan or agreement contains a monitoring program and adaptive management to ensure that the conservation measures are effective and can be modified in the future in response to new information.

Whether a plan or agreement has previously been subject to public comment, agency review, and NEPA compliance processes are factors that may indicate the degree of critical analysis the plan or agreement has already received. These factors influence the Services' determination of the appropriate weight that should be given in any particular case.

Achieving the conservation benefits of a particular existing plan is usually not a *benefit of exclusion,* because we expect such plans to be implemented and, therefore, those conservation benefits are expected to occur, regardless of inclusion or exclusion of the covered areas in critical habitat. Instead, the benefit of excluding from critical habitat a specific area covered by an existing plan is typically the maintenance of an existing partnership or the potential for creation of new conservation partnerships with the plan's signatories or other parties. On the other hand, the conservation benefits of a particular existing plan, agreement, or partnership may serve to reduce the *benefits of including* in critical habitat a specific area that is covered by an existing plan. The benefits of inclusion in critical habitat include that amount of conservation of the species habitat provided by the designation of critical habitat above the baseline (i.e., above the conservation benefits from listing of the species or other measures not dependent on this designation of critical habitat). Where there is an existing plan, that plan (and the conservation benefits it provides) may appropriately be included in the baseline. Therefore, to the extent the plan provides some protection for the species' habitat that would to some degree be duplicated by designating the area at issue as critical habitat, the benefits of inclusion of that area covered by the plan are reduced.

c. Private or Other Non-Federal Conservation Plans Related to Permits Under Section 10 of the Act

Habitat conservation plans (HCPs) for incidental take permits under section 10(a)(1)(B) of the Act provide for partnerships with non-Federal entities to minimize and mitigate impacts to listed species and their habitat. In most cases HCP permittees agree to do more for the conservation of the species and their habitats on private lands than designation of critical habitat would provide alone. We place great value on the partnerships that are developed during the preparation and implementation of HCPs.

Candidate conservation agreements with assurances (CCAAs) and safe harbor agreements (SHAs) are voluntary agreements designed to conserve candidate and listed species, respectively, on non-Federal lands. In exchange for actions that contribute to the conservation of species on non-Federal lands, participating property owners are covered by an enhancement of survival permit under section 10(a)(1)(A) of the Act, which authorizes incidental take of the covered species that may result from implementation of conservation actions, specific land uses, and return to baseline under the agreements. The Services also provide enrollees assurances that we will not impose further land-, water-, or resource-use restrictions or additional commitments of land, water, or finances beyond those agreed to in the agreements.

When we undertake a discretionary exclusion analysis, we will always consider areas covered by an approved CCAA/SHA/HCP, and generally exclude such areas from a designation of critical habitat if three conditions are met:

(1) The permittee is properly implementing the CCAA/SHA/HCP and is expected to continue to do so for the term of the agreement. A CCAA/SHA/HCP is properly implemented if the permittee is and has been fully implementing the commitments and provisions in the CCAA/SHA/HCP, Implementing Agreement, and permit.

(2) The species for which critical habitat is being designated is a covered species in the CCAA/SHA/HCP, or very similar in its habitat requirements to a covered species. The recognition that the Services extend to such an agreement depends on the degree to which the conservation measures undertaken in the CCAA/SHA/HCP would also protect the habitat features of the similar species.

(3) The CCAA/SHA/HCP specifically addresses that species' habitat (and does

not just provide guidelines) and meets the conservation needs of the species in the planning area.

We will undertake a case-by-case analysis to determine whether these conditions are met and, as with other conservation plans, whether the benefits of exclusion outweigh the benefits of inclusion.

The benefits of excluding lands with CCAAs, SHAs, or properly implemented HCPs that have been permitted under section 10 of the Act from critical habitat designation include relieving landowners, communities, and counties of any potential additional regulatory burden that might be imposed as a result of the critical habitat designation. A related benefit of exclusion is the unhindered, continued ability to maintain existing partnerships and seek new partnerships with potential plan participants, including States, counties, local jurisdictions, conservation organizations, and private landowners. Together, these entities can implement conservation actions that the Services would be unable to accomplish without private landowners. These partnerships can lead to additional CCAAs, SHAs, and HCPs. This is particularly important because HCPs often cover a wide range of species, including listed plant species (for which there is no general take prohibition under section 9 of the Act) and species that are not state or federally listed (which do not receive the Act's protections). Neither of these categories of species may receive much protection from development in the absence of HCPs.

As is the case with conservation plans generally, the protection that a CCAA, SHA, or HCP provides to habitat can reduce the benefits of including the area covered by a CCAA, SHA, or HCP in the designation. With specific regard to HCPs, because the Services generally approve HCPs on the basis of their efficacy to minimize and mitigate impacts to listed species and their habitat, these plans tend to be very effective at reducing those benefits of inclusion. Nonetheless, HCPs often are written with the understanding that some of the covered area will be developed, and the associated permit provides authorization of incidental take caused by that development (although a properly designed HCP will tend to steer development toward the least biologically important habitat). Thus, designation of the areas specified for development that meet the definition of ''critical habitat'' may still conceivably provide a conservation benefit to the species. In addition, if activities not covered by the HCP are affecting or may affect an area that is identified as critical habitat, then the benefits of inclusion of that specific area may be relatively high because additional conservation benefits may be realized by the designation of critical habitat in that area. In any case, the Services will weigh whatever benefits of inclusion there are against the benefits of exclusion (usually the fostering of partnerships that may result in future conservation actions).

For CCAAs, SHAs, and HCPs that are still under development, when we undertake a discretionary exclusion analysis, we generally will not exclude those areas from a designation of critical habitat. If a CCAA, SHA, or HCP is close to being approved, we will evaluate these draft plans under the framework of general plans and partnerships (subsection b, above). In other words, we will consider factors such as partnerships that have been developed during the preparation of draft CCAAs, SHAs, and HCPs and broad public benefits such as encouraging the continuation of current and development of future conservation efforts with non-Federal partners, and consider these factors as possible benefits of exclusion. However, promises of future conservation actions in draft CCAAs, SHAs, and HCPs will be given little weight in the discretionary exclusion analysis, even if they may directly benefit the species for which a critical habitat designation is proposed.

d. Tribal Lands

There are several Executive Orders, Secretarial Orders, and policies that relate to working with tribes. These guidance documents generally confirm our trust responsibilities to Tribes, recognize that Tribes have sovereign authority to control Tribal lands, emphasize the importance of developing partnerships with Tribal governments, and direct the Services to consult with Tribes on a government-to-government basis.

A joint Secretarial Order that applies to both FWS and NMFS, Secretarial Order 3206, *American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act* (June 5, 1997) (S.O. 3206), is the most comprehensive of the various guidance documents related to Tribal relationships and ESA implementation, and it provides the most detail directly relevant to the designation of critical habitat. In addition to the general direction discussed above, S.O. 3206 explicitly recognizes the right of Tribes to participate fully in the listing process, including designation of critical habitat. The Order also states: ''Critical habitat shall not be designated in such areas unless it is determined essential to conserve a listed species. In designating critical habitat, the Services shall evaluate and document the extent to which the conservation needs of the listed species can be achieved by limiting the designation to other lands.'' In light of this instruction, when we undertake a discretionary exclusion analysis we will always consider exclusions of Tribal lands under section 4(b)(2) of the Act prior to finalizing a designation of critical habitat and will give great weight to Tribal concerns in analyzing the benefits of exclusion.

However, S.O. 3206 does not preclude us from designating Tribal lands or waters as critical habitat nor does it state that Tribal lands or waters cannot meet the Act's definition of ''critical habitat.'' We are directed by the Act to identify areas that meet the definition of ''critical habitat,'' (i.e., occupied lands that contain the essential physical or biological features that may require special management or protection and identification of unoccupied areas that are essential to the conservation of a species) without regard to landownership. While S.O. 3206 provides important direction, it expressly states that it does not modify the Departments' statutory authority.

e. Impacts on National Security and Homeland Security

Section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)), as revised in 2003 provides: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense [DoD], or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.'' In other words, as articulated in the proposed rule revising 50 CFR 424.12(h) published elsewhere in today's edition of the **Federal Register**, if the Services conclude that an INRMP ''provides a benefit'' to the species, the area covered is ineligible for designation. Thus that area cannot be designated as critical habitat.

Section 4(a)(3)(B)(i) of the Act, however, may not cover all DoD lands or areas that pose potential national security concerns (e.g., a DoD installation that is in the process of revising its integrated natural resources management plan). If a particular area is

not covered under section 4(a)(3)(B)(i), national security or homeland-security concerns are not a factor in the process of determining what areas meet the definition of ''critical habitat.'' Nevertheless, when designating critical habitat under section 4(b)(2), the Secretaries must consider impacts on national security, including homeland security, on DoD lands or areas ineligible for consideration under section 4(a)(3)(B)(i). Accordingly, we will always consider for exclusion from the designation areas for which DoD, DHS, or another Federal agency has requested exclusion based on an assertion of national security or homeland-security concerns.

We cannot, however, automatically exclude requested areas. When DoD, DHS, or another Federal agency requests exclusion from critical habitat on the basis of national-security or homeland-security impacts, it must provide a specific justification. Such justification could include demonstration of probable impacts, such as impacts to ongoing border security patrols and surveillance activities, or a delay in training or facility construction, as a result of compliance with section 7(a)(2) of the Act. If the agency requesting the exclusion does not provide us with a specific justification, we will contact the agency to recommend that it provide a specific justification. If the agency provides a specific justification, we will defer to the expert judgment of DoD, DHS, or another Federal agency as to: (1) Whether activities on its lands or waters, or its activities on other lands or waters, have national-security or homeland-security implications; and (2) the importance of those implications. In that circumstance, in conducting a discretionary exclusion analysis, we will give great weight to national-security and homeland security concerns in analyzing the benefits of exclusion.

f. Federal Lands

We recognize that we have obligations to consider the impacts of designation of critical habitat on Federal lands under the first sentence of section 4(b)(2) and under E.O. 12866. However, as mentioned above, the Services have broad discretion under the second sentence of 4(b)(2) on how to weigh those impacts. In particular, ''[t]he consideration and weight given to any particular impact is completely within the Secretary's discretion.'' H.R. Rep. No. 95–1625, at 17 (1978). In considering how to exercise this broad discretion, we are mindful that Federal land managers have unique obligations under the Act. First, Congress declared that it was its policy that ''all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this Act.'' Section 2(c)(1). Second, all Federal agencies have responsibilities under section 7 of the Act to carry out programs for the conservation of listed species and to ensure their actions are not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat.

We also note that, while the benefits of excluding non-Federal lands include development of new conservation partnerships and fostering existing partnerships, those benefits do not generally arise with respect to Federal lands, because of the independent obligations of Federal agencies under section 7 of the Act. Conversely, the benefits of including Federal lands in a designation are greater than non-Federal lands because there is a Federal nexus for any project on Federal lands that may affect critical habitat, so section 7 consultation would be triggered and an analysis under the destruction and adverse-modification standard would always be conducted.

Under the Act, the only direct consequence of critical habitat designation is to require Federal agencies to ensure, through section 7 consultation, that any action they fund, authorize, or carry out does not destroy or adversely modify designated critical habitat. The costs that this requirement may impose on Federal agencies can be divided into two types: The additional administrative or transactional costs associated with the consultation process, and the costs to Federal agencies and other affected parties, including applicants for Federal permits, of any project modifications necessary to avoid adverse impacts to critical habitat. Consistent with the unique obligations that Congress created for Federal agencies in conserving endangered and threatened species, we generally will not consider avoiding the administrative or transactional costs associated with the section 7 consultation process to be a ''benefit'' of excluding a particular area from a critical habitat designation in any discretionary exclusion analysis. We will, however, consider the extent to which such consultation would produce an outcome that has economic or other impacts, such as by requiring project modifications and additional conservation measures by the Federal agency or other affected parties.

Lands owned by the Federal government should be prioritized as sources of support in the recovery of listed species. To the extent possible, we will focus designation of critical habitat on Federal lands in an effort to avoid the real or perceived regulatory burdens on non-Federal lands. We do greatly value the partnership of other Federal agencies in the conservation of listed and non-listed species. However, for the reasons listed above, we will focus our exclusions on non-Federal lands. Circumstances where we determine that the benefits of excluding Federal lands outweigh the benefits of not doing so are most likely when national security or homeland-security concerns are present.

g. Economic Impacts

The first sentence of section 4(b)(2) of the ESA requires the Services to consider the economic impacts (as well as the impacts on national security and any other relevant impacts) of designating critical habitat. In addition, economic impacts may for some particular areas play an important role in the discretionary exclusion analysis under the second sentence of section 4(b)(2). In both contexts, the Services will consider the probable incremental economic impacts of the designation. When the Services undertake a discretionary exclusion analysis with respect to a particular area, they will weigh the economic benefits of exclusion (and any other benefits of exclusion) against any benefits of inclusion (primarily the conservation value of designating the area). The conservation value may be influenced by the level of effort needed to manage degraded habitat to the point where it could support the listed species. The Services will use their discretion in determining how to weigh probable incremental economic impacts against conservation value. It is the nature of the probable incremental economic impacts, not necessarily a particular threshold level, that triggers considerations of exclusions based on probable incremental economic impacts. For example, if an economic analysis indicates high probable incremental impacts in a proposed critical habitat unit of low conservation value (relative to the remainder of the designation), the Services may consider exclusion of that particular unit.

Draft Policy on Implementation of Section 4(b)(2) of the Act

1. The decision to exclude any specific area from a designation of critical habitat is always discretionary, as the Act states that the Secretaries

''may''' exclude any area. In no circumstances is an exclusion of any specific area required by the Act.

2. When we undertake a discretionary exclusion analysis, we will evaluate the effect of conservation plans and partnerships on the benefits of inclusion and the benefits of exclusion of any particular area from critical habitat by considering a number of factors including:

a. The degree to which the record supports a conclusion that a critical habitat designation would impair the realization of benefits expected from the plan, agreement, or partnership.

b. The extent of public participation in the development of the conservation plan.

c. The degree to which there has been agency review and required determinations.

d. Whether National Environmental Policy Act (NEPA) compliance was required.

e. The demonstrated implementation and success of the chosen mechanism.

f. The degree to which the plan or agreement provides for the conservation of the essential physical or biological features for the species.

g. Whether there is a reasonable expectation that the conservation management strategies and actions contained in the management plan or agreement will be implemented.

h. Whether the plan or agreement contains a monitoring program and adaptive management to ensure that the conservation measures are effective and can be modified in the future in response to new information.

3. When we undertake a discretionary exclusion analysis, we will always consider areas covered by a permitted CCAA, SHA, or HCP, and generally exclude such areas from a designation of critical habitat if incidental take caused by the activities in those areas is covered by a permit under section 10 of the Act and the CCAA/SHA/HCP meets the following conditions:

a. The permittee is properly implementing the CCAA/SHA/HCP and is expected to continue to do so for the term of the agreement. A CCAA/SHA/HCP is properly implemented if the permittee is and has been fully implementing the commitments and provisions in the HCP, Implementing Agreement, and permit.

b. The species for which critical habitat is being designated is a covered species in the CCAA/SHA/HCP, or very similar in its habitat requirements to a covered species. The recognition that the Services extend to such an agreement depends on the degree to which the conservation measures undertaken in the CCAA/SHA/HCP would also protect the habitat features of the similar species.

c. The CCAA/SHA/HCP specifically addresses that species' habitat (not just providing guidelines) and meets the conservation needs of the species in the planning area.

We generally will not rely on CCAAs/SHAs/HCPs that are still under development as the basis of exclusion from a designation of critical habitat.

4. When we undertake a discretionary exclusion analysis, we will always consider exclusion of Tribal lands, and give great weight to Tribal concerns in analyzing the benefits of exclusion. However, Tribal concerns are not a factor in determining what areas, in the first instance, meet the definition of ''critical habitat.''

5. When we undertake a discretionary exclusion analysis, we will always consider exclusion of areas for which a Federal agency has requested exclusion based on an assertion of national-security or homeland-security concerns, and give great weight to national-security or homeland-security concerns in analyzing the benefits of exclusion. National-security and or homeland-security concerns are not a factor, however, in the process of determining what areas, in the first instance, meet the definition of ''critical habitat.''

6. Except in the circumstances described in 5 above, we will focus our exclusions on non-Federal lands. Because all actions on Federal lands are subject to the requirements of Section 7(a)(2) of the Act, the benefits of designating Federal lands as critical habitat are always present and are typically greater than the benefits of not designating Federal lands or of designating other lands.

7. When the Services are determining whether to undertake a discretionary exclusion analysis as a result of the probable incremental economic impacts of designating a particular area, it is the nature of those impacts, not necessarily a particular threshold level, that is relevant to the Services' determination.

8. For any area to be excluded, we must find that the benefits of excluding that area outweigh the benefits of including that area in the designation. We must not exclude an area if the failure to designate it will result in the extinction of the species.

Request for Information

We intend that a final policy will consider information and recommendations from all interested parties. We, therefore, solicit comments, information, and recommendations from governmental agencies, Indian Tribes, the scientific community, industry groups, environmental interest groups, and any other interested parties. All comments and materials received by the date listed above in **DATES** will be considered prior to the approval of a final document.

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov*.

We seek comments and recommendations in particular on:

1. Whether this policy sets out clearly defined expectations regarding critical habitat and the exclusion process. If not, please provide detailed comments so we can clarify our draft policy.

2. Whether this draft policy provides enough or too little detail regarding how the Services will consider and conduct the discretionary 4(b)(2) exclusion analysis for each of the categories described in this draft policy.

3. Whether, in general, there may be other factors or considerations that we should evaluate when considering exclusions from critical habitat.

4. Regarding consideration of conservation plans and partnerships, whether our draft policy appropriately characterizes the importance of partnerships relative to the conservation benefits of a plan or partnership.

5. Regarding habitat conservation plans (HCPs), whether our draft policy works for large-scale regional plans as well as smaller project-specific plans

6. Relative to our consideration for Tribal lands, whether our draft policy provides clearly defined expectations and appropriate consideration of Tribal sovereignty. If not, please describe in detail how we could improve this consideration.

7. Whether our consideration of impacts to national security and homeland security accurately captures our responsibilities under the Act and the Sikes Act (16 U.S.C. 670a).

Required Determinations

As mentioned above, we intend to apply this policy, when finalized, in considering exclusions from critical habitat designations. The general policy reserves much discretion that will be applied by the agencies in particular designations, and in each we are required to comply with various

Executive Orders and statutes for those individual rulemakings. Below we discuss compliance with several Executive Orders and statutes as they pertain to this draft policy.

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this is a significant rule.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that our regulatory system must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this policy in a manner consistent with these requirements.

Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) We find this draft policy would not ''significantly or uniquely'' affect small governments. We have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502, that this policy would not impose a cost of $100 million or more in any given year on local or State governments or private entities. Small governments would not be affected because the draft policy would not place additional requirements on any city, county, or other local municipalities.

(b) This draft policy would not produce a Federal mandate on State, local, or Tribal governments or the private sector of $100 million or greater in any year; that is, it is not a ''significant regulatory action''' under the Unfunded Mandates Reform Act. This policy would impose no obligations on State, local, or tribal governments because this draft policy is meant to complement the amendments to 50 CFR 424.19, and is intended to clarify expectations regarding critical habitat and provide for a credible, predictable, and simplified critical-habitat-exclusion process. The only entities directly affected by this draft policy are the FWS and NMFS. As such, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with Executive Order 12630, this draft policy would not have significant takings implications. This draft policy would not pertain to ''taking'' of private property interests, nor would it directly affect private property. A takings implication assessment is not required because this draft policy (1) would not effectively compel a property owner to suffer a physical invasion of property and (2) would not deny all economically beneficial or productive use of the land or aquatic resources. This draft policy would substantially advance a legitimate government interest (clarify expectations regarding critical habitat and provide for a credible, predictable, and simplified critical-habitat-exclusion process) and would not present a barrier to all reasonable and expected beneficial use of private property.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), this draft policy does not have significant Federalism effects and a Federalism assessment is not required. This draft policy pertains only to exclusions from designations of critical habitat under section 4 of the Act, and would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), this draft policy would not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. The clarification of expectations regarding critical habitat and providing a credible, predictable, and simplified critical-habitat-exclusion process will make it easier for the public to understand our critical-habitat-designation process, and thus should not significantly affect or burden the judicial system.

Paperwork Reduction Act of 1995

This draft policy does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This draft policy will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

National Environmental Policy Act (NEPA)

We are analyzing this draft policy in accordance with the criteria of the National Environmental Policy Act (NEPA), the Department of the Interior regulations on Implementation of the National Environmental Policy Act (43 CFR 46.10–46.450), the Department of the Interior Manual (516 DM 1–6 and 8), and National Oceanic and Atmospheric Administration (NOAA) Administrative Order 216–6. We invite the public to comment on the extent to which any of these proposed regulations may have a significant impact on the human environment, or fall within one of the categorical exclusions for actions that have no individual or cumulative effect on the quality of the human environment. We will complete our analysis, in compliance with NEPA, before finalizing this draft policy.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175 ''Consultation and Coordination with Indian Tribal Governments,'' and the Department of the Interior Manual at 512 DM 2, and the Department of Commerce *American Indian and Alaska Native Policy* (March 30, 1995), we have considered possible effects on federally recognized Indian tribes and have preliminarily determined that there are no potential adverse effects of issuing this draft policy. Our intent with this draft policy is to provide a consistent approach to the consideration of exclusion of areas from critical habitat, including Tribal lands. This draft policy does not establish a new irection, but does establish a consistent approach and direction for the Services. We will continue to work with Tribes as we finalize this draft policy and promulgate individual critical habitat designations.

Energy Supply, Distribution, or Use

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies

to prepare Statements of Energy Effects when undertaking certain actions. *This draft policy, if made final, is not expected to significantly affect energy supplies, distribution, or use.* Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Clarity of This Draft Policy

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule or policy we publish must:

a. Be logically organized;

b. Use the active voice to address readers directly;

c. Use clear language rather than jargon;

d. Be divided into short sections and sentences; and

e. Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise this draft policy, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Authors

The primary authors of this draft policy are the staff members of the Endangered Species Program, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Arlington, VA 22203, and the National Marine Fisheries Service's Endangered Species Division, 1335 East-West Highway, Silver Spring, MD 20910.

Authority

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

Dated: April 28, 2014.

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

Dated: April 28, 2014.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2014–10502 Filed 5–9–14; 8:45 am]

BILLING CODE 4310–55–P; 3510–22–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 402

[Docket No. FWS–R9–ES–2011–0072]

RIN 1018–AX88

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 402

[Docket No. 120106026–3731–01: 92210–0–0009–B4]

RIN 0648–BB80

Interagency Cooperation—Endangered Species Act of 1973, as Amended; Definition of Destruction or Adverse Modification of Critical Habitat

AGENCIES: U.S. Fish and Wildlife Service, Interior; National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) (collectively referred to as the ''Services'' or ''we'') propose to amend our regulations, which implements the Endangered Species Act of 1973, as amended (Act). Our regulation establishes the procedural regulations governing interagency cooperation under section 7 of the Act. The Act requires Federal agencies, in consultation with and with the assistance of the Secretaries of the Interior and Commerce, to insure that their actions are not likely to jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of critical habitat of such species. In 1986, the Services established a definition for ''destruction or adverse modification'' (§ 402.02) that was found to be invalid by the U.S. Court of Appeals for the Fifth (2001) and Ninth (2004) Circuits. We propose to amend our regulations to replace the invalidated definition with one that is consistent with the Act and the circuit court opinions. Finally, the proposed amendment is part of the Services' response to Section 6 of Executive Order 13563 (January 18, 2011), which directs agencies to analyze their existing regulations and, among other things, modify or streamline them in accordance with what has been learned.

DATES: We will accept comments from all interested parties until July 11, 2014. Please note that if you are using the Federal eRulemaking Portal (see **ADDRESSES** below), the deadline for submitting an electronic comment is 11:59 p.m. Eastern Standard Time on this date.

ADDRESSES: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. In the box that reads ''Enter Keyword or ID,'' enter the Docket number for this proposed rule, which is FWS–R9–ES–2011–0072. Then, in the Search panel, under the Document Type heading, check the box next to Proposed Rules. You may enter a comment by clicking on ''Submit a Comment.'' Please ensure that you have found the correct rulemaking before submitting your comment.
- *U.S. mail or hand delivery:* Public Comments Processing, Attn: [Docket No. FWS–R9–ES–2011–0072]; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the Request for Information section below for more information).

FOR FURTHER INFORMATION CONTACT: Patrice Ashfield, U.S. Fish and Wildlife Service, Division of Environmental Review, 4401 N Fairfax Drive, Suite 420, Arlington, VA, 22203, telephone 703/358–2171; facsimile 703/358–1735; or Cathryn E. Tortorici, National Marine Fisheries Service, Office of Protected Resources, Interagency Cooperation Division, 1315 East-West Highway, Silver Spring, MD 20910, telephone 301/427–8405; facsimile 301/713–0376. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800/877–8339.

SUPPLEMENTARY INFORMATION: Today, we publish in the **Federal Register** three related documents that are now open for public comment. We invite the public to comment individually on these documents as instructed in their preambles. This document is one of the three, of which two are proposed rules and one is a draft policy:

- A proposed rule to amend the existing regulations governing section 7 consultation under the Endangered Species Act to revise the definition of ''destruction or adverse modification'' of critical habitat. The current regulatory definition has been invalidated by several courts for being inconsistent with the language of the Act. This proposed rule would revise title 50 of the Code of Federal Regulations (CFR) at part 402. The Regulatory Identifier Number (RIN) is 1018–AX88, and the proposed rule may be found on *http://www.regulations.gov* at Docket No. FWS–R9–ES–2011–0072.
- A proposed rule to amend existing regulations governing the designation of critical habitat under section 4 of the Act. A number of factors, including litigation and the Services' experience over the years in interpreting and applying the statutory definition of critical habitat, have highlighted the need to clarify or revise the current regulations. This proposed rule would revise 50 CFR part 424. It is published under RIN 1018–AX86 and may be found on *http://www.regulations.gov* at Docket No. FWS–HQ–ES–2012–0096.
- A draft policy pertaining to exclusions from critical habitat and how we consider partnerships and conservation plans, conservation plans permitted under section 10 of the Act, tribal lands, national security and homeland security impacts and military lands, Federal lands, and economic impacts in the exclusion process. This policy is meant to complement the proposed revisions to 50 CFR part 424 and to provide for a simplified exclusion process. The policy is published under RIN 1018–AX87 and may be found on *http://www.regulations.gov* at Docket No. FWS–R9–ES–2011–0104.

Background

The Act requires Federal agencies, in consultation with and with the assistance of the Secretaries of the Interior and Commerce, to insure that their actions are not likely to jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of critical habitat of such species. In 1978, the Services promulgated regulations governing interagency cooperation under section 7 of the Act. (50 CFR part 402). These regulations provided a definition for ''destruction or adverse modification'' of critical habitat, which was later updated in 1986 to conform with amendments made to the Act. The 1986 regulations defined ''destruction or adverse modification'' as: ''a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.'' (50 CFR 402.02). The

preamble to the 1986 regulation contained relatively little discussion on the concept of ''destruction or adverse modification of critical habitat.''

In 2001, the Fifth Circuit Court of Appeals reviewed the 1986 regulatory definition of destruction and adverse modification and found it exceeded the Service's discretion. *Sierra Club* v. *U.S. Fish and Wildlife Service,* 245 F.3d 434 (5th Cir. 2001). Specifically, the court found the regulatory definition to be invalid on its face and inconsistent with the Act. The court reasoned that the regulatory definition set too high a threshold for triggering adverse modification by its requirement that both recovery and survival be diminished before adverse modification would be the appropriate conclusion. The court determined that the regulatory definition actually established a standard that would only trigger an adverse modification determination if the ''survival'' of the species was diminished, while ignoring the role critical habitat plays in the recovery of species. Citing legislative history and the Act itself, the court was persuaded that Congress intended the Act to ''enable listed species not merely to survive, but to recover from their endangered or threatened status.'' *Sierra Club* at 436. Noting the Act defines critical habitat as areas that are ''essential to the conservation'' of listed species, the court determined that ''conservation'' is a much ''broader concept than mere survival.'' *Sierra Club* at 436. The court concluded that the Act's definition of conservation ''speaks to the recovery'' of listed species.

In 2004, the Ninth Circuit Court of Appeals also reviewed the 1986 regulatory definition of destruction or adverse modification. *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F.3d 1059 (9th Cir. 2004). That court agreed with the Fifth Circuit's determination that the regulation was facially invalid. The Ninth Circuit, following similar reasoning set out in the *Sierra Club* decision, determined that Congress viewed conservation and survival as ''distinct, though complementary, goals and the requirement to preserve critical habitat is designed to promote both conservation and survival.'' Specifically, the court found that ''the purpose of establishing 'critical habitat' is for the government to designate habitat that is not only necessary for the species' survival but also essential for the species' recovery.'' *Gifford Pinchot Task Force* at 1070.

After the Ninth Circuit's decision, the Services each issued guidance to discontinue the use of the 1986 adverse modification regulation (FWS Acting Director Marshall Jones Memo to Regional Directors, ''Application of the 'Destruction or Adverse Modification' Standard under Section 7(a)(2) of the Endangered Species Act 2004;'' NMFS Assistant Administrator William T. Hogarth Memo to Regional Administrators, ''Application of the 'Destruction or Adverse Modification' Standard under Section 7(a)(2) of the Endangered Species Act, 2005''). Specifically, in evaluating an action's effects on critical habitat as part of interagency consultation, the Services began applying the definition of ''conservation'' as set out in the Act, which defines conservation (and conserve and conserving) to mean ''to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no long necessary.'' 16 U.S.C. § 1532(3). Further, after examining the baseline and the effects of the action, the Services began analyzing whether the implementation of the Federal action under consultation, together with any cumulative effects, would result in the critical habitat remaining ''functional (or retain the current ability for the primary constituent elements to be functionally established) to serve the intended conservation role for the species.''

Proposed Definition

After considering relevant case law and our collective experience in applying the ''destruction or adverse modification'' standard over the last three decades, the Services propose to amend the definition of ''destruction or adverse modification'' to (1) more explicitly tie the definition to the stated purpose of the Act; and, (2) more clearly contrast the definitions of ''destruction or adverse modification'' and ''jeopardize the continued existence of.'' To achieve these purposes, the Services propose the following definition:

''*Destruction or adverse modification*'' means a direct or indirect alteration that appreciably diminishes the conservation value of critical habitat for listed species. Such alterations may include, but are not limited to, effects that preclude or significantly delay the development of the physical or biological features that support the life-history needs of the species for recovery.

Use of the term ''conservation value'' is intended to align the definition of ''destruction or adverse modification'' with the conservation purposes of the Act and the Act's definition of ''critical habitat.'' Specifically, the term ''conservation value'' is intended to capture the role that critical habitat should play for the recovery of listed species. We believe by focusing on the conservation value of critical habitat, which also necessarily includes attributes critical to a species' survival, this definition will be consistent with the Fifth and Ninth Circuit Court of Appeals decisions referenced above. The Services note that ''value'' within ''conservation value'' refers to its utility or importance. It does not refer to a quantified value.

The proposed definition also better clarifies and preserves the existing distinction between the definitions of ''destruction or adverse modification'' and ''jeopardize the continued existence of'' by focusing the analysis for ''destruction or adverse modification'' on how the effects of a proposed action affect the value of critical habitat for the recovery of threatened or endangered species. The focus of the ''jeopardize the continued existence of'' definition, on the other hand, is the status of the species, which concentrates on a species' reproduction, numbers, and distribution. The second sentence of the Services' proposed definition of ''destruction or adverse modification'' simply acknowledges that some important physical or biological features may not be present or are present in a sub-optimal quantity or quality. This could occur when, for example, the habitat has been degraded by human activity or is part of an ecosystem adapted to a particular natural disturbance (e.g., fire or flooding), which does not constantly occur but is likely to recur. The critical habitat area may either be unoccupied habitat, which is not required to have physical or biological features present, or may be an area within an occupied habitat that has only some but not all features. The area may have been designated because of its potential to support the physical or biological features that fulfill the species' life-history needs and its potential recovery. A species life-history needs may include, but are not limited to, food, water, light, shelter from predators, competitors, weather and physical space to carry out normal behaviors or provide dispersal or migratory corridors. Thus, an action that would preclude or significantly delay habitat regeneration or natural successional processes, to an extent that it appreciably diminishes the conservation value of critical habitat, would result in destruction or adverse modification.

The Act defines critical habitat to include those specific areas within the

geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features essential to the conservation of species. Our use of the phrase ''physical or biological features'' is consistent with the recently proposed definition of ''physical or biological features'' in 50 CFR 424.02 but is intended to apply more broadly than in defining specific areas of critical habitat within the geographic area occupied by the species at the time of listing. All habitats are comprised of physical or biological features. Consistent with current practice, we anticipate that our analyses of the effects of the action to critical habitat will necessarily consider, in part, effects to features irrespective of whether the specific area was designated within or outside of the geographic area occupied by the species at the time it was listed.

In proposing a new definition for ''destruction or adverse modification,'' and setting out the accompanying clarifying discussion in this Preamble, the Services are establishing prospective standards only. Nothing in these proposed revised regulations is intended to require (now or at such time as these regulations may become final) that any previously completed biological opinions must be reevaluated on this basis.

Basis for Term ''Conservation Value''

Our proposed definition of ''destruction or adverse modification'' of critical habitat is based on an understanding of the role that habitat—which includes the physical or biological features required for a species' life-history needs—generally plays for species. The size of species' populations will fluctuate with, among other things, the availability of the physical or biological features the species finds in its habitat (for more detailed definitions of habitat and reviews of the relationship between a species and its habitat, see Gilpin and Soule 1986; Hall *et al.* 1997; MacArthur and Wilson 1967; Odum 1971).

Our proposed definition is further shaped by the purpose of designating critical habitat. Both for occupied and unoccupied habitat, Congress focused on what habitat was essential to the ''conservation'' of listed species when designating critical habitat. As discussed above, the courts have concluded that Congress intended that ''conservation and survival be two different (though complementary) goals of the (Act).'' *Gifford Pinchot* at 1070. In light of congressional intent that critical habitat be established for conservation purposes, the courts concluded, and we agree, that the purpose of establishing ''critical habitat'' is for the government to designate habitat ''that is not only necessary for the species' survival but also essential for the species' recovery.'' *Id.* From these cases, it is clear that any definition of ''destruction or adverse modification'' must reflect the purpose for which the critical habitat was designated—the recovery of the species.

After reviewing the court cases discussed above, the Act's definitions of ''conservation'' and ''critical habitat,'' and our understanding of the role habitat plays for species' conservation, we determined that ''conservation value'' embodies the intended recovery role of critical habitat and, therefore, is relevant in a determination as to whether an action is likely to destroy or adversely modify that habitat. ''Conservation value,'' as used in the definition, then, is the contribution the critical habitat provides, or has the ability to provide, to the recovery of the species.

Determination of ''Conservation Value'' of Critical Habitat

Our determination of the conservation value of critical habitat for a particular species will be based on our current understanding of the life-history needs of that particular species, and how the features of the critical habitat provide or have the ability to provide for those life-history needs to continue the survival and promote the recovery of that species. As a practical matter, to determine the conservation value of critical habitat, we will need to consider several variables for the entire critical habitat, including for the specific areas (or units, as appropriate) designated. The variables include:

- Life-history needs of the species being provided for by critical habitat.
- Current condition of the critical habitat, which requires consideration of:
  - The quantity of features and habitat necessary to support the life-history needs of the species for recovery.
  - The quality of features and habitat necessary to support the life-history needs of the species for recovery.
  - The ability (or likelihood) for the critical habitat to fulfill its role in the recovery of the species.

In conducting a section 7 analysis under the Act on the impacts of an action on critical habitat, the Services will first consider the information set out in the final rule designating the critical habitat. In some cases, the final rules designating critical habitat contain sufficient information to characterize the ''conservation value'' of the critical habitat overall, and of any discrete areas that are designated. In other cases, the available information may be quite limited. With time, new information may become available and enable us to refine our determination of the conservation value of the critical habitat. For each section 7 consultation, we will rely upon the best scientific and commercial data available to describe the life-history needs of the species, and how the features or areas of the critical habitat provide or have the ability to provide for those life-history needs and the recovery of that species. In the future, an emphasis will be placed on preparing final critical habitat rules that explicitly describe the conservation value of critical habitat, both overall and at the scale of individual specific areas designated, if applicable.

Our determination of conservation value is based not only on the current status of the critical habitat but also, in cases where it is degraded or depends on ongoing ecological processes, on the potential for the habitat to provide further recovery support for conserving the species. While occupied critical habitat would always contain at least one or more of the physical or biological features that provide for some life-history needs of the listed species, an area of critical habitat may be in a degraded condition or less than optimal successional stage and not contain all physical or biological features at the time it is designated or those features may be present but in a degraded or less than optimal condition. The area may have been designated as critical habitat, however, because of the potential for some of the features not already present or not yet fully functional to be developed, restored, or improved and contribute to the species' recovery. The condition of the critical habitat would be enhanced as the physical or biological features important to the species life-history needs are developed, restored, or improved and the area is able to provide the recovery support for the species on which the designation is based. The conservation value of critical habitat also includes consideration of the likely capability, in the foreseeable future, of the critical habitat to support the species' recovery given the backdrop of past and present actions that may impede formation of the optimal successional stage or otherwise degrade the critical habitat. Therefore, an action that would preclude or significantly delay the development or restoration of the physical or biological features needed to achieve that capability, to an extent that it appreciably diminishes the conservation value of critical habitat relative to that which would occur without the action undergoing

consultation, is likely to result in destruction or adverse modification.

We note that habitat suitability for any particular species will vary through time as a result of natural processes and, in a natural system, these habitats would not be considered ''degraded.'' For example, willow flycatchers generally nest in a specific age-class of willows. In a dynamic riverine system this age-class of willows is continually created and destroyed by periodic flooding, bank erosion, and deposition. An area of riverine habitat would not be considered ''degraded'' during periods when the appropriate age-class of willows is not present. However, as with ''degraded'' habitat, an action that would preclude or significantly delay the development of those features that support the life-history needs of the species—the appropriate age-class of willows—is likely to result in destruction or adverse modification of critical habitat if it occurs to an extent that it appreciably diminishes the conservation value of critical habitat relative to that which would occur without the action undergoing consultation.

We are cognizant that section 7(a)(2) only applies to discretionary agency actions. *See* 50 CFR 402.03. Further, while other parts of the Act create certain responsibilities for all Federal agencies (such as section 7(a)(1)), we recognize that section 7(a)(2) does not create an affirmative duty for action agencies to recover listed species. The consultation provision requires that agencies insure that any action they authorize, fund, or carry out is ''not likely to jeopardize the continued existence of any [listed] species or result in the destruction or adverse modification of [critical habitat].'' 16 U.S.C. 1536(a)(2). This is a standard of prohibition rather than a mandate to further recovery. Thus, the Ninth Circuit has made it clear that for an action ''to jeopardize'' listed species, it has to cause ''some deterioration in the species' pre-action condition.'' *National Wildlife Federation* v. *NMFS,* 543 F.3d 917 (9th Cir. 2008).

We think the same is true for a finding of adverse modification (or destruction) of critical habitat—that is, in order for an action to be found to adversely modify critical habitat, it must in some way cause the deterioration of the critical habitat's pre-action condition, which includes its ability to provide recovery support to the species based on ongoing ecological processes. For example, if one aspect of the conservation value of the critical habitat is the capacity to develop into a specific age-class of willows in a riverine system, an action agency is not required under section 7(a)(2) to affirmatively assist the transition of the habitat to that state. But, an adverse modification may occur if the action agency takes an action that would appreciably diminish the capacity of that habitat to complete that transition relative to the conditions which would occur without the action undergoing consultation. Conversely, if the proposed action does not preclude or significantly delay the ability for that habitat to develop through ecological processes into a specific age-class of willows, then the habitat has not been adversely modified.

Determination of ''Appreciably Diminish''

Once the conservation value of the habitat is determined, then the question becomes whether the effects of the action (as defined in § 402.02) ''appreciably diminish'' that value of the critical habitat. The preamble to the 1986 regulations provides no guidance regarding the meaning of the words ''appreciably diminish.'' The Joint Consultation Handbook (Services 1998), however, defines ''appreciably diminish the value'' as ''to considerably reduce the capability of designated or proposed critical habitat to satisfy the requirements essential to both the survival and recovery of a listed species.''

We find this definition to be no longer valid in light of the courts' rulings with regard to the regulatory definition of ''destruction or adverse modification.'' That is, that portion of the definition that requires a reduction in the likelihood of ''both the survival and recovery'' of listed species is no longer valid. Further, we think the use of the term ''considerable'' to modify ''appreciably'' does not add any real value to help interpret what ''appreciably diminish'' means with regard to the modification of critical habitat, and may lead to disparate outcomes in consultations. For example, the word ''considerable'' can mean ''large in amount or extent'' but it can also mean ''worthy of consideration'' or ''significant.'' To further complicate matters, ''significant'' can mean ''measurable.'' So, some could interpret a ''considerable'' reduction to mean a massive reduction in the value of critical habitat and others could interpret it to mean a measurable reduction in the value of critical habitat. In light of the range of results various interpretations of ''considerable'' could lead one to, we have set out below a more detailed interpretation of the phrase ''appreciably diminish the conservation value.''

A determination that an action's effects will ''appreciably diminish'' the conservation value of critical habitat requires an understanding of both the words ''diminish'' and ''appreciable'' and how they relate to each other in the context of the definition. A review of the definition of (and the synonyms for) ''diminish'' establishes that to diminish is to reduce, lessen, or weaken. As applied to the definition of ''destruction or adverse modification,'' then, the inquiry is whether the relevant effects have reduced, lessened, or weakened the conservation value of the critical habitat. If so, then, the inquiry is whether that reduction or diminishment is ''appreciable'' to the conservation value of the critical habitat.

Appreciable is generally defined as ''noticeable'' or ''measurable.'' In this context, however, that definition is too simplistic because, to determine a diminishment of the conservation value—or a reduction, lessening, or weakening of that value—one would have had to be able to notice or recognize the diminishment. Using this unhelpful meaning, the inclusion of the term ''appreciably'' would not add anything to the definition of ''destruction or adverse modification.'' To determine the appropriate meaning of the term ''appreciably,'' we ultimately found it helpful to look at the definition of ''appreciate,'' which means to ''recognize the quality, significance, or magnitude'' or ''grasp the nature, worth, quality or significance.'' This usage makes more sense to us in the actual application of the phrase ''appreciably diminish.'' The relevant question, then, becomes whether we can recognize the quality, significance, or magnitude of the diminishment. In other words, is there a diminishment to the value of the critical habitat that has some relevance because we can recognize or grasp the quality, significance, magnitude, or worth of the diminishment in a way that affects the conservation value of the critical habitat.

It is important to understand that the determination of ''appreciably diminish'' will be based upon the effect to the conservation value of the designated critical habitat. That is, the question is whether the ''effects of the action'' will appreciably diminish the conservation value of the critical habitat as a whole, not just in the area where the action takes place. For example, an action may have an adverse effect to a portion of critical habitat. The question would be, then, whether the adverse effect in that one part of the critical habitat will diminish the conservation value of the critical habitat overall in such a manner that we can appreciate

the difference it will have to the recovery of the listed species. Specifically, some factors to be considered will be: will recovery be delayed, will recovery be more difficult, and will recovery be less likely. At the appropriate time after rulemaking, the Services plan to update guidance or handbook material to reflect any identified changes to the ''appreciably diminish'' definition in the March 1998 Consultation Handbook. These considerations should be applied cautiously so the Services do not apply a standard that is either too sensitive in light of the particular circumstances, or not sensitive enough. In a biological opinion, the Services provide an accurate assessment of the status of critical habitat, (including threats and trends), the environmental baseline (describing all past and present impacts), and cumulative effects (i.e., future State or private activities). The effects of any particular action are evaluated in the context of the status, environmental baseline, and cumulative effects. This avoids situations where each individual action is viewed as causing only insignificant adverse effects but, over time, the aggregate effects of these actions would erode the conservation value of the critical habitat.

Finally, we note that the term ''appreciably'' also appears in the regulatory definition of ''jeopardize the continued existence of,'' although in that definition it modifies ''to reduce.'' A similar interpretation of ''appreciably'' should be applied to the definition of ''jeopardize the continued existence of.'' In other words, is the reduction one we can recognize or grasp the quality, significance, magnitude, or worth of in a way that makes a difference to the likely survival and recovery of the listed species?

The Relationship Between the Standards of Section 7 of the Act

The relationship between the ''jeopardize the continued existence of'' standard and the ''destruction or adverse modification'' standard reflects the ecological relationship between a species' population dynamics and the physical or biological features a species needs to grow and recover. To fulfill their responsibilities during interagency consultation, the Services conduct separate analyses for the two standards that are founded on this relationship. The difference between the outcomes of the ''jeopardize the continued existence of'' and ''destruction or adverse modification'' analyses will depend on a variety of factors. The results from applying the ''jeopardize the continued existence of'' and ''destruction or adverse modification'' standards tend to converge and diverge depending on whether the area designated as critical habitat currently encompasses the physical or biological features that a species would need to be ''conserved,'' and whether the species' reproduction, numbers, or distribution will be affected. There is an inherent linkage, though, between a species and its habitat, and that linkage means those alterations to a species' habitat will in many cases cause alterations in the numbers, reproduction, or distribution of the species.

The ''destruction or adverse modification'' standard focuses on how Federal actions affect the quantity and quality of the physical or biological features in the area that is designated as critical habitat for a listed species and, especially in the case of unoccupied habitat, on any impacts to the area itself. Specifically, as discussed above, the Services should first evaluate Federal actions against the ''destruction or adverse modification'' definition standard by considering how the action affects the quantity and quality of the physical or biological features that determine the habitat's ability to support recovery of a listed species. If the effects of an action appreciably diminish the quantity and quality of those features to support the conservation value of critical habitat, then the Services generally conclude that the Federal action is likely to ''destroy or adversely modify'' the designated critical habitat.

In addition, the Services may consider other kinds of impacts to the designated areas. For example, some areas that are currently in a degraded condition may have been designated as critical habitat for their potential to develop or improve habitat and eventually provide the needed ecological functions to support species' recovery. Under these circumstances, the Services generally conclude that an action is likely to ''destroy or adversely modify'' the designated critical habitat if the action will alter the ecology of the habitat in ways that prevent the habitat from improving over time relative to pre-action condition. For example, by artificially maintaining an area of critical habitat in a relatively late successional stage, to the detriment of a species dependent upon periodic flooding or fire to establish early successional stages.

Conversely, the ''jeopardize the continued existence of'' definition focuses on the effects of a Federal action on a listed species' likelihood of continuing to survive and recover in the wild. Specifically, the Services evaluate Federal actions against the ''jeopardize the continued existence of'' definition by considering how the action affects a species' reproduction, numbers, or distribution. If the effects of an action would likely reduce the species' reproduction, numbers, or distribution in a manner or to a degree that would appreciably reduce the species' likelihood of surviving and recovering in the wild, the Services would conclude that the Federal action is likely to ''jeopardize'' the species' continued existence.

The distribution and/or abundance of some species are not currently limited by the quantity or quality of their habitat (for example, population densities may be suppressed by other factors such as over-exploitation, disease, or predators, and often persist well below population sizes that could be supported by the available habitat). In such circumstances where habitat modifications associated with a Federal action are not expected to reduce the species' reproduction, numbers, or distribution, the Services might conclude that a Federal action ''adversely modified'' designated critical habitat, but they would not conclude that the action ''jeopardized the continued existence of'' the species (unless the modifications were dramatic). Application of the two section 7 standards should produce different outcomes whenever a proposed Federal action affects a portion of designated critical habitat that will not result in an appreciable reduction of the species' reproduction, numbers, or distribution (for example, because the species exists as very small populations that do not fully occupy the designated critical habitat).

Request for Information

We intend that a final regulation will consider information and recommendations from all interested parties. We therefore solicit comments, information, and recommendations from governmental agencies, Native American tribes, the scientific community, industry groups, environmental interest groups, and any other interested parties. All comments and materials received by the date listed in **DATES** above will be considered prior to the approval of a final document.

You may submit your information concerning this proposed rule by one of the methods listed in **ADDRESSES**. If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is

made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Information and supporting documentation that we receive in response to this proposed rule will be available for you to review at *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Division of Conservation and Classification (see **FOR FURTHER INFORMATION CONTACT**).

We are particularly interested in comments concerning whether the phrases ''conservation value'' and ''appreciably diminish'' are clear and can be applied consistently across consultations and we invite the public to suggest alternative phrases that might improve clarity and consistency in implementing the ''destruction or adverse modification'' provisions of the section 7(a)(2) of the Act.

Required Determinations

Regulatory Planning and Review (E.O. 12866)

The Office of Management and Budget (OMB) has determined that this proposed rule is a significant regulatory action and has reviewed this proposed rule under Executive Order 12866 (E.O. 12866).

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 601 *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare, and make available for public comment, a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA requires Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. We are certifying that this regulation would not have a significant economic effect on a substantial number of small entities. The following discussion explains our rationale.

This rulemaking clarifies existing requirements for Federal agencies under the Endangered Species Act. Federal agencies are the only entities that are directly affected by this rule, and they are not considered to be small entities under SBA's size standards. No other entities are directly affected by this rule.

This proposed rule, if made final, would be applied in determining whether a Federal agency has ensured, in consultation with the Services, that any action it would authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. Based on procedures applied through existing agency (Guidance [see **ADDRESSES**]), this proposed rule is substantially unlikely to affect our determinations. The proposed rule would serve to provide clarity to the standard with which we will evaluate agency actions pursuant to section 7 of the Endangered Species Act.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) If adopted, this proposal will not ''significantly or uniquely'' affect small governments. We have determined and certify under the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.,* that this proposed rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. A Small Government Agency Plan is not required. As explained above, small governments would not be affected because the proposed regulation will not place additional requirements on any city, county, or other local municipalities.

(b) This rule will not produce a Federal mandate of $100 million or greater in any year (i.e., it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act). This proposed regulation would not impose any additional management or protection requirements on the States or other entities.

Takings (E.O. 12630)

In accordance with Executive Order 12630, we have determined the proposed rule does not have significant takings implications.

A takings implication assessment is not required because this rule (1) will not effectively compel a property owner to suffer a physical invasion of property and (2) will not deny all economically beneficial or productive use of the land or aquatic resources. This rule would substantially advance a legitimate government interest (conservation and recovery of listed species) and would not present a barrier to all reasonable and expected beneficial use of private property.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, we have considered whether this proposed rule would have significant Federalism effects and have determined that a Federalism assessment is not required. This proposed rule pertains only to determinations of Federal agency compliance with section 7 of the Act, and would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Civil Justice Reform (E.O. 12988)

This proposed rule will not unduly burden the judicial system and meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988. This proposed rule would clarify how the Services will make determinations whether a Federal agency has ensured that any action it would authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We cannot reasonably predict the species or particular locations where we would designate critical habitat in the future. Thus, we cannot predict whether tribal lands would be affected by a proposal to designate critical habitat. However, the Act requires that we give notice of and seek comment on any proposal to designate critical habitat prior to a final decision. Our proposed rules to designate critical habitat would indicate the types of activities that may be affected by resulting regulatory requirements of the Act. Any potentially affected federally recognized Indian tribes would be notified of a proposed determination and given the

opportunity to review and comment on the proposed rules.

Paperwork Reduction Act

This proposed rule does not contain any new collections of information that require approval by the OMB under the Paperwork Reduction Act. This proposed rule would not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

National Environmental Policy Act

We are analyzing these proposed regulations in accordance with the criteria of the National Environmental Policy Act (NEPA), the Department of the Interior regulations on Implementation of the National Environmental Policy Act (43 CFR 46.10–46.450), the Department of the Interior Manual (516 DM 1–6 and 8), and National Oceanographic and Atmospheric Administration (NOAA) Administrative Order 216–6. Our analysis includes evaluating whether the action is procedural, administrative, or legal in nature, and therefore a categorical exclusion applies. We invite the public to comment on whether, and if so, how this proposed regulation may have a significant effect upon the human environment, including any effects identified as extraordinary circumstances at 43 CFR 46.215. We will complete our analysis, in compliance with NEPA, before finalizing these proposed regulations.

Energy Supply, Distribution or Use (E.O. 13211)

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule, if made final, is not expected to affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Clarity of This Policy

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule or policy we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the regulation, your comments should be as specific as possible. For example, you should tell us the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

References Cited

A complete list of all references cited in this document is available on the Internet at *http://www.regulations.gov* or upon request from the U.S. Fish and Wildlife Service (see **FOR FURTHER INFORMATION CONTACT**).

Authority

We are taking this action under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

List of Subjects in 50 CFR Part 402

Endangered and threatened species.

Proposed Regulation Promulgation

Accordingly, we propose to amend subpart A of part 402, subchapter A of chapter IV, title 50 of the Code of Federal Regulations, as set forth below:

PART 402—[AMENDED]

■ 1. The authority citation for part 402 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

■ 2. In § 402.02, revise the definition for ''*Destruction or adverse modification*'' to read as follows:

§ 402.02 Definitions.

* * * * *

Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the conservation value of critical habitat for listed species. Such alterations may include, but are not limited to, effects that preclude or significantly delay the development of physical or biological features that support the life-history needs of the species for recovery.

* * * * *

Dated: April 3, 2014.

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks, U.S. Department of the Interior.

Dated: April 4, 2014.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2014–10503 Filed 5–9–14; 8:45 am]

BILLING CODE 4310–55; 3510–22–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 424

[Docket No. FWS–HQ–ES–2012–0096; Docket No. 120106025–3256–01; 4500030114]

RIN 1018–AX86; RIN 0648–BB79

Listing Endangered and Threatened Species and Designating Critical Habitat; Implementing Changes to the Regulations for Designating Critical Habitat

AGENCY: U.S. Fish and Wildlife Service, Interior; National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) (collectively referred to as the ''Services'' or ''we''), propose to amend portions of our regulations, which implements the Endangered Species Act of 1973, as amended (Act). Our regulation clarifies, interprets, and implements portions of the Act concerning the procedures and criteria used for adding species to the Lists of Endangered and Threatened Wildlife and Plants and designating and revising critical habitat. Specifically, we propose to amend portions of our regulations that clarify procedures for designating and revising critical habitat. The proposed amendments would make minor edits to the scope and purpose, add and remove some definitions, and clarify the criteria for designating critical habitat. These proposed amendments are based on the Services' review of the regulations and are intended to add clarity for the public,

clarify expectations regarding critical habitat and provide for a credible, predictable, and simplified critical-habitat-designation process. Finally, the proposed amendments are also part of the Services' response to Executive Order 13563 (January 18, 2011), which directs agencies to review their existing regulations and, among other things, modify or streamline them in accordance with what has been learned.

DATES: We will accept comments from all interested parties until July 11, 2014. Please note that if you are using the Federal eRulemaking Portal (see **ADDRESSES** below), the deadline for submitting an electronic comment is 11:59 p.m. Eastern Standard Time on this date.

ADDRESSES: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* In the Search box, enter the Docket Number for this proposed rule, which is FWS–HQ–ES–2012–0096. You may submit a comment by clicking on ''Comment Now!''. Please ensure that you have found the correct rulemaking before submitting your comment.
- *U.S. mail or hand delivery:* Public Comments Processing, Attn: [Docket No. FWS–HQ–ES–2012–0096]; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Request for Information section below for more information).

FOR FURTHER INFORMATION CONTACT: Douglas Krofta, U.S. Fish and Wildlife Service, Division of Conservation and Classification, 4401 N Fairfax Drive, Suite 420, Arlington, VA, 22203, telephone 703/358–2527; facsimile 703/358–1735; or Marta Nammack, National Marine Fisheries Service, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910, telephone 301/427–8469; facsimile 301/713–0376. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION: Today, we publish in the **Federal Register** three related documents that are now open for public comment. We invite the public to comment individually on these documents as instructed in their preambles. This document is one of the three, of which two are proposed rules and one is a draft policy:

- A proposed rule to amend the existing regulations governing section 7 consultation under the Endangered Species Act to revise the definition of ''destruction or adverse modification'' of critical habitat. The current regulatory definition has been invalidated by several courts for being inconsistent with the language of the Act. This proposed rule would revise title 50 of the Code of Federal Regulations (CFR) at part 402. The Regulatory Identifier Number (RIN) is 1018–AX88, and the proposed rule may be found on *http://www.regulations.gov* at Docket No. FWS–R9–ES–2011–0072.
- A proposed rule to amend existing regulations governing the designation of critical habitat under section 4 of the Act. A number of factors, including litigation and the Services' experience over the years in interpreting and applying the statutory definition of critical habitat, have highlighted the need to clarify or revise the current regulations. This proposed rule would revise 50 CFR part 424. It is published under RIN 1018–AX86 and may be found on *http://www.regulations.gov* at Docket No. FWS–HQ–ES–2012–0096.
- A draft policy pertaining to exclusions from critical habitat and how we consider partnerships and conservation plans, conservation plans permitted under section 10 of the Act, tribal lands, national security and homeland security impacts and military lands, Federal lands, and economic impacts in the exclusion process. This policy is meant to complement the proposed revisions to 50 CFR part 424 and to provide for a simplified exclusion process. The policy is published under RIN 1018–AX87 and may be found on *http://www.regulations.gov* at Docket No. FWS–R9–ES–2011–0104.

Background

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), states that the purposes of the Act are to provide a means to conserve the ecosystems upon which listed species depend, to develop a program for the conservation of listed species, and to achieve the purposes of certain treaties and conventions. Moreover, the Act states that it is the policy of Congress that the Federal Government will seek to conserve threatened and endangered species, and use its authorities in furtherance of the purposes of the Act.

In passing the Act, Congress viewed habitat loss as a significant factor contributing to species endangerment. Habitat destruction and degradation have been a contributing factor causing the decline of a majority of species listed as threatened or endangered under the Act (Wilcove *et. al.* 1998). The present or threatened destruction, modification, or curtailment of a species' habitat or range is included in the Act as one of the factors on which to base a determination of threatened or endangered. One of the tools provided by the Act to conserve species is the designation of critical habitat.

The purpose of critical habitat is to identify the areas that are or will be essential to the species' recovery. Once critical habitat is designated, it provides for the conservation of listed species in several ways. Specifying the geographic location of critical habitat facilitates implementation of section 7(a)(1) of the Act by identifying areas where Federal agencies can focus their conservation programs and use their authorities to further the purposes of the Act. Designating critical habitat also helps focus the conservation efforts of other conservation partners, such as State and local governments, nongovernmental organizations, and individuals. Furthermore, when designation of critical habitat occurs near the time of listing it provides early conservation planning guidance (e.g., identifying some of the areas that are needed for recovery, the physical and biological features needed for the species, and special management considerations or protections) to bridge the gap until the Services can complete more thorough recovery planning.

In addition to serving as a notification tool, the designation of critical habitat also provides a significant regulatory protection—the requirement that Federal agencies consult with the Services under section 7(a)(2) of the Act to ensure that their actions are not likely to destroy or adversely modify critical habitat. The Federal Government, through its role in water management, flood control, regulation of resources extraction and other industries, Federal land management, and the funding, authorization, and implementation of a myriad of other activities, may propose actions that are likely to affect critical habitat. The designation of critical habitat ensures that the Federal Government considers the effects of its actions on habitat important to species' conservation and avoids or modifies those actions that are likely to destroy or adversely modify critical habitat. This benefit should be especially valuable when, for example, species presence or habitats are ephemeral in nature, species presence is difficult to establish through surveys (e.g., when a species such as a plant's ''presence'' may be limited to a seed bank), or protection of unoccupied habitat is

essential for the conservation of the species.

The Secretaries of the Interior and Commerce (the ''Secretaries'') share responsibilities for implementing most of the provisions of the Act. Generally, marine and anadromous species are under the jurisdiction of the Secretary of Commerce and all other species are under the jurisdiction of the Secretary of the Interior. Authority to administer the Act has been delegated by the Secretary of the Interior to the Director of FWS and by the Secretary of Commerce to the Assistant Administrator for NMFS.

There have been no comprehensive amendments to the Act since 1988, and no comprehensive revisions to part 424 of the implementing regulations since 1984. In the years since those changes took place, the Services have gained considerable experience in implementing the critical habitat requirements of the Act, and there have been numerous court decisions regarding the designation of critical habitat.

On May 1, 2012, the Services finalized the revised implementing regulations related to publishing textual descriptions of proposed and final critical habitat boundaries in the **Federal Register** for codification in the Code of Federal Regulations (77 FR 25611). That final rule revised 50 CFR 424.12(c) to make the process of designating critical habitat more user-friendly for affected parties, the public as a whole, and the Services, as well as more efficient and cost effective. Since the final rule became effective on May 31, 2012, the Services have maintained the publication of maps of proposed and final critical habitat designations in the **Federal Register**, but the inclusion of any textual description of the designation boundaries in the **Federal Register** for codification in the Code of Federal Regulations is optional. Because we revised 50 CFR 424.12(c) separately, we do not discuss that paragraph further in this proposed rule.

On August 28, 2013, the Services finalized revisions to the regulations for impact analyses of critical habitat (78 FR 53058). These changes were made as directed by the President's February 28, 2012, Memorandum, which directed us to take prompt steps to revise our regulations to provide that the economic analysis be completed and made available for public comment at the time of publication of a proposed rule to designate critical habitat. These revisions also state that the impact analysis should focus on the incremental effects resulting from the designation of critical habitat. Because we have revised 50 CFR 424.19 separately, we do not discuss that section further in this proposed rule.

Discussion of Proposed Changes to Part 424

This proposal would amend 50 CFR 424.01, 424.02, and 424.12 (except for paragraph (c) as mentioned) to clarify the procedures and criteria used for designating critical habitat, addressing in particular several key issues that have been subject to frequent litigation.

In proposing the specific changes to the regulations that follow, and setting out the accompanying clarifying discussion in this preamble, the Services are establishing prospective standards only. Nothing in these proposed revised regulations is intended to require (now or at such time as these regulations may become final) that any previously completed critical habitat designation must be reevaluated on this basis.

Section 424.01 Scope and Purpose

We propose minor revisions to this section to update language and terminology. The first sentence in section 424.01(a) would be revised to remove reference to critical habitat being designated or revised only ''where appropriate.'' This wording implied a greater flexibility regarding whether to designate critical habitat than is correct. The Services believe that circumstances when critical habitat designation will be deemed not prudent are rare. Therefore, the new language removes the phrase ''where appropriate.'' Other revisions to this section are minor word changes to use more plain language.

Section 424.02 Definitions

This section of the regulations defines terms used in the context of section 4 of the Act. We propose revisions to section 424.02 to update it to current formatting guidelines, to revise several definitions related to critical habitat, to delete definitions that are redundant of statutory definitions, and to add two newly defined terms. Section 424.02 is currently organized with letters as paragraph designation for each term (e.g., 424.02(b) *Candidate*). The Office of the Federal Register now recommends setting out definitions in the CFR without paragraph designations. We propose to revise the formatting of the entire section accordingly. Discussion of the revised definitions and newly defined terms follows.

We note that, although revising the formatting of the section requires that the entirety of the section be restated in the proposed-amended-regulation section, we are not at this time revisiting the text of those existing definitions that we are not specifically revising, including those that do not directly relate to designating critical habitat. In particular, we are not in this rulemaking proposing to amend the definitions of ''plant,'' ''wildlife,'' or ''fish and wildlife'' to reflect changes in taxonomy since the ESA was enacted in 1973. In 1973, only the Animal and Plant Kingdoms of life were universally recognized by science, and all living things were considered to be members of one of these kingdoms. Thus, at enactment, the ESA applied to all living things. Advances in taxonomy have subsequently split additional kingdoms from these two. Any species that was considered to be a member of the Animal or Plant Kingdoms in 1973 will continue to be treated as such for purposes of the administration of the Act regardless of any subsequent changes in taxonomy. We may address this issue in a future rulemaking relating to making listing determinations (as opposed to designating critical habitat). In the meantime, the republication of these definitions here should not be viewed as an agency determination that these definitions reflect the scope of the Act in light of our current understanding of taxonomy.

The current regulations include a definition for ''Conservation, conserve, and conserving.'' We propose to revise the title of this entry to ''Conserve, conserving, and conservation,'' changing the order of the words to conform to the statute. Additionally, we propose to revise the first sentence of the definition to include the phrase ''i.e., the species is recovered'' to clarify the link between conservation and recovery of the species. The statutory definition of ''conserve, conserving, and conservation'' is ''to bring any endangered or threatened species to the point at which measures provided pursuant to the Act are no longer necessary.'' This is the same concept as the definition of recovery found in section 402.02: ''improvement in the status of listed species to the point at which listing is no longer appropriate.'' The Services, therefore, view ''conserve, conserving, and conservation'' as a process culminating at the point at which a species is recovered.

We propose to delete definitions for ''critical habitat,'' ''endangered species,'' ''plant,'' ''Secretary,'' ''State Agency,'' and ''threatened species,'' because these terms are defined in the Act and the existing regulatory definitions do not add meaning to the terms.

We also propose to define the previously undefined term ''geographical area occupied by the species'' as: ''the geographical area

which may generally be delineated around the species' occurrences, as determined by the Secretary (i.e., range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (e.g., migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).'' This term appears in the definition of ''critical habitat'' found in section 3(5)(A)(i) and (ii) of the Act, but is not defined in the Act or in our current regulations. The inclusion of this new regulatory definition reflects the Services' efforts to clarify the critical-habitat-designation process.

The definition of ''critical habitat'' in the Act has two parts, section 3(5)(A)(i) and (ii), which establish two distinct categories of critical habitat, based on species occupancy in an area at the time of listing. Therefore, to identify specific areas to designate as critical habitat, we must first determine what area constitutes the ''geographical area occupied by the species at the time of listing,'' which is the language used in the Act. The scale of this area is likely to be larger than the specific areas that would then be analyzed for potential designation under section 3(5)(A)(i). This is because the first part of the critical habitat definition in the Act directs the Services to identify ''specific areas within'' the geographical area occupied by the species at time of listing. This intentional choice to use more narrow terminology alongside broader terminology suggests that the ''geographical area'' was expected most often to be a larger area that could encompass multiple ''specific areas.'' Thus, we find the statutory language supports the interpretation of equating the geographical area occupied by the species to the wider area around the species' occurrences at the time of listing. A species occurrence is a particular location in which members of the species are found throughout all or part of their life cycle. The geographic area occupied by the species is thus the broader, coarser-scale area that encompasses the occurrences, and is what is often referred to as the ''range'' of the species.

In the Act, the term ''geographical area occupied by the species'' is further modified by the clause, ''at the time it is listed.'' However, if critical habitat is being designated or revised several years after the species was listed, it can be difficult to discern what was occupied at the time of listing. The known distribution of a species can change after listing for many reasons, such as discovery of additional localities, extirpation of populations, or emigration of individuals to new areas. In many cases, information concerning a species' distribution, particularly on private lands, is limited as surveys are not routinely carried out on private lands unless performed as part of an environmental analysis for a particular development proposal. Even then, such surveys typically focus on listed rather than unlisted species, so our knowledge of a species' distribution at the time of listing in these areas is often limited and the information in our listing rule may not detail all areas occupied by the species at that time.

Thus, while some of these changes in a species' known distribution reflect changes in the actual distribution of the species, some reflect only changes in the quality of our information concerning distribution. In these circumstances, the determination of which geographic areas were occupied at the time of listing may include data developed since the species was listed. This interpretation was supported by a recent court decision, *Otay Mesa Property L.P.* v. *DOI,* 714 F. Supp. 2d 73 (D.D.C. 2010), *rev'd on other grounds,* 646 F.3d 914 (D.C. Cir. 2011) (San Diego fairy shrimp). In that decision, the judge noted that the clause ''occupied at the time of listing'' allows FWS to make a postlisting determination of occupancy based on the currently known distribution of the species. Although the D.C. Circuit disagreed with the district court that the record contained sufficient data to support the FWS's determination of occupancy in that case, the D.C. Circuit did not disagree that the Act allows FWS to make a postlisting determination of occupancy if based on adequate data. The FWS acknowledges that to make a postlisting determination of occupancy we must distinguish between actual changes to species occupancy and changes in available information. For succinctness, herein and elsewhere we refer to areas as ''occupied'' when we mean ''occupied at the time of listing.''

The second sentence of the proposed definition for ''geographical area occupied by the species'' would clarify that the meaning of the term ''occupied'' includes areas that are used only periodically or temporarily by a listed species during some portion of its life history, and is not limited to those areas where the listed species may be found more or less continuously. Areas of periodic use may include, for example, breeding areas, foraging areas, and migratory corridors. The Ninth Circuit recently supported this interpretation by FWS, holding that a determination that a species was likely to be temporarily present in the areas designated as critical habitat was a sufficient basis for determining those areas to be occupied, even if the species was not continuously present. *Arizona Cattle Growers' Assoc.* v. *Salazar,* 606 F.3d 1160 (9th Cir. 2010) (Mexican spotted owl).

Nonetheless, periodic use of an area does not include use of habitat in that area by vagrant individuals of the species who wander far from the known range of the species. Occupancy by the listed species must be based on evidence of regular periodic use by the listed species during some portion of the listed species' life history. However, because some species are difficult to survey, or, we may otherwise have incomplete survey information, the Services will rely on the best available scientific data, which may include indirect or circumstantial evidence, to determine occupancy. We further note that occupancy does not depend on identifiable presence of adult organisms. For example, periodical cicadas occupy their range even though adults are only present for 1 month every 13 or 17 years. Similarly, the presence (or reasonably inferred presence) of eggs or cysts of fairy shrimp or seed banks of plants constitute occupancy even when mature individuals are not present.

We also propose a definition for the term ''physical or biological features.'' This phrase is used in the statutory definition of ''critical habitat'' to assist in identifying the specific areas within the entire geographical area occupied by the species that can be considered for designation as critical habitat. We propose to define ''physical or biological features'' as ''the features that support the life-history needs of the species, including but not limited to water characteristics, soil type, geological features, sites, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic, or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity.''

The proposed definition clarifies that physical and biological features can be the features that support the occurrence of ephemeral or dynamic habitat conditions. For example, a species may require early-successional riparian vegetation in the Southwest to breed or feed. Such vegetation may exist only 5 to 15 years after a local flooding event. The necessary features, then, may include not only the suitable vegetation

itself, but also the flooding events, topography, soil type, and flow regime, or a combination of these characteristics and the necessary amount of the characteristics that can result in the periodic occurrence of the suitable vegetation. Thus, the Services could conclude that essential physical or biological features exist in a specific area even in the temporary absence of suitable vegetation, and could designate such an area as critical habitat if all of the other applicable requirements were met and if there were documented occurrences of the particular habitat type in the area and a reasonable expectation of that habitat occurring again.

In *Cape Hatteras Access Preservation Alliance* v. *DOI,* 344 F. Supp. 2d 108, 123 n.4 (D.D.C. 2004), the court rejected FWS's designation for the piping plover as including lands that did not currently contain the features defined by FWS, but noted that it was not addressing ''whether dynamic land capable of supporting plover habitat can itself be one of the 'physical or biological features' essential to conservation.'' The new definition for ''physical or biological features'' would clarify that features can be dynamic or ephemeral habitat characteristics. However, an area within the geographical area occupied by the species, with habitat that is not ephemeral by nature but that has been degraded in some way, must have one or more of the physical or biological features at the time of designation.

Having proposed to define ''physical or biological features,'' we also propose to remove the term ''primary constituent element'' and all references to it from the regulations in section 424.12. As with all other aspects of these proposed revisions, this will apply only to future critical habitat designations and is further explained below in the discussion of the proposed changes to section 424.12, where the term is currently used.

We are also proposing to revise the definition of ''special management considerations or protection'' which is found in section 424.02. Here we propose to remove the phrase ''of the environment'' from the current regulation. This phrase is not used in this context elsewhere in the regulations or the Act and, therefore, may create ambiguity. We also propose to insert the words ''essential to'' to conform to the language of the Act.

In determining whether an area has essential features that may require special management considerations or protection, the Services do not base their decision on whether management is currently in place or whether that management is adequate. FWS formerly took the position that special management was required only if whatever management was in place was inadequate and that *additional* special management was needed. This position was rejected by the court in *Center for Biological Diversity* v. *Norton,* 240 F. Supp. 2d 1090 (D. Ariz. 2003) (Mexican spotted owl), the only court to address this issue. The Services agree with the conclusion of the court on this point—it is incorrect to read the statute as asking whether *additional* special management may be required. The consideration of whether features in an area may require special management or protection occurs independent of whether any form of management or protection occurs in the area.

We expect that, in most circumstances, the physical or biological features essential to the conservation of endangered species may require special management in all areas in which they occur, particularly for species that have significant habitat-based threats. However, if in some areas the essential features do not require special management or protections because there are no applicable threats to the features that have to be managed or protected for the conservation of the species, then that area does not meet this part (section 3(5)(A)(i)) of the definition of ''critical habitat.'' Nevertheless, we expect such circumstances to be rare.

Furthermore, it is not necessary that a feature currently *require* special management considerations or protection, only that it *may require* special management to meet the definition of ''critical habitat.'' 16 U.S.C. 1532(5)(A)(i) (emphasis added). Two district court decisions have emphasized this point. *CBD* v. *Norton* (Mexican spotted owl); *Cape Hatteras Access Preservation Alliance* v. *DOI,* 344 F. Supp. 2d 108 (D.D.C. 2004) (piping plover). The legislative history supports the view that Congress purposely set the standard as ''may require.'' Earlier versions of the bills that led to the statutory definition of ''critical habitat'' used the word ''requires,'' but ''may require'' was substituted prior to final passage. In any case, an interpretation of a statute should give meaning to each word Congress chose to use, and our interpretation gives the word ''may'' meaning.

Finally, we explain our interpretation of the meaning of the phrase ''interbreeds when mature,'' which is found in the definition of ''species.'' The ''interbreeds when mature'' language is ambiguous. *Modesto Irrigation Dist.* v. *Gutierrez,* 619 F.3d 1024, 1032 (9th Cir. 2010). Although we are not proposing to revise the regulations at this time, we are using this notice to inform the public of our longstanding interpretation of this phrase. We have always understood the phrase ''interbreeds when mature'' to mean that a distinct population segment (DPS) must consist of members of the same species or subspecies in the wild that would be biologically capable of interbreeding if given the opportunity, but all members need not actually interbreed with each other. A DPS is a subset of a species or subspecies, and cannot consist of members of different species or subspecies. The ''biological species'' concept, which defines species according to a group of organisms' actual or potential ability to interbreed, and their relative reproductive isolation from other organisms, is one widely accepted approach to defining species. We interpret the phrase ''interbreeds when mature'' to reflect this understanding and signify only that a DPS must be composed solely of members of the same species or subspecies. As long as this requirement is met, a DPS may include multiple groups of vertebrate organisms that do not actually interbreed with each other. For example, a DPS may consist of multiple groups of a fish species separated into different drainages. While it is possible that the members of these groups do not actually interbreed with each other, their members are biologically capable of interbreeding.

Section 424.12 Criteria for Designating Critical Habitat

We propose to revise the first sentence of paragraph (a) to clarify that critical habitat shall be proposed and finalized ''to the maximum extent prudent and determinable . . . concurrent with issuing proposed and final listing rules, respectively.'' The existing language is ''shall be specified to the maximum extent prudent and determinable at the time a species is proposed for listing.'' We propose to add the words ''proposed and finalized'' to be consistent with the Act, which requires that critical habitat be finalized concurrent with listing. The existing language could be interpreted to mean *proposing* critical habitat concurrent with listing was the only requirement. Additionally, the existing phrase ''shall be specified'' is vague and not consistent with the requirements of the Act, which is to propose and finalize a designation of critical habitat. The last two sentences in proposed paragraph (a) contain minor language changes to use the active voice.

Paragraphs (a)(1) and (a)(1)(i) would not be changed.

The first sentence of paragraph (a)(1)(ii) would remain the same. However, we propose to add a second sentence to paragraph (a)(1)(ii) to provide examples of factors that we may consider in determining whether a designation would be beneficial to the species. A designation may not be beneficial and, therefore, not prudent, under certain circumstances, including but not limited to: The present or threatened destruction, modification or curtailment of a species' habitat or range is not a threat to the species, or no areas meet the definition of ''critical habitat.'' For example, this provision may apply to a species that is threatened primarily by disease but the habitat that it relies upon continues to exist unaltered throughout an appropriate distribution that, absent the impact of the disease, would support conservation of the species. Another example is a species that occurs in portions of the United States and a foreign nation. In the foreign nation, there are multiple areas that have the features essential for the conservation of the species; however, in the United States there are no such areas. Consequently, there are no areas within the United States that meet the definition of ''critical habitat'' for the species. Therefore, there is no benefit to designation of critical habitat, and designation is not prudent.

While this provision is intended to reduce the burden of regulation in rare circumstances in which designation of critical habitat does not contribute to the conservation of the species, the Services recognize the value of critical habitat as a conservation tool and expect to designate it in most cases.

Section 424.12(a)(2) would remain unchanged from the current regulation, and proposed subparagraphs (i) and (ii) contain minor language changes to be consistent with the language in the Act.

The Services propose to completely revise section 424.12(b) of the current regulations. For the reason explained below, we also propose to remove the terms ''principal biological or physical constituent elements'' and ''primary constituent elements'' from this section. These concepts would be replaced by the statutory term ''physical or biological features,'' which we propose to define as described above.

The first part of the statutory definition of ''critical habitat'' (section 3(5)(A)(i)) contains terms necessary for (1) identifying specific areas within the geographical area occupied by the species that may be considered for designation as critical habitat and (2) describing which features on those areas are important to the species. In current section 424.12(b), the Services use the phrase ''primary constituent elements'' to focus identification of critical habitat on areas that contain these elements. However, the regulations are not clear as to how primary constituent elements relate to or are distinct from physical or biological features, which is the term used in the statute. Adding a term not found in the statute that is at least in part redundant with the term ''physical or biological features'' has proven confusing. Trying to parse features into elements and give them meaning distinct from one another has added an unnecessary layer of complication during the designation process.

The proposed definition of ''physical or biological features,'' described above, would encompass similar habitat characteristics as currently described in section 424.12(b), such as roost sites, nesting grounds, spawning sites, feeding sites, seasonal wetland or dryland, water quality or quantity, host species or plant pollinator, geological formation, vegetation type, tide, and specific soil types. Our proposal is intended to simplify and clarify the process, and to remove redundancy, without substantially changing the manner in which critical habitat is designated.

Proposed section 424.12(b) describes the process to be used to identify the specific areas to be considered for designation as critical habitat, based on the statutory definition of ''critical habitat.'' With respect to both parts of the definition, the proposed regulations would emphasize that the Secretary would identify areas that meet the definition ''at a scale determined by the Secretary to be appropriate.'' The purpose of this language is to clarify that the Secretary cannot and need not make determinations at an infinitely fine scale. Thus, the Secretary need not determine that each square inch, yard, acre, or even mile independently meets the definition of ''critical habitat.'' Nor would the Secretary necessarily consider legal property lines in making a scientific judgment about what areas meet the definition of ''critical habitat.'' Instead, the Secretary has discretion to determine at what scale to do the analysis. In making this determination, the Secretary may consider, among other things, the life history of the species, the scales at which data are available, and biological or geophysical boundaries (such as watersheds).

Under the first part of the statutory definition, in identifying specific areas for consideration, the Secretary must first identify the geographical area occupied by the species at the time of listing. Within the geographical area occupied by the species, the Secretary must identify the specific areas on which are found those physical or biological features (1) essential to the conservation of the species, and (2) which may require special management considerations or protection.

Under proposed section 424.12(b)(1)(i), the Secretary would identify the geographical area occupied by the species using the definition of this term as proposed above. Under proposed section 424.12(b)(1)(ii), the Secretary would then identify those physical and biological features essential for the conservation of the species. These physical or biological features are to be described at an appropriate level of specificity, based on the best scientific data available at the time of designation. For example, physical features might include gravel of a particular size required for spawning, alkali soil for germination, protective cover for migration, or susceptibility to flooding that maintains early-successional habitat characteristics. Biological features might include prey species, forage grasses, specific kinds or ages of trees for roosting or nesting, symbiotic fungi, or a maximum level of nonnative species consistent with conservation needs of the listed species. The features may also be combinations of habitat characteristics and may encompass the relationship between characteristics or the necessary amount of a characteristic needed to support the life history of the species. For example, a feature may be a specific type of forage grass that is in close proximity to a certain type of shrub for cover. Because the species would not consume the grass if there were not the nearby shrubs in which to hide from predators, one of these characteristics in isolation would not be an essential feature; the feature that supports the life-history needs of the species would consist of the combination of these two characteristics in close proximity to each other.

In considering whether features are essential to the conservation of the species, the Services may consider an appropriate quality, quantity, and spatial and temporal arrangement of habitat characteristics in the context of the life-history needs, condition, and status of the species. For example, a small patch of meadow may have the native flowers, full sun, and a biologically insignificant level of invasive ants that have been determined to be important habitat characteristics that support the life-history needs of an endangered butterfly. However, that small patch may be too far away from other patches to allow for mixing of the

populations, or the meadow may be too small for the population to persist over time. So the area could have important characteristics, but those characteristics may not contribute to the conservation of the species because they lack the appropriate size and proximity to other meadows with similar characteristics. Conversely, the exact same characteristics (native flowers, full sun, and a biologically insignificant level of invasive ants), when combined with the additional characteristics of larger size and short dispersal distance to other meadows, may in total constitute a physical or biological feature essential to the conservation of the species.

Under proposed section 424.12(b)(1)(iii), the Secretary would then determine the specific areas within the geographical area occupied by the species on which are found those physical or biological features essential to the conservation of the species.

Proposed section 424.12(b)(1)(iv) provides for the consideration of whether those physical or biological features may require special management considerations or protection. In this portion of the analysis, the Secretary must determine whether there are any ''methods or procedures useful in protecting physical and biological features for the conservation of listed species.'' Only those physical or biological features that may be in need of special management considerations or protection are considered further. The Services may conduct this analysis for the need of special management considerations or protection at the scale of all specific areas, but they may also do so within each specific area.

The ''steps'' outlined in subparagraphs (i) through (iv) above are not necessarily intended to be applied strictly in a stepwise fashion. The instructions in each subparagraph must be considered, as each relates to the statutory definition of ''critical habitat.'' However, there may be multiple pathways in the consideration of the elements of the first part of the definition of ''critical habitat.'' For instance, one may first identify specific areas occupied by the species, then identify all features needed by a species to carry out life-history functions in those areas through consideration of the conservation needs of the species, then determine which of those specific areas contain the features essential to the conservation of the species. The determination of which features are essential to the conservation of the species may consider the spatial arrangement and quantity of such features in the context of the life history, status, and conservation needs of the species. In some circumstances, not every location that contains one or more of the habitat characteristics that a species needs would be designated as critical habitat. Some locations may have important habitat characteristics, but are too small to support a population of the species, or are located too far away from other locations to allow for genetic exchange. Considered in context of the conservation needs of the species, the proposed section 424.12(b)(1)(i) through (iv) would allow for sufficient flexibility to determine what areas within the geographical area occupied by the species are needed to provide for the conservation of the species.

Occasionally, new taxonomic information may result in a determination that a previously listed species or subspecies is actually two or more separate entities. In such an instance, the Services must have flexibility, when warranted, to continue to apply the protections of the Act to preserve the conservation value of critical habitat that has been designated for a species listed as one listable entity (i.e., species, subspecies, or distinct population segment (DPS)), and which is being reproposed for listing as one or more different listable entities (*e.g.,* when the Services propose to list two or more species, subspecies, or DPSs that had previously been listed as a single entity). Where appropriate (such as where the range of an entity proposed for listing and a previously designated area of critical habitat align), the Services have the option to find, simultaneously with the proposed listing of the proposed entity or entities, that the relevant geographic area(s) of the existing designation continues to apply as critical habitat for the new entity or entities. Such a finding essentially carries forward the existing critical habitat (in whole or in part). Alternatively, the Services have the option to pursue a succinct and streamlined notice of proposed rulemaking to carry forward the existing critical habitat (in whole or in part), that draws, as appropriate, from the existing designation.

More broadly, when applying the proposed 424.12(b)(1) to the facts relating to a particular species, the Services will usually have more than one option available for determining what specific areas constitute the critical habitat for that species. In keeping with the conservation-based purpose of critical habitat, the relevant Service may find it best to first consider broadly what it knows about the biology and life history of the species, the threats it faces, the species' status and condition, and therefore the likely conservation needs of the species with respect to habitat. If there already is a recovery plan for that species (which is not always the case and not a prerequisite for designating critical habitat), then that plan would be useful for this analysis.

Using principles of conservation biology such as the need for appropriate patch size, connectivity of habitat, dispersal ability of the species, or representation of populations across the range of the species, the Service may evaluate areas needed for the conservation of the species. The Service must identify the physical and biological features essential to the conservation of the species and unoccupied areas that are essential for the conservation of the species. When using this methodology to identify areas within the geographical area occupied by the species at the time of listing, the Service will expressly translate the application of the relevant principles of conservation biology into the articulation of the features. Aligning the physical and biological features identified as essential with the conservation needs of the species will maximize the effectiveness of the designation in promoting recovery of the species.

We note that designation of critical habitat relies on the best available scientific data at the time of designation. The Services may not know of, or be able to identify, all of the areas on which are found the features essential to the conservation of a species. After designation of final critical habitat for a particular species, the Services may become aware of or identify other features or areas essential to the conservation of the species, such as through 5-year reviews and recovery planning. Newly identified features that are useful for characterizing the conservation value of designated critical habitat can be considered in consultations conducted under section 7(a)(2) of the Act as part of the best available scientific and commercial data. We also note that if there is uncertainty as to whether an area was ''within the geographical area occupied by the species, at the time it is listed,'' the Services may in the alternative designate the area under the second part of the definition if the relevant Service determines that the area is essential for the conservation of the species.

The second part of the statutory definition of ''critical habitat'' (section 3(5)(A)(ii)) provides that areas outside the geographical area occupied by the species at the time of listing should be

designated as critical habitat if they are determined to be ''essential for the conservation of the species.'' Proposed section 424.12(b)(2) further describes the factors the Services would consider in identifying any areas outside the geographical area occupied by the species at the time of listing that may meet this aspect of the definition of ''critical habitat.'' Under proposed section 424.12(b)(2), the Services will determine whether unoccupied areas are essential for the conservation of the species by considering ''the life-history, status, and conservation needs of the species.''

Proposed section 424.12(b)(2) would subsume and supersede section 424.12(e) of the existing regulations. Section 424.12(e) currently provides that the Secretary shall designate areas outside the ''geographical area presently occupied by a species'' only when ''a designation limited to its present range would be inadequate to ensure the conservation of the species.'' Although the current provision represents one reasonable approach to giving meaning to the term ''essential'' as it relates to unoccupied areas, the Services believe this provision is both unnecessary and unintentionally limiting. While Congress supplied two different standards to govern the Secretary's designation of these two types of habitat, there is no suggestion in the legislative history that the Services were expected to exhaust occupied habitat before considering whether any unoccupied area may be essential. In addition, although section 3(5)(C) of the Act reflects Congressional intent that a designation generally should not include every area that the species *can* occupy, this does not necessarily translate into a mandate to avoid designation of any unoccupied areas unless relying on occupied areas alone would be insufficient. Therefore, we conclude that deleting this provision would restore the two parts of the statutory definition (for occupied and unoccupied areas) to the appropriate relative statuses envisioned by Congress.

However, even if we were to conclude that Congress intended the Services to rely primarily on occupied areas, we think the existing regulatory provision is unnecessary because the Secretary in any case must find that the unoccupied area is ''essential.'' In many cases the Secretary may conclude that an integral part of analyzing whether unoccupied areas are essential is to begin with the occupied areas, but the Act does not require the Services to first prove that the occupied areas are insufficient before considering unoccupied areas.

As it is currently written, the provision in section 424.12(e) also confusingly references *present* range, while the two parts of the statutory definition refer to the area occupied *at the time of listing.* In practice, these concepts may be largely the same, given that critical habitat ideally should be designated at or near the time of listing. Nevertheless, the Services believe it will reduce confusion to change the regulations to track the statutory distinction. In addition, because critical habitat may be revised at any time, the statutory distinction may be important during a revision, which could occur several years after the listing of the species.

However, we note that unoccupied areas must be essential for the conservation of the species, but need not have the features essential to the conservation of the species: This follows directly from the inclusion of the ''features essential'' language in section 3(5)(A)(i) but not in section 3(5)(A)(ii). In other words, the Services may identify areas that do not yet have the features, or degraded or successional areas that once had the features, or areas that contain sources of or provide the processes that maintain the features as areas essential to the conservation of the species. Areas may develop features over time, or, with special management, features may be restored to an area. Under proposed section 424.12(b)(2), the Services would identify unoccupied areas, either with the features or not, that are essential for the conservation of a species. This proposed section is intended to be a flexible, rather than prescriptive, standard to allow the Services to tailor the inquiry about what is essential to the specific characteristics and circumstances of the particular species.

The Services anticipate that critical habitat designations in the future will likely increasingly use the authority to designate specific areas outside the geographical area occupied by the species at the time of listing. As the effects of global climate change continue to influence distribution and migration patterns of species, the ability to designate areas that a species has not historically occupied is expected to become increasingly important. For example, such areas may provide important connectivity between habitats, serve as movement corridors, or constitute emerging habitat for a species experiencing range shifts in latitude or altitude (such as to follow available prey or host plants). Where the best available scientific data suggest that specific unoccupied areas are, or it is reasonable to infer from the record that they will eventually become, necessary to support the species' recovery, it may be appropriate to find that such areas are essential for the conservation of the species and thus meet the definition of ''critical habitat.''

An example may clarify this situation: A butterfly depends on a particular host plant. The host plant is currently found in a particular area. The data show the host plant's range has been moving up slope in response to warming temperatures (following the cooler temperatures) resulting from climate change. Other butterfly species have been documented to have shifted from their historical ranges in response to changes in the range of host plants. Therefore, we rationally conclude that the butterfly's range will likely move up slope, and we would designate specific areas outside the geographical area occupied by the butterfly at the time it was listed if we concluded this area was essential based on this information.

Adherence to the process described above will ensure compliance with the requirement in section 3(5)(C) of the Act, which states that, except in those circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied by the threatened or endangered species.

Existing section 424.12(c) has been revised in a separate rulemaking (77 FR 25611).

The proposed section 424.12(d) would include minor language changes and would remove the example as it is not necessary for the text of the regulation.

We propose to remove current section 424.12(e), as this concept—designating specific areas outside the geographical area occupied by the species at the time it is listed upon a determination by the Secretary that such areas are essential for the conservation of the species—would be captured in proposed section 424.12(b)(2).

We propose to redesignate the current section 424.12(f) as section 424.12(e) and to add a second sentence to emphasize that designation of critical habitat for species that were listed prior to 1978 is at the discretion of the Secretaries. The first sentence of proposed section 424.12(e) would provide that the Secretary ''may designate critical habitat for those species listed as threatened or endangered species but for which no critical habitat has been previously designated.'' This is substantially the same as current paragraph section 424.12(f) in the existing regulations, although the Services have changed the passive voice to the active voice.

The new second sentence would codify in the regulations the principle that the decision whether to designate critical habitat for species listed prior to the effective date of the 1978 Amendments to the Act (November 10, 1978) is at the discretion of the Secretary. This principle is clearly reflected in the text of the statute and firmly grounded in the legislative history. The definition of ''critical habitat'' added to the Act in 1978 provided that the Secretary ''may,'' but was not required to, establish critical habitat for species already listed by the effective date of the 1978 amendments. *See* Public Law 95–632, 92 Stat. 3751 (Nov. 10, 1978) (codified at 16 U.S.C. 1532(5)(B)); *see also Conservancy of Southwest Florida* v. *United States Fish & Wildlife Service,* No. 2:10–cv–106–FtM–SPC, 2011 WL 1326805, *9 (M.D. Fla. April 6, 2011) (Florida panther) (plain language of statute renders designation of habitat for species listed prior to the 1978 Amendments discretionary), *aff'd,* 677 F.3d 1073 (11th Cir. 2012); *Fund for Animals* v. *Babbitt,* 903 F. Supp. 96, 115 n.8 (D.D.C. 1995) (grizzly bear) (same). Similarly, the 1982 amendments expressly exempted species listed prior to the 1978 amendments from the requirement that critical habitat must be designated concurrently with listing. See Public Law 97–304, 96 Stat. 1411, § 2(b)(4) (Oct. 13, 1982). To reduce potential confusion, it will be useful for the regulations to reflect the discretionary nature of designations for such species.

As recent litigation has highlighted, the statutory history regarding the procedures for undertaking proposals to designate critical habitat for certain species is nuanced and has proven confusing in other respects as well. For species listed before passage of the 1982 amendments to the Act (October 13, 1982), any proposed regulations issued by the Secretary to designate critical habitat are governed by the provisions in section 4 of the Act applicable to proposals to revise critical habitat designations. This is specified in an uncodified provision of the 1982 amendments. *See* Public Law 97–304, 96 Stat. 1411, 1416, 2(b)(2), 16 U.S.C. 1533 (note) (''Any regulation proposed after, or pending on, the date of the enactment of this Act to designate critical habitat for a species that was determined before such date of enactment to be endangered or threatened shall be subject to the procedures set forth in section 4 of such Act of 1973 . . . for regulations proposing revisions to critical habitat instead of those for regulations proposing the designation of critical habitat.''); *see also Center for Biological Diversity* v. *FWS,* 450 F.3d 930, 934–35 (9th Cir. 2006) (unarmored three-spine stickleback). While the Services do not propose to add regulatory text to address this narrow issue, we explain below how these provisions must be understood within the general scheme for designating critical habitat.

As a result of the above-referenced provision of the 1982 amendments, final regulations to designate critical habitat for species that were listed prior to October 13, 1982, are governed by section 4(b)(6)(A)(i) of the Act. By contrast, for species listed after October 13, 1982, final regulations are governed by section 4(b)(6)(A)(ii). Proposed rules for species listed both pre- and post-1982 are governed by section 4(b)(5). Thus, the Services have additional options at the final rule stage with regard to a proposal to designate critical habitat for those species listed prior to 1982 that they do not have when proposing to designate habitat for other species. These include an option to make a finding that the revision ''should not be made'' and to extend the 12-month deadline by an additional period of up to 6 months if there is substantial disagreement regarding the sufficiency or accuracy of available data. *See* 16 U.S.C. 1533(b)(6)(B)(i); *see also Center for Biological Diversity,* 450 F.3d at 936–37.

These provisions, however, do not affect the handling or consideration of *petitions* seeking designation of critical habitat for species listed prior to1982. The term ''petition'' is not used in section 2(b)(2) of the 1982 amendments to the Act (compare to section 2(b)(1) of the same amendments, which mentions ''[a]ny petition'' and ''any regulation''). Thus, the special rules for finalizing proposals to designate critical habitat for species listed prior to1982 come into play only upon a decision by the Secretary to actually propose to designate critical habitat for such species. Petitions seeking such designations are governed just like any other petition seeking designation, which are governed by the provisions of the Administrative Procedure Act rather than section 4 of the Endangered Species Act. *See* 50 CFR 424.14(d); *Conservancy of Southwest Florida,* 2011 WL 1326805, at *9 (''It is the Secretary's proposal to designate critical habitat that triggers the statutory and regulatory obligations, not plaintiffs' requests that the Secretary do so.''); *Fund for Animals* v. *Babbitt,* 903 F. Supp. at 115 (petitions to designate critical habitat are governed by the APA, not the ESA).

We propose to redesignate current section 424.12(g) as section 424.12(f) with minor language changes.

We propose to redesignate current section 424.12(h) as section 424.12(g) with minor language changes.

We propose to add a new section 424.12(h). Proposed section 424.12(h) would reflect the amendment to section 4(a)(3)(B)(i) of the Act in the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136). This proposed paragraph would codify the amendments to the Act that prohibit the Services from designating as critical habitat lands or other geographic areas owned or controlled by the Department of Defense, or designated for its use, if those lands are subject to an integrated natural resources management plan (INRMP) prepared under section 101 of the Sikes Act (16 U.S.C. 670a), and if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is being designated. In other words, if the Services conclude that an INRMP ''benefits'' the species, the area covered is ineligible for designation. Unlike the Secretary's decision on exclusions under section 4(b)(2) of the Act, this result is not subject to the discretion of the Secretary (once a benefit has been found).

Neither the Act nor the National Defense Authorization Act for Fiscal Year 2004 defines the term ''benefit.'' However, the conference report on the 2004 National Defense Authorization Act (Report 108–354) instructed the Secretary to ''assess an INRMP's potential contribution to species conservation, giving due regard to those habitat protection, maintenance, and improvement projects . . . that address the particular conservation and protection needs of the species for which critical habitat would otherwise be proposed.'' We therefore conclude that Congress intended ''benefit'' to mean ''conservation benefit.'' In addition, because a finding of benefit would result in an exemption from critical habitat designation, and given the specific mention of ''habitat protection, maintenance, and improvement'' in the conference report, we infer that Congress intended that an INRMP provide a conservation benefit to the habitat (e.g., essential features) of the species, in addition to the species. Examples of actions that would provide habitat-based conservation benefit to the species include: Reducing fragmentation of habitat; maintaining or increasing populations in the wild; planning for catastrophic events; protecting, enhancing, or restoring habitats; buffering protected areas; and testing

and implementing new habitat-based conservation strategies.

In the conference report, Congress further instructed the Secretary to ''establish criteria that would be used to determine if an INRMP benefits the listed species.'' The Services, therefore, also propose in section 424.12(h) to describe some factors that would help us determine whether an INRMP provides a conservation benefit: (1) The extent of area and features present; (2) the type and frequency of use of the area by the species ; (3) the relevant elements of the INRMP in terms of management objectives, activities covered, and best management practices, and the certainty that the relevant elements will be implemented; and (4) the degree to which the relevant elements of the INRMP will protect the habitat from the types of effects that would be addressed through a destruction-or-adverse-modification analysis.

Under the Sikes Act, the Department of Defense is also instructed to prepare INRMPs in cooperation with FWS and each appropriate State fish and wildlife agency. The approved INRMP shall reflect the mutual agreement of the involved agencies on the conservation, protection, and management of fish and wildlife resources. In other words, FWS must approve an INRMP (reflected by signature of the plan or letter of concurrence pursuant to the Sikes Act (not to be confused with a letter of concurrence issued in relation to consultation under section 7(a)(2) of the Act)) before an INRMP can be relied upon for making an area ineligible for designation under section 4(a)(3)(B)(i). As part of this approval process, FWS will also conduct consultation under section 7(a)(2) of the Act, if listed species or designated critical habitat may be affected by the actions included in the INRMP. Section 7(a)(2) of the Act will continue to apply to any federal actions affecting the species once an INRMP is approved. However, if the area is ineligible for critical habitat designation under section 4(a)(3)(B)(i), then those consultations would address only effects to the species and the likelihood of the federal action to jeopardize the continued existence of the species.

Proposed new section 424.12(h) would specify that an INRMP must be approved to make an area ineligible for designation under section 4(a)(3)(B)(i). When the Department of Defense provides a draft INRMP for the Services' consideration during development of a critical habitat designation, the Services will evaluate it.

Existing section 424.19 has been finalized in a separate rulemaking (78 FR 53058).

Request for Information

We intend that a final regulation will consider information and recommendations from all interested parties. We, therefore, solicit comments, information, and recommendations from governmental agencies, Native American tribes, the scientific community, industry groups, environmental interest groups, and any other interested parties. All comments and materials received by the date listed in **DATES** above will be considered prior to the approval of a final document.

You may submit your information concerning this proposed rule by one of the methods listed in **ADDRESSES**. If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Information and supporting documentation that we receive in response to this proposed rule will be available for you to review at *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Division of Conservation and Classification (see **FOR FURTHER INFORMATION CONTACT**).

Required Determinations

Regulatory Planning and Review—Executive Orders 12866 and 13563

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 601 *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare, and make available for public comment, a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency, or his designee, certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. We are certifying that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

This rulemaking revises and clarifies requirements for NMFS and FWS in designating critical habitat under the Endangered Species Act to reflect recent amendments to the Act and agency experience. This proposed rule, if made final, would revise the Services' regulations to be consistent with recent statutory amendments that make certain lands managed by the Department of Defense ineligible for designation of critical habitat; be consistent with Congressional intent; be consistent with recent case law; and would clarify our process for designating critical habitat. The other changes included in these proposed regulations serve to clarify, and do not expand the reach of potential designations of critical habitat.

NMFS and FWS are the only entities that are directly affected by this rule because we are the only entities that designate critical habitat. No external entities, including any small businesses, small organizations, or small governments, will experience any economic impacts from this rule.

Therefore, the only effect to any external entities large or small would likely be positive, that is, gaining a greater understanding of the process we use for designating critical habitat.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) On the basis of information contained in the ''Regulatory Flexibility Act'' section above, these proposed regulations would not ''significantly or uniquely'' affect small governments. We have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502, that these regulations would not impose a cost of $100 million or more in any given year on local or State governments or private entities. A Small Government Agency Plan is not required. As explained above, small governments would not be affected because the proposed regulations would not place additional requirements on any city, county, or other local municipalities.

(b) These proposed regulations would not produce a Federal mandate on State, local, or tribal governments or the private sector of $100 million or greater in any year; that is, it is not a ''significant regulatory action''' under the Unfunded Mandates Reform Act. These proposed regulations would impose no obligations on State, local, or tribal governments.

Takings (E.O. 12630)

In accordance with Executive Order 12630, these proposed regulations would not have significant takings implications. These proposed regulations would not pertain to ''taking'' of private property interests, nor would they directly affect private property. A takings implication assessment is not required because these proposed regulations (1) would not effectively compel a property owner to suffer a physical invasion of property and (2) would not deny all economically beneficial or productive use of the land or aquatic resources. These proposed regulations would substantially advance a legitimate government interest (conservation and recovery of endangered and threatened species) and would not present a barrier to all reasonable and expected beneficial use of private property.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, we have considered whether these proposed regulations would have significant Federalism effects and have determined that a Federalism assessment is not required. These proposed regulations pertain only to determinations to designate critical habitat under section 4 of the Act, and would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Civil Justice Reform (E.O. 12988)

These proposed regulations do not unduly burden the judicial system and meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988. These proposed regulations would clarify how the Services will make designations of critical habitat under section 4 of the Act.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In our proposed regulations, we explain that the Secretaries have discretion to exclude any particular area from the critical habitat upon a determination that the benefits of exclusion outweigh the benefits of specifying the particular area as part of the critical habitat. In identifying those benefits, the Secretaries may consider effects on tribal sovereignty.

Paperwork Reduction Act

This proposed rule does not contain any new collections of information that require approval by the OMB under the Paperwork Reduction Act. This proposed rule would not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

National Environmental Policy Act

We are analyzing these proposed regulations in accordance with the criteria of the National Environmental Policy Act (NEPA), the Department of the Interior regulations on Implementation of the National Environmental Policy Act (43 CFR 46.10–46.450), the Department of the Interior Manual (516 DM 1–6 and 8)), and National Oceanic and Atmospheric Administration (NOAA) Administrative Order 216–6. Our analysis includes evaluating whether this action is procedural, administrative or legal in nature, and therefore a categorical exclusion applies. We invite the public to comment on whether, and if so, how this proposed regulation may have a significant effect upon the human environment, including any effects identified as extraordinary circumstances at 43 CFR 46.215. We will complete our analysis, in compliance with NEPA, before finalizing these proposed regulations.

Energy Supply, Distribution or Use (E.O. 13211)

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. These proposed regulations, if made final, are not expected to affect energy supplies, distribution, and use. Therefore, this action is a not a significant energy action, and no Statement of Energy Effects is required.

Clarity of This Proposed Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule or policy we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the proposed rule, your comments should be as specific as possible. For example, you should tell us the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

References Cited

A complete list of all references cited in this document is available on the Internet at *http://www.regulations.gov* or upon request from the U.S. Fish and Wildlife Service (see **FOR FURTHER INFORMATION CONTACT**).

Authority

We are taking this action under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.).

List of Subjects in 50 CFR Part 424

Administrative practice and procedure, Endangered and threatened species.

Proposed Regulation Promulgation

Accordingly, we propose to further amend part 424, subchapter A of chapter IV, title 50 of the Code of Federal Regulations, as proposed to be amended at 77 FR 51503, August 24, 2012, as set forth below:

PART 424—[AMENDED]

■ 1. The authority citation for part 424 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

■ 2. Revise § 424.01 to read as follows:

§ 424.01 Scope and purpose.

(a) Part 424 provides regulations for revising the Lists of Endangered and Threatened Wildlife and Plants and designating or revising the critical habitats of listed species. Part 424 provides criteria for determining whether species are endangered or threatened and for designating critical habitats. Part 424 also establishes procedures for receiving and considering petitions to revise the lists and for conducting periodic reviews of listed species.

(b) The purpose of the regulations in part 424 is to interpret and implement those portions of the Act that pertain to the listing of species as threatened or endangered and the designation of critical habitat.

■ 3. Revise § 424.02 to read as follows:

§ 424.02 Definitions.

The definitions contained in the Act and parts 17, 222, and 402 of this title apply to this part, unless specifically modified by one of the following definitions. Definitions contained in part 17 of this title apply only to species under the jurisdiction of the U.S. Fish and Wildlife Service. Definitions contained in part 222 of this title apply only to species under the jurisdiction of the National Marine Fisheries Service.

Candidate. Any species being considered by the Secretary for listing as an endangered or threatened species, but not yet the subject of a proposed rule.

Conserve, conserving, and *conservation.* To use and the use of all methods and procedures that are necessary to bring any endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary, i.e., the species is recovered in accordance with section 402.02. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Geographical area occupied by the species. An area which may generally be delineated around species' occurrences, as determined by the Secretary (i.e., range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (e.g., migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

List or *lists.* The Lists of Endangered and Threatened Wildlife and Plants found at 50 CFR 17.11(h) or 17.12(h).

Physical or biological features. The features that support the life-history needs of the species, including but not limited to, water characteristics, soil type, geological features, sites, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic, or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity.

Public hearing. An informal hearing to provide the public with the opportunity to give comments and to permit an exchange of information and opinion on a proposed rule.

Special management considerations or protection. Methods or procedures useful in protecting the physical or biological features essential to the conservation of listed species.

Species. Any species or subspecies of fish, wildlife, or plant, and any distinct population segment of any vertebrate species that interbreeds when mature. A distinct population segment ''interbreeds when mature'' when it consists of members of the same species or subspecies in the wild that are capable of interbreeding when mature. Excluded is any species of the Class Insecta determined by the Secretary to constitute a pest whose protection under the provisions of the Act would present an overwhelming and overriding risk to man.

Wildlife or *fish and wildlife.* Any member of the animal kingdom, including without limitation, any vertebrate, mollusk, crustacean, arthropod, or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof.

■ 4. In § 424.12, revise paragraphs (a), (b), and (d) through (h) to read as follows:

§ 424.12 Criteria for designating critical habitat.

(a) To the maximum extent prudent and determinable, we will propose and finalize critical habitat designations concurrent with issuing proposed and final listing rules, respectively. If designation of critical habitat is not prudent or if critical habitat is not determinable, the Secretary will state the reasons for not designating critical habitat in the publication of proposed and final rules listing a species. The Secretary will make a final designation of critical habitat on the basis of the best scientific data available, after taking into consideration the economic impact, the impact on national security, and other relevant impacts of making such a designation in accordance with section 424.19.

(1) A designation of critical habitat is not prudent when any of the following situations exist:

(i) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species; or

(ii) Such designation of critical habitat would not be beneficial to the species. In determining whether a designation would be beneficial, the factors the Services may consider include, but are not limited to: The present or threatened destruction, modification or curtailment of a species habitat or range is not a threat to the species, or no areas meet the definition of critical habitat.

(2) Designation of critical habitat is not determinable when one or both of the following situations exist:

(i) Data sufficient to perform required analyses are lacking; or

(ii) The biological needs of the species are not sufficiently well known to identify any area that meets the definition of critical habitat.

(b) Where designation of critical habitat is prudent and determinable, the Secretary will identify specific areas within the geographical area occupied by the species at the time of listing and any specific areas outside the

geographical area occupied by the species to be considered for designation as critical habitat.

(1) The Secretary will identify, at a scale determined by the Secretary to be appropriate, specific areas within the geographical area occupied by the species for consideration as critical habitat. The Secretary will:

(i) Identify the geographical area occupied by the species at the time of listing.

(ii) Identify physical and biological features essential to the conservation of the species at an appropriate level of specificity using the best available scientific data. This analysis will vary between species and may include consideration of the appropriate quality, quantity, and spatial and temporal arrangements of such features in the context of the life history, status, and conservation needs of the species.

(iii) Determine the specific areas within the geographical area occupied by the species that contain the physical or biological features essential to the conservation of the species.

(iv) Determine which of these features may require special management considerations or protection.

(2) The Secretary will identify, at a scale determined by the Secretary to be appropriate, specific areas outside the geographical area occupied by the species that are essential for its conservation, considering the life history, status, and conservation needs of the species.

* * * * *

(d) When several habitats, each satisfying the requirements for designation as critical habitat, are located in proximity to one another, the Secretary may designate an inclusive area as critical habitat.

(e) The Secretary may designate critical habitat for those species listed as threatened or endangered but for which no critical habitat has been previously designated. For species listed prior to November 10, 1978, the designation of critical habitat is at the discretion of the Secretary.

(f) The Secretary may revise existing designations of critical habitat according to procedures in this section as new data become available.

(g) The Secretary will not designate critical habitat within foreign countries or in other areas outside of the jurisdiction of the United States.

(h) The Secretary will not designate as critical habitat land or other geographic areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an approved integrated natural resources management plan (INRMP) prepared under section 101 of the Sikes Act (16 U.S.C. 670a) if the Secretary determines in writing that such plan provides a conservation benefit to the species for which critical habitat is being designated. In determining whether such a benefit is provided, the Secretary will consider:

(1) The extent of the area and features present;

(2) The type and frequency of use of the area by the species;

(3) The relevant elements of the INRMP in terms of management objectives, activities covered, and best management practices, and the certainty that the relevant elements will be implemented; and

(4) The degree to which the relevant elements of the INRMP will protect the habitat from the types of effects that would be addressed through a destruction-or-adverse-modification analysis.

Dated: April 3, 2014.

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

Dated: April 4, 2014.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2014–10504 Filed 5–9–14; 8:45 am]

BILLING CODE 4310–55–P; 3510–22–P

FEDERAL REGISTER

Vol. 79 Monday,

No. 91 May 12, 2014

Part III

Department of Health and Human Services

Office of Inspector General

42 CFR Parts 1003 and 1005

Medicare and State Health Care Programs: Fraud and Abuse; Revisions to the Office of Inspector General's Civil Monetary Penalty Rules; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Parts 1003 and 1005

RIN 0936–AA04

Medicare and State Health Care Programs: Fraud and Abuse; Revisions to the Office of Inspector General's Civil Monetary Penalty Rules

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the civil monetary penalty (CMP or penalty) rules of the Office of Inspector General (OIG) to incorporate new CMP authorities, clarify existing authorities, and reorganize regulations on civil money penalties, assessments and exclusions to improve readability and clarity.

DATES: To ensure consideration, comments must be delivered to the address provided below by no later than 5 p.m. Eastern Standard Time on July 11, 2014.

ADDRESSES: In commenting, please reference file code OIG–403–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. However, you may submit comments using one of three ways (no duplicates, please):

1. *Electronically.* You may submit electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* (Attachments should be in Microsoft Word, if possible.)

2. *By regular, express, or overnight mail.* You may mail your printed or written submissions to the following address: Patrice S. Drew, Office of Inspector General, Department of Health and Human Services, Attention: OIG–403–P, Cohen Building, 330 Independence Avenue SW., Room 5541C, Washington, DC 20201.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By hand or courier.* You may deliver, by hand or courier, before the close of the comment period, your printed or written comments to: Patrice S. Drew, Office of Inspector General, Department of Health and Human Services, Attention: OIG–403–P, Cohen Building, 330 Independence Avenue SW., Room 5541C, Washington, DC 20201.

Because access to the interior of the Cohen Building is not readily available to persons without Federal Government identification, commenters are encouraged to schedule their delivery with one of our staff members at (202) 619–1368.

Inspection of Public Comments: All comments received before the end of the comment period will be posted on *http://www.regulations.gov* for public viewing. Hard copies will also be available for public inspection at the Office of Inspector General, Department of Health and Human Services, Cohen Building, 330 Independence Avenue SW., Washington, DC 20201, Monday through Friday from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone (202) 619–1368.

FOR FURTHER INFORMATION CONTACT: Tony Maida, (202) 619–0335, or Jill Wright, (202) 619–0335, Office of Counsel to the Inspector General.

SUPPLEMENTARY INFORMATION:

EXECUTIVE SUMMARY:

I. Purpose of the Regulatory Action

A. Need For Regulatory Action

The Affordable Care Act of 2010 (Patient Protection and Affordable Care Act, Pub. L. 111–148, 124 Stat. 119 (2010), as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. 111–152, 124 Stat. 1029 (2010), hereafter ACA) significantly expanded OIG's authority to protect Federal health care programs from fraud and abuse. OIG proposes to update its regulations to codify the changes made by ACA in the regulations. At the same time, OIG proposes updates pursuant to the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 and other statutory authorities, as well as technical changes to clarify and update the regulations.

B. Legal Authority

The legal authority, laid out later in the preamble, for this regulatory action is found in the Social Security Act (Act), as amended by ACA. The legal authority for the proposed changes is listed by the parts of Title 42 of the Code of Federal Regulations that we propose to modify:

1003: 42 U.S.C. 1320a–7(c), 1320a–7a, 1320b–10, 1395w–27(g), 1395w–112(b)(3)(E), 1395w–141(i)(3), 1395y(b)(3)(B), 1395dd(d)(1), 1395mm, 1395nn(g), 1395ss(d), 1396b(m), 1396r–7(b)(3)(B), 1396r–7(b)(3)(C), 1396t(i)(3), 11131(c), 11137(b)(2), and 262a.

1005: 42 U.S.C. 405(a), 405(b), 1302, 1320a–7, 1320a–7a, and 1320c–5.

II. Summary of Major Provisions

We propose changes to the Civil Monetary Penalties (CMP) regulations at 42 CFR part 1003 to implement authorities under ACA and other statutes. ACA provides for CMPs, assessments, and exclusion for:

- Failure to grant OIG timely access to records;
- ordering or prescribing while excluded;
- making false statements, omissions, or misrepresentations in an enrollment application;
- failure to report and return an overpayment; and
- making or using a false record or statement that is material to a false or fraudulent claim.

These statutory changes are reflected in the proposed regulations.

We also propose a reorganization of 42 CFR part 1003 to make the regulations more accessible to the public and to add clarity to the regulatory scheme. We propose an alternate methodology for calculating penalties and assessments for employing excluded individuals in positions in which the individuals do not directly bill the Federal health care programs for furnishing items or services. We also clarify the liability guidelines under OIG authorities, including the Civil Monetary Penalties Law (CMPL); the Emergency Medical Treatment and Labor Act (EMTALA); section 1140 of the Act for conduct involving electronic mail, Internet, and telemarketing solicitations; and section 1927 of the Act for late or incomplete reporting of drug-pricing information.

III. Costs and Benefits

There are no significant costs associated with the proposed regulatory revisions that would impose any mandates on State, local, or tribal governments or the private sector. OIG anticipates that CMP collections may increase in the future in light of the new CMP authorities and other changes proposed in this rule. However, it is difficult to accurately predict the extent of any increase due to a variety of factors, such as budget and staff resources, the number and quality of CMP referrals or leads, and the length of time needed to investigate and litigate a case. In calendar years 2004–2013, OIG collected between $10.2 million and $26.2 million in CMP resolutions for a total of over $165.2 million.

Discussion

I. Background

For over 22 years, OIG has exercised the authority to impose CMPs, assessments, and exclusions in furtherance of its mission to protect the Federal health care programs and their

beneficiaries from fraud, waste, and abuse. As those programs have changed over the last two decades, OIG has received new fraud-fighting CMP authorities in response, including new authorities under ACA. With the addition of new authorities over time, part 1003 has become cumbersome. While adding new authorities, we are also reorganizing part 1003 to improve its readability and clarity. Lastly, we are also addressing several substantive issues in our existing authorities.

This notice of proposed rulemaking is part of a rulemaking identified in the Unified Agenda by the Title ''Medicare and State Health Care Programs: Fraud and Abuse; Revisions to the Office of Inspector General's Safe Harbors Under the Anti-Kickback Statute, Exclusion Authorities, and Civil Monetary Penalty Rules.'' OIG contemplates additional rulemaking in the following areas: Exclusion authorities (42 CFR parts 1000, 1001, 1002, 1006, 1007); inflation adjustment for CMPs (42 CFR part 1003); and safe harbors under the anti-kickback statute, a revised definition of remuneration in part 1003, and a codified gainsharing CMP (42 CFR 1001.952, 42 CFR part 1003). Each of the proposed rules is a stand-alone, independent rule, and the public need not wait for all of the proposed rules to be published to submit comments on any one of the proposed rules. Thus, one can comment meaningfully on this proposed rule without having seen the proposed rules concerning exclusion authorities, inflation adjustment for CMPs, or safe harbors under the anti-kickback statute.

A. Overview of OIG Civil Monetary Penalty Authorities

In 1981, Congress enacted the CMPL, section 1128A of the Act (42 U.S.C. 1320a–7a), as one of several administrative remedies to combat fraud and abuse in Medicare and Medicaid. The CMPL authorized the Secretary to impose penalties and assessments on a person, as defined in 42 CFR part 1003, who defrauded Medicare or Medicaid or engaged in certain other wrongful conduct. The CMPL also authorized the Secretary to exclude persons from Medicare and all State health care programs (including Medicaid). Congress later expanded the CMPL and the scope of exclusion to apply to all Federal health care programs. The Secretary delegated the CMPL's authorities to OIG. 53 FR 12,993 (April 20, 1988). Since 1981, Congress has created various other CMP authorities covering numerous types of fraud and abuse. These new authorities were also delegated by the Secretary to OIG and were added to part 1003.

B. The Patient Protection and Affordable Care Act of 2010

ACA is the most recent expansion of the CMP provisions and OIG's ability to protect Federal health care programs from fraud and abuse. Sections 6402(d)(2)(A)(iii) and 6408(a) of ACA amended the CMPL by adding new conduct that would subject a person to penalties, assessments, and/or exclusion from participation in Federal health care programs. The new covered conduct includes: (1) Failure to grant OIG timely access to records, upon reasonable request; (2) ordering or prescribing while excluded when the excluded person knows or should know that the item or service may be paid for by a Federal health care program; (3) making false statements, omissions, or misrepresentations in an enrollment or similar bid or application to participate in a Federal health care program; (4) failure to report and return an overpayment that is known to the person; and (5) making or using a false record or statement that is material to a false or fraudulent claim. *See* Act, section 1128A(a)(8)–(12). We propose to codify these new authorities and remedies at 42 CFR 1003.200(b)(6)–(10), 1003.210(a)(6)–(9), and 1003.210(b)(3).

Section 6408(b)(2) of ACA amended section 1857(g)(1) of the Act (42 U.S.C. 1395w–27(g)(1)), which relates to Medicare Advantage and Part D contracting organizations. *See* Act, section 1860D–12(b)(3)(E) (42 U.S.C. 1395w–112) (incorporating 1857(g) by reference). Through this amendment to the Act, ACA made several changes to these authorities. First, section 6408(b)(2) of ACA clarifies that penalties, and, where applicable, assessments, may be imposed against a Medicare Advantage or Part D contracting organization when its employees or agents, or any provider or supplier who contracts with it, engages in the conduct described in the CMP authorities in section 1857(g) of the Act. This statutory change broadens the general liability of principals for the actions of their agents under our existing regulations at § 1003.102(d)(5) (proposed § 1003.120(c)) to include contracting providers and suppliers who may not qualify as agents of the contracting organization. ACA also provides for penalties and assessments against a Medicare Advantage or Part D contracting organization that: (1) Enrolls an individual without his or her prior consent; (2) transfers an enrollee from one plan to another without his or her prior consent; (3) transfers an enrollee solely for the purpose of earning a commission; (4) fails to comply with marketing restrictions described in sections 1851(h) or (j) of the Act (42 U.S.C. 1395w–21(h) or (j)) or applicable implementing regulations or guidance; or (5) employs or contracts with any person who engages in the conduct described in section 1857(g)(1).

We propose to codify these new authorities in the proposed regulations at § 1003.400(c) and their corresponding penalties and assessments at § 1003.410. The Centers for Medicare & Medicaid Services (CMS) may also impose sanctions under its authorities related to Medicare Advantage or Part D contracting organizations. Those authorities are at 42 CFR parts 422 and 423.

C. Reorganization of Part 1003

As Congress created additional CMP authorities, corresponding regulations have been added to the existing regulatory structure. Part 1003 is currently structured with each basis for CMPs and assessments listed in § 1003.102, except CMPs pertaining to managed care organizations are listed in § 1003.103(f). Separate sections discuss the penalty and assessment amounts, exclusion provisions, the factors for determining the appropriate penalty and assessment amounts, and the factors for determining whether OIG should impose exclusion. Over time, this structure has become cumbersome. We propose reorganizing part 1003 to make the regulations more accessible to the public and to add clarity to the regulatory scheme. Except for general and procedural subparts, the reorganized part 1003 groups CMP authorities into subparts by subject matter. This revised structure also clarifies the differences between the various CMP authorities and their respective statutory remedies. For certain CMP authorities, penalties, assessments, and exclusion are authorized. For other CMP authorities, only penalties, or penalties and assessments, are authorized. Each subpart is intended to be self-contained, with all the relevant provisions concerning a particular violation included in the same subpart.

D. Factors Relevant to Determining Amount of Penalty and Assessment and Length of Exclusion

As part of the reorganization, we propose modifying the provisions relating to the factors considered in determining the exclusion period and the amount of penalties and assessments for violations. The present structure separately lists factors for certain CMP

violations in § 1003.106(a) and provides additional detail on these factors for certain CMP violations in § 1003.106(b) and (d). This structure is cumbersome and potentially confusing for the reader.

To add clarity and improve transparency in OIG's decision-making processes, we identified the most common issues among the factors listed and created a single, primary list of factors in the proposed § 1003.140. The primary factors are: (1) The nature and circumstances of the violation, (2) the degree of culpability of the person, (3) the history of prior offenses, (4) other wrongful conduct, and (5) other matters as justice may require. As the fifth factor demonstrates, these are illustrative factors rather than a comprehensive list. Unlike factors in the current version of the regulation, these factors would apply to all CMP violations, except as otherwise provided in the subpart relating to a specific subject matter, which may contain additional detail or explanation regarding a factor's applicability to a specific violation. For example, the aggravating factors currently listed in § 1003.106(b)(1) relate to the nature and circumstances of a violation. Because these factors relate most directly to billing issues, the proposed regulations include them in §§ 1003.220, 1003.320, and 1003.420. We are proposing updating the claims-mitigating factor by increasing the maximum dollar amount considered as mitigation from $1,000 to $5,000. We believe this updated amount is an appropriate threshold that is consistent with rationale behind the original amount. A dollar threshold as a mitigating factor for CMP purposes differentiates between conduct that could be considered less serious and more serious. Conduct resulting in more than $5,000 in federal health care program loss is an indication of more serious conduct. Given the changes in the costs of health care since this regulation was last updated in 2002, we believed the $1,000 threshold was lower than appropriate. We are also proposing to revise the claims-aggravating factor at 1003.106(b)(1)(iii) by replacing ''substantial'' with ''$15,000 or more.'' In assigning a dollar value to the aggravating factor, we considered our practices in evaluating conduct for pursuing CMPs and believe that a loss greater than $15,000 is an indication of serious misconduct. We also believe replacing ''substantial'' with a specific dollar threshold increases transparency and provides better guidance to the provider community on OIG's evaluation of this factor.

OIG will, however, continue to review the facts and circumstances of a violation on a case-by-case basis. For instance, when considering the nature and circumstances of any case, OIG will consider, among other things and to the extent they are relevant, the time period over which the conduct occurred, whether a pattern of misconduct is indicated, the magnitude of the violation, the materiality or significance of a false statement or omission, the number of people involved, the number of victims, and whether patients were or could have been harmed.

The proposed changes also clarify that these factors apply to both exclusion determinations made under part 1003 as well as penalty and assessment amount determinations. We are removing § 1003.7(c) in light of this reorganization. The current regulations state, at § 1003.107(c), that the guidelines regarding exclusion determinations are not binding. This language was used to emphasize that only the reasonableness of a period of exclusion is reviewable on appeal as opposed to OIG's decision to impose an exclusion. While OIG's discretion to exercise its exclusion authority remains unreviewable, the § 1003.107(c) language is no longer necessary under the proposed reorganization. The revisions at § 1003.140 more clearly state that the general guidelines relate to the length of exclusion as opposed to the decision whether to exclude an individual.

At § 1003.106(b)(2), the current regulations discuss a person's degree of culpability and list several aggravating circumstances concerning whether a person had knowledge of the violation. We believe the current language is out-of-date in light of all the CMP authorities that have been added to part 1003 over the years. In addition, we have developed significant experience over the past two decades investigating CMP cases and, particularly, evaluating the different levels of knowledge or intent a person may possess. We propose to consider as an aggravating factor a person's having a level of intent to commit the violation that is greater than the minimum intent required to establish liability. This new aggravating factor would more fully reflect our evaluation of a person's intent and more accurately reflect the different levels of intent required under different CMP authorities.

Various CMP authorities have different intent or scienter requirements. Some authorities have a ''knows or should know'' standard consistent with the False Claims Act standard that includes actual knowledge, deliberate ignorance, or reckless disregard. Some authorities require only negligence and some have no intent requirement. Through our extensive enforcement history, we have considerable experience in investigating and evaluating scienter evidence and determining a person's level of intent in committing the violation. In cases when the ''knows or should know'' standard applies, actual knowledge is considered more egregious than a lower level of intent. When the violation has a strict-liability standard, OIG evaluates the evidence to determine whether the violation was the result of reckless disregard, actual knowledge, or any other level of intent. We intend to continue this practice and intend the general ''degree of culpability'' factor to encompass this practice.

We also propose to clarify that possessing a lower level intent to commit a violation is not a defense against liability, a mitigating factor, or a justification for a less serious remedy. Individuals and entities are expected to know the law and Federal health care program rules. While the degree of culpability is relevant in our determination to impose a monetary or exclusion remedy, other factors, such as the nature and circumstances of the violation, may justify a maximum monetary remedy or exclusion to protect the Federal health care programs and beneficiaries from fraud, waste, and abuse.

In addition, we propose to add a mitigating circumstance to the degree-of-culpability factor for taking ''appropriate and timely corrective action in response to the violation.'' The proposed regulation requires that a person, to qualify as taking corrective action, disclose the violation to OIG through the Self-Disclosure Protocol (Protocol) and fully cooperate with OIG's review and resolution of the violation. We have long emphasized the importance of compliance programs that result in appropriate action when Federal health care program compliance issues are identified. We continue to believe that appropriate action for potential violations of OIG's CMP authorities must include self-disclosure and cooperation in the inquiry and resolution of the matter. We do not believe that without self-disclosure through the Protocol, the person qualifies for mitigation of the potential monetary or exclusion remedies.

The proposed change clarifies that when we are determining the appropriate remedy against an entity, aggravating circumstances include the prior offenses or other wrongful conduct of: (1) The entity itself; (2) any individual who had a direct or indirect ownership or control interest (as

defined in section 1124(a)(3) of the Act (42 U.S.C. 1320a–3)) in the sanctioned entity at the time the violation occurred and who knew, or should have known, of the violation; or (3) any individual who was an officer or a managing employee (as defined in section 1126(b) of the Act (42 U.S.C. 1320a–5)) of the entity at the time the violation occurred. We also propose to change ''any other public or private program for reimbursement for medical services'' to ''in connection with the delivery of a health care item or service.'' This change broadens the types of prior offenses or conduct that we may consider to include private insurance fraud in addition to other offenses that have a nexus to the delivery of health care items or services. Also, this proposed change would be consistent with the aggravating circumstance ''other wrongful conduct'' at proposed § 1003.140(a)(4).

Finally, the proposed rule would clarify when OIG considers the financial condition of a person in determining penalty or assessment amounts. The current regulations discuss financial condition in various sections with varying degrees of specificity: § 1003.106(a)(1)(iv); (a)(3)(i)(F); (a)(4)(iv); (b)(5); and (d)(4). We propose a more uniform and specific standard to apply after OIG evaluates the facts and circumstances of the conduct and weighs the aggravating and mitigating factors to determine an appropriate penalty and assessment amount. Once OIG proposes this penalty and assessment amount, the person may request that OIG consider its ability to pay the proposed amount. To permit OIG to evaluate a person's ability to pay, the person must submit sufficient documentation that OIG deems necessary to conduct its review, including audited financial statements, tax returns, and financial disclosure statements. This ability to pay review may also consider the ability of the person to reduce expenses or obtain financing to pay the proposed penalty and assessment. If a person requested a hearing in accordance with 42 CFR 1005.2, the only financial documentation subject to review would be that which the person submitted to OIG, unless the ALJ finds that extraordinary circumstances prevented the person from providing the financial documentation to the OIG in the time and manner requested by the OIG prior to the hearing request.

E. Technical Changes and Clarifications

Because we intend each subpart to be self-contained, we propose incorporating the exclusion sections, which are currently found at §§ 1003.105 and 1003.107, into the subparts in which exclusion is available: False Claims; Anti-kickback and Physician Self-Referral; EMTALA; and Beneficiary Inducement. This proposed revision more clearly reflects the statutory scheme, which permits both monetary and exclusion remedies for these violations.

The proposed changes clarify in each subject matter subpart that we may impose a penalty for each individual violation of the applicable provision. As we explain below, the statutory authorities are clear that each act that constitutes a violation is subject to penalties. The proposed revisions to the regulatory language better reflect this statutory framework.

Throughout part 1003, we propose replacing references to Medicare and State health care programs with ''Federal health care programs'' when the provision concerns exclusion to more completely reflect the full scope of exclusion. The proposed changes also remove all references to the penalties and assessments available before 1997 because any conduct prior to 1997 falls outside the CMPL's statute of limitations.

The proposed changes clarify that a principal's liability for the acts of its agents does not limit liability only to the principal. Agents are still liable for their misconduct. In our enforcement litigation, we have encountered the argument that agents are not liable for their misconduct where the principal is liable for the same misconduct. We believe the current law provides that the agent remains liable for his or her conduct and may not use the principal as a liability shield. The proposed revision clarifies this point. In addition, we propose to consolidate the current § 1003.102(d)(1)–(4), which addresses situations in which multiple parties may have liability for separate CMP provisions. This proposed revision clarifies that each party may be held liable for any applicable penalties and that the parties may be held jointly and severally liable for the assessment.

II. Provisions of the Proposed Rule

A. Civil Monetary Penalty Authorities

Subpart A—General Provisions

Subpart A contains the general provisions that apply to part 1003. The proposed changes revise the ''Basis and Purpose'' section to state more succinctly part 1003's purpose and to include a complete listing of CMPs. We also propose updates to statutory authority citations at proposed § 1003.100(a)–(b).

1003.110 Definitions

The proposed revision includes several changes to the ''Definitions'' section, proposed § 1003.110 (current § 1003.101), for clarity and readability. First, we propose to redesignate § 1003.101 as § 1003.110. We propose to remove terms from this part that duplicate definitions in part 1000 or are no longer used in this part. We also propose clarifying the definition of ''knowingly,'' currently found at § 1003.102(e), to cover acts as opposed to information.

Claim

We propose to revise the definition of ''claim'' by changing the word ''to'' in the current definition to ''under.'' This change more closely aligns the regulations to the CMPL's definition of ''claim'' to avoid any misinterpretation that a claim is limited to an application for payment for an item or service made directly to a Federal health care program (*e.g.,* a claim also includes applications for payment to contractors).

Contracting Organization

We propose to update the definition of ''contracting organization'' to include all entities covered by sections 1857, 1860D–12, 1876(b) (42 U.S.C. 1395mm(b)), or 1903(m) of the Act.

Item or Service

We propose revisions to the definition of the term ''item or service.'' Section 1128A of the Act provides that the term ''item or service'' ''includes'' various items, devices, supplies, and services. By using the word ''includes'' in section 1128A, Congress created an illustrative statutory definition that is broad enough to capture all the uses of the term in section 1128A of the Act. The term is used in section 1128A of the Act in two different contexts: One, in reference to submitting claims for items and services reimbursed by a Federal health care program, and two, in the definition of ''remuneration'' to beneficiaries in reference to section 1128A(a)(5) of the Act. We propose clarifying the definition to ensure that it reflects the broad meaning of ''item or service'' in both contexts.

Knowingly

We also propose removing the reference to the False Claims Act from the definition of ''knowingly'' because it is unnecessary. As used in part 1003, the term ''knowingly'' applies only to acts, such as the act of presenting a claim. When a person's awareness or knowledge of information is at issue, the CMPL and other statutes use either a ''knows or should know'' or a ''knew or

should have known'' construction. ''Knowingly'' is defined at section 1128A(i)(7) of the Act. For example, section 1128A(a)(2) of the Act subjects a person to liability when the person knowingly presents, or causes to be presented, a claim that the person knew or should have known is false or fraudulent. Here, the act is presenting the claim or causing the claim to be presented. The information is that the claim was false or fraudulent.

Material

We propose a definition of ''material'' that mirrors the False Claims Act definition.

Overpayment

We propose a definition of ''overpayment'' that is taken from section 1128J(d)(4) of the Act (42 U.S.C. 1320a–7k(d)(4)), as amended by section 6402(a) of ACA.

Reasonable Request

We propose a definition of ''reasonable request'' as part of implementing the new ACA CMP authority for failure to grant OIG timely access to records, as discussed below under § 1003.200, Subpart B.

Responsible Official and Select Agent Program

We propose definitions of ''Responsible Official'' and ''Select Agent Program'' as these terms relate to the select agent and toxin CMP authority. We propose to amend the definition of ''select agent and toxin'' as the term relates to the select agent and toxin CMP authority (42 U.S.C. 262a(i); Act, section 1128A(j)(2)).

Responsible Physician

We also propose revising the definition of ''responsible physician'' to more closely conform to statutory intent, as discussed below under § 1003.500, Subpart E.

Separately Billable Item or Service and Non-Separately-Billable Item or Service

We also propose definitions of ''separately billable item or service'' and ''non-separately-billable item or service'' to create an alternate method for calculating penalties and assessments for violations of section 1128A(a)(6) of the Act, as discussed below.

1003.140 Determinations Regarding the Amount of Penalties and Assessments and the Period of Exclusion

As explained above, the proposed regulation would consolidate the aggravating and mitigating factors that OIG would consider when determining penalty and assessment amounts and periods of exclusion in proposed § 1003.140. Proposed § 1003.140(c)–(d) clarifies that if any single aggravating circumstance is present: (1) The imposition of a penalty and assessment at or close to the maximum amount may be justified and (2) if exclusion is available, the person should be excluded.

1003.150 Delegation of Authority

The proposed rule also adds an express delegation of authority from the Secretary to OIG to impose penalties, assessments, and exclusions against persons that violate any of the provisions of part 1003. Currently, several **Federal Register** notices and delegation letters, spanning over 20 years, delegate various authorities to OIG. Some of these older notices and letters are no longer easily accessible by the public, such as 53 FR 12,993 (April 20, 1998). This provision, at proposed § 1003.150, reiterates OIG's existing authority to pursue these matters.

1003.160 Waiver of Exclusion

We also propose changes to part 1003's exclusion-waiver provisions to clarify the criteria for a waiver request from a State agency. Currently, the regulations state that OIG will consider an exclusion waiver request from a State agency for exclusions imposed pursuant to 42 CFR 1003.102(a), (b)(1), and (b)(4) and 1003.105(a)(1)(ii) under certain circumstances. We propose updating the regulations to permit an administrator of a Federal health care program to request a waiver, similar to the waiver in part 1001. Also, we propose removing the limitations concerning when a waiver may be requested by such administrator.

Subpart B—CMPs, Assessments, and Exclusions for False or Fraudulent Claims and Other Similar Misconduct

Subpart B contains most of the provisions found in the current regulations at § 1003.102(a) and several of the provisions in the current § 1003.102(b). The text of the proposed provisions remains largely unchanged from the current version, except for a separate provision we created to address section 1128A(a)(6) of the Act. Section 1128A(a)(6) of the Act subjects persons to liability for arranging or contracting with (by employment or otherwise) a person that the person knows or should know is excluded from participation in a Federal health care program for the provision of items or services for which payment may be made under that program. This authority is included in the current regulations describing false or fraudulent claims at § 1003.102(a)(2). Because of our desire to improve the clarity of the regulations generally and because of the proposed penalty and assessment provisions discussed below, the proposed regulation would address section 1128A(a)(6) of the Act in a separate subsection at § 1003.200(b)(4).

On the basis of our lengthy experience enforcing section 1128A(a)(6) of the Act, we are proposing an alternate methodology for calculating penalties and assessments. This alternate methodology recognizes the variety of ways in which items and services are reimbursed by Federal health care programs and the numerous types of health care professionals and other individuals and entities that contribute to the provision of those items and services.

Excluded individuals and entities may be involved in providing items and services in two ways. First, an excluded person may provide items or services that are identifiable on claims submitted by the person or another person (*i.e.,* separately billable items or services). These include items or services for which the excluded person may directly bill under such person's provider number or where the person assigned their provider number to another entity, such as an employer. In this case, the items or services for which no payment may be made are identifiable because the claims should include the identity of the person that provided the item or service. For example, the performing physician's provider number should be listed on claims for office visits. If the performing physician is excluded, then the entire claim for the office visit is prohibited.

An excluded person may also provide, furnish, order, or prescribe items or services that are billed by another person, who also is involved in providing the item or service. In this situation, the claim itself may not identify the excluded person by name or provider number. For example, a claim for a prescription drug may not include the identity of the prescribing physician or dispensing pharmacist. The claim for the prescription drug is a separately billable item because it is an item for which an identifiable payment is made. If either the prescribing physician or the dispensing pharmacist is excluded, the claim for the drug is prohibited. The same would be true for a physician who orders a diagnostic test. If the physician who orders the diagnostic test is excluded, the claim for the test is prohibited regardless of who provides and bills for the test.

The second way an excluded individual or entity may be involved in providing items and services is through non-separately billable items or services. Many health care professionals and other individuals and entities are involved in providing items and services that are included within the federal health care program's payment for the item or service. In the physician office visit example, the nurse employed by the physician also contributes to the office visit paid for by the programs. The nurse's services are not separately billable, but are included as part of the claim made for the office visit and are included in the program's reimbursement.

We interpret ''the provision of items or services'' to include furnishing, providing, ordering, or prescribing an item or service. Thus, an excluded pharmacist furnishes or provides every prescription that he or she fills. Each prescription is separately billable, and under the CMPL, OIG may collect the full amount of each prescription the pharmacist fills while excluded. This analysis extends to each person who is in the supply chain or who has a role in the process that leads to an item or a service provided. For example, a manufacturer, a wholesaler, and a distributer have all participated in providing an item or a service.

Difficulties exist in determining the appropriate penalty and assessment amount for claims that are not separately billable by the excluded person. The Federal health care programs' movement to various forms of bundled and prospective payment has increased these difficulties over time. In light of these changes, the involvement of a single excluded person could cause the total bundled claim or prospective payment to be prohibited. When the excluded person provides items and services that are not separately billable, prohibiting the entire payment could lead to disproportionate assessment amounts in comparison to the harm to the programs. We believe the proposed alternate methodology achieves the purpose of section 1128A(a)(6) of the Act while recognizing the programs' various reimbursement methods and the different types of individuals and entities that may be involved in providing items and services.

The proposed regulations address how penalties and assessments will be imposed for two distinct types of violations: (1) Instances when items or services provided by the excluded person may be separately billed to the Federal health care programs and (2) instances when the items or services provided by the excluded person are not separately billable to the Federal health care programs, but are reimbursed by the Federal health care program in some manner as part of the item or service claimed.

To achieve this distinction, we propose to define two new terms: ''separately billable item or service'' and ''non-separately-billable item or service.'' A ''separately billable item or service'' is defined as ''an item or service for which an identifiable payment may be made under a Federal health care program.'' This type of item or service exists when a person provides, furnishes, orders, or prescribes an identifiable item or service for which a claim for reimbursement may be made to a Federal health care program, *e.g.,* a physician office visit, by either the person or another person.

A ''non-separately-billable item or service'' is defined as ''an item or service that is a component of, or otherwise contributes to the provision of, an item or service, but is not itself a separately billable item or service.'' Non-separately-billable items or services are reimbursed as part of the claim submitted under the applicable payment methodology, *e.g.,* nursing services associated with a physician office visit, care covered by the skilled nursing facility per diem payment, nursing care covered by a hospital diagnosis-related group (DRG) payment, or radiology technician services associated with a specific procedure.

In instances when the item or service provided by the excluded person is separately billable, the employing or contracting person would continue to be subject to penalties and assessments based on the number and value of those separately billable items and services. For instances when the item or service provided by the excluded person is non-separately-billable, we propose an alternate methodology to calculate penalties and assessments. Penalties would be based on the number of days the excluded person was employed, was contracted with, or otherwise arranged to provide non-separately-billable items or services. Assessments would be based on the total costs to the employer or contractor of employing or contracting with the excluded person during the exclusion, including salary, benefits, and other money or items of value.

We believe the per-day penalty would achieve the purposes of section 1128A(a)(6) of the Act by penalizing the act of employing or otherwise contracting with the excluded person in proportion to the number of days the prohibited relationship with the excluded person existed. In the claims-based penalty provisions of section 1128A, the number of penalties increases by the number of claims submitted. We propose that similarly the number of penalties increase by the number of days the prohibited relationship with the excluded person existed.

We believe the cost-based assessment achieves the purposes of section 1128A(a)(6) of the Act by capturing the value of the excluded person to the employing or contracting person. The value of an excluded person includes, but is not limited to, salary, health insurance, disability insurance, and employer taxes paid related to the employment of the individual (*e.g.,* employer's share of Federal Insurance Contributions Act (FICA) and Medicare taxes). The health care industry has been on notice for over a decade that employing or contracting with excluded persons who provide items or services paid for by the Federal health care programs is prohibited. *See* Special Advisory Bulletin on the Effect of Exclusion From Participation in Federal Health Care Programs, 64 FR 52,791 (Sept. 30, 1999). We also recognize, however, that billable items or services generally include numerous non-separately-billable items or services. The involvement of one excluded person can cause the entire claim to be prohibited when a number of other individuals and entities that were not excluded may have been involved in the claim. Through the proposed regulation, we seek to avoid this disproportionate result for purposes of calculating the assessment. We believe that the total costs paid by the employing or contracting person with respect to the excluded person appropriately represents the value of non-separately-billable items or services that the excluded person provided during his, her, or its period of employment or contract.

As discussed above, ACA added five new violations and corresponding penalties to the CMPL. These new violations and the corresponding penalties are at proposed §§ 1003.200(b)(6)–(10), 1003.210(a)(6)–(9), and 1003.210(b)(3). The proposed regulatory text closely mirrors the statutory text. However, section 6402(d)(2)(A) of ACA amends the CMPL by adding a violation for knowingly making or causing to be made ''any false statement, *omission,* or misrepresentation of a material fact in any application, bid, or contract to participate or enroll as a provider of services or a supplier under a Federal health care program.'' (Emphasis added.) ACA does not, however, include

the word ''omission'' in its description of the penalty and assessment for this violation. In order to give full effect to the amendment adding ''omission'' to the CMPL, OIG believes the word ''omission'' must also be included in the penalty and assessment sections.

Also, we propose clarifying the penalty at section 1128A of the Act, as amended by section 6402(d)(2) of ACA, for failure to report and return overpayments. Under the amended section 1128J(d) of the Act, overpayments must be reported and returned by the later of 60 days after the date the overpayment was identified or the date any corresponding cost report is due, if applicable. The new CMPL authority under section 1128A(a)(10) of the Act does not contain a specific penalty amount, but instead uses the default penalty amount in the CMPL, which is up to $10,000 for each item or service. In this context, we have proposed regulatory text interpreting the CMPL's default penalty as up to $10,000 for each day a person fails to report and return an overpayment by the deadline in section 1128J(d) of the Act. Because the act that creates liability under section 1128A(a)(10), failing to report and return overpayments within 60 days of identification, is based on the 60-day period passing, we believe that the penalty could be interpreted to attach to each following day that the overpayment is retained. However, we note that Congress specified a per day penalty in sections 1128A(a)(4) and (12) and did not do so for section 1128A(a)(10). Thus, we also solicit comments on whether to interpret the default penalty of up to $10,000 for each item or service as pertaining to each claim for which the provider or supplier identified an overpayment.

Section 6408(a)(2) of ACA amends the CMPL by adding a violation for failure to grant timely access, upon reasonable request, to OIG for the purpose of audits, investigations, evaluations, or other statutory functions. Section 1128(b)(12) of the Act and 42 CFR 1001.1301 currently authorize exclusion based on similar, but not identical, conduct-failure to grant immediate access. We believe Congress expanded OIG's authority to exclude, and created an authority to impose a penalty, in a broader set of circumstances than covered by section 1128(b)(12) of the Act by using the phrase ''timely access'' in section 6408(a)(2) of ACA. Thus, we believe conduct that implicates section 1128(b)(12) of the Act is a subset of the conduct implicated by the new CMPL authority created by section 6408(a)(2) of ACA. In these situations, OIG has the discretion to choose whether to pursue exclusion under section 1128(b)(12) of the Act or penalties and/or exclusion under section 6408(a)(2) of ACA. In drafting regulations pursuant to section 6408(a)(2) of ACA, we evaluated the conduct covered by section 1128(b)(12) to ensure that this proposed rule is consistent with § 1001.1301.

The proposed definitions of ''failure to grant timely access'' and ''reasonable request'' give OIG flexibility to determine the time period in which a person must respond to a specific request for access depending on the circumstances. Given the different purposes for which OIG may request access to material, such as audits, evaluations, investigations, and enforcement actions, we believe the best approach to defining these terms is for OIG to specify the date for production or access to the material in the OIG's written request. In making this decision, OIG will consider the circumstances of the request, including the volume of material, size and capabilities of the party subject to the request, and OIG's need for the material in a timely way to fulfill its responsibilities. The exception to this approach is a case when OIG has reason to believe that the requested material is about to be altered or destroyed. Under those circumstances, timely access means access at the time the request is made. This exception is the same as provided in § 1001.1301.

Finally, we propose revisions to the current regulation's aggravating factors for these violations. The aggravating factors listed in proposed § 1003.220 are based on those that apply to the violations in the current regulations. We propose moving the aggravating factors to one section and consolidating similar factors into one factor. For instance, the first aggravating factor, *i.e.,* the violations were of several types or occurred over a lengthy period of time, is found at current § 1003.106(b)(1)(i). We interpret the phrase ''several types'' to include, but not be limited to, billing for services that are covered by different billing codes. The final aggravating factor relates to the amount or type of financial, ownership, or control interest, or the degree of responsibility a person has in an entity with respect to actions brought under § 1003.200(b)(3). While we will consider whether a person is a CEO or a manager, job titles alone will not guide our consideration of this factor; we will look at the degree of responsibility and influence that a person has in an entity.

Subpart C—CMPs, Assessments, and Exclusions for Anti-Kickback and Physician Self-Referral Violations

Subpart C contains the anti-kickback and physician self-referral provisions, which are found in the current regulations at § 1003.102(a)(5), (b)(9), (b)(10), and (b)(11). The proposed changes include various technical corrections to improve readability and ensure consistency with the statutory language.

We propose revising the provisions relating to the physician self-referral law to incorporate statutory terms that are unique to this statute (section 1877 of the Act (42 U.S.C. 1395nn)). These revisions include using ''designated health service'' instead of ''item or service'' and ''furnished'' instead of ''provided.'' In addition, we propose revising the authority regarding ''cross-referral arrangements'' in the current regulations at § 1003.102(b)(10) to more closely reflect the statutory language. Section 1877(g)(4) of the Act provides for CMPs and exclusion against any physician or other person that enters into any arrangement or scheme (such as a cross-referral arrangement) that the physician or other person knows, or should know, has a principal purpose of ensuring referrals by the physician to a particular person that, if the physician directly made referrals to such person, would violate the prohibitions of 42 CFR 411.353. The current regulations, at § 1003.102(b)(10)(i), contain an example of a cross-referral arrangement whereby the physician-owners of entity ''X'' refer to entity ''Y'' and the physician-owners of entity ''Y'' refer to entity ''X'' in violation of 42 CFR 411.353. While this is one example of a cross-referral arrangement, cross-referral arrangements and circumvention schemes can take a variety of forms. The proposed changes to the regulatory language more closely align the regulations to the statute to avoid any misinterpretation that § 1003.102(b)(10)(i) limits the conduct that circumvents the prohibitions of the physician self-referral law.

The proposed changes also include minor technical corrections to the anti-kickback statute authorities to improve consistency with the statute. First, we added the phrases ''to induce'' and ''in whole and in part'' to § 1003.300(d) to better mirror the statutory language. The proposed change also clarifies that the anti-kickback CMP statute, at sections 1128B(b) and 1128A(a)(7) of the Act, permits imposing a penalty for each offer, payment, solicitation, or receipt of remuneration and that each action constitutes a separate violation. In

addition, we include the statutory language stating that the calculation of the total remuneration for purposes of an assessment does not consider whether any portion of the remuneration had a lawful purpose.

Subpart D—CMPs and Assessments for Misconduct by a Managed Care Organization

Subpart D contains the proposed provisions for penalties and assessments against managed care organizations. We propose several stylistic changes to the regulations currently listed at § 1003.103(f). We changed the verbs in this subpart from past tense to present tense to conform to the statutory authorities and many other regulations in this part. The proposed regulation also removes superfluous phrases, such as ''in addition to or in lieu of other remedies available under law.'' The proposed regulation replaces references to ''an individual or entity'' with ''a person'' because ''person'' is defined in the general section as an individual or entity. The proposed regulation also removes the phrase ''for each determination by CMS.'' OIG may impose CMPs in addition to or in place of sanctions imposed by CMS under its authorities.

We also added to the regulations OIG's authority to impose CMPs against Medicare Advantage contracting organizations pursuant to section 1857(g)(1) of the Act and against Part D contracting organizations pursuant to section 1860D–12(b)(3) of the Act.

As discussed above, ACA amended several provisions of the Act that apply to misconduct by Medicare Advantage or Part D contracting organizations. We have included these provisions in the proposed regulations. We added the change in section 6408(b)(2)(C) of ACA regarding assessing penalties against a Medicare Advantage or Part D contracting organization when its employees or agents, or any provider or supplier that contracts with it, violates section 1857. We propose to add the five new violations created in ACA, and their corresponding penalties, at § 1003.400(c). We also propose to include the new assessments, which are available for two of the five new violations, at § 1003.410(c). The proposed regulatory text closely mirrors that of the statute.

The violations in this subpart are grouped according to the contracting organizations they apply to. For instance, § 1003.400(a) violations apply to all contracting organizations. Section 1003.400(b) violations apply to all Medicare contracting organizations, *i.e.,* those with contracts under sections 1857, 1860D–12, or 1876. Section 1003.400(c) violations apply to Medicare Advantage and Part D contracting organizations, *i.e.,* those with contracts under sections 1857 or 1860D–12 of the Act. Section 1003.400(d) violations apply to Medicare Advantage contracting organizations, *i.e.,* those with contracts under section 1857 of the Act. Section 1003.400(e) violations apply to Medicaid contracting organizations, *i.e.,* those with contracts under section 1903(m) of the Act.

We also propose to remove the definition of ''violation,'' which is currently found at § 1003.103(f)(6), because throughout this part, violation means each incident or act that violates the applicable CMP authority. We also propose including aggravating circumstances to be used as guidelines for taking into account the factors listed in proposed § 1003.140. These aggravating circumstances are adapted from those listed in the current regulations at §§ 1003.106(a)(5) and 1003.106(b)(1) and those published in the **Federal Register** in July 1994. 59 FR 36072 (July 15, 1994).

Subpart E—CMPs and Exclusions for EMTALA Violations

Subpart E contains the penalty and exclusion provisions for violations of EMTALA, section 1867 of the Act (42 U.S.C. 1395dd). EMTALA, also known as the patient antidumping statute, was passed in 1986 as part of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), Public Law 99–272. Section 1867 of the Act sets forth the obligations of a Medicare-participating hospital to provide medical screening examinations to individuals who come to the hospital's emergency department and request examination or treatment for a medical condition. EMTALA further provides that if the individual has an emergency medical condition, the hospital is obligated to stabilize that condition or to arrange for an appropriate transfer to another medical facility where stabilizing treatment can be provided. EMTALA also requires hospitals with specialized capabilities or facilities to accept appropriate transfers of individuals from other hospitals. Finally, EMTALA creates obligations for physicians responsible for the examination, treatment, or transfer of an individual in a participating hospital, including a physician on-call for the care of that individual. The regulations created pursuant to section 1867 of the Act are found at 42 CFR 489.24.

Under section 1867(d) of the Act, participating hospitals and responsible physicians may be liable for CMPs of up to $50,000 ($25,000 for hospitals with fewer than 100 State-licensed and Medicare-certified beds) for each negligent violation of their respective EMTALA obligations. Responsible physicians are also subject to exclusion for committing a gross and flagrant or repeated violation of their EMTALA obligations. OIG's regulations concerning the EMTALA CMPs and exclusion are currently at 42 CFR 1003.102(c), 103(e) and 106(a)(4) and (d).

We propose several clarifications to the EMTALA CMP regulations. First, as part of our proposed general reorganization, we have included the EMTALA authorities within a separate subpart. Further, the proposed revision removes outdated references to the pre-1991 ''knowing'' scienter requirement. We also propose minor revisions to clarify that the CMP may be assessed for each violation of EMTALA and that all participating hospitals subject to EMTALA, including those with emergency departments and those with specialized capabilities or facilities, are subject to penalties.

As discussed above, we propose revising the ''responsible physician'' definition to clarify that on-call physicians at any participating hospital subject to EMTALA, including the hospital the individual initially presented to and the hospital with specialized capabilities or facilities that has received a request to accept an appropriate transfer, face potential CMP and exclusion liability under EMTALA.

Section 1867(d) of the Act provides that any physician who is responsible for the examination, treatment, or transfer of an individual in a participating hospital, including any physician on-call for the care of such an individual, and who negligently violates section 1867 may be penalized under section 1867(d)(1)(B). The current definition of ''responsible physician'' also provides for on-call physician liability. We propose to revise the definition to clarify the circumstances when an on-call physician has EMTALA liability. An on-call physician that fails or refuses to appear within a reasonable time after such physician is requested to come to the hospital for examination, treatment, or transfer purposes is subject to EMTALA liability. This includes on-call physicians at the hospital where the individual presents initially and requests medical examination or treatment as well as on-call physicians at a hospital with specialized capabilities or facilities where the

individual may need to be transferred. In addition, an on-call physician at the hospital with specialized capabilities or facilities may violate EMTALA by refusing to accept an appropriate transfer.

Under a plain reading of section 1867(d)(1)(B), the statute makes no distinction between physicians who are on-call at the presenting hospital and those who are on-call at a hospital with specialized capabilities or facilities. In fact, the statute refers to ''participating hospitals'' and that term includes both. Thus, we propose modifying the definition of ''responsible physician'' to more clearly reflect the statutory scheme.

We also propose revising the factors, currently set forth in §§ 1003.106(a)(4) and (d), to improve clarity and better reflect OIG's enforcement policy. First, we propose clarifying that the factors listed in proposed § 1003.520 will be used in making both CMP and exclusion determinations. Further, we propose incorporating the general factors listed in § 1003.140 and provide additional guidance on the EMTALA subpart at proposed § 1003.520. Many of the factors in the current § 1003.106(a)(4) and (d) duplicate those general factors.

Finally, we examined the factors currently at § 1003.106(d) in light of our lengthy enforcement experience. We concluded that for several reasons, the mitigating factors should be removed. Because of the overall statutory purpose, the fact-specific nature of EMTALA violations, and the CMS certification process, the mitigating factors currently found at § 1003.106(d) are not useful in determining an appropriate penalty amount. First, Congress enacted EMTALA to ensure that individuals with emergency medical conditions are not denied essential lifesaving services. 131 Cong. Rec. S13904 (daily ed. Oct. 23, 1985) (statement of Sen. David Durenberger); H.R. Rep. No 99–241, pt. 1, at 27 (1986), reprinted 1986 U.S.C.C.A.N. 579, 605. In light of this statutory purpose, the circumstances surrounding the individual's presentment to a hospital are important to determinations about whether and to what extent a CMP or an exclusion is appropriate. Thus, the proposed regulations would revise the factors to clarify that aggravating circumstances include: A request for proof of insurance or payment prior to screening or treating; patient harm, unnecessary risk of patient harm, premature discharge, or a need for additional services or subsequent hospital admission that resulted, or could have resulted, from the incident; and whether the individual presented with a medical condition that was an emergency medical condition. While we removed the language at current § 1003.106(a)(4), we consider these circumstances to be included in the general factors listed at proposed § 1003.140. Thus, while the proposed regulations do not state that OIG will consider ''other instances where the respondent failed to provide appropriate medical screening examination, stabilization and treatment of individuals coming to a hospital's emergency department or to effect an appropriate transfer,'' OIG will consider each of these failures when determining a penalty because they relate to a respondent's prior history.

EMTALA violations necessarily involve a case-by-case inquiry into the circumstances of the incident. Through our enforcement experience, we have found that the current regulation's mitigating factors do not assist in that inquiry. For example, § 1003.106(d)(5) states that it should be considered a mitigating circumstance if an individual presented a request for treatment, but subsequently exhibited conduct that demonstrated a clear intent to leave the respondent hospital voluntarily. In our enforcement activities, however, we have found situations when the individual may have demonstrated a clear intent to leave because the hospital failed to properly screen the individual within a reasonable amount of time. We do not believe that in this circumstance, the hospital's penalty should be mitigated. Further, the factor at § 1003.106(d)(6)(A) in the current regulation is not relevant to mitigation because developing and implementing a corrective action plan is a requirement of the CMS certification process following an investigation of an EMTALA violation.

We will continue to evaluate the circumstances of each EMTALA referral to determine whether to exercise our discretion to pursue the violation and to determine the appropriate remedy.

Subpart F—CMPs for Section 1140 Violations

Subpart F applies to violations of section 1140 of the Act (42 U.S.C. 1320b–10). The most significant proposed change to this subpart is clarifying the application of section 1140 of the Act to telemarketing, Internet, and electronic mail solicitations. Section 1140 of the Act prohibits the use of words, letters, symbols, or emblems of the Department of Health and Human Services (HHS), CMS, Medicare, or Medicaid in connection with ''an *advertisement, solicitation,* circular, book, pamphlet, or *other communication,* or a play, motion picture, broadcast, telecast, *or other production''* in a manner that could reasonably be interpreted as conveying the false impression that HHS, CMS, Medicare, or Medicaid has approved, endorsed, or authorized such use. (Emphasis added.)

We previously defined conduct that constituted a violation for (1) direct or printed mailing solicitations or advertisements and (2) broadcasts or telecasts. The proposed regulations are updated also to reflect telephonic and Internet communications. Under a plain reading of the Act, telemarketing solicitations, email, and Web sites fall within the statutory terms emphasized above. We believe these communications are analogous to, and therefore propose imposing penalties that would apply in the same manner as, those for direct mail and other printed materials. The number of individuals who received direct mail and other printed materials can be more easily quantified than the number of individuals who saw a television commercial or heard a radio commercial. Telemarketing calls, electronic messages, and Web page views can be similarly quantified. Thus, we propose subjecting telemarketing, email, and Web site violations to the same $5,000 penalty as printed media. Each separate email address that received the email, each telemarketing call, and each Web page view would constitute a separate violation. We are also soliciting comments on how to interpret section 1140 in the context of social media, such as Facebook and Twitter.

Subpart G—Reserved

Subpart H—CMPs for Adverse Action Reporting and Disclosure Violations

Subpart H covers violations for failing to report payments in settlement of a medical malpractice claim in accordance with section 421 of Public Law 99–660 (42 U.S.C. 11131); failing to report adverse actions pursuant to section 221 of Public Law 104–191 as set forth in section 1128E of the Act (42 U.S.C. 1320a–7e); or improperly disclosing, using, or permitting access to information reported in accordance with part B of Title IV of Public Law 99–660 (42 U.S.C. 11137).

The language in proposed subpart H remains largely unchanged from the current regulations at § 1003.102(b)(5)–(6) and § 1003.103(c), (g). We propose to remove the reference to the Healthcare Integrity and Protection Data Bank (HIPDB) in conformity with section 6403(a) of ACA, which removed the reference from section 1128E of the Act.

The relevant reporting requirements, violation, and penalties would remain unchanged. Under section 1128E of the Act, providers must still report the same information. Once the HIPDB is phased out pursuant to section 6403(a) of ACA, the information will be collected and stored in the National Practitioner Data Bank established pursuant to the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11101 et seq.). In the penalty section, we propose to clarify that a CMP may be imposed for each failure to report required information or adverse action and for each improper disclosure, use, or permitting of access to information.

Subpart I—CMPs for Select Agent Program Violations

Subpart I contains the penalties for violations involving select agents, currently found at § 1003.102(b)(16) and § 1003.103(l). The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Bioterrorism Act of 2002), Public 107–188, provides for the regulation of certain biological agents and toxins (referred to below as ''select agents and toxins'') by HHS. The regulations created pursuant to the Bioterrorism Act of 2002 are found at 42 CFR part 73. The regulations set forth requirements for the possession and use in the United States, receipt from outside the United States, and transfer within the United States of the select agents and toxins. For each violation of 42 CFR part 73, OIG is authorized to impose CMPs of up to of $250,000, in the case of an individual, and $500,000, in the case of an entity.

Proposed subpart I clarifies that the CMP may be assessed for each individual violation of 42 CFR Part 73. The Bioterrorism Act of 2002 states that any person who violates ''any provision'' of the regulations is subject to the maximum statutory penalty. The plain meaning of ''any provision'' means that any single violation can subject a person to the maximum penalty. The provisions of 42 CFR 72.7 state that the penalties for a violation of part 73 should be calculated ''per event,'' also indicating that the maximum penalty may be assessed on a per-violation basis. Thus, we propose amending the regulation to add ''each individual'' before ''violation'' to clarify our longstanding interpretation of this section to mean that each violation subjects a person to a CMP up to the maximum amount.

In addition, proposed subpart I includes several aggravating circumstances to guide our penalty determinations. Aggravating factors include: (1) The Responsible Official participated in or knew or should have known of the violation; (2) the violation was a contributing factor, regardless of proportionality, to an unauthorized individual's access to or possession of a select agent or toxin, an individual's exposure to a select agent or toxin, or the unauthorized removal of a select agent or toxin from the person's physical location as identified on the person's certificate of registration; and (3) the person previously received a statement of deficiency from HHS or the Department of Agriculture for the same or substantially similar conduct.

Subpart J—CMPs, Assessments, and Exclusions for Beneficiary Inducement Violations

Subpart J covers two statutory provisions concerning beneficiary inducement violations. We propose moving the existing regulation, § 1003.102(b)(13), concerning the beneficiary inducement provision in the CMPL (section 1128A(a)(5) of the Act), to this subpart. We also propose regulatory language for the authority at section 1862(b)(3)(C) of the Act. The statutory authority is self-implementing and does not require a regulation. We propose adding the regulatory language at this time in light of the general reorganization. Under section 1862(b)(3)(C) of the Act, a penalty of up to $5,000 may be imposed against any person who offers any financial or other incentive for an individual entitled to benefits under Medicare not to enroll, or to terminate enrollment, under a group health plan or a large group health plan that would, in the case of such enrollment, be a primary plan as defined in section 1862(b)(2)(A). The proposed regulatory text closely follows the language of the statute.

We propose to incorporate the general factors listed in § 1003.140 for determining amounts of penalties and assessments for violations in this subpart and to clarify that we will consider the amount of remuneration, other financial incentives, or other incentive. This provision is in the current regulations at § 1003.106(a)(1)(vii).

Subpart K—CMPs for the Sale of Medicare Supplemental Policies

Subpart K covers violations relating to the sale of Medicare supplemental policies. The statutory authority is self-implementing and does not require a regulation. Omnibus Budget Reconciliation Act of 1990, Public Law 101–508, section 4354(c), 104 Stat. 3327 (1990); 42 U.S.C. 1395ss(d). However, we propose adding the regulatory language at this time in light of the general reorganization.

OIG may impose a penalty against any person who it determines has violated section 1882(d)(1) of the Act (42 U.S.C. 1395ss(d)(1)) by knowingly and willfully making or causing to be made or inducing or seeking to induce the making of any false statement or representation of material fact with respect to the compliance of any policy with Medicare supplemental policy standards and requirements or with respect to the use of the Secretary's emblem (described at section 1882(a)(1) of the Act (42 U.S.C. 1395ss(a)(1)) indicating that a policy has received the Secretary's certification. We propose to add this violation at § 1003.1100(a).

OIG may impose a penalty against any person who it determines has violated section 1882(d)(2) of the Act (42 U.S.C. 1395ss(d)(2)) by falsely assuming or pretending to be acting, or misrepresenting in any way that he is acting, under the authority of or in association with, Medicare or any Federal agency, for the purpose of selling or attempting to sell insurance, or in such pretended character demands or obtains money, paper, documents or anything of value. We propose to add this violation at § 1003.1100(b).

OIG may also impose a penalty against any person who it determines has violated section 1882(d)(4)(A) of the Act (42 U.S.C. 1395ss(d)(4)(A)) by mailing or causing to be mailed any matter for advertising, soliciting, offering for sale, or the delivery of Medicare supplemental insurance policy that has not been approved by the State commissioner or superintendent of insurance. We propose to add this violation at § 1003.1100(c).

OIG may impose a penalty against any person who it determines has violated section 1882(d)(3)(A)(i) of the Act (42 U.S.C. 1395ss(d)(3)(A)) by issuing or selling to an individual entitled to benefits under Part A or enrolled in Part B (including an individual electing a Medicare Part C plan) (1) a health insurance policy with the knowledge that the policy duplicates Medicare or Medicaid health benefits to which the individual is otherwise entitled; (2) a Medicare supplemental policy to an individual who has not elected a Medicare Part C plan where the person knows that the individual is entitled to benefits under another Medicare supplemental policy; (3) a Medicare supplemental policy to an individual who has elected a Medicare Part C plan where the person knows that the policy duplicates health benefits to which the individual is otherwise entitled under

the Medicare Part C plan or under another Medicare supplemental policy; and (4) a health insurance policy (other than a Medicare supplemental policy) with the knowledge that the policy duplicates health benefits to which the individual is otherwise entitled, other than benefits to which the individual is entitled under a requirement of State or Federal law. We proposed to add this violation at § 1003.1100(d).

OIG may also impose a penalty against any person who violated section 1882(d)(3)(A)(vi)(II) of the Act (42 U.S.C. 1395ss(d)(3)(A)(vi)(II)) by issuing or selling a health insurance policy (other than a policy described in section 1882(d)(3)(A)(vi)(III) of the Act) to an individual entitled to benefits under Part A or enrolled under Part B who is applying for a health insurance policy without furnishing a disclosure statement (described at section 1882(d)(3)(A)(vii) of the Act). We propose to add this violation at § 1003.1100(e).

OIG may also impose a penalty against any person who it determines has violated section 1882(d)(3)(B)(iv) of the Act (42 U.S.C. 1395ss(d)(3)(B)(iv)) by issuing or selling a Medicare supplemental policy to any individual eligible for benefits under Part A or enrolled under Part B without obtaining the written statement from the individual or written acknowledgement from the seller required by section 1882(d)(3)(B) of the Act (42 U.S.C. 1395ss(d)(3)(B)). We propose to add this violation at § 1003.1100(f).

For violations of section 1882(d)(1), (d)(2), and (d)(4)(A) of the Act, OIG may impose a penalty of not more than $5,000 for each violation. We propose to add this penalty at § 1003.1110(a). For violations of section 1882(d)(3)(A) and (B) of the Act, OIG may impose a penalty of not more than $25,000 for each violation by a seller that is also the issuer of the policy and a penalty of not more than $15,000 for each violation by a seller that is not the issuer of the policy. We propose to add these penalties at § 1003.1110(b) and (c). In determining the amount of the penalty in accordance with proposed subpart K, OIG would consider the factors listed in the proposed § 1003.140.

Subpart L—CMPs for Drug Price Reporting

Subpart L contains the CMPs for drug-price reporting found in section 1927(b)(3)(B)–(C) of the Act (42 U.S.C. 1396r–8(b)(3)(B)–(C)). Although the statutory authority is self-implementing and does not require a regulation, we propose adding the regulatory language at this time in light of the general reorganization. The proposed regulation text closely mirrors the language of the statute.

Section 1927(a) of the Act and section 340B of the Public Health Service Act implement a drug-pricing program in which manufacturers that sell covered outpatient drugs to covered entities must agree to charge a price that will not exceed an amount determined under a statutory formula. Under section 1927(a) of the Act, manufacturers must provide certain statutorily mandated discounts to covered entities. Section 1927(b)(3)(A) requires manufacturers with Medicaid Drug Rebate Agreements to provide specified drug-pricing and product information to the Secretary, including, but not limited to, average manufacturer price (AMP), average sales price (ASP), wholesale acquisition cost, and best price. Labelers are required to certify each product and pricing data submission made to CMS.

The fact that many manufacturers submit late or incomplete product and pricing data adversely affects the efficient administration of Federal health care programs. *See Drug Manufacturers' Noncompliance With Average Manufacturer Price Reporting Requirements* (OEI–03–09–00060) (September 2010); *Average Sales Prices: Manufacturer Reporting and CMS Oversight* (OEI–03–08–00480) (February 2010); *Deficiencies in the Oversight of the 340B Drug Pricing Program* (OEI–05–02–00072) (October 2005). As described in our Special Advisory Bulletin dated September 28, 2010, OIG inspections have established that manufacturers continue to provide untimely or incomplete pricing data. The September 2010 report found that more than three-quarters of manufacturers failed to comply with quarterly AMP reporting requirements in at least one quarter in calendar year 2008.

In response to the September 2010 report's findings, CMS stated that it would begin referring manufacturers that submit incomplete quarterly and monthly data to OIG for CMP consideration. CMS stated that it would also refer manufacturers that report late or incomplete ASP data. As discussed in two 2010 **Federal Register** notices CMS proposed to establish a process for addressing manufacturers' failure to report manufacturer ASP data in a timely fashion, noting that while delays in reporting ASP data have been uncommon, they create risks. 75 FR 40139, 40153 (July 13, 2010); 75 FR 73169, 73462 (November 29, 2010). CMS further stated that it had recently encountered situations when delays in manufacturer ASP reporting could have led to significant ASP payment limit fluctuations for highly utilized Health Care Common Procedure Coding System codes (HCPCS). 75 FR at 40153; 75 FR at 73462. To minimize ASP payment limit fluctuations because of missing data, CMS proposed that, in situations when missing ASP data would result in a 10 percent or greater change in the calculation of the HCPCS payment limit for multiple source drugs, CMS would carry over previously reported manufacturer ASP data, as subject to certain conditions. CMS noted that its carryover proposal should not be interpreted by manufacturers to mean that CMS and OIG will refrain from collecting penalties for ASP reporting violations. As stated in the CMS proposal, submission of late reports and failure to submit reports will not be tolerated.

As set forth in the Special Advisory Bulletin dated September 28, 2010, OIG intends to impose CMPs on those manufacturers that submit or certify late or incomplete product and pricing information. Under section 1927(b)(3)(C) of the Act, OIG may impose a penalty of not more than $10,000 per day for each day that a manufacturer with an agreement under section 1927 of the Act fails to provide the information required by section 1927(b)(3)(A) of the Act.

Manufacturers submit the product and pricing information required by section 1927 using the National Drug Code (NDC) product identifier. Manufacturers submit ASP data to CMS at the 11-digit NDC level, including the number of units of the 11-digit NDC sold. Manufacturers submit AMP data to CMS through the Web-based Drug Data Reporting system at the 9-digit NDC level.

OIG proposes calculating CMPs under section 1927(b)(3)(C) of the Act at the 9-digit NDC level for both AMP and ASP data. For example, a manufacturer that fails to provide the information required by section 1927(b)(3)(A) of the Act for five separate 9-digit level NDCs may be penalized for each item, in an aggregate amount of not more than $50,000 per day for each day that the information is not provided. If, after 2 days, the manufacturer in this example submitted information for two of the missing drugs, the manufacturer would be subject to an aggregate penalty of not more than $30,000 per day for each additional day that information was not provided for the remaining three items. OIG believes that this interpretation is supported by the statutory text, which refers to NDCs, and by the reporting systems employed by CMS, under which manufacturers are required to

report AMP and ASP product and pricing data using NDCs.

Section 1927(b)(3)(B) provides for verification surveys of AMPs and establishes that a penalty of not more than $100,000 may be imposed against a wholesaler, direct seller, or manufacturers that directly distribute their covered outpatient drugs for refusing a request for information by, or for knowingly providing false information to, the Secretary about charges or prices in connection with such a survey.

Pursuant to section 1927(b)(3)(C) of the Act, OIG may impose a penalty of not more than $100,000 against any manufacturer with an agreement under section 1927 of the Act that knowingly provides false information for each item of false information.

OIG will consider the general factors listed in § 1003.140 when determining the amount of the penalties.

Subpart M—CMPs for Notifying a Skilled Nursing Facility, Nursing Facility, Home Health Agency, or Community Care Setting of a Survey

In subpart M, we propose to add regulations providing for CMPs for notifying a skilled nursing facility, nursing facility, home health agency, or a community care setting of the date or time of a survey. The statutory authority for these CMPs is self-implementing and does not require a regulation. Act, sections 1819(g)(2)(A), 1919(g)(2)(A), 1891(c)(1), 1929(i)(3)(A); 42 U.S.C. 1395i–3(g)(2)(A), 1396r(g)(2)(A), 1395bbb(c)(1), 1396t(i)(3)(A). However, we propose adding the regulatory language at this time in light of the general reorganization. The proposed regulation text closely mirrors the language of the statute.

Skilled nursing facilities (SNF), nursing facilities (NF), home health agencies, and community care settings are subject to State compliance surveys without any prior notice. Sections 1819(g)(2)(A), 1919(g)(2)(A), 1891(c)(1), and 1929(i)(3)(A) of the Act provide for imposing a penalty of not more than $2,000 against any individual who notifies, or causes to be notified, a SNF, NF, home health agency, or community care setting of the time or date on which a survey is scheduled to be conducted.

OIG will consider the general factors listed in § 1003.140 when determining the amount of the penalties to be imposed under proposed subpart M.

Subpart O—Procedures for the Imposition of CMPs, Assessments, and Exclusions

Subpart O contains the procedural provisions that apply to part 1003. We propose several clarifying changes to procedures in this subpart. We propose amending the methods permitted for service of a notice of intent to impose a penalty, assessment, or exclusion under part 1003. The current § 1003.109 requires service by certified mail, return receipt requested. Section 1128A(c)(1) of the Act, however, permits service by any method authorized by Rule 4 of the Federal Rules of Civil Procedure (FRCP). This rule has been amended to authorize various service methods depending on whether the recipient is a domestic or foreign individual or corporation. Therefore, we are amending our regulation at § 1003.1500(a) and 1003.1510 to permit service under FRCP Rule 4. By referencing the rule, the regulation would reflect any future amendments to Rule 4 automatically.

We also propose technical changes to the judicial review provision currently at § 1003.127 and redesignated as § 1003.1540 to better conform to the statutory scheme that a person must exhaust his or her administrative remedies before filing a claim in Federal court. Exhaustion of administrative remedies is a well-settled legal principle, particularly concerning section 405(g) of the Act (42 U.S.C. 205(g)). Consistent with existing law, the proposed regulations clarify that a person may not bring a claim in Federal court without first raising that claim at every applicable stage within the administrative process, including any administrative appeal process. In the context of part 1003, that administrative process consists of timely requesting a hearing before an Administrative Law Judge (ALJ) pursuant to 42 CFR 1005.2 and, if the respondent loses at the ALJ level, timely filing an appeal of the ALJ decision to the Departmental Appeals Board. Only after the Departmental Appeals Board makes a final decision under 42 CFR 1005.21(j) is the respondent eligible to file an action in Federal court.

We also propose a technical change to the regulatory language to clarify the statutory limit on issues eligible for judicial review. Section 1128A(e) of the Act provides that ''[n]o objection that has not been urged before the Secretary shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances.'' We interpret this to mean that a person is precluded from making arguments or raising issues in Federal court that were not first raised in the administrative process, unless the court finds that extraordinary circumstances prevented raising those arguments or issues. For example, we interpret ''extraordinary circumstances'' to mean that those arguments or issues were beyond the authority of the administrative process.

Other Changes in Part 1003

OIG has the authority to impose CMPs against endorsed sponsors under the Medicare Prescription Drug Discount Card Program that knowingly commit certain violations. The discount card program has been defunct since January 1, 2006, when Medicare Part D went into effect. We propose to remove this CMP from the regulations as the statute of limitations has expired for any conduct that might implicate this CMP.

B. Appeals of Exclusions, Civil Monetary Penalties, and Assessments

We propose changes to the OIG regulations at 42 CFR part 1005 to correct an internal inconsistency in § 1005.4(c). The regulation currently states at § 1005.4(c)(5)–(6) that an ALJ is not authorized to (1) review the exercise of discretion by OIG to exclude an individual or entity under section 1128(b) of the Act, (2) determine the scope or effect of the exclusion, or (3) set a period of exclusion at zero when the ALJ finds that the individual or entity committed an act described in section 1128(b) of the Act. Currently, § 1005.4(c)(7) states that an ALJ is not authorized to review the exercise of discretion by OIG to impose a CMP, an assessment, or an exclusion under part 1003. The second and third limits on ALJ authority with respect to exclusions under section 1128(b) of the Act should also apply to exclusions imposed under part 1003. To correct this inconsistency, we propose to clarify that when reviewing exclusions imposed pursuant to part 1003, an ALJ is not authorized to (1) review OIG's exercise of discretion to exclude an individual or entity, (2) determine the scope or effect of the exclusion, or (3) set a period of exclusion at zero if the ALJ finds that the individual or entity committed an act described in part 1003. We believe that this requirement is consistent with congressional intent in enacting the statutes providing authority for part 1003 that explicitly provide for exclusion as an appropriate remedy for the commission of any of the acts specified in those statutes. Thus, in every case when OIG has exercised its discretion to impose an exclusion and when the ALJ concurs that a violation did occur, exclusion is appropriate.

III. Regulatory Impact Statement

We have examined the impact of this proposed rule as required by Executive Order 12866, Executive Order 13563,

the Regulatory Flexibility Act (RFA) of 1980, the Unfunded Mandates Reform Act of 1995, and Executive Order 13132.

Executive Order Nos. 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulations are 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 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review as established in Executive Order 12866. A regulatory impact analysis must be prepared for major rules with economically significant effects, *i.e.,* $100 million or more in any given year. This is not a major rule as defined at 5 U.S.C. 804(2); it is not economically significant because it does not reach that economic threshold.

This proposed rule is designed to implement new statutory provisions, including new CMP authorities. This proposed rule is also designed to clarify the intent of existing statutory requirements and to reorganize CMP regulation sections for ease of use. The vast majority of providers and Federal health care programs would be minimally impacted, if at all, by these proposed revisions.

Accordingly, we believe that the likely aggregate economic effect of these regulations would be significantly less than $100 million.

Regulatory Flexibility Act

The RFA and the Small Business Regulatory Enforcement and Fairness Act of 1996, which amended the RFA, require agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most providers are considered small entities by having revenues of $5 million to $25 million or less in any one year. For purposes of the RFA, most physicians and suppliers are considered small entities.

The aggregate effect of the changes to the CMP provisions would be minimal.

In summary, we have concluded that this proposed rule should not have a significant impact on the operations of a substantial number of small providers and that a regulatory flexibility analysis is not required for this rulemaking.

In addition, section 1102(b) of the Act (42 U.S.C. 1302) requires us to prepare a regulatory impact analysis if a rule under Titles XVIII or XIX or section B of Title XI of the Act may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to section 604 of the RFA. Only one proposed change has been made under the relevant title, the amendments to the Medicare Contracting Organization Rule at proposed § 1003.400, et seq. This rule applies only to Medicare contracting organizations, not to rural hospitals, and would have no effect on rural hospitals. Thus, an analysis under section 1102(b) is not required for this rulemaking.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditures in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. As indicated above, these proposed revisions comport with statutory amendments and clarify existing law. We believe that as a result, there would be no significant costs associated with these proposed revisions that would impose any mandates on State, local, or tribal governments or the private sector that would result in an expenditure of $110 million or more (adjusted for inflation) in any given year and that a full analysis under the Unfunded Mandates Reform Act is not necessary.

Executive Order 13132

Executive Order 13132, Federalism, establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct requirements or costs on State and local governments, preempts State law, or otherwise has Federalism implications. In reviewing this rule under the threshold criteria of Executive Order 13132, we have determined that this proposed rule would not significantly affect the rights, roles, and responsibilities of State or local governments.

IV. Paperwork Reduction Act

These proposed changes to Parts 1003 and 1005 impose no new reporting requirements or collections of information. Therefore, a Paperwork Reduction Act review is not required.

List of Subjects

42 CFR Part 1003

Fraud, Grant programs—health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping.

42 CFR Part 1005

Administrative practice and procedure, Fraud, Investigations, Penalties.

For the reasons set forth in the preamble, the Office of the Inspector General, Department of Health and Human Services, proposes to amend 42 CFR chapter V, subchapter B as follows:

PART 1003—CIVIL MONEY PENALTIES, ASSESSMENTS AND EXCLUSIONS

■ 1. The authority citation for part 1003 continues to read as follows:

Authority: 42 U.S.C. 262a, 1302, 1320–7, 1320a–7a, 1320b–10, 1395u(j), 1395u(k), 1395cc(j), 1395w–141(i)(3), 1395dd(d)(1), 1395mm, 1395nn(g), 1395ss(d), 1396b(m), 11131(c), and 11137(b)(2).

■ 2. Designate §§ 1003.100 through 1003.135 as Subpart A, and add a heading for subpart A to read as follows:

Subpart A—General Provisions

■ 3. Revise § 1003.100 to read as follows:

§ 1003.100 Basis and purpose.

(a) *Basis.* This part implements sections 1128(c), 1128A, 1140, 1819(b)(3)(B), 1819(g)(2)(A), 1857(g)(2)(A), 1860D–12(b)(3)(E), 1860D–31(i)(3), 1862(b)(3)(C), 1867(d)(1), 1876(i)(6), 1877(g), 1882(d), 1891(c)(1); 1903(m)(5), 1919(b)(3)(B), 1919(g)(2)(A), 1927(b)(3)(B), 1927(b)(3)(C), and 1929(i)(3) of the Social Security Act; sections 421(c) and 427(b)(2) of Pub. L. 99–660; and section 201(i) of Pub. L. 107–188 (42 U.S.C. 1320a–7(c), 1320a–7a, 1320b–10, 1395i–3(b)(3)(B), 1395i–3(g)(2)(A), 1395w–27(g)(2)(A), 1395w–112(b)(3)(E), 1395w–141(i)(3), 1395y(b)(3)(B), 1395dd(d)(1), 1395mm(i)(6), 1395nn(g), 1395ss(d), 1395bbb(c)(1), 1396b(m)(5), 1396r(b)(3)(B), 1396r(g)(2)(A), 1396r–7(b)(3)(B), 1396r–7(b)(3)(C), 1396t(i)(3), 11131(c), 11137(b)(2), and 262a(i)).

(b) *Purpose.* This part—

(1) Provides for the imposition of civil money penalties and, as applicable, assessments and exclusions against persons who have committed an act or omission that violates one or more provisions of this part and

(2) Sets forth the appeal rights of persons subject to a penalty, assessment, and exclusion.

■ 4. Remove §§ 1003.102 through 1003.110, 1003.114, 1003.126 through 1003.129, and 1003.132 through 1003.135.

■ 5. Redesignate § 1003.101 as § 1003.110.

■ 6. Amend newly designated § 1003.110 by:

■ a. Removing the definitions ''Act'', ''Adverse effect'', ''ALJ'', ''CMS'', ''Department'', ''Exclusion'', ''Inspector General'', ''Item or service'', ''Medicaid'', ''Medicare'', ''Secretary'', ''State'', ''State health care program'', and ''Transitional assistance''.

■ b. Revising the definitions of ''Assessment'', ''Claim'', ''Contracting organization'', ''Enrollee'', ''Medical malpractice claim or action'', ''Participating hospital'', ''Penalty'', ''Physician incentive plan'', ''Responsible physician'', ''Select agents and toxins'', and ''Should know, or should have known'', ''Social Services Block Grant Program'', and ''Timely basis''.

■ c. Adding the definitions of ''Items and services or items or services'', ''Knowingly'', ''Material'', ''Non-separately-billable item or service'', ''Overpayment'', ''Reasonable request'', ''Responsible Official'', ''Select Agent Program'', ''Separately billable item or service'' in alphabetical order.

■ d. Amending the definition ''*Remuneration''* by removing ''as set forth in § 1003.102(b)(13) of this part,'' and by adding after ''Remuneration,'' ''for purposes of § 1003.1000(a) of this part,''.

The revisions and additions read as follows:

§ 1003.110 Definitions.

* * * * *

Assessment means the amounts described in this part and includes the plural of that term.

Claim means an application for payment for an item or service under a Federal health care program.

* * * * *

Contracting organization means a public or private entity, including a health maintenance organization, Medicare Advantage Plan, Prescription Drug Plan sponsor, or other organization that has contracted with the Department or a State to furnish services to Medicare or Medicaid beneficiaries pursuant to sections 1857, 1860D–12, 1876(b), or 1903(m) of the Act.

Enrollee means an individual who is eligible for Medicare or Medicaid and who enters into an agreement to receive services from a contracting organization.

* * * * *

Items and services or items or services includes without limitation, any item, device, drug, biological, supply, or service (including management or administrative services), including, but not limited to, those that are listed in an itemized claim for program payment or a request for payment; for which payment is included in any Federal or State health care program reimbursement method, such as a prospective payment system or managed care system; or that are, in the case of a claim based on costs, required to be entered in a cost report, books of account, or other documents supporting the claim (whether or not actually entered).

Knowingly means that a person, with respect to an act, has actual knowledge of the act, acts in deliberate ignorance of the act, or acts in reckless disregard of the act, and that no proof of specific intent to defraud is required.

Material means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.

* * * * *

Medical malpractice claim or action means a written complaint or claim demanding payment based on a physician's, dentist's, or other health care practitioner's provision of, or failure to provide, health care services and includes the filing of a cause of action based on the law of tort brought in any State or Federal court or other adjudicative body.

* * * * *

Non-separately-billable item or service means an item or service that is a component of, or otherwise contributes to the provision of, an item or a service, but is not itself a separately billable item or service.

Overpayment means any funds that a person receives or retains under Title XVIII or XIX to which the person, after applicable reconciliation, is not entitled under such title.

Participating hospital means either a hospital or a critical access hospital as defined in section 1861(mm)(1) of the Act that has entered into a Medicare provider agreement under section 1866 of the Act.

Penalty means the amount described in this part and includes the plural of that term.

* * * * *

Physician incentive plan means any compensation arrangement between a contracting organization and a physician or physician group that may directly or indirectly have the effect of reducing or limiting services provided with respect to enrollees in the organization.

* * * * *

Reasonable request, with respect to § 1003.200(b)(10), means a written request, signed by a designated representative of the OIG and made by a properly identified agent of the OIG during reasonable business hours. The request will include a statement of the authority for the request, the person's rights in responding to the request, the definition of ''reasonable request'' and ''failure to grant timely access'' under part 1003, the deadline by which the OIG requests access, and the amount of the civil money penalty or assessment that could be imposed and the effective date, length, and scope and effect of the exclusion that would be imposed for failure to comply with the request, and the earliest date that a request for reinstatement would be considered.

* * * * *

Responsible Official means the individual designated pursuant to 42 CFR part 73 to serve as the Responsible Official for the person holding a certificate of registration to possess, use, or transfer select agents or toxins.

Responsible physician means a physician who is responsible for the examination, treatment, or transfer of an individual who comes to a participating hospital's emergency department requesting examination or treatment, including any physician who is on-call for the care of such individual and fails or refuses to appear within a reasonable time at such hospital to provide services relating to the examination, treatment, or transfer of such individual. *Responsible physician* also includes a physician who is responsible for the examination or treatment of individuals at hospitals with specialized capabilities or facilities, as provided under section 1867(g) of the Act, including any physician who is on-call for the care of such individuals and refuses to accept an appropriate transfer or fails or refuses to appear within a reasonable time to provide services related to the examination or treatment of such individuals.

* * * * *

Select Agent Program means activities relating to the possession, use, and transfer of select agents and toxins as regulated by section 351A of the Public Health Service Act and 42 CFR part 73.

Select agents and toxins is defined consistent with the definition of ''select agent and/or toxin'' and ''overlap select agent and/or toxin'' as set forth in 42 CFR part 73.

Separately billable item or service means an item or service for which an identifiable payment may be made under a Federal health care program, *e.g.,* an itemized claim or a payment under a prospective payment system or other reimbursement methodology.

Should know, or should have known, means that a person, with respect to information, either acts in deliberate ignorance of the truth or falsity of the information or acts in reckless disregard

of the truth or falsity of the information. For purposes of this definition, no proof of specific intent to defraud is required.

Social Services Block Grant Program means the program authorized under Title XX of the Act.

* * * * *

Timely basis means, in accordance with § 1003.300(a) of this part, the 60-day period from the time the prohibited amounts are collected by the individual or the entity.

* * * * *

■ 7. Add § 1003.120, 1003.130, 1003.140, 1003.150, and 1003.160 to subpart A to read as follows:

§ 1003.120 Liability for penalties and assessments.

(a) In any case when it is determined that more than one person was responsible for a violation described in this part, each such person may be held liable for the penalty prescribed by this part.

(b) In any case when it is determined that more than one person was responsible for a violation described in this part, an assessment may be imposed, when authorized, against any one such person or jointly and severally against two or more such persons, but the aggregate amount of the assessments collected may not exceed the amount that could be assessed if only one person was responsible.

(c) Under this part, a principal is liable for penalties and assessments for the actions of his or her agent acting within the scope of his or her agency. This provision does not limit the underlying liability of the agent.

§ 1003.130 Assessments.

The assessment in this part is in lieu of damages sustained by the Department or a State agency because of the violation.

§ 1003.140 Determinations regarding the amount of penalties and assessments and the period of exclusion.

(a) Except as otherwise provided in this part, in determining the amount of any penalty or assessment or the period of exclusion in accordance with this part, the OIG will consider the following factors—

(1) The nature and circumstances of the violation;

(2) The degree of culpability of the person against whom a civil money penalty, assessment, or exclusion is proposed. It should be considered an aggravating circumstance if the respondent had a greater level of knowledge than the minimum level of knowledge required to establish liability (*e.g.,* for a provision that establishes liability if the respondent ''knew or should have known'' a claim was false or fraudulent, it will be an aggravating circumstance if the respondent had actual knowledge the claim was false or fraudulent). It should be a mitigating circumstance if the person took appropriate and timely corrective action in response to the violation. For purposes of this part, corrective action must include disclosing the violation to the OIG through the Self-Disclosure Protocol and fully cooperating with the OIG's review and resolution of such disclosure;

(3) The history of prior offenses. Aggravating circumstances include, if at any time prior to the violation, the person—or in the case of an entity, the entity itself; any individual who had a direct or indirect ownership or control interest (as defined in section 1124(a)(3) of the Act) in a sanctioned entity at the time the violation occurred and who knew, or should have known, of the violation; or any individual who was an officer or a managing employee (as defined in section 1126(b) of the Act) of such an entity at the time the violation occurred—was held liable for criminal, civil, or administrative sanctions in connection with a program covered by this part or in connection with the delivery of a health care item or service;

(4) *Other wrongful conduct.* Aggravating circumstances include proof that the person—or in the case of an entity, the entity itself; any individual who had a direct or indirect ownership or control interest (as defined in section 1124(a)(3) of the Act) in a sanctioned entity at the time the violation occurred and who knew, or should have known, of the violation; or any individual who was an officer or a managing employee (as defined in section 1126(b) of the Act) of such an entity at the time the violation occurred—engaged in wrongful conduct, other than the specific conduct upon which liability is based, relating to a government program or in connection with the delivery of a health care item or service. The statute of limitations governing civil money penalty proceedings will not apply to proof of other wrongful conduct as an aggravating circumstance; and

(5) *Such other matters as justice may require.* Other circumstances of an aggravating or mitigating nature should be considered if, in the interests of justice, they require either a reduction or an increase in the penalty, assessment, or period of exclusion to achieve the purposes of this part.

(b)(1) After determining the amount of any penalty and assessment in accordance with this part, the OIG considers the ability of the person to pay the proposed civil money penalty or assessment. The person shall provide, in a time and manner requested by the OIG, sufficient financial documentation, including audited financial statements, tax returns, and financial disclosure statements, deemed necessary by the OIG to determine the person's ability to pay.

(2) If the person requests a hearing in accordance with 42 CFR 1005.2, the only financial documentation subject to review is that which the person provided to the OIG during the administrative process, unless the ALJ finds that extraordinary circumstances prevented the person from providing the financial documentation to the OIG in the time and manner requested by the OIG prior to the hearing request.

(c) In determining the amount of any penalty and assessment to be imposed under this part the following circumstances are also to be considered—

(1) If there are substantial or several mitigating circumstances, the aggregate amount of the penalty and assessment should be set at an amount sufficiently below the maximum permitted by this part to reflect that fact.

(2) If there are substantial or several aggravating circumstances, the aggregate amount of the penalty and assessment should be set at an amount sufficiently close to or at the maximum permitted by this part to reflect that fact.

(3) Unless there are extraordinary mitigating circumstances, the aggregate amount of the penalty and assessment should not be less than double the approximate amount of damages and costs (as defined by paragraph (e)(2) of this section) sustained by the United States, or any State, as a result of the violation.

(4) The presence of any single aggravating circumstance may justify imposing a penalty and assessment at or close to the maximum even when one or more mitigating factors are present.

(d) In determining whether to exclude a person under this part, where there are aggravating circumstances, the person should be excluded.

(e)(1) The standards set forth in this section are binding, except to the extent that their application would result in imposition of an amount that would exceed limits imposed by the United States Constitution.

(2) The amount imposed will not be less than the approximate amount required to fully compensate the United States, or any State, for its damages and costs, tangible and intangible, including, but not limited to, the costs attributable

to the investigation, prosecution, and administrative review of the case.

(3) Nothing in this part limits the authority of the Department or the OIG to settle any issue or case as provided by § 1003.1530 or to compromise any penalty and assessment as provided by § 1003.1550.

(4) Penalties, assessments, and exclusions imposed under this part are in addition to any other penalties, assessments, or other sanctions prescribed by law.

§ 1003.150 Delegation of authority.

The OIG is delegated authority from the Secretary to impose civil money penalties and, as applicable, assessments and exclusions against any person who has violated one or more provisions of this part. The delegation of authority includes all powers to impose civil monetary penalties, assessments, and exclusion under section 1128A of the Act.

§ 1003.160 Waiver of exclusion.

(a) The OIG will consider a request from the administrator of a Federal health care program for a waiver of an exclusion imposed under this part as set forth in paragraph (b) of this section. The request must be in writing and from an individual directly responsible for administering the Federal health care program.

(b) If the OIG subsequently obtains information that the basis for a waiver no longer exists, the waiver will cease and the person will be excluded from the Federal health care programs for the remainder of the exclusion period, measured from the time the exclusion would have been imposed if the waiver had not been granted.

(c) The OIG will notify the administrator of the Federal health care program whether his or her request for a waiver has been granted or denied.

(d) If a waiver is granted, it applies only to the program(s) for which waiver is requested.

(e) The decision to grant, deny, or rescind a waiver is not subject to administrative or judicial review.

■ 8. Add subparts B through F to read as follows:

Subpart B—CMPs, Assessments, and Exclusions for False or Fraudulent Claims and Other Similar Misconduct

Sec.
1003.200 Basis for civil money penalties, assessments, and exclusions.
1003.210 Amount of penalties and assessments.
1003.220 Determinations regarding the amount of penalties and assessments and the period of exclusion.

Subpart C—CMPs, Assessments, and Exclusions for Anti-Kickback and Physician Self-Referral Violations

1003.300 Basis for civil money penalties, assessments, and exclusions.
1003.310 Amount of penalties and assessments.
1003.320 Determinations regarding the amount of penalties and assessments and the period of exclusion.

Subpart D—CMPs and Assessments for Contracting Organization Misconduct

1003.400 Basis for civil money penalties and assessments.
1003.410 Amount of penalties and assessments.
1003.420 Determinations regarding the amount of penalties and assessments.

Subpart E—CMPs and Exclusions for EMTALA Violations

1003.500 Basis for civil money penalties and exclusions.
1003.510 Amount of penalties.
1003.520 Determinations regarding the amount of penalties and the period of exclusion.

Subpart F—CMPs for Section 1140 Violations

1003.600 Basis for civil money penalties.
1003.610 Amount of penalties.
1003.620 Determinations regarding the amount of penalties.

Subpart B—CMPs, Assessments, and Exclusions for False or Fraudulent Claims and Other Similar Misconduct

§ 1003.200 Basis for civil money penalties, assessments, and exclusions.

(a) The OIG may impose a penalty, assessment, and an exclusion against any person who it determines has knowingly presented, or caused to be presented, a claim that was for—

(1) An item or service that the person knew, or should have known, was not provided as claimed, including a claim that was part of a pattern or practice of claims based on codes that the person knew, or should have known, would result in greater payment to the person than the code applicable to the item or service actually provided;

(2) An item or service for which the person knew, or should have known, that the claim was false or fraudulent;

(3) An item or service furnished during a period in which the person was excluded from participation in the Federal health care program to which the claim was made;

(4) A physician's services (or an item or service) for which the person knew, or should have known, that the individual who furnished (or supervised the furnishing of) the service—

(i) Was not licensed as a physician;

(ii) Was licensed as a physician, but such license had been obtained through a misrepresentation of material fact (including cheating on an examination required for licensing); or

(iii) Represented to the patient at the time the service was furnished that the physician was certified in a medical specialty board when he or she was not so certified; or

(5) An item or service that a person knew, or should have known was not medically necessary, and which is part of a pattern of such claims.

(b) The OIG may impose a penalty; an exclusion; and, where authorized, an assessment against any person whom it determines—

(1) Has knowingly presented, or caused to be presented, a request for payment in violation of the terms of—

(i) An agreement to accept payments on the basis of an assignment under section 1842(b)(3)(B)(ii) of the Act;

(ii) An agreement with a State agency or other requirement of a State Medicaid plan not to charge a person for an item or service in excess of the amount permitted to be charged;

(iii) An agreement to be a participating physician or supplier under section 1842(h)(1) of the Act; or

(iv) An agreement in accordance with section 1866(a)(1)(G) of the Act not to charge any person for inpatient hospital services for which payment had been denied or reduced under section 1886(f)(2) of the Act;

(2) Has knowingly given, or caused to be given, to any person, in the case of inpatient hospital services subject to section 1886 of the Act, information that he or she knew, or should have known, was false or misleading and that could reasonably have been expected to influence the decision when to discharge such person or another person from the hospital;

(3) Is an individual and who is excluded from participating in a Federal health care program in accordance with sections 1128 or 1128A of the Act, and who—

(i) Knows, or should know, of the action constituting the basis for the exclusion and retains a direct or indirect ownership or control interest of 5 percent or more in an entity that participates in a Federal health care program or

(ii) Is an officer or a managing employee (as defined in section 1126(b) of the Act) of such entity;

(4) Arranges or contracts (by employment or otherwise) with an individual or entity that the person knows, or should know, is excluded from participation in Federal health care programs for the provision of items or services for which payment may be made under such a program;

(5) Has knowingly and willfully presented, or caused to be presented, a bill or request for payment for items and services furnished to a hospital patient for which payment may be made under a Federal health care program if that bill or request is inconsistent with an arrangement under section 1866(a)(1)(H) of the Act or violates the requirements for such an arrangement;

(6) Orders or prescribes a medical or other item or service during a period in which the person was excluded from a Federal health care program, in the case when the person knows, or should know, that a claim for such medical or other item or service will be made under such a program;

(7) Knowingly makes, or causes to be made, any false statement, omission, or misrepresentation of a material fact in any application, bid, or contract to participate or enroll as a provider of services or a supplier under a Federal health care program, including contracting organizations and entities that apply to participate as providers of services or suppliers in such contracting organizations;

(8) Knows of an overpayment and does not report and return the overpayment in accordance with section 1128J(d) of the Act;

(9) Knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim for payment for items and services furnished under a Federal health care program; or

(10) Fails to grant timely access to records, documents, and other material or data in any medium (including electronically stored information and any tangible thing), upon reasonable request, to the OIG, for the purpose of audits, investigations, evaluations, or other OIG statutory functions. Such failure to grant timely access means:

(i) Except when the OIG reasonably believes that the requested material is about to be altered or destroyed, the failure to produce or make available for inspection and copying the requested material upon reasonable request or to provide a compelling reason why they cannot be produced, by the deadline specified in the OIG's written request, and

(ii) When the OIG has reason to believe that the requested material is about to be altered or destroyed, the failure to provide access to the requested material at the time the request is made.

(c) The OIG may impose a penalty against any person who it determines, in accordance with this part, is a physician and who executes a document falsely by certifying that a Medicare beneficiary requires home health services when the physician knows that the beneficiary does not meet the eligibility requirements in sections 1814(a)(2)(C) or 1835(a)(2)(A) of the Act.

(d) The OIG may impose a penalty against any person who it determines knowingly certifies, or causes another individual to certify, a material and false statement in a resident assessment pursuant to sections 1819(b)(3)(B) and 1919(b)(3)(B).

§ 1003.210 Amount of penalties and assessments.

(a) *Penalties.* (1) Except as provided in this section, the OIG may impose a penalty of not more than $10,000 for each individual violation that is subject to a determination under this subpart.

(2) The OIG may impose a penalty of not more than $15,000 for each person with respect to whom a determination was made that false or misleading information was given under § 1003.200(b)(2).

(3) The OIG may impose a penalty of not more than $10,000 per day for each day that the prohibited relationship described in § 1003.200(b)(3) occurs.

(4) For each individual violation of § 1003.200(b)(4), the OIG may impose a penalty of not more than $10,000—

(i) For each separately billable item or service provided, furnished, ordered, or prescribed by an excluded individual or entity, or

(ii) For each day the person employs, contracts with, or otherwise arranges for an excluded individual or entity to provide, furnish, order, or prescribe a non-separately-billable item or service.

(5) The OIG may impose a penalty of not more than $2,000 for each bill or request for payment for items and services furnished to a hospital patient in violation of § 1003.200(b)(5).

(6) The OIG may impose a penalty of not more than $50,000 for each false statement, omission, or misrepresentation of a material fact in violation of § 1003.200(b)(7).

(7) The OIG may impose a penalty of not more than $50,000 for each false record or statement in violation of § 1003.200(b)(9).

(8) The OIG may impose a penalty of not more than $10,000 per day for each overpayment that is not reported and returned in accordance with section 1128J(d) of the Act in violation of § 1003.200(b)(8).

(9) The OIG may impose a penalty of not more than $15,000 for each day of failure to grant timely access in violation of § 1003.200(b)(10).

(10) For each false certification in violation of § 1003.200(c), the OIG may impose a penalty of not more than the greater of—

(i) $5,000; or

(ii) Three times the amount of Medicare payments for home health services that are made with regard to the false certification of eligibility by a physician, as prohibited by section 1814(a)(2)(C) or 1835(a)(2)(A) of the Act.

(11) For each false certification in violation of § 1003.200(d), the OIG may impose a penalty of not more than—

(i) $1,000 with respect to an individual who willfully and knowingly falsely certifies a material and false statement in a resident assessment; and

(ii) $5,000 with respect to an individual who willfully and knowingly causes another individual to falsely certify a material and false statement in a resident assessment.

(b) *Assessments.* (1) Except for violations of § 1003.200(b)(4), (5), and (7), and § 1003.200(c) and (d), the OIG may impose an assessment for each individual violation of § 1003.200, of not more than 3 times the amount for each item or service wrongfully claimed.

(2) For violations of § 1003.200(b)(4), the OIG may impose an assessment of not more than 3 times—

(i) The amount claimed for each separately billable item or service provided, furnished, ordered, or prescribed by an excluded individual or entity or

(ii) The total costs (including salary, benefits, taxes, and other money or items of value) related to the excluded individual or entity incurred by the person that employs, contracts with, or otherwise arranges for an excluded individual or entity to provide, furnish, order, or prescribe a non-separately-billable item or service.

(3) For violations of § 1003.200(b)(7), the OIG may impose an assessment of not more than 3 times the total amount claimed for each item or service for which payment was made based upon the application containing the false statement, omission, or misrepresentation of material fact.

§ 1003.220 Determinations regarding the amount of penalties and assessments and the period of exclusion.

In considering the factors listed in § 1003.140—

(a) It should be considered a mitigating circumstance if all the items or services or violations included in the action brought under this part were of the same type and occurred within a short period of time, there were few such items or services or violations, and the total amount claimed or requested for such items or services was less than $5,000.

(b) Aggravating circumstances include—

(1) The violations were of several types or occurred over a lengthy period of time;

(2) There were many such items or services or violations (or the nature and circumstances indicate a pattern of claims or requests for payment for such items or services or a pattern of violations);

(3) The amount claimed or requested for such items or services, or the amount of the overpayment was $15,000 or more;

(4) The violation resulted, or could have resulted, in patient harm, premature discharge, or a need for additional services or subsequent hospital admission; or

(5) The amount or type of financial, ownership, or control interest or the degree of responsibility a person has in an entity was substantial with respect to an action brought under § 1003.200(b)(3).

Subpart C—CMPs, Assessments, and Exclusions for Anti-Kickback and Physician Self-Referral Violations

§ 1003.300 Basis for civil money penalties, assessments, and exclusions.

The OIG may impose a penalty, an assessment, and an exclusion against any person who it determines in accordance with this part—

(a) Has not refunded on a timely basis, as defined in § 1003.110, amounts collected as a result of billing an individual, third party payer, or other entity for a designated health service furnished pursuant to a prohibited referral as described in § 411.353 of this title.

(b) Is a physician or other person that enters into any arrangement or scheme (such as a cross-referral arrangement) that the physician or other person knows, or should know, has a principal purpose of ensuring referrals by the physician to a particular person that, if the physician directly made referrals to such person, would be in violation of the prohibitions of § 411.353 of this title.

(c) Has knowingly presented, or caused to be presented, a claim that is for a payment that such person knows, or should know, may not be made under § 411.353 of this title;

(d) Has violated section 1128B(b) of the Act by unlawfully offering, paying, soliciting, or receiving remuneration to induce or in return for the referral of business paid for, in whole or in part, by Medicare, Medicaid, or other Federal health care programs.

§ 1003.310 Amount of penalties and assessments.

(a) *Penalties.* The OIG may impose a penalty of not more than—

(1) $15,000 for each claim or bill for a designated health service, as defined in § 411.351 of this title, that is subject to a determination under § 1003.300(a) or (c);

(2) $100,000 for each arrangement or scheme that is subject to a determination under § 1003.300(b); and

(3) $50,000 for each offer, payment, solicitation, or receipt of remuneration that is subject to a determination under § 1003.300(d).

(b) *Assessments.* The OIG may impose an assessment of not more than 3 times—

(1) The amount claimed for each designated health service that is subject to a determination under § 1003.300(a), (b), or (c).

(2) The total remuneration offered, paid, solicited, or received that is subject to a determination under § 1003.300(d). Calculation of the total remuneration for purposes of an assessment shall be without regard to whether a portion of such remuneration was offered, paid, solicited, or received for a lawful purpose.

§ 1003.320 Determinations regarding the amount of penalties and assessments and the period of exclusion.

In considering the factors listed in § 1003.140:

(a) It should be considered a mitigating circumstance if all the items, services, or violations included in the action brought under this part were of the same type and occurred within a short period of time; there were few such items, services, or violations; and the total amount claimed or requested for such items or services was less than $5,000.

(b) Aggravating circumstances include—

(1) The violations were of several types or occurred over a lengthy period of time;

(2) There were many such items, services, or violations (or the nature and circumstances indicate a pattern of claims or requests for payment for such items or services or a pattern of violations);

(3) The amount claimed or requested for such items or services or the amount of the remuneration was $15,000 or more; or

(4) The violation resulted, or could have resulted, in harm to the patient, a premature discharge, or a need for additional services or subsequent hospital admission.

Subpart D—CMPs and Assessments for Contracting Organization Misconduct

§ 1003.400 Basis for civil money penalties and assessments.

(a) *All contracting organizations.* The OIG may impose a penalty against any contracting organization that—

(1) Fails substantially to provide an enrollee with medically necessary items and services that are required (under the Act, applicable regulations, or contract) to be provided to such enrollee and the failure adversely affects (or has the substantial likelihood of adversely affecting) the enrollee;

(2) Imposes a premium on an enrollee in excess of the amounts permitted under the Act;

(3) Engages in any practice that would reasonably be expected to have the effect of denying or discouraging enrollment by beneficiaries whose medical condition or history indicates a need for substantial future medical services, except as permitted by the Act;

(4) Misrepresents or falsifies information furnished to a person;

(5) Misrepresents or falsifies information furnished to the Secretary or a State, as applicable;

(6) Fails to comply with the requirements of 42 CFR 417.479(d) through (i) for Medicare and 42 CFR 417.479(d) through (g) and (i) for Medicaid regarding certain prohibited incentive payments to physicians; or

(7) Fails to comply with applicable requirements of the Act regarding prompt payment of claims.

(b) *All Medicare contracting organizations.* The OIG may impose a penalty against any contracting organization with a contract under section 1857, 1860D–12, or 1876 of the Act that—

(1) Acts to expel or to refuse to reenroll a beneficiary in violation of the Act or

(2) Employs or contracts with a person excluded, under section 1128 or 1128A of the Act, from participation in Medicare for the provision of health care, utilization review, medical social work, or administrative services, or employs or contracts with any entity for the provision of such services (directly or indirectly) through an excluded person.

(c) *Medicare Advantage and Part D contracting organizations.* The OIG may impose a penalty, and for § 1003.400(c)(4) or (c)(5), an assessment, against a contracting organization with a contract under section 1857 or 1860D–12 of the Act that:

(1) Enrolls an individual without the individual's (or his or her designee's)

prior consent, except as provided under subparagraph (C) or (D) of section 1860D–1(b)(1) of the Act;

(2) Transfers an enrollee from one plan to another without the individual's (or his or her designee's) prior consent;

(3) Transfers an enrollee solely for the purpose of earning a commission;

(4) Fails to comply with marketing restrictions described in subsection (h) or (j) of section 1851 of the Act or applicable implementing regulations or guidance; or

(5) Employs or contracts with any person who engages in the conduct described in paragraphs (a) through (c) of this section.

(d) *Medicare Advantage contracting organizations.* The OIG may impose a penalty against a contracting organization with a contract under section 1857 of the Act that fails to comply with the requirements of section 1852(j)(3) or 1852(k)(2)(A)(ii) of the Act.

(e) *Medicaid contracting organizations.* The OIG may impose a penalty against any contracting organization with a contract under section 1903(m) of the Act that acts to discriminate among individuals in violation of the Act, including expulsion or refusal to reenroll an individual or engaging in any practice that would reasonably be expected to have the effect of denying or discouraging enrollment by eligible individuals with the contracting organization whose medical condition or history indicates a need for substantial future medical services.

§ 1003.410 Amount of penalties and assessments.

(a) *Penalties.* (1) The OIG may impose a penalty of up to $25,000 for each individual violation under § 1001.400, except as provided in this section.

(2) The OIG may impose a penalty of up to $100,000 for each individual violation under § 1003.400(a)(3), (a)(5), or (e).

(b) *Additional penalties.* In addition to the penalties described in paragraph (a) of this section, the OIG may impose—

(1) An additional penalty equal to double the amount of excess premium charged by the contracting organization for each individual violation of § 1003.400(a)(2). The excess premium amount will be deducted from the penalty and returned to the enrollee.

(2) An additional $15,000 penalty for each individual expelled or not enrolled in violation of § 1003.400(a)(3) or (e).

(c) *Assessments.* The OIG may impose an assessment against a contracting organization with a contract under section 1857 or 1860D–12 of the Act (Medicare Advantage or Part D) of not more than the amount claimed in violation of § 1003.400(a)(4) or (a)(5) on the basis of the misrepresentation or falsified information involved.

(d) The OIG may impose a penalty or, when applicable, an assessment, against a contracting organization with a contract under section 1857 or 1860D–12 of the Act (Medicare Advantage or Part D) if any of its employees, agents, or contracting providers or suppliers engages in any of the conduct described in § 1003.400(a) through (d).

§ 1003.420 Determinations regarding the amount of penalties and assessments.

In considering the factors listed in § 1003.140, aggravating circumstances include—

(a) Such violations were of several types or occurred over a lengthy period of time;

(b) There were many such violations (or the nature and circumstances indicate a pattern of incidents);

(c) The amount of money, remuneration, damages, or tainted claims involved in the violation was $15,000 or more; or

(d) Patient harm, premature discharge, or a need for additional services or subsequent hospital admission resulted, or could have resulted, from the incident; and

(e) The contracting organization knowingly or routinely engaged in any prohibited practice that acted as an inducement to reduce or limit medically necessary services provided with respect to a specific enrollee in the organization.

Subpart E—CMPs and Exclusions for EMTALA Violations

§ 1003.500 Basis for civil money penalties and exclusions.

(a) The OIG may impose a penalty against any participating hospital with an emergency department or specialized capabilities or facilities for each negligent violation of section 1867 of the Act or § 489.24 of this title.

(b) The OIG may impose a penalty against any responsible physician for each—

(1) Negligent violation of section 1867 of the Act;

(2) Certification signed under section 1867(c)(l)(A) of the Act if the physician knew, or should have known, that the benefits of transfer to another facility did not outweigh the risks of such a transfer; or

(3) Misrepresentation made concerning an individual's condition or other information, including a hospital's obligations under section 1867 of the Act.

(c) The OIG may, in lieu of or in addition to any penalty available under this subpart, exclude any responsible physician that commits a gross and flagrant, or repeated, violation of this subpart from participation in Federal health care programs.

(d) For purposes of this subpart, a ''gross and flagrant violation'' is a violation that presents an imminent danger to the health, safety, or well-being of the individual who seeks examination and treatment or places that individual unnecessarily in a high-risk situation.

§ 1003.510 Amount of penalties.

The OIG may impose—

(a) Against each participating hospital, a penalty of not more than $50,000 for each individual violation, except that if the participating hospital has fewer than 100 State-licensed, Medicare-certified beds on the date the penalty is imposed, the penalty will not exceed $25,000 for each violation, and

(b) Against each responsible physician, a penalty of not more than $50,000 for each individual violation.

§ 1003.520 Determinations regarding the amount of penalties and the period of exclusion.

In considering the factors listed in § 1003.140, aggravating circumstances include:

(a) Requesting proof of insurance, prior authorization, or a monetary payment prior to appropriately screening or initiating stabilizing treatment for an emergency medical condition, or requesting a monetary payment prior to stabilizing an emergency medical condition;

(b) Patient harm or unnecessary risk of patient harm, premature discharge, or a need for additional services or subsequent hospital admission resulted, or could have resulted, from the incident; or

(c) The individual presented to the hospital with a request for examination or treatment of a medical condition that was an emergency medical condition, as defined by § 489.24(b) of this title.

Subpart F—CMPs for Section 1140 Violations

§ 1003.600 Basis for civil money penalties.

(a) The OIG may impose a penalty against any person who it determines in accordance with this part has used the words, letters, symbols, or emblems as defined in paragraph (b) of this section in such a manner that such person knew, or should have known, would convey, or in a manner that reasonably could be interpreted or construed as conveying, the false impression that an

advertisement, a solicitation, or other item was authorized, approved, or endorsed by the Department or CMS or that such person or organization has some connection with or authorization from the Department or CMS.

(b) Civil money penalties may be imposed, regardless of the use of a disclaimer of affiliation with the United States Government, the Department, or its programs, for misuse of—

(1) The words ''Department of Health and Human Services,'' ''Health and Human Services,'' ''Centers for Medicare & Medicaid Services,'' ''Medicare,'' or ''Medicaid'' or any other combination or variations of such words;

(2) The letters ''DHHS,'' ''HHS,'' or ''CMS,'' or any other combination or variation of such letters; or

(3) A symbol or an emblem of the Department or CMS (including the design of, or a reasonable facsimile of the design of, the Medicare card, the check used for payment of benefits under Title II, or envelopes or other stationery used by the Department or CMS) or any other combination or variation of such symbols or emblems.

(c) Civil money penalties will not be imposed against any agency or instrumentality of a State, or political subdivision of the State, that uses any symbol or emblem or any words or letters that specifically identify that agency or instrumentality of the State or political subdivision.

§ 1003.610 Amount of penalties.

(a) The OIG may impose a penalty of not more than—

(1) $5,000 for each individual violation resulting from the misuse of Departmental, CMS, or Medicare or Medicaid program words, letters, symbols, or emblems as described in § 1003.600(a) relating to printed media;

(2) $5,000 for each individual violation in the case of such misuse related to an electronic message, Web page, or telemarketing solicitation;

(3) $25,000 for each individual violation in the case of such misuse related to a broadcast or telecast.

(b) For purposes of this paragraph, a violation is defined as—

(1) In the case of a direct mailing solicitation or an advertisement, each separate piece of mail that contains one or more words, letters, symbols, or emblems related to a determination under § 1003.600(a);

(2) In the case of a printed solicitation or an advertisement, each reproduction, reprinting, or distribution of such item related to a determination under § 1003.600(a);

(3) In the case of a broadcast or telecast, each airing of a single commercial or solicitation related to a determination under § 1003.600(a);

(4) In the case of electronic mail (email) messages, each separate email address that received the email message that contains one or more words, letters, symbols, or emblems related to a determination under § 1003.600(a);

(5) In the case of a Web page (such as an Internet site) accessed by a computer or other electronic means, each instance in which an individual views such Web page that contains one or more words, letters, symbols, or emblems related to a determination under § 1003.600(a); and

(6) In the case of a telemarketing solicitation, each individual unsolicited telephone call regarding the delivery of an item or service under Medicare or Medicaid related to a determination under § 1003.600(a).

§ 1003.620 Determinations regarding the amount of penalties.

(a) In considering the factors listed in § 1003.140, the following circumstances are to be considered—

(1) The nature and objective of the advertisement, solicitation, or other communication and the degree to which it had the capacity to deceive members of the public;

(2) The frequency and scope of the violation and whether a specific segment of the population was targeted; and

(3) The prior history of the individual, organization, or entity in its willingness or refusal to comply with informal requests to correct violations.

(b) The use of a disclaimer of affiliation with the United States Government, the Department, or its programs will not be considered as a mitigating factor in determining the amount of penalty in accordance with § 1003.600(a).

■ 9. Add and reserve subpart G to read as follows:

Subpart G—[Reserved]

■ 10. Add subparts H through M to read as follows:

Subpart H—CMPs for Adverse Action Reporting and Disclosure Violations

Sec.
1003.800 Basis for civil money penalties.
1003.810 Amount of penalties.
1003.820 Determinations regarding the amount of penalties.

Subpart I—CMPs for Select Agent Program Violations

1003.900 Basis for civil money penalties.
1003.910 Amount of penalties.
1003.920 Determinations regarding the amount of penalties.

Subpart J—CMPs, Assessments, and Exclusions for Beneficiary Inducement Violations

1003.1000 Basis for civil money penalties, assessments, and exclusions.
1003.1010 Amount of penalties and assessments.
1003.1020 Determinations regarding the amount of penalties and assessments and the period of exclusion.

Subpart K—CMPs for the Sale of Medicare Supplemental Policies.

1003.1100 Basis for civil money penalties.
1003.1110 Amount of penalties.
1003.1120 Determinations regarding the amount of penalties.

Subpart L—CMPs for Drug Price Reporting

1003.1200 Basis for civil money penalties.
1003.1210 Amount of penalties.
1003.1220 Determinations regarding the amount of penalties.

Subpart M—CMPs for Notifying a Skilled Nursing Facility, Nursing Facility, Home Health Agency, or Community Care Setting of a Survey

1003.1300 Basis for civil money penalties.
1003.1310 Amount of penalties.
1003.1320 Determinations regarding the amount of penalties.

Subpart H—CMPs for Adverse Action Reporting and Disclosure Violations

§ 1003.800 Basis for civil money penalties.

The OIG may impose a penalty against any person (including an insurance company) who it determines—

(a) Fails to report information concerning—

(1) A payment made under an insurance policy, self-insurance, or otherwise for the benefit of a physician, dentist, or other health care practitioner in settlement of, or in satisfaction in whole or in part of, a medical malpractice claim or action or a judgment against such a physician, dentist, or other practitioner in accordance with section 421 of Public Law 99–660 (42 U.S.C. 11131) and as required by regulations at 45 CFR part 60 or

(2) An adverse action required to be reported under section 1128E, as established by section 221 of Public Law 104–191.

(b) Improperly discloses, uses, or permits access to information reported in accordance with part B of Title IV of Public Law 99–660 (42 U.S.C. 11137) or regulations at 45 CFR part 60. (The disclosure of information reported in accordance with part B of Title IV in response to a subpoena or a discovery request is considered an improper disclosure in violation of section 427 of Public Law 99–660. However, disclosure or release by an entity of

original documents or underlying records from which the reported information is obtained or derived is not considered an improper disclosure in violation of section 427 of Pub. L. 99–660.)

§ 1003.810 Amount of penalties.

The OIG may impose a penalty of not more than—

(a) $11,000 for each payment for which there was a failure to report required information in accordance with § 1003.800(a)(1) or for each improper disclosure, use, or access to information in accordance with a determination under § 1003.800(b); and

(b) $25,000 against a health plan for each failure to report information on an adverse action required to be reported in accordance with section 1128E of the Act and § 1003.800(a)(2).

§ 1003.820 Determinations regarding the amount of penalties.

In determining the amount of any penalty in accordance with this subpart, the OIG will consider the factors listed in § 1003.140.

Subpart I—CMPs for Select Agent Program Violations

§ 1003.900 Basis for civil money penalties.

The OIG may impose a penalty against any person who it determines in accordance with this part is involved in the possession or use in the United States, receipt from outside the United States or transfer within the United States, of select agents and toxins in violation of 42 CFR part 73 as determined by the HHS Secretary, in accordance with sections 351A(b) and (c) of the Public Health Service Act.

§ 1003.910 Amount of penalties.

For each individual violation of section 351A(b) or (c) of the Public Health Service Act or 42 CFR part 73, the OIG may impose a penalty of not more than $250,000 in the case of an individual, and not more than $500,000 in the case of any other person.

§ 1003.920 Determinations regarding the amount of penalties.

In considering the factors listed in § 1003.140, aggravating circumstances include:

(a) The Responsible Official participated in or knew, or should have known, of the violation;

(b) The violation was a contributing factor, regardless of proportionality, to an unauthorized individual's access to or possession of a select agent or toxin, an individual's exposure to a select agent or toxin, or the unauthorized removal of a select agent or toxin from the person's physical location as identified on the person's certificate of registration; or

(c) The person previously received a statement of deficiency from the Department or the Department of Agriculture for the same or substantially similar conduct.

Subpart J—CMPs, Assessments, and Exclusions for Beneficiary Inducement Violations

§ 1003.1000 Basis for civil money penalties, assessments, and exclusions.

(a) The OIG may impose a penalty, an assessment, and an exclusion against any person who it determines offers or transfers remuneration (as defined in § 1003.110) to any individual eligible for benefits under Medicare or a State health care program that such person knows, or should know, is likely to influence such individual to order or to receive from a particular provider, practitioner, or supplier, any item or service for which payment may be made, in whole or in part, under Medicare or a State health care program.

(b) The OIG may impose a penalty against any person who it determines offered any financial or other incentive for an individual entitled to benefits under Medicare not to enroll, or to terminate enrollment, under a group health plan or a large group health plan that would, in the case of such enrollment, be a primary plan as defined in section 1862(b)(2)(A) of the Act.

§ 1003.1010 Amount of penalties and assessments.

The OIG may impose a penalty of not more than—

(a) $10,000 for each individual violation of § 1003.1000(a) and an assessment of not more than 3 times the amount for each item or service wrongfully claimed; and

(b) $5,000 for each individual violation of § 1003.1000(b).

§ 1003.1020 Determinations regarding the amount of penalties and assessments and the period of exclusion.

In determining the amount of any penalty or assessment or the period of exclusion under this subpart, the OIG will consider the factors listed in § 1003.140, as well as the amount of remuneration or the amount or nature of any other incentive.

Subpart K—CMPs for the Sale of Medicare Supplemental Policies

§ 1003.1100 Basis for civil money penalties.

The OIG may impose a penalty against any person who—

(a) Knowingly and willfully makes or causes to be made or induces or seeks to induce the making of any false statement or representation of a material fact with respect to—

(1) The compliance of any policy with the standards and requirements for Medicare supplemental policies set forth in section 1882(c) of the Act or in promulgating regulations, or

(2) The use of the emblem designed by the Secretary under section 1882(a) of the Act for use as an indication that a policy has received the Secretary's certification;

(b) Falsely assumes or pretends to be acting, or misrepresents in any way that he or she is acting, under the authority of or in association with Medicare or any Federal agency, for the purpose of selling or attempting to sell insurance, or in such pretended character demands, or obtains money, paper, documents, or anything of value;

(c) Knowingly, directly, or through his or her agent, mails or causes to be mailed any matter for the advertising, solicitation, or offer for sale of a Medicare supplemental policy, or the delivery of such a policy, in or into any State in which such policy has not been approved by the State commissioner or superintendent of insurance;

(d) Issues or sells to any individual entitled to benefits under Part A or enrolled under Part B of title XVIII of the Act—

(1) A health insurance policy with knowledge that the policy duplicates health benefits to which the individual is otherwise entitled under title XVIII or title XIX of the Act,

(2) A health insurance policy (other than a Medicare supplemental policy) with knowledge that the policy duplicates health benefits to which the individual is otherwise entitled, other than benefits to which the individual is entitled under a requirement of State or Federal law,

(3) In the case of an individual not electing a Part C plan, a Medicare supplemental policy with knowledge that the individual is entitled to benefits under another Medicare supplemental policy, or

(4) In the case of an individual electing a Part C plan, a Medicare supplemental policy with knowledge that the policy duplicates health benefits to which the individual is otherwise entitled under the Part C plan or under another Medicare supplemental policy;

(e) Issues or sells a health insurance policy (other than a policy described in section 1882(d)(3)(A)(vi)(III)) to any individual entitled to benefits under Part A or enrolled under Part B of title

XVIII of the Act who is applying for a health insurance policy and fails to furnish the appropriate disclosure statement described in section 1882(d)(3)(A)(vii); or

(f) Issues or sells a Medicare supplemental policy to any individual eligible for benefits under Part A or enrolled under Part B of title XVIII of the Act without obtaining the written statement or the written acknowledgment described in section 1882(d)(3)(B) of the Act.

§ 1003.1110 Amount of penalties.

The OIG may impose a penalty of not more than—

(a) $5,000 for each individual violation of § 1003.1100(a), (b), or (c).

(b) $25,000 for each individual violation of § 1003.1100(d), (e), or (f) by a seller who is also the issuer of the policy; and

(c) $15,000 for each individual violation of § 1003.1100(d), (e), or (f) by a seller who is not the issuer of the policy.

§ 1003.1120 Determinations regarding the amount of penalties.

In determining the amount of the penalty in accordance with this subpart, the OIG will consider the factors listed in § 1003.140.

Subpart L—CMPs for Drug Price Reporting

§ 1003.1200 Basis for civil money penalties.

The OIG may impose a penalty against—

(a) Any wholesaler, manufacturer, or direct seller of a covered outpatient drug that—

(1) Refuses a request for information by, or

(2) Knowingly provides false information to, the Secretary about charges or prices in connection with a survey being conducted pursuant to section 1927(b)(3)(B) of the Act; and

(b) Any manufacturer with an agreement under section 1927 of the Act that—

(1) Fails to provide any information required by section 1927(b)(3)(A) of the Act by the deadlines specified therein, or

(2) Knowingly provides any item information required by section 1927(b)(3)(A) or (B) of the Act that is false.

§ 1003.1210 Amount of penalties.

The OIG may impose a penalty of not more than—

(a) $100,000 for each individual violation of § 1003.1200(a) or § 1003.1200(b)(2); and

(b) $10,000 for each day that such information has not been provided in violation of § 1003.1200(b)(1).

§ 1003.1220 Determinations regarding the amount of penalties.

In determining the amount of the penalty in accordance with this subpart, the OIG will consider the factors listed in § 1003.140.

Subpart M—CMPs for Notifying a Skilled Nursing Facility, Nursing Facility, Home Health Agency, or Community Care Setting of a Survey

§ 1003.1300 Basis for civil money penalties.

The OIG may impose a penalty against any individual who notifies, or causes to be notified, a skilled nursing facility, nursing facility, home health agency, a community care setting, of the time or date on which a survey pursuant to sections 1819(g)(2)(A), 1919(g)(2)(A), 1891(c)(1), or 1929(i) of the Act is scheduled to be conducted.

§ 1003.1310 Amount of penalties.

The OIG may impose a penalty of not more than $2,000 for each individual violation of § 1003.1300.

§ 1003.1320 Determinations regarding the amount of penalties.

In determining the amount of the penalty in accordance with this subpart, the OIG will consider the factors listed in § 1003.140.

■ 11. Add and reserve subpart N to read as follows:

Subpart N—[Reserved]

■ 12. Add subpart O to read as follows:

Subpart O—Procedures for the Imposition of CMPs, Assessments, and Exclusions

Sec.

1003.1500 Notice of proposed determination.
1003.1510 Failure to request a hearing.
1003.1520 Collateral estoppel.
1003.1530 Settlement.
1003.1540 Judicial review.
1003.1550 Collection of penalties and assessments.
1003.1560 Notice to other agencies.
1003.1570 Limitations.
1003.1580 Statistical sampling.
1003.1590 Effect of exclusion.
1003.1600 Reinstatement.

Subpart O—Procedures for the Imposition of CMPs, Assessments, and Exclusions

§ 1003.1500 Notice of proposed determination.

(a) If the OIG proposes a penalty and, when applicable, an assessment, or proposes to exclude a respondent from participation in all Federal health care programs, as applicable, in accordance with this part, the OIG must serve on the respondent, in any manner authorized by Rule 4 of the Federal Rules of Civil Procedure, written notice of the OIG's intent to impose a penalty, an assessment, and an exclusion, as applicable. The notice will include—

(1) Reference to the statutory basis for the penalty, assessment, and exclusion;

(2) A description of the violation for which the penalty, assessment, and exclusion are proposed (except in cases when the OIG is relying upon statistical sampling in accordance with § 1003.1580, in which case the notice shall describe those claims and requests for payment constituting the sample upon which the OIG is relying and will briefly describe the statistical sampling technique used by the OIG);

(3) The reason why such violation subjects the respondent to a penalty, an assessment, and an exclusion,

(4) The amount of the proposed penalty and assessment, and the length of the period of proposed exclusion (where applicable);

(5) Any factors and circumstances described in this part that were considered when determining the amount of the proposed penalty and assessment and the length of the period of exclusion;

(6) Instructions for responding to the notice, including—

(i) A specific statement of the respondent's right to a hearing and

(ii) A statement that failure to request a hearing within 60 days permits the imposition of the proposed penalty, assessment, and exclusion without right of appeal; and

(7) In the case of a notice sent to a respondent who has an agreement under section 1866 of the Act, the notice also indicates that the imposition of an exclusion may result in the termination of the respondent's provider agreement in accordance with section 1866(b)(2)(C) of the Act.

(b) Any person upon whom the OIG has proposed the imposition of a penalty, an assessment, or an exclusion may appeal such proposed penalty, assessment, or exclusion to the DAB in accordance with 42 CFR 1005.2. The provisions of 42 CFR part 1005 govern such appeals.

(c) If the respondent fails, within the time period permitted, to exercise his or her right to a hearing under this section, any exclusion, penalty, or assessment becomes final.

§ 1003.1510 Failure to request a hearing.

If the respondent does not request a hearing within 60 days after the notice prescribed by § 1003.1500(a) is received,

as determined by 42 CFR 1005.2(c), by the respondent, the OIG may impose the proposed penalty, assessment, and exclusion, or any less severe penalty, assessment, or exclusion. The OIG shall notify the respondent in any manner authorized by Rule 4 of the Federal Rules of Civil Procedure of any penalty, assessment, and exclusion that have been imposed and of the means by which the respondent may satisfy the judgment. The respondent has no right to appeal a penalty, an assessment, or an exclusion with respect to which he or she has not requested a hearing.

§ 1003.1520 Collateral estoppel.

(a) Where a final determination pertaining to the respondent's liability for acts that violate this part has been rendered in any proceeding in which the respondent was a party and had an opportunity to be heard, the respondent shall be bound by such determination in any proceeding under this part.

(b) In a proceeding under this part, a person is estopped from denying the essential elements of the criminal offense if the proceeding—

(1) Is against a person who has been convicted (whether upon a verdict after trial or upon a plea of guilty or nolo contendere) of a Federal crime charging fraud or false statements, and

(2) Involves the same transactions as in the criminal action.

§ 1003.1530 Settlement.

The OIG has exclusive authority to settle any issues or case without consent of the ALJ.

§ 1003.1540 Judicial review.

(a) Section 1128A(e) of the Act authorizes judicial review of a penalty, an assessment, or an exclusion that has become final. The only matters subject to judicial review are those that the respondent raised pursuant to 42 CFR 1005.21, unless the court finds that extraordinary circumstances existed that prevented the respondent from raising the issue in the underlying administrative appeal.

(b) A respondent must exhaust all administrative appeal procedures established by the Secretary or required by law before a respondent may bring an action in Federal court, as provided in section 1128A(e) of the Act, concerning any penalty, assessment, or exclusion imposed pursuant to this part.

(c) Administrative remedies are exhausted when a decision becomes final in accordance with 42 CFR 1005.21(j).

§ 1003.1550 Collection of penalties and assessments.

(a) Once a determination by the Secretary has become final, collection of any penalty and assessment will be the responsibility of CMS, except in the case of the Maternal and Child Health Services Block Grant Program, in which the collection will be the responsibility of the Public Health Service (PHS); in the case of the Social Services Block Grant program, in which the collection will be the responsibility of the Office of Human Development Services; and in the case of violations of subpart I, collection will be the responsibility of the Program Support Center (PSC).

(b) A penalty or an assessment imposed under this part may be compromised by the OIG and may be recovered in a civil action brought in the United States district court for the district where the claim was presented or where the respondent resides.

(c) The amount of penalty or assessment, when finally determined, or the amount agreed upon in compromise, may be deducted from any sum then or later owing by the United States Government or a State agency to the person against whom the penalty or assessment has been assessed.

(d) Matters that were raised, or that could have been raised, in a hearing before an ALJ or in an appeal under section 1128A(e) of the Act may not be raised as a defense in a civil action by the United States to collect a penalty under this part.

§ 1003.1560 Notice to other agencies.

(a) Whenever a penalty, an assessment, or an exclusion becomes final, the following organizations and entities will be notified about such action and the reasons for it: The appropriate State or local medical or professional association; the appropriate quality improvement organization; as appropriate, the State agency that administers each State health care program; the appropriate Medicare carrier or intermediary; the appropriate State or local licensing agency or organization (including the Medicare and Medicaid State survey agencies); and the long-term-care ombudsman. In cases involving exclusions, notice will also be given to the public of the exclusion and its effective date.

(b) When the OIG proposes to exclude a nursing facility under this part, the OIG will, at the same time the facility is notified, notify the appropriate State licensing authority, the State Office of Aging, the long-term care ombudsman, and the State Medicaid agency of the OIG's intention to exclude the facility.

§ 1003.1570 Limitations.

No action under this part will be entertained unless commenced, in accordance with § 1003.1500(a), within 6 years from the date on which the violation occurred.

§ 1003.1580 Statistical sampling.

(a) In meeting the burden of proof in 42 CFR 1005.15, the OIG may introduce the results of a statistical sampling study as evidence of the number and amount of claims and/or requests for payment as described in this part that were presented, or caused to be presented, by the respondent. Such a statistical sampling study, if based upon an appropriate sampling and computed by valid statistical methods, shall constitute prima facie evidence of the number and amount of claims or requests for payment as described in this part.

(b) Once the OIG has made a prima facie case as described in paragraph (a) of this section, the burden of production shall shift to the respondent to produce evidence reasonably calculated to rebut the findings of the statistical sampling study. The OIG will then be given the opportunity to rebut this evidence.

§ 1003.1590 Effect of exclusion.

The effect of an exclusion will be as set forth in 42 CFR 1001.1901.

§ 1003.1600 Reinstatement.

A person who has been excluded in accordance with this part may apply for reinstatement at the end of the period of exclusion. The OIG will consider any request for reinstatement in accordance with the provisions of 42 CFR 1001.3001 through 1001.3004.

PART 1005 — [AMENDED]

■ 13. The authority citation for Part 1005 continues to read as follows:

Authority: 42 U.S.C. 405(a), 405(b), 1302, 1320a–7, 1320a–7a and 1320c–5.

■ 14. Section 1005.4 is amended by republishing the introductory text for paragraph (c) and revising paragraphs (c)(5) and (c)(6) to read as follows:

§ 1005.4 Authority of the ALJ.

* * * * *

(c) The ALJ does not have the authority to—

* * * * *

(5) Review the exercise of discretion by the OIG to exclude an individual or entity under section 1128(b) of the Act or under part 1003 of this chapter, or determine the scope or effect of the exclusion;

(6) Set a period of exclusion at zero, or reduce a period of exclusion to zero,

in any case where the ALJ finds that an individual or entity committed an act described in section 1128(b) of the Act or under part 1003 of this chapter; or

* * * * *

Dated: January 16, 2014.

Daniel R. Levinson,

Inspector General.

Approved: January 28, 2014.

Kathleen Sebelius,

Secretary.

[FR Doc. 2014–10394 Filed 5–9–14; 8:45 am]

BILLING CODE 4152–01–P

FEDERAL REGISTER

Vol. 79 Monday,

No. 91 May 12, 2014

Part IV

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 413, 416, 440 et al.

Medicare and Medicaid Programs; Regulatory Provisions To Promote Program Efficiency, Transparency, and Burden Reduction; Part II; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 413, 416, 440, 442, 482, 483, 485, 486, 488, 491, and 493

[CMS–3267–F]

RIN 0938–AR49

Medicare and Medicaid Programs; Regulatory Provisions To Promote Program Efficiency, Transparency, and Burden Reduction; Part II

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule reforms Medicare regulations that CMS has identified as unnecessary, obsolete, or excessively burdensome on health care providers and suppliers, as well as certain regulations under the Clinical Laboratory Improvement Amendments of 1988 (CLIA). This final rule also increases the ability of health care professionals to devote resources to improving patient care, by eliminating or reducing requirements that impede quality patient care or that divert resources away from providing high quality patient care. We are issuing this rule to achieve regulatory reforms under Executive Order 13563 on improving regulation and regulatory review and the Department's plan for retrospective review of existing rules. This is the latest in a series of rules developed by CMS over the last 5 years to reform existing rules to reduce unnecessary costs and increase flexibility for health care providers.

DATES: These regulations are effective on July 11, 2014, with the exception of amendments to 42 CFR Part 483, which are effective May 12, 2014.

FOR FURTHER INFORMATION CONTACT: Lauren Oviatt, (410) 786–4683. We have also included a subject matter expert under the ''Provisions of the Proposed Rule and Analysis and Response to Public Comments'' section for each provision set out in this final rule.

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I. Summary and Background

A. Executive Summary of This Final Rule

1. Purpose

In Executive Order 13563, ''Improving Regulations and Regulatory Review'', the President recognized the importance of a streamlined, effective, and efficient regulatory framework designed to promote economic growth, innovation, job-creation, and competitiveness. To achieve a more robust and effective regulatory framework, the President has directed each executive agency to establish a plan for ongoing retrospective review of existing significant regulations to identify those rules that can be eliminated as obsolete, unnecessary, burdensome, or counterproductive or that can be modified to be more effective, efficient, flexible, and streamlined. This final rule responds directly to the President's instructions in Executive Order 13563 by reducing outmoded or unnecessarily burdensome rules, and thereby increasing the ability of health care entities to devote resources to providing high quality patient care.

2. Summary of the Major Provisions

This rule reduces regulatory burden on providers and suppliers by modifying, removing, or streamlining current regulations that are excessively burdensome.

- *Radiology services in ambulatory surgical centers:* We are reducing the requirements that Ambulatory Surgical Centers (ASCs) must meet in order to provide radiological services to patients. Our requirements will reflect only those services that ASCs are permitted to perform. ASCs are currently subject to the full hospital requirements for radiology services even though they are only permitted to provide limited radiologic services integral to the performance of certain surgical procedures.
- *Hospital registered dietitian privileges:* We are permitting registered dietitians and other clinically qualified nutrition professionals to be privileged to order patient diets under the hospital conditions of participation (CoPs).
- *Hospital supervision of radiopharmaceutical preparation:* We are revising the nuclear medicine services CoP to remove the modifier ''direct'' from the in-house preparation supervision requirement. The presence of a pharmacist, MD, or DO will no longer be required during the delivery of off-hour nuclear medicine tests. These changes are based on the Society of Nuclear Medicine and Molecular Imaging recommendations on this issue.
- *Hospital reclassification of swing-bed services:* We are revising the requirements by relocating the swing-bed services CoP to Subpart D, to classify swing beds as an optional service. This revision allows an accredited hospital's compliance with ''swing bed'' requirements to be evaluated by a CMS-approved accrediting organization. This reduces the burden on hospitals by not requiring an additional State survey agency survey specifically for ''swing bed'' approval.
- *Transplant centers reports to CMS:* The CoPs require transplant programs to notify CMS of certain changes related to the center's transplant program. The current system for transplant center data analysis, in effect, requires the centers to submit data which CMS routinely receives through other sources. This creates unnecessary paperwork and burden on the transplant program and does not contribute to Federal oversight. We are eliminating this redundant data submission requirement.

• *Transplant center re-approval process:* The current transplant survey process and regulatory criteria require programs be subject to an automatic onsite review of compliance with key CoPs under a 3-year re-approval cycle under particular conditions. This leads some transplant programs to undergo an onsite survey that may not be necessary to ensure a proper level of federal oversight, and it also does not always provide for the most effective method to target survey resources where they are most needed. In addition, since we are already receiving the data we need to determine if a center is complying with outcome requirements, eliminating this automatic re-approval cycle will not result in any reduction in Federal oversight of the center. It will, however, enable us to more efficiently use our survey resources. In lieu of the automatic 3-year re-approval cycle, we are providing more flexibility in the re-approval cycle to be able to focus survey attention where it is most needed. We are also clarifying the following—(1) the review of mitigating factors process could occur at any time there was non-compliance with the CoPs, and (2) that compliance with the CoPs is a continuous requirement, as already specified in § 488.61(c).

• *Long term care sprinkler deadline extension:* All buildings containing long term care (LTC) facilities were required to have automatic sprinkler systems installed throughout the building by August 13, 2013 (§ 483.70(a)(8)). Based on public feedback, we understand that some facilities were not able to meet the 2013 deadline. In order to maintain access to LTC facilities, and in recognition of financing difficulties faced by some providers, we are allowing LTC facilities the opportunity to apply for a deadline extension, not to exceed 2 years, if certain conditions apply. An additional extension may be granted for up to 1 year, depending on the need and particular circumstances.

• *CAH provision of services:* Critical Access Hospital (CAH) CoPs require that a CAH develop its patient care policies with the advice of ''at least one member who is not a member of the CAH staff.'' We believe that this provision is no longer necessary and that the original reasons for including this requirement (for example, lack of local resources and in-house expertise) have been effectively addressed. Also, based on our experience with CAHs and input from the provider community, it is a challenge for facilities to comply with this requirement. These challenges include the amount of time it takes to familiarize the non-staff member with the CAH's operations, high turnover, and, in many cases, the expense of paying outside personnel.

• *CAH, RHC, and FQHC physician responsibilities:* The regulations for CAHs, Rural Health Clinics (RHCs), and Federally Qualified Health Centers (FQHCs), require a physician to be present for sufficient periods of time, at least once in every 2 week period, except in extraordinary circumstances. Some providers in extremely remote areas or areas that have geographic barriers have indicated that they find it difficult to comply with the precise biweekly schedule requirement. Many rural populations have limited access to care due to a shortage of health care professionals, especially physicians. Recent improvements in, and expansion of, telemedicine services allow for physicians to provide certain types of care to remote facilities at lower costs. We are revising the CAH and RHC/FQHC regulations to eliminate the requirement that a physician must be onsite at least once in every 2-week period. CAHs and RHCS/FQHCs will continue to be required to have a physician onsite for sufficient periods of time depending on the needs of the facility and its patients.

Clinical Laboratory Improvement Amendments Revisions: This final rule makes a number of clarifications and changes pertaining to CMS regulations governing proficiency testing referrals under the Clinical Laboratory Improvement Amendments of 1988 (CLIA). These changes prevent confusion on the part of laboratories, reduce the risk of noncompliance, and establish policies under which certain proficiency testing (PT) referrals by laboratories may not generally be subject to revocation of a CLIA certificate, or a two-year prohibition on laboratory ownership or operation that may be applied to an owner and an operator when a CLIA certificate is revoked.

• *Treatment of proficiency testing samples:* We are adding a clarifying statement that explicitly notes that the requirement to test PT samples in the same manner as patient specimens does not mean that it is acceptable to refer PT samples to another laboratory for testing even if that is the protocol for patient specimens.

• *Intentional referral carve-out:* We are carving out a narrow exception in our long-standing interpretation of what constitutes an ''intentional'' referral of PT samples. In these instances, the laboratory will be subject to alternate sanctions.

• *New definitions:* To clarify the stipulations of the intentional referral carve-out, we are also adding the following terms, with their definitions, to the regulation: Reflex testing, Confirmatory testing, and Distributive testing.

• *Application of the TEST Act:* We are also making a regulatory change, pursuant to the TEST Act, to acknowledge CMS's ability to substitute alternative sanctions in lieu of the two-year prohibition for the owner or operator when a CLIA certificate is revoked. In the May 2, 2014, **Federal Register** at 79 FR 25436, we published the Medicare Program; Prospective Payment System for Federally Qualified Health Centers; Changes to Contracting Policies for Rural Health Clinics; and Changes to Clinical Laboratory Improvement Amendments of 1988 Enforcement Actions for Proficiency Testing Referral final rule with comment period (the ''FQHC PPS/CLIA final rule with comment period''), which finalized proposals for implementing the TEST Act.

Provisions That Will Remove Obsolete or Duplicative Regulations or Provide Clarifying Information: We are removing regulations set out in the Code of Federal Regulations (CFR) that have become obsolete and are no longer needed or enforced and clarifying other provisions.

• *Hospital medical staff:* We are clarifying the requirement that a hospital's medical staff must be composed of doctors of medicine or osteopathy but that it may also include, in accordance with State laws, including scope-of-practice laws, other categories of physicians (as set out at § 482.12(c)) and non-physician practitioners who are determined to be eligible for appointment by the governing body.

• *Transplant centers outcome review:* The transplant center CoPs state that, ''[e]xcept for lung transplants, CMS will review adult and pediatric outcomes separately when a center requests Medicare approval to perform both adult and pediatric transplants.'' Changes to the transplant center reporting system have made the separate review for lung transplant data obsolete. Therefore, we are removing this language.

• *Transplant center volume and clinical experience requirements:* The transplant center CoPs state that ''[t]he required number of transplants must have been performed during the time frame reported in the most recent SRTR center-specific report.'' The Scientific Registry for Transplant Recipients (SRTR) provides statistical information about transplant outcomes and transplant programs nationwide. Under the current regulations, however, there

is no requirement that a certain number of transplants be performed during a particular period that is covered in a single SRTR center-specific report. This has resulted in transplant centers being confused about the volume of transplants they are required to perform during any particular period of time covered by the SRTR center-specific reports. We are making changes to clarify the transplant volume and clinical experience requirements.

• *RHC/FQHC definition of physician:* The definition of a ''physician'' in the RHC/FQHC regulations does not conform to the definition of a ''physician'' in the Medicare payment regulations. We are revising the regulation to eliminate possible confusion in the provider community by making the definition consistent with that used in the Medicare payment regulations.

Final Provisions that Respond to Stakeholder Concerns: We have identified changes to improve clarity and respond to concerns raised by the public.

• *Hospital governing body:* We are adding a new provision to the ''Medical staff'' standard of the governing body CoP. This new provision requires a hospital's governing body to directly consult periodically throughout the calendar year or fiscal year with the individual responsible for the organized medical staff of the hospital, or his or her designee. For a multi-hospital system using a single governing body to oversee multiple hospitals within its system, this provision requires the single governing body to consult directly with the individual responsible for the organized medical staff (or his or her designee) of each hospital within its system in addition to the other requirements finalized here. We are also removing the requirement for a medical staff member, or members, to be on a hospital's governing body.

• *Hospital medical staff:* We are retaining the current regulatory provision at § 482.22, but reinterpreting it to allow for either a unique medical staff for each hospital or for a unified and integrated medical staff shared by multiple hospitals within a hospital system. We are adding four new provisions to hold a hospital responsible for showing that it actively addresses its use of a system unified and integrated medical staff model. We are requiring that the medical staff members holding privileges at each separately certified hospital in the system have voted either to participate in a unified and integrated medical staff structure or to opt out of such a structure, and to maintain a hospital-specific separate and distinct medical staff for their respective hospital. We are requiring that the unified and integrated medical staff has bylaws, rules, and requirements that describe its processes for self-governance, appointment, credentialing, privileging, and oversight, as well as its peer review policies and due process rights guarantees, and which include a process for the members of the medical staff of each separately certified hospital (that is, all medical staff members who hold specific privileges to practice at that hospital) to be advised of their rights to opt out of the unified and integrated medical staff structure after a majority vote by the members to maintain a separate and distinct medical staff for their hospital. We are requiring that the unified and integrated medical staff is established in a manner that takes into account each hospital's unique circumstances, and any significant differences in patient populations and services offered in each hospital. We are also requiring that the unified and integrated medical staff gives due consideration to the needs and concerns of members of the medical staff, regardless of practice or location, and the hospital has mechanisms in place to assure that issues localized to particular hospitals are duly considered and addressed.

• *Practitioners permitted to order hospital outpatient services:* We are revising the Outpatient services CoP to allow for practitioners who are not on the hospital's medical staff to order hospital outpatient services for their patients when authorized by the medical staff and allowed by State law.

• *Hospital diet terminology:* We are updating terminology related to ''diets'' and ''therapeutic diets'' in the CoPs.

• *Request for comment on RHC services:* We sought public comment on potential changes we could make to regulatory or other requirements that could reduce barriers to the provision of telehealth, hospice, or home health services in an RHC. We summarize and respond to these public comments in this final rule.

Technical Corrections: We are making technical corrections to some regulations.

• *Organ Procurement Organizations (OPOs):* We are making some technical corrections to the CoPs for OPOs.

• *Intermediate Care Facilities for Individuals with Intellectually Disabilities (ICFs/IID):* We are making some technical corrections to clarify state survey agency certification survey requirements for ICF/IIDs.

• *Rural Health Clinics (RHCs):* We are correcting a technical error in the regulations by amending § 491.8(a)(6) to conform to section 6213(a)(3) of OBRA '89 (Pub. L. 101–239), which requires that a nurse practitioner (NP), physician assistant (PA), or certified nurse-midwife (CNM) be available to furnish patient care at least 50 percent of the time the RHC operates.

3. Summary of Costs and Benefits

a. Overall Impact

This final rule will create savings and reduce burden in many areas. Several of the changes create measurable monetary savings for providers and suppliers, while others create savings of time and administrative burden. We estimate one-time savings of $22 million for the sprinkler deadline extension in long term care facilities, and annual recurring savings of about $660 million for other provisions in this final rule.

b. Section-by-Section Economic Impact Estimates

The following table summarizes the provisions for which we are able to provide specific estimates for savings or burden reductions (these estimates are uncertain and could be substantially higher or lower, as explained in the regulatory impact analysis section of this rule):

Issue	Frequency	Estimated savings or benefits ($ millions)
Ambulatory Surgical Centers:		
• Radiology Services	Recurring annually	41
Hospitals:		
• Food and dietetic services	Recurring annually	459
• Nuclear medicine services	Recurring annually	77
Transplant Centers:		

Issue	Frequency	Estimated savings or benefits ($ millions)
• Reports to CMS& Survey Changes	Recurring annually	<1
Long Term Care Facilities:		
• Sprinkler Deadline Extension	One-time	22
Rural Health:		
• CAH & RHC/FQHC Physician responsibilities	Recurring annually	76
• CAH Provision of services	Recurring annually	<1
CLIA:		
• PT Referral	Recurring annually	2
Total		679

B. Legislative and Regulatory History

In January 2011, the President issued Executive Order 13563, ''Improving Regulation and Regulatory Review.'' Section 6 of that order requires agencies to identify rules that may be ''outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.'' In accordance with the Executive Order, the Secretary of the Department of Health & Human Services (HHS) published on August 22, 2011, a Plan for Retrospective Review of Existing Rules (*http://www.whitehouse.gov/21stcenturygov/actions/21st-century-regulatory-system*). As shown in the plan, the Centers for Medicare & Medicaid Services (CMS) has identified many obsolete and burdensome regulations that could be eliminated or reformed to improve effectiveness or reduce unnecessary reporting requirements and other costs, with a particular focus on freeing up resources that health care providers, health plans, and States could use to improve or enhance patient health and safety. CMS has also examined policies and practices not codified in rules that could be changed or streamlined to achieve better outcomes for patients while reducing burden on providers of care. In addition, CMS has identified non-regulatory changes to increase transparency and to become a better business partner. For example:

• We have automated our review of Health Services Delivery tables, which gives Medicare Advantage (MA) applicants for participation as MA plans immediate feedback on their deficiencies before submitting applications so that they can address them up-front.

• We have changed the timeframes during which a Medicare durable medical equipment (DME) supplier may contact a beneficiary concerning refilling an order from 7 days to 15 days before the beneficiary's refill date.

• We have streamlined the Skilled Nursing Facility Discharge Assessment through Minimum Data Set (MDS) 3.0 which has been designed to improve the reliability, accuracy, and usefulness of the MDS. The change included the removal of data collections in the MDS that are not relevant to the measurement of quality or used for reimbursement purposes.

As explained in the plan, HHS is committed to the President's vision of creating an environment where agencies incorporate and integrate the ongoing retrospective review of regulations into Department operations to achieve a more streamlined and effective regulatory framework. The objectives are to improve the quality of existing regulations consistent with statutory requirements; streamline procedural solutions for businesses to enter and operate in the marketplace; maximize net benefits (including benefits that are difficult to quantify); and reduce costs and other burdens on businesses to comply with regulations. Consistent with the commitment to periodic review of the regulatory burden on providers and to public participation, HHS will continue to assess its existing significant regulations in accordance with the requirements of Executive Order 13563.

In accordance with these goals, we published two final rules on May 16, 2012. The first rule, titled ''Reform of Hospital and Critical Access Hospital Conditions of Participation'' (77 FR 29034), finalized updates to the Medicare CoPs and reduces regulatory burden for hospitals and CAHs. The second rule, titled ''Regulatory Provisions To Promote Program Efficiency, Transparency, and Burden Reduction'' (77 FR 29002), addressed burdensome regulatory requirements for a broader range of healthcare providers and suppliers who provide care to Medicare and Medicaid beneficiaries. We proposed a second set of burden-reducing rules on February 7, 2013 (78 FR 9216). This final rule is a continuation of those efforts.

II. Provisions of the Proposed Rule and Analysis and Response to Public Comments

A. Ambulatory Surgical Centers

Section 1832(a)(2)(F)(i) of the Act specifies that Ambulatory Surgical Centers (ASCs) must meet health, safety, and other requirements as specified by the Secretary in regulation in order to participate in Medicare. The Secretary is responsible for ensuring that the Conditions for Coverage (CfCs) and their enforcement protect the health and safety of all individuals treated by ASCs, whether they are Medicare beneficiaries or other patients.

To implement the CfCs, we determine compliance through State survey agencies that conduct onsite inspections of ASC, applying these requirements to the ASCs they survey. ASCs also may be deemed to meet Medicare CfCs if they are accredited by one of the national accrediting organizations that have a CMS-approved Medicare ASC accreditation program.

The ASC CfCs were first published on August 5, 1982 (47 FR 34082), and were subsequently amended several times in the last four years. A final rule published on November 18, 2008 (73 FR 68502), revised four existing health and safety CfCs and created three new health and safety CfCs (42 CFR 416.41 through 416.43 and 416.49 through 416.52); a subsequent final rule amended the Patient rights CfC on October 24, 2011 (76 FR 65886); and most recently a final rule published on May 16, 2012, amended the requirements governing emergency equipment that ASCs must maintain (77 FR 29002).

Section 416.49(b) of Title 42 of the Code of Federal Regulations outlines the radiologic services requirements that ASCs must meet in order to be Medicare-certified. Since ASCs are facilities that operate exclusively to provide a specific range of surgical procedures (see § 416.2), they may provide radiologic services only to the extent that such services are an integral

part of the procedures they perform. Section 416.49(b)(1) states that the ASC must have procedures for obtaining radiological services from a Medicare-approved facility to meet the needs of patients. Section 416.49(b)(2) requires that the ASC's radiologic services must meet the hospital CoPs for radiologic services specified in § 482.26. However, since adopting this rule in 2008, we have learned that some of the hospital CoP requirements are unduly burdensome for ASCs to meet. In particular, the hospital CoP requirement to have a radiologist supervise the provision of radiologic services is unduly burdensome and overly aggressive, as many ASCs are having great difficulty locating a radiologist to supervise the minimal ASC radiologic services provided. The ASC CfCs were first published in 1982 and did not include a radiologist supervision requirement until the 2008 final rule. Moreover, the cost of privileging radiologists as members of an ASC's medical staff and paying radiologists' fees for oversight of radiology studies that are limited to those which are integral to a surgical procedure, with the results applied immediately by the operating physician, is often needlessly burdensome. The ASC governing body, as set out at § 416.41, is responsible for the oversight and accountability for the quality assessment and performance improvement program, and is responsible for ensuring that all policies and services provide quality healthcare in a safe environment. As such, the provision requires that the ASC governing body be responsible for determining if any procedures, now or in the future, require additional review by a radiologist. In addition, the medical staff CfC at § 416.45 requires such governing body be accountable for the medical staff, and to ensure that such staff members are legally and professionally qualified for the positions to which they are appointed and for the performance of the privileges granted. This includes, if applicable, assessing their competency in using imaging as an integral part of the procedures they perform.

In the February 7, 2013, proposed rule, we proposed to remove § 416.49(b)(1) and replace it with the requirement that radiologic services may only be provided when integral to procedures offered by the ASC and must meet the requirements specified in § 482.26(b), (c)(2), and (d)(2). We also proposed to remove the existing language at § 416.49(b)(2) and replace it with the requirement that an MD/DO who is qualified by education and experience in accordance with State law and ASC policies must supervise the provision of radiologic services. We stated that we believe these proposed changes to the ASC radiologic services requirements would assure the safety of these services while being less burdensome for Medicare-certified ASC facilities. We requested public comments on whether these proposed changes would allow for appropriate oversight of radiologic procedures conducted in ASCs.

We also noted that there is a technical error in § 416.42(b)(2) of the ASC CfCs and proposed to correct this error. Paragraph (b)(2) references ''paragraph (d) of this section'' but § 416.42 does not have a paragraph (d). We proposed to correct the error by referencing paragraph (c) of that section instead.

We received fifty-eight timely public comments on our proposed changes to the ASC radiologic services requirements. Commenters included individual clinicians, ASCs, organizations and national associations that represent ASCs, hospitals, healthcare corporations, the nuclear medicine industry, radiologists, and dentists. Overall, the majority of commenters were supportive of the goal of the proposed changes. Summaries of the major issues and our responses are set forth below.

All of the comments, with one exception, expressed strong support for the proposed changes to the oversight of radiologic services in an ASC. Two commenters recommended an alternative supervisory approach for ASC radiologic services, and more than half of the commenters specifically recommended that oversight of radiologic services be directly assigned to the governing body as part of their oversight and operation of the ASC. We did not receive any comments in regards to the technical changes made to § 416.42(b)(2), therefore we are incorporating those changes as proposed in this final rule.

Comment: Two commenters supported the proposal to remove the radiologist supervision requirement in ASCs; however, they suggested that CMS require the supervision rules for ASCs to be the same as those for the Physician Fee Schedule (PFS) and the Hospital Outpatient Prospective Payment System (OPPS). They stated this policy change would allow for radiology studies to be performed under general, direct and personal supervision as defined in § 410.32(b)(3)(i) through (b)(3)(iii).

Response: The regulations referenced at § 410.32(b)(3) are located in the Medicare payment rules at Part 410, Supplementary Medical Insurance Benefits General Provisions. They are part of § 410.32, which addresses the circumstances under which Medicare will pay for diagnostic x-ray tests, diagnostic laboratory tests, and other diagnostic tests. The diagnostic imaging supervision requirements are, therefore, not applicable to ASCs, since ASCs only furnish radiologic services that are integral to a surgical procedure being performed in the ASC.

Comment: A majority of the commenters that supported our proposal to remove the radiologist supervision requirement of radiological services in ASCs also suggested that responsibility for radiologic services should be that of the governing body. Many commenters noted the importance for each ASC's governing body to have the flexibility to oversee radiologic services in keeping with the facility's policies and state law. Several commenters also stated that replacing the radiologist requirement with an MD/DO supervision requirement would not alleviate any financial or clinical burden, and would continue to be too narrow. For example, several dental facilities submitted comments that stated they would not be able to meet the requirement without significant burden, since their ASCs provide only dental services. These facilities do not have a MD or DO on staff, and would therefore continue to incur a burden to employ an extra staff member only to meet the radiological supervision requirements. ASCs that solely provide podiatry surgical services and employ only podiatrists would experience similar difficulties.

Response: We agree with the suggestion of the commenters that requiring supervision of radiologic services to be provided by an MD or DO would still be too restrictive or burdensome for some ASCs. Accordingly, we are revising our proposed language that would have required a doctor of medicine or osteopathy to supervise the provision of radiologic services, to require the ASC governing body appoint an individual who has appropriate qualifications, in accordance with State law and ASC policies, to provide oversight of the ASC's radiologic services. The appointed individual would be responsible for assuring the ASC's compliance with the provisions of § 482.26(b), (c)(2), and (d)(2). We note that the referenced provisions address requirements related to safety for patients and personnel, such as use of safety precautions (shielding, and appropriate storage, use and disposal of radioactive materials) against radiation

hazards; regular equipment inspection and hazard correction; regular review of radiation workers for the amount of radiation exposure; use of radiologic equipment only by qualified personnel; and maintenance of imaging results or records. The person appointed to oversee radiologic services could be someone already working in the ASC who is qualified in accordance with State law and ASC policies. The ASC's governing body will continue to be required to ensure, through the credentialing and privileging process, that the operating surgeon is competent to perform procedures in the ASC safely when using imaging as an integral part of the surgical procedure.

Comment: One commenter opposed the removal of the radiologist supervision requirement by stating that Independent Diagnostic Treatment Facilities (IDTFs) and ASCs need periodic supervision. In addition, the commenter gave examples, such as equipment repair and radiation badge monitoring, that he or she considered part of the supervision responsibilities of the radiologist.

Response: We understand the importance of oversight of issues related to safety and quality in the provision of radiological services. However, after reviewing all of the comments, we believe we have found a suitable balance for radiologic services oversight in ASCs, since it requires continued oversight, through the privileging process, of the surgeon's skill in using radiologic services during a procedure, and by the governing body of day-to-day operational responsibility for oversight of all the other aspects of the ASC's radiologic services by an individual qualified in accordance with state law and ASC policies.

After consideration of the public comments received and discussed above, we are finalizing our proposed changes to § 416.49(b) with revisions. The revised regulation text at § 416.49(b)(2) in the final rule has been changed from ''A doctor of medicine or osteopathy who is qualified by education and experience in accordance with State law and ASC policy must supervise the provision of radiologic services'' to ''If radiologic services are utilized, the governing body must appoint an individual qualified in accordance with State law and ASC policies who is responsible for assuring that all radiologic services are provided in accordance with the requirements of this section.''

Contact for ASC topics: CAPT Jacqueline Leach, USPHS, (410) 786–4282.

B. Intermediate Care Facilities for Individuals With Intellectual Disabilities

In the May 16, 2012, final rule ''Regulatory Provisions To Promote Program Efficiency, Transparency, and Burden Reduction,'' (77 FR 29002) we eliminated the requirement for time-limited agreements for Intermediate Care Facilities for Individuals With Intellectual Disabilities (ICFs/IID) and replaced it with an open-ended agreement which, consistent with nursing facilities, would remain in effect until the Secretary or a State determined that the ICF/IID no longer met the ICF/IID CoPs. We also added a requirement that a certified ICF/IID would be surveyed, on average, every 12 months with a maximum 15-month survey interval. This requirement provides States with more flexibility relative to the current process. These changes were implemented by revising §§ 442.15, 442.109, and 442.110, and by removing § 442.16.

Section 442.105 describes circumstances for when a state survey agency may provide an annual certification of a facility found out of compliance with standards for ICF/IID's. Since time-limited certification is no longer required for ICF/IID's, this section serves no purpose and is confusing. Therefore, we proposed that this section be deleted. We also proposed to make a corresponding change to § 442.101(d)(3) by removing a reference to § 442.105.

A revision to § 442.110(b) made in the May 16, 2012 final rule extended the time for which a state may certify ICFs/IID with standard level deficiencies. However, the section inadvertently and incorrectly maintains time-limited certification for this sub-set of facilities. This is inconsistent with the revised survey regulation for ICFs/IID put in place in the May 16, 2012 final rule, and will create confusion and barriers to its successful implementation. Therefore, we proposed to delete § 442.110 in its entirety.

We also proposed to delete language in § 442.105 and § 442.110 to make it consistent with the intent of the Burden Reduction I regulatory changes to standardize survey processes of ICFs/IID with those of nursing facilities and other certified providers with open-ended certification periods.

We received one comment on the proposed changes for ICFs/IID, which we discuss here:

Comment: The commenter objected to the complete removal of all provisions found at 42 CFR 442.105 and 442.110. The commenter stated that, ''the current rule changes are meant to remove reference to time limited certifications from the ICF/IID regulations, as well as to eliminate language rendered anachronistic by the move to open ended certification agreements.'' The commenter further stated that while they appreciate the importance of clarifying the regulation, they believe that § 442.105 and § 442.110 contain valuable instructions for the surveyors that are not specified elsewhere in the regulation.

Specifically, the commenter mentioned that the complete removal of § 442.105 would remove any reference to the language in § 442.101, which states the requirements for obtaining notice of an ICF/IID's certification before a Medicaid agency executes a provider agreement under § 442.12, leaving only the requirement that the facility submit an acceptable plan of correction covering remaining deficiencies (standard level deficiencies). The commenter further stated that they believe this action removes from Federal regulation the specific requirement that facilities must ensure that any deficiencies do not jeopardize the health and safety of residents or limit the facility's capacity to serve them adequately. Absent this provision at § 442.105, the commenter believes that the only regulatory language addressing this need is located at § 442.117. However, the commenter states that the language at § 442.117 is limited to only situations of immediate jeopardy. The commenter recommended that CMS retain all the language of § 442.105 except § 442.105(d) which refers to a prior certification period.

Response: We appreciate the concerns of the commenter that the complete removal of § 442.105 may limit the ability of the State Survey Agencies and CMS to deny certification to a facility whose deficiencies in the aggregate compromise the facility's ability to provide adequate services. However, we believe that § 442.101(d)(1) does provide this ability through the requirement that the ICFs/IID must meet the CoPs for certification. Deficiencies indicating a lack of ability to provide adequate services are cited at a Condition level and the facility cannot be certified or continue certification unless acceptable corrections are made. We believe that the provisions of deleted section § 442.105 are adequately covered by § 442.101(d)(1) and § 442.117. Therefore we are not changing our proposal based on this comment and are removing § 442.105 as proposed.

Comment: The commenter also objected to the complete removal of § 442.110. The commenter stated that § 442.110 requires that a facility's

certification will be automatically cancelled on a specific date unless the State Survey Agency finds that standard level deficiencies have been corrected or sufficient progress toward correction has been made. The commenter feels that allowing a facility's continued certification to be predicated on correcting deficiencies found by the Survey Agency is an important regulatory tool and should be preserved. The commenter recommended that CMS retain § 442.110 and revise it to state that a facility's certification will be automatically cancelled on a specific date unless the State Survey Agency finds that the deficiencies are corrected or sufficient progress has been made and has a new plan for correction that has been accepted.

Response: We agree with the commenter that it is critical to retain the regulatory language which requires that a facility correct cited deficiencies to retain their certification; however, we do not agree that § 442.110 must include a reference to automatic cancellation of certification. In response to this comment, we will retain existing § 442.110 with revisions stating that ICFs/IID may be certified with standard level deficiencies under § 442.101 only if: (1) the survey agency finds that all deficiencies have been satisfactorily corrected; or (2) the survey agency finds that the facility has made substantial progress in correcting the deficiencies and has a new plan of correction that is acceptable.

Contact for ICFs/IID Topics: Martin Kennedy, 410–786–0784.

C. Hospitals

1. Governing Body (§ 482.12)

On May 16, 2012, we published a final rule, entitled ''Reform of Hospital and Critical Access Hospital Conditions of Participation'' (77 FR 29034). In that rule, we finalized changes to the requirements of the ''Governing body'' CoP, § 482.12, and adopted a policy to allow one governing body to oversee multiple hospitals in a multi-hospital system. Additionally, we added a requirement for a medical staff member, or members, from at least one hospital in the system to be included on the governing body as a means of ensuring communication and coordination between the governing body and the medical staffs of individual hospitals in the system. After publication of the rule, we received considerable feedback that the mandate requiring medical staff representation on the governing body of a hospital could cause unanticipated complications for many hospitals. We recognized that the provision to include a member of the medical staff on a hospital's governing body creates conflicts for some hospitals, particularly public and not-for-profit hospitals. Issues include, but are not limited to, potential conflicts with some State and local laws that require members of a public hospital's governing body to either be publicly elected or appointed by the State's governor or by some other State or local official(s).

Given the complexity of the issue, and in light of industry feedback, we reviewed this requirement and gathered the relevant background information on the issues raised by stakeholders. After consideration of the issues, we proposed to rescind part of the new requirement and to propose an alternative. Specifically, we proposed to remove the requirement for a medical staff member, or members, to serve on a hospital's governing body and proposed to add a requirement that the hospital's governing body directly consult with the individual responsible for the organized medical staff (or his or her designee). While we believe that it is important that our requirements avoid any unnecessary conflicts for hospitals, we believe that it is essential that the requirements also ensure that the medical staff perspective on quality of care is heard by a hospital's governing body. Therefore, we proposed to add a new provision to the ''Medical staff'' standard of the Governing body CoP at § 482.12(a)(10). This new provision would require a hospital's governing body to directly consult with the individual responsible for the organized medical staff of the hospital, or his or her designee. At a minimum, this direct consultation would require a discussion of matters related to the quality of medical care provided to patients of the hospital and must occur periodically throughout the fiscal or calendar year. We indicated in the proposed rule that this proposed language reflects our intention to leave some degree of flexibility for a hospital's governing body (or a multi-hospital system's governing body) to determine how often during the year its consultations with the individual responsible for the organized medical staff of the hospital (or his or her designee) would occur, and that we would expect these consultations to occur at least twice during either a fiscal or calendar year. Moreover, we indicated in the proposed rule that we would expect a hospital (or multi-hospital system) governing body to determine the number of consultations needed based on various factors specific to a particular hospital. These factors would include, but are not limited to, the scope and complexity of hospital services offered, specific patient populations served by a hospital, and any issues of patient safety and quality of care that a hospital's quality assessment and performance improvement program might periodically identify as needing the attention of the governing body in consultation with its medical staff. We also stated that we would expect to see evidence that the governing body is appropriately responsive to any periodic and/or urgent requests from the individual responsible for the organized medical staff of the hospital (or his or her designee) for timely consultation on issues regarding the quality of medical care provided to patients of the hospital.

Additionally, for a multi-hospital system using a single governing body to oversee multiple hospitals within its system, we proposed to require the single governing body to consult directly with the individual responsible for the organized medical staff (or his or her designee) of *each* hospital within its system in addition to the other requirements proposed. In the proposed rule, we stated that we believe this proposal represents the best solution for those hospitals that were unintentionally burdened by the requirement finalized in the May 16, 2012, rule, while still addressing the concerns of many stakeholders who responded to the final rule, many of whom firmly stated their belief that medical staff input on a hospital's governing body is essential to the continuing quality of patient care delivered in the hospital.

We received a total of 83 comments from individuals, medical societies, professional societies, hospital associations, and national organizations on this proposal. The comments reflected a mixed response to our proposal, generally divided between the response of physician and physician groups and hospitals and hospital groups. Here we respond to specific comments:

Comment: Commenters generally asked that CMS retain the requirement for a member of the medical staff to be a member of the governing body and felt that physician representation on the governing body was critical to ensure adequate medical staff input into the quality of medical care provided to hospital patients. Some of these commenters felt that any conflict with state or local laws could be resolved without rescinding the provision requiring a medical staff member to be a member of the governing body. One commenter felt the conflict created by the requirement was overstated.

Response: We appreciate the commenters' concerns. However, as discussed in the preamble to the proposed rule, the existing requirement posed unanticipated complications for many hospitals, especially public and government-owned institutions. We believe it is important to avoid such unnecessary conflicts and complications and that our proposal reflects the most efficient option for doing so. We considered deferring to state and local law as suggested, but remained concerned that such deference would not adequately address and resolve the complications and conflicts that we are addressing. We believe our proposal achieves an appropriate balance between the concerns raised by the commenters and the problems and conflicts created by requiring medical staff membership on the governing body.

Comment: A number of commenters expressed support for our proposal to rescind the requirement. One commenter appreciated our acknowledgment of the legal issues created by the existing requirement.

Response: We appreciate the commenters' support of our proposed changes.

Comment: Generally, commenters were supportive of our intent to ensure meaningful communication between the governing body and the medical staff. Several commenters supported the provision as written, with one stating that CMS' alternative proposal will ensure a hospital's governing body hears the medical staff perspective on quality of care while leaving appropriate flexibility in the composition of the hospital's governing body.

Response: We appreciate the commenters' support of our proposed changes.

Comment: We received a number of comments expressing concern that the proposed consultation requirement would be overly burdensome, particularly for multi-hospital systems with a single governing body. One commenter stated that for systems with large numbers of hospitals and a single governing board, requiring separate consultations between each medical staff representative and the entire governing board would prove unworkable. One commenter suggested instead allowing for ''a committee structure with representatives throughout the system and at a frequency that is flexible.'' Other commenters suggested various committee-based options and greater flexibility in achieving the objectives of meaningful communication between the governing body and the medical staff.

Response: Our proposal gives governing bodies flexibility to determine the most effective and efficient way to meet the requirement. We believe it allows sufficient flexibility for hospitals to meet this requirement in a manner appropriate to each organization. As written, this provision does not require separate consultations with each leader of each medical staff and does not exclude the possibility of consulting with multiple medical staff leaders simultaneously using some form of committee structure, so long as the direct consultation occurs periodically throughout the fiscal or calendar year and includes discussion of matters related to the quality of medical care provided to patients of each hospital. Similar to our discussion in the preamble to the May 16, 2012 Final Rule (77 FR 29038), we expect hospital governing bodies, especially a multi-hospital system's single governing body, to carefully consider the unique needs of the patient populations served by its member hospital(s) and their respective medical staffs when determining the number and the type of consultations needed to achieve the necessary communication between the governing body and the medical staff. Furthermore, this proposal does not preclude medical staff membership on the governing body.

Comment: One commenter felt that the proposed provision would not achieve the objective of meaningful communication and several commenters stated that ''[w]e do not accept the premise that 'direct consultation,' no matter how frequent or in what form, is an adequate substitution for medical staff representation on a hospital's governing body.'' One commenter stated that if this proposal is implemented, medical staffs would be unable to comply with § 482.12(a)(5) requiring ''that the medical staff is accountable to the governing body for the quality of care provided to patients.''

Response: We believe that our proposal will provide for meaningful communication between the governing body and the medical staff while avoiding the complications created by the current requirement. We are confused by the comment that the implementation of this proposed requirement would make it impossible for medical staffs to comply with the current requirement at § 482.12(a)(5) listed above or with § 482.22(b), which requires the medical staff to be ''well organized and accountable to the governing body for the quality of the medical care provided to the patients.'' The finalized requirement merely codifies the requirements applicable to communications regarding the hospital's quality of patient care, which should be occurring regularly between the governing body and the medical staff. We do not see how the addition of this requirement would make the medical staff *less* accountable to the governing body for the quality of care provided to patients in the hospital. By requiring direct consultation, we believe that the medical staff would be ensured a forum in which its collective voice can be heard regarding patient care. If anything, the requirement holds the governing body accountable to the medical staff for providing that forum through direct consultation.

Comment: Several commenters requested examples of compliance or additional clarification regarding what constitutes ''direct consultation.''

Response: ''Direct consultation'' means that the governing body, or a subcommittee thereof, meets with the medical staff leader(s) either face-to-face or via a telecommunications system permitting immediate, synchronous communication.

Comment: One commenter asked if having a member of the medical staff on the governing body would meet the consultation requirement.

Response: As noted earlier, this proposal does not preclude including medical staff on the governing body, as full, non-voting, or ex-officio member(s). However, a hospital would meet the consultation requirement only if the medical staff member serving on the governing body is the same individual responsible for the organization and conduct of the hospital's medical staff, or his or her designee, and only if such membership includes meeting with the board periodically throughout the fiscal or calendar year and discussing matters related to the quality of medical care provided to patients of the hospital. If there were a change in the medical staff leadership and the bylaws governing terms and conditions of governing body membership did not allow for substitution of the new medical staff leader (or his or her designee) on the governing body, then the governing body would be expected to engage in direct consultation with the individual newly responsible for the organization and conduct of the medical staff (or his or her designee). It should be noted that if a hospital chooses to meet the requirement in this manner, there is nothing in the requirements to prohibit the hospital from including other medical staff members on the governing body in addition to the member responsible for the organization and conduct of the medical staff.

After consideration of the comments discussed above, we are finalizing the changes to § 482.12 as proposed.

2. Medical Staff (§ 482.22)

Similar to the issues regarding medical staff representation on the governing body that were discussed in the previous section, we also received a considerable amount of feedback regarding our responses in the May 16, 2012 final rule (77 FR 29061) where we discussed our interpretation of the Medical staff CoP at § 482.22 as requiring that each hospital have its own independent medical staff despite the arguable ambiguity of the regulatory language. After the publication of the May 16, 2012 final rule, it was brought to our attention that, over the years, this apparently ambiguous language might have led some stakeholders to interpret § 482.22 as allowing for separately certified hospitals, as members of a multi-hospital system, to share a unified and integrated medical staff. Therefore, we proposed to amend the introductory paragraph of § 482.22 to require that each hospital must have an organized and individual medical staff, distinct to that individual hospital, which operates under bylaws approved by the governing body, and which is responsible for the quality of medical care provided to patients of that individual hospital.

Shortly after publication of the May 2012 final rule, it was also brought to our attention that some of the changes made to the hospital requirements at § 482.22(a), ''Medical staff,'' were not clear. Our intent in revising the provision was to provide the flexibility that hospitals need under federal law to maximize their medical staff opportunities for all practitioners, but within the regulatory boundaries of their State licensing and scope-of-practice laws. We believe that the greater flexibility for hospitals and medical staffs to enlist the services of non-physician practitioners to carry out the patient care duties for which they are trained and licensed will allow them to meet the needs of their patients most efficiently and effectively.

Section 482.22(a), ''Standard: Eligibility and process for appointment to medical staff,'' currently requires a hospital's medical staff to be composed of doctors of medicine or osteopathy. It also allows for a hospital's medical staff to include other categories of non-physician practitioners determined as eligible for appointment by the governing body, in accordance with State law, including scope-of-practice laws. With the substitution of the term ''non-physician practitioners'' in the final rule (which replaced the term ''other practitioners''), we might have unintentionally given the impression that the requirements now excluded other types of practitioners previously included among those eligible for appointment to the medical staff. In our guidance prior to the issuance of this final rule, we stated that a medical staff could include ''other practitioners'' such as doctors of dental surgery or of dental medicine, doctors of podiatric medicine, doctors of optometry, and chiropractors, as those terms are defined and specified as physicians under section 1861(r) of the Act. Because part of § 482.22(a) states that a hospital's medical staff must include ''doctors of medicine or osteopathy,'' other types of physicians, such as those listed above, are inadvertently excluded from the term ''medical staff.'' Similarly, the new term ''non-physician practitioner'' therefore might also seem to exclude these other types of physicians simply by its use of the modifier, ''non-physician,'' since by the definition described at section 1861(r) of the Act, the practitioners are ''physicians,'' they cannot also be considered to be ''non-physicians.'' Our intention was not to exclude these types of physicians from the definition described in our regulations. Therefore, we believe it was appropriate to propose revisions to § 482.22(a) to clarify that the medical staff requirements still allow for these types of physicians as well as other types of non-physician practitioners to be eligible for appointment to a hospital's medical staff.

At § 482.22(a), we proposed to revise the current language to require that a hospital's medical staff must be composed of physicians and that it may also include, in accordance with State laws, including scope-of-practice laws, other categories of non-physician practitioners determined as eligible for appointment by the governing body. We indicated that the proposed substitution of the current terms, ''doctors of medicine or osteopathy,'' with the term ''physicians,'' would be consistent with the statutory language. We also proposed to substitute ''must include'' with ''must be composed of'' since we believe that this more accurately reflects the fact that hospital medical staffs are predominantly made up of physicians and would also emphasize the vital positions that physicians hold on these medical staffs. We stated that this proposed regulatory language would require that the medical staff be composed of physicians. Finally, we proposed to retain the language allowing for other types of non-physician practitioners (such as Advanced Practice Registered Nurses (APRNs), Physician Assistants (PAs), Registered Dietitians (RDs), and Doctors of Pharmacy (PharmDs)) to be included on the medical staff since we continue to believe that these practitioners, even though they are not included in the statutory definition of a physician, nevertheless have equally important roles to play on a medical staff and in the quality of medical care provided to patients in the hospital.

We received over 100 comments on our proposed changes to § 482.22 from individuals, national and State professional organizations, accreditation organizations, individual hospitals and multi-hospital systems, and national and State hospital organizations. Regarding the proposed requirement for a single medical staff for each individual hospital, there was a clear split among commenters with a pronounced difference of opinion on this issue between primarily physicians and their professional organizations on one side and hospitals, multi-hospital systems, an accreditation organization, and hospital organizations on the other. For the most part, physicians and their organizations were supportive of the proposed changes. However, there were some physicians, most clearly those who stated that they had experience with a unified and integrated medical staff for multiple hospitals within a system, who were opposed to our proposed changes. On the other side, hospitals and their organizations, along with accreditation organizations, were opposed to our proposed change to prohibit a unified and integrated medical staff structure for a multi-hospital system made up of separately certified member hospitals.

On the proposed changes to the composition of the medical staff requirements, the comments were mixed though generally supportive of the changes. A number of commenter asked for further clarification of these changes.

Here we respond to specific comments:

Comment: Regarding the proposed changes to the composition of the medical staff, one commenter questioned whether non-physician practitioners and other practitioners (for example, podiatrists, dentists, and oral surgeons) would be granted hospital privileges and be allowed to practice if State law only permitted MDs and DOs to be medical staff members.

Response: The requirement at § 482.22(a) has always allowed hospitals to grant medical staff membership for non-physician practitioners as well as

other practitioners who are not MDs/DOs only if such membership is in accordance with State law. Although our expectation is that all practitioners granted privileges are also members of the medical staff, if State law limits the composition of the medical staff to certain categories of practitioners, there is nothing in the CoPs that prohibits hospitals and their medical staffs from establishing certain practice privileges for those specific categories of practitioners excluded from medical staff membership under State law, or from granting those privileges to individual practitioners in those categories as long as such privileges are recommended by the medical staff, approved by the governing body, and in accordance with State law. However, CMS has always expected a hospital and its medical staff to exercise oversight, such as credentialing and competency review, of those practitioners to whom it grants privileges, just as it would for those practitioners appointed to its medical staff.

Comment: Several commenters expressed concerned with our referring to practitioners who are not MDs or DOs as ''physicians.'' One commenter stated that CMS was trying to undermine the traditional hospital medical staff leadership model composed solely or primarily of MDs and DOs by replacing that model with one composed largely of non-physician practitioners who are hospital employees.

Response: As we stated above, the changes proposed as well as the current requirements do not require hospitals and their medical staffs to appoint practitioners other than MDs and DOs to their medical staffs. The requirement provides hospitals and medical staffs with an option of medical staff appointment for practitioners who are not MDs or DOs, not a requirement. However, in our attempts in the proposed rule to correct the omission of other categories of physicians (as defined in § 1861(r) of the Act and listed at § 482.12(c)(1)) in this requirement, we believe, based on some of the comments received, we might have further confused the issue of the composition of the medical staff. Therefore, we are finalizing a revision to § 482.22(a) in this rule that we believe will adequately present the required part of this provision and that part which is only optional. We are revising the regulatory language to now state that the ''medical staff *must* be composed of *doctors of medicine or osteopathy,*'' and that in accordance with State law, including scope-of-practice laws, the medical staff ''*may also include other categories of physicians (as listed at § 482.12(c)(1)) and non-physician practitioners* who are determined to be eligible for appointment by the governing body.'' [Emphasis added.]

Comment: We received a large number of comments from individual physicians as well as national and State physician organizations that supported our proposed changes to reaffirm and make more explicit the requirement that each hospital to have its own medical staff, specifically those hospitals that are part of a multi-hospital system. These commenters stated they believed that allowing a multi-hospital system to have a unified and integrated medical staff instead of separate medical staffs for each hospital would destroy the concept of medical staff self-governance that is ''a basic requirement'' for TJC hospital accreditation and which is ''mandated by some states.'' Additionally, there were some comments from individuals as well as hospital leaders that stated that while they support the proposed requirement overall, they believed that there should be some allowance for hospitals within a system to share medical staff bylaws, rules, and regulations.

Conversely, we also received an equally large number of comments from hospitals, multi-hospital systems, national and State hospital organizations, and individual physicians that rejected these same proposed changes. These commenters offered both anecdotal evidence and preliminary research evidence to support their arguments that unified and integrated medical staffs provide the best means for multi-hospital systems to more efficiently standardize evidence-based ''best'' practices (for example, innovations that have been proven to reduce healthcare-associated infections (HAIs), hospital-acquired conditions (HACs), and readmissions) across member hospitals. A number of commenters also disputed claims that a unified and integrated medical staff structure for multiple hospitals within a system would undermine medical staff self-governance and pointed out that there is no evidence that the separate-medical-staff-for-each-hospital structure improves the quality of patient care or protects patient safety. A few commenters pointed to several specific benefits that can potentially be derived from a unified and integrated medical staff structure including:

- Increased opportunity to improve peer review processes.
- Improved patient safety through shared credentialing and privileging.
- More efficient sharing of knowledge and innovations among medical staff members.
- Better physician on-call coverage for specialties.
- Consistency with the move toward accountable care organizations and modern care delivery systems.
- More efficient coordination of emergency preparedness and community health planning.

Among the comments supporting unified and integrated medical staffs some stated that they believed that CMS should allow it as an option for hospitals that might not be using such a structure currently. One commenter argued that because the structure of a hospital's medical staff is commonly defined within medical staff bylaws, which must be approved by both the medical staff and the governing body, a multi-hospital governing body cannot unilaterally force the members of its separate hospital medical staffs to accept a single, unified, and integrated medical staff. This commenter stated that the members of the system's separate hospital medical staffs had voted many years ago to structure themselves as a unified medical staff because the majority of medical staff members believed that this was the best way for the system and its medical staffs to ''achieve our goals for mutual integration.'' The commenter further reinforced the idea that this change was not forced upon the separate medical staffs by stating that the medical staff and its members ''were, and remain responsible for their self-governance.'' The commenter recommended that hospital systems with separately certified hospitals that wish to adopt an integrated medical staff structure should be required to provide for an election or vote on the issue to ensure that the medical staff of each hospital is in agreement. One commenter also noted that unified medical staffs ''are self-governing entities that can and do respect the diversity, viewpoints and concerns of medical staff members across the system.'' Several commenters in support of unified medical staffs pointed out that many unified medical staffs rely on a system of committees made up of representatives from the various hospitals in a system. These commenters argued that while the unified medical staff model allows for more efficient patient care coordination, the committees and member representatives ensure that hospital-specific concerns are voiced, heard, and addressed by the unified medical staff and the governing body.

Other commenters pointed out the significant burden that would be imposed on hospitals already operating under this structure if CMS were to finalize the proposed requirement. They

pointed to the significant cost of dismantling the unified medical staffs under which many have been operating for several years in many accredited hospitals, in addition to the burden of having to establish new medical staffs at each such member hospital with new bylaws, rules, regulations, and committee structures. A few commenters also asserted that there might be inconsistency in CMS allowing for a single unified structure for a multi-hospital system's governing body (as we did in the May 12, 2012 final rule), but denying the same flexibility for its medical staff structure.

Finally, there were several commenters who stated that they while they disagreed with the proposed clarifications, and believed that a multi-hospital system should be allowed to have a unified and integrated medical staff, they believed that there should be specific parameters limiting how many member hospitals could possibly share a unified medical staff within a system. Commenters suggested establishing a specific number of hospitals or limiting the geographic range by state or metropolitan statistical area.

Response: We appreciate all of the comments received on this issue. After carefully considering all of the arguments for and against allowing a multi-hospital system to use a unified and integrated medical staff structure for its member hospitals, we believe that it is in the best interest of hospitals, medical staff members, and patients to modify our proposed prohibition on the use of a unified and integrated medical staff for a multi-hospital system and its member hospitals so as to enable the medical staff of each hospital to voluntarily integrate itself into a larger system medical staff.

The fact that many hospital systems have been using a unified medical staff model for a number of years, without evidence showing that such a system is detrimental to patients or decreases the quality of care delivered, was a major factor in our decision to allow hospitals and their respective medical staffs the flexibility to decide which medical staff framework works best for their particular situations. The arguments against allowing this flexibility through the CoPs did not provide any evidence that having a single and separate medical staff for each hospital within a system was inherently superior to the unified and integrated model. We weighed this argument against the comments from the physician leaders and members of unified and integrated medical staffs who provided testimony and anecdotal evidence for the benefits of this type of structure. Additionally, we considered preliminary evidence that appears to show that hospitals using a unified medical staff might be achieving some success in reducing HACs, HAIs, and readmissions, and in improving patient safety and outcomes. One commenter, writing on behalf of a multi-hospital system that the commenter references as the largest in their State, stated that ''we believe the concept of a single medical staff has substantially contributed to our success as an integrated delivery system and has accelerated our quality, safety and efficiency performance.'' The commenter cited the system's achievements, which they believe are a result of this single and integrated medical staff model: Core measures in the top quartile with excellent value-based purchasing scores according to CMS; lower in-hospital mortality rates that are statistically significant, that is, 17 percent lower than expected; lower hospital readmission rates that are statistically significant, that is, 15 percent lower than expected; and the second lowest congestive heart failure readmission rate in the nation, according to published CMS data. We agree that it appears to be evident that a unified system medical staff would usually be better suited to standardizing best practices and implementing quality improvements than would the more fragmented structure of separate medical staffs.

While we do not agree with comments that stated that a unified and integrated medical staff would destroy medical staff self-governance, we appreciate that added flexibility allowing a multi-hospital unified medical staff might conceivably be implemented in a manner that fails to achieve the desired benefits. We also received comments suggesting that if flexibility were permitted, CMS should place parameters or limitations on the use of a unified medical staff. We believe that the specifics should be left up to the medical staffs and governing bodies to determine, but agree that basic parameters are advisable to address the concerns of commenters and ensure due consideration of the unique aspects of each involved hospital (such as requiring that the hospitals have considered the extent to which a medical staff can be shared among its member hospitals as defined in hospital and medical staff policy, by-laws, and protocols).

Therefore, we are revising the proposed requirement and finalizing it here by retaining the original and current language of the condition statement, which states that the hospital must have an organized medical staff that operates under bylaws approved by the governing body and is responsible for the quality of medical care provided to patients by the hospital. We believe that this will provide more flexibility for each hospital and medical staff to determine the medical staff framework which works best for their situation (for example, whether that decision is for a separate medical staff for each hospital or a unified and integrated medical staff for multiple hospitals with a system). We are also revising this CoP (at § 482.22(b)) to include new provisions that will hold a hospital responsible for showing that it actively addresses its use of a unified and integrated staff model. Under the provisions of this final rule, the unified medical staff would still be composed of medical staff members from each hospital in the system and each member would be eligible to take on a leadership role on the various committees and subcommittees just as he or she would if he or she were part of a separate medical staff. Further, a medical staff and a governing body would still need to work closely together, with the medical staff responsible for the quality of care provided and accountable to the governing body. Neither the governing body nor the medical staff may impose its will unilaterally. They are dependent on each other for the hospital's success. For medical staffs and multi-hospital systems that choose to exercise the flexibility provided by this CoP (to use a unified and integrated medical staff, after determining that such a decision is in accordance with all applicable State and local laws), these new provisions are aimed at ensuring that—

(1) The medical staff members of each separately certified hospital in the system (that is, all medical staff members who hold specific privileges to practice at that hospital) have voted by majority in accordance with medical staff bylaws, either to accept a unified and integrated medical staff structure according to provisions included in the medical staff bylaws or to opt out of such a structure and to maintain a separate and distinct medical staff for their respective hospital;

(2) The unified and integrated medical staff has bylaws, rules, and requirements that describe its processes for self-governance, appointment, credentialing, privileging, and oversight, as well as its peer review policies and due process rights guarantees, and which include a process for the members of the medical staff of each separately certified hospital (that is, all medical staff members who hold specific privileges to practice at that hospital) to be advised of their rights to

opt out of the unified and integrated medical staff structure after a majority vote by the members to maintain a separate and distinct medical staff for their hospital;

(3) The unified and integrated medical staff is established in a manner that takes into account each hospital's unique circumstances, and any significant differences in patient populations (such as low income or minority populations, rural populations, etc.) and services offered in each hospital (such as emergency services, psychiatric services, pediatric care, long term acute care, organ transplant services, dialysis, etc.); and

(4) The unified and integrated medical staff gives due consideration to the needs and concerns of members of the medical staff, regardless of practice or location, and the unified and integrated medical staff has mechanisms in place to ensure that issues localized to particular hospitals are duly considered and addressed.

Finally, we note that some commenters argued in support of a unified medical staff by pointing to our previous position permitting a single governing body for hospitals within a system. We believe that the CoPs pertaining to the governing body and medical staff are unique in their focus on governance processes. We are taking this opportunity to emphasize that permitting use of a system governing body or medical staff must not be construed as implying that compliance with any other hospital CoPs may also be demonstrated at the system (multi-hospital) level. Each separately participating hospital is required to demonstrate its compliance with all other hospital CoPs in order to participate in Medicare. Although there can be system approaches in many of these areas (such as infection control or quality assessment/performance improvement programs), each individual hospital must demonstrate that it fulfills the applicable CoP requirements.

3. Food and Dietetic Services (§ 482.28)

We proposed to revise the hospital requirements at § 482.28(b), ''Food and Dietetic Services,'' which currently requires that a therapeutic diet must be prescribed only by the practitioner or practitioners responsible for the care of the patient.

The Interpretive Guidelines (IGs) for this requirement, which are contained in the State Operations Manual (SOM) for surveyors, further state that ''[in] accordance with State law and hospital policy, a dietitian may assess a patient's nutritional needs and provide recommendations or consultations for patients, but the patient's diet must be prescribed by the practitioner responsible for the patient's care.'' State survey agencies have applied this requirement to mean that registered dietitians or other clinically qualified nutrition professionals (RDs) cannot be granted privileges by the hospital to order patient diets (or to order necessary laboratory tests to monitor the effectiveness of dietary plans and orders, or to make subsequent modifications to those diets based on the laboratory tests) since these practitioners have never been considered to be among those in the hospital who are ''responsible for the care of the patient.'' The responsibility for the care of the patient, and the attendant hospital privileges that accompany this responsibility, have traditionally and exclusively been the provenance of the physician, more specifically the MD and DO, and, to a lesser extent, the APRN and PA. Understanding the regulatory language and its interpretation, most hospitals have taken a very conservative approach toward the granting of privileges, especially ordering privileges, to other types of non-physician practitioners, including RDs. Consequently, most hospitals have withheld ordering privileges from RDs absent a clear signal from CMS and the subsequent and necessary changes to the CoPs that would allow them to do so.

After the publication of the October 24, 2011 proposed rule (76 FR 65891) and the May 16, 2012 final rule (77 FR 29034), ''Medicare and Medicaid Programs; Reform of Hospital and Critical Access Hospital Conditions of Participation,'' it came to our attention that the regulatory language and the IGs for § 482.28(b) were too restrictive and lacked reasonable flexibility to allow hospitals to extend these specific privileges to RDs in accordance with State laws. We believe that RDs are the professionals who are best qualified to assess a patient's nutritional status and to design and implement a nutritional treatment plan in consultation with the patient's interdisciplinary care team. In order for patients to receive timely nutritional care, the RD must be viewed as an integral member of the hospital interdisciplinary care team, one who, as the team's clinical nutrition expert, is responsible for a patient's nutritional diagnosis and treatment in light of the patient's medical diagnosis. In the February 7, 2013 proposed rule, we provided research evidence that supports the changes we have proposed (78 FR 9222). Without the proposed regulatory changes allowing hospitals to grant appropriate ordering privileges to RDs, hospitals would not be able to effectively realize improved patient outcomes and overall cost savings that we believe would be possible with such changes.

It should be noted, because a few States elect not to use the regulatory term ''registered'' and choose instead to use the term ''licensed'' (or no modifying term at all), or because some States also recognize other nutrition professionals with equal or possibly more extensive qualifications, we proposed to use the term ''qualified dietitian.'' In those instances where we have used the most common abbreviation for dietitians, ''RD,'' throughout this preamble, our intention is to include all qualified dietitians and any other clinically qualified nutrition professionals, regardless of the modifying term (or lack thereof), as long as each qualified dietitian or clinically qualified nutrition professional meets the requirements of his or her respective State laws, regulations, or other appropriate professional standards.

In order for patients to have access to the timely nutritional care that can be provided by RDs, a hospital must have the regulatory flexibility either to appoint RDs to the medical staff and grant them specific nutritional ordering privileges or to authorize the ordering privileges without appointment to the medical staff, all through the hospital's appropriate medical staff rules, regulations, and bylaws. In either instance, medical staff oversight of RDs and their ordering privileges would be ensured. Therefore, we proposed revisions to § 482.28(b)(1) and (2) that would require that individual patient nutritional needs be met in accordance with recognized dietary practices. We would make further revisions that would allow for flexibility in this area by requiring that all patient diets, including therapeutic diets, must be ordered by a practitioner responsible for the care of the patient, or by a qualified dietitian or other clinically qualified nutrition professional as authorized by the medical staff and in accordance with State law. We believe that hospitals that choose to grant these specific ordering privileges to RDs may achieve a higher quality of care for their patients by allowing these professionals to fully and efficiently function as important members of the hospital patient care team in the role for which they were trained. In the proposed rule, we stated that we believe hospitals would realize significant cost savings in many of the areas affected by nutritional care.

We received over 100 comments on our proposed changes to § 482.28 from professional organizations, accreditation organizations, hospitals and hospital systems, and individuals. Overall, the majority of commenters were supportive of the proposed changes, though there were a large number of commenters who were opposed to the exclusive use of the terms ''registered dietitian,'' ''qualified dietitian,'' or ''RD'' for varied reasons. Here we respond to specific comments:

Comment: As stated above, the majority of commenters were very supportive of the proposed changes with many citing improved patient care, greater efficiency in delivering dietary services, and significant cost savings as benefits that would be realized if the proposed changes were to be finalized. A few commenters provided references (to the same published studies that we cited) that offer evidence of the benefits that might be derived by hospitals if dietitians were granted ordering privileges as well as to guidelines, best practices, professional standards, and recommendations for the ordering of enteral and parenteral nutrition. Other commenters provided detailed information on the recognized training, education, and other qualifications that dietitians and nutrition professionals must meet in order to practice in their respective professions.

Response: We appreciate the commenters' support of our proposed changes as well as the references to the research provided. We agree that these changes will benefit patients as well as the practitioners caring for them, and will allow hospitals to achieve greater efficiency and cost savings in the delivery of food and dietetic services to patients.

We also appreciate the information on the professional standards and guidelines for enteral and parenteral nutrition therapy provided as well that provided on the qualifications for the various dietetics and nutrition professions.

Comment: One commenter, while agreeing with the intent of the proposed changes and many of the statements made in the preamble in support of these changes, did not agree with the use of the term ''qualified dietitian'' in the regulatory text. The commenter stated that ''the terminology 'registered dietitian' or 'RD' is the nationally accepted designation for a professional who has met the minimum educational standards, [and] taken a registration exam complete with mandatory continuing professional education.'' Similar to this commenter, a few individuals and one professional organization asked for CMS to use the term ''registered dietitian'' instead of ''qualified dietitian,'' or to clarify that the definition of qualified dietitian used here is consistent with the one currently found under the transplant center process requirements at § 482.94(e), which defines a qualified dietitian as ''an individual who meets practice requirements in the State in which he or she practices and is a registered dietitian with the Commission on Dietetic Registration.'' However, many of the registered dietitians who commented simply thanked CMS for the proposed changes, stated their support for them, and acknowledged the possible benefits that might be derived from the regulatory changes to § 482.28.

Conversely, one commenter, who included the names of 2,480 individuals who had signed on in support of the comment, stated that they cannot support ''Medicare rules that create a monopoly for RDs at the expense of often better-qualified nutrition professionals.'' Similarly, various comments from ''nutritionists,'' ''nutrition professionals,'' ''certified clinical nutritionists,'' and ''certified nutrition specialists'' argued that the rule would not serve patients since it excludes non-registered dietitians and other nutrition professionals and that the changes would create a practice monopoly for registered dietitians in hospitals. These commenters expressed the opinion that advanced degree nutrition professionals possess more extensive education and training backgrounds in nutrition than do registered dietitians. One commenter stated that they believe the professional organization representing registered dietitians is attempting to ''exclude other nutritional specialists,'' while many other commenters simply urged CMS to be ''forward-looking by incorporating the most flexible, inclusive language to increase the qualified nutrition workforce rather than narrowing it to one private credential, essentially creating a monopoly.''

Response: Our use of the term ''registered dietitian,'' in the proposed regulatory language, along with our use of this term and the terms ''qualified dietitian'' and ''RD'' in the preamble, was not meant to be exclusive of other nutrition professionals qualified to practice in the hospital setting. We agree with commenters that the regulatory language for § 482.28 should be inclusive of all qualified nutrition professionals. We do not agree with commenters who requested that we use the term ''registered dietitian'' or define ''qualified dietitian'' as an individual specifically registered with the Commission on Dietetic Registration. We agree that a more flexible approach would be the best way to ensure that patients benefit from the improved quality of care that these professionals can bring to hospital food and dietetic services. Additionally, we believe that it is best left to individual States to determine the regulatory processes by which these professions are governed and that hospitals, through their medical staff privileging processes, should be allowed the flexibility to determine the credentials and qualifications for dietitians and nutrition professionals, in accordance with their respective State laws if and when they choose to grant ordering privileges to these professionals. Therefore, we are revising our proposed regulatory language in this final rule to now require that all patient diets, ''including therapeutic diets, must be ordered by a practitioner responsible for the care of the patient, or by a qualified dietitian *or qualified nutrition professional* as authorized by the medical staff and in accordance with *State law governing dietitians and nutrition professionals.*'' [Emphasis added.]

Comment: A few commenters suggested that the term, ''therapeutic diets,'' be clarified in the requirements as including both enteral and parenteral nutrition support because the commenters are concerned that the term might be interpreted as not including these nutrition modalities.

Response: While we understand the commenter's concerns, we believe that we have made it very clear in the preamble to this rule as well as in the preamble to the proposed rule that we consider all patient diets to be therapeutic in nature, regardless of the modality used to support the nutritional needs of the patient, and that the term would most certainly include enteral and parenteral nutrition support. Further, we believe that our extensive discussion of the research evidence supporting ordering privileges for RDs in both the proposed rule's preamble and its regulatory impact section leaves very little room for misinterpretation of this term since much of our discussion centered on the RD's role and expertise in ordering parenteral nutrition for patients.

Comment: Several commenters supported the proposed change and requested that CMS apply this revision to the Medicare requirements for long-term care facilities and other healthcare facilities in which RDs and nutrition professionals play a role.

Response: We appreciate the commenters' support and suggestions,

but the recommendations are outside the scope of this rule. However, we will keep the suggestion to extend the proposed revisions to the requirements for other providers and suppliers in consideration if we pursue future rulemaking in these areas.

Comment: One commenter noted that while these proposed changes address the nutritional aspects of diet management, they do not address ''diet texture modification, which may be recommended by speech-language pathologists for patients with significant swallowing problems.'' The commenter further states that since speech-language pathologists ''are the professionals who typically assess individuals with swallowing disorders . . . they, like dieticians, should have the authority to order diets that reflect changes based on their expert recommendations.''

Response: While we agree with the commenter that speech-language pathologists may be the professionals best qualified to make recommendations for patients with swallowing disorders, we do not believe that § 482.28 is the appropriate place for such a change. Additionally, we believe that the recent changes to the medical staff CoP (§ 482.22) with regard to non-physician practitioners allow hospitals to determine if specific categories of practitioners, along with individual practitioners within those categories, should be granted certain privileges within the hospital, including ordering privileges. The changes finalized here for § 482.28 in no way prohibit hospitals from granting specific ordering privileges to speech-language pathologists, or to other non-physician practitioners, as long as those privileges are in accordance with State laws and regulations, including scope-of-practice laws.

Comment: Several commenters disagreed with CMS' assertion in the proposed rule that dietitians are the professionals best qualified to assess a patient's nutritional status and to design and implement a nutritional treatment plan. These commenters also disagreed with our statement in the proposed rule that ''physicians often lack the training and educational background to manage the sometimes complex nutritional needs of patients with the same degree of efficiency and skill as registered dieticians.'' These commenters further stated that they believe that ''in some cases, such as post-abdominal surgery care, the physician is best suited to determine patient diet.'' They urged CMS to clarify in the final rule that ''in some cases, per medical staff directive, the dietician must defer to or consult with the physician responsible for the care of the patient.'' The same commenters did agree with ''CMS' deference to the authorization of the medical staff at § 482.28'' and stated that they believe that ''the medical staff should be the arbiter of policies regarding when a dietician is qualified to order patient diets in the hospital.''

Response: We agree with the commenters that there are some cases where the dietitian or nutrition professional must defer to, or consult with, the practitioner responsible for the care of the patient, often the practitioner who admitted the patient. We further agree that the medical staff should determine which specific practitioners, including dietitians and nutrition professionals, are qualified for which specific privileges. However, we must point out that this requirement does not require hospitals and medical staff to grant or authorize specific privileges to specific practitioners, but only allows them the flexibility to do so if they choose, and only if State law allows for it.

Comment: Another commenter asked for clarification on whether the proposed requirement only provides a hospital with the option of credentialing and privileging a dietitian.

Response: The requirement, including the revisions we are finalizing here, does not require hospitals to credential and privilege dietitians as a condition of participation, but, as previously stated, allows for it as an option if consistent with State law.

Comment: A few commenters stated that they were concerned about ordering diets for critically ill patients or making specific patients ''NPO.'' They further state that they would feel comfortable ordering diets only if there was a "'diet order per dietitian' order from the doctor.''

Response: As we have stated, the requirement does not require dietitians and nutrition professionals to order diets, but only allows for it as an option if consistent with State law and if a hospital chooses to grant such privileges after considering the recommendations of its medical staff. An individual dietitian or nutrition professional would then need to apply for these ordering privileges.

Comment: A few commenters asked for clarification on laboratory ordering privileges for dietitians as part of the proposed requirement. The commenters cited conflicts with the Medicare payment requirements as well as EHR incentives if dietitians were authorized to order lab and other diagnostic services.

Response: As proposed, and as finalized here, the regulatory language did not include privileges for ordering lab or other diagnostic services by dietitians or nutrition professionals. However, the preamble to this section of the proposed rule did include a discussion of such privileges in the context of some of the research cited. Such privileges for dietitians and nutrition professionals are not required or specifically allowed by this requirement, but are instead an option left to hospitals and their medical staffs to determine in consideration of relevant State law as well as any other requirements and/or incentives that CMS or other insurers might have.

In accordance with the comments discussed above, we are finalizing the proposed changes to § 482.28 with the revisions to the regulatory language as noted above.

4. Nuclear Medicine Services (§ 482.53)

The current requirement at § 482.53(b)(1) requires that the in-house preparation of radiopharmaceuticals be performed by, or under the direct supervision of, an appropriately trained registered pharmacist or a doctor of medicine or osteopathy. Direct supervision means that one of these professionals must be physically present in the hospital and immediately available during the preparation of all radiopharmaceuticals. Hospitals have reported to us that this requirement is extremely burdensome when the presence of a pharmacist or physician is required for the provision of off-hour nuclear medicine tests that require only minimal in-house preparation of radiopharmaceuticals. Information from stakeholders regarding this issue has revealed that minimal in-house preparation is required for most radiopharmaceuticals. Many are batch-prepared by the manufacturer for hospital use as a way of reducing radiation exposure of hospital personnel, ensuring that on-site hospital preparation of radiopharmaceuticals generally requires only a few final steps, if any.

We proposed to revise the current requirement at § 482.53(b)(1) by removing the term ''direct.'' We stated that, if finalized, the revised requirement would require that in-house preparation of radiopharmaceuticals be performed by, or under the supervision of, an appropriately trained registered pharmacist or doctor of medicine or osteopathy. We also stated that the revision to ''supervision'' from ''direct supervision'' would allow for other appropriately trained hospital staff to prepare in-house radiopharmaceuticals under the oversight of a registered

pharmacist or doctor of medicine or osteopathy, but it would not require that such oversight be exercised by the physical presence in the hospital at all times of one of these professionals, particularly during off-hours when such a professional would not be routinely present.

We stated that these changes would allow hospitals to establish their own policies on supervision of nuclear medicine personnel and the in-house preparation of radiopharmaceuticals. Absent a requirement for ''direct'' supervision, we expect most hospitals to follow the Society of Nuclear Medicine and Molecular Imaging recommendations on this issue and to no longer require a registered pharmacist or MD/DO to be on site for direct supervision when radiopharmaceuticals are prepared in-house by staff. We stated that the proposed change would directly reduce the burden of the current direct supervision requirement where it is most needed—in-house preparation of radiopharmaceuticals for after-hours/emergency performance of nuclear medicine diagnostic procedures (for example, coronary artery disease, pulmonary emboli, stroke, and testicular torsion). Given that an estimated 16 million nuclear medicine imaging and therapeutic procedures are performed each year in the United States, we would expect hospitals to achieve significant cost reductions in this area if they take advantage of the proposed change. We welcomed public comments on this proposed change.

We received several comments on our proposed change to § 482.53, primarily from professional organizations, hospitals and hospital systems, and individual nuclear medicine technologists. All commenters were supportive of the proposed change with no commenters opposed.

In accordance with the comments discussed above, we are finalizing the changes to § 482.53(b)(1) as proposed.

5. Outpatient Services (§ 482.54)

We proposed changes to the requirements at § 482.54, ''Outpatient services.'' Specifically, we proposed to add a new standard at § 482.54(c), entitled ''Orders for outpatient services.'' We proposed these revisions so that the regulations would codify Interpretive Guideline (IG) changes that we recently made regarding the ordering of outpatient services.

On May 13, 2011, CMS issued memorandum SC–11–28 (*http://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/SCLetter11_28.pdf*). Among other things, this memorandum included preliminary guidance on who may order hospital rehabilitation (§ 482.56(b)) and respiratory care services (§ 482.57(b)(3)). On November 18, 2011, the final version of the revised IGs for these requirements was released. Subsequently, we received considerable feedback that this guidance, which was intended to expand the categories of practitioners who could order rehabilitation and respiratory care services beyond physicians and stated that all ordering practitioners had to hold medical staff privileges, was actually having the opposite effect and limiting practitioner orders for these services. In the area of outpatient rehabilitation services, in particular, stakeholders informed us that the revised guidance was posing a barrier to care because a substantial percentage of these services are provided in hospital outpatient rehabilitation facilities to patients referred by practitioners who are not on the hospital's medical staff and who do not hold medical staff privileges. We were advised that, in many cases, the referring practitioners are based in other States to which patients have traveled to receive specialized services. Clearly, these practitioners do not provide care in the patient's local hospital and are not interested in seeking medical staff privileges merely to refer patients for outpatient services.

It was not our intention to create barriers to care or to limit the ability of practitioners, who are appropriately licensed, acting within their scope of practice, and authorized under hospital policies, to refer patients for outpatient services. We distinguish these outpatient referral cases from cases where a practitioner provides care in the hospital, either to inpatients or outpatients, and must have medical staff privileges to do so. We subsequently issued new guidance on this rule. On February 17, 2012, CMS issued SC–12–17 (*http://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/SCLetter12_17.pdf*), which clarified that outpatient services may be ordered by any practitioner responsible for the care of the patient, who is licensed and acting within his or her scope of practice in the State where he or she provides care to the patient, and who has been authorized by the medical staff and approved by the governing body to order specific outpatient services.

In light of the above, as indicated in the proposed rule, we believed it would be appropriate to revise § 482.54, the CoP governing outpatient services, which is silent on the issue of who may order such services, in order to explicitly address this issue. We proposed to revise the requirements to mean that orders for outpatient services may be made by any practitioner who is—

- Responsible for the care of the patient;
- Licensed in the State where he or she provides care to the patient;
- Acting within his or her scope of practice under State law; and
- Authorized in accordance with policies adopted by the medical staff, and approved by the governing body, to order the applicable outpatient services.

Further, we stated that these proposed requirements would apply to all practitioners who are appointed to the hospital's medical staff and who have been granted privileges to order the applicable outpatient services; and all practitioners not appointed to the medical staff, but who satisfy the above criteria for authorization by the hospital for ordering the applicable outpatient services and for referring patients for such services. These requirements would also apply to all hospital services that may be offered on an outpatient basis, including services for which there is regulatory language that, in the absence of the clarifying language we propose herein, would appear to impose more stringent limits as to the practitioners who are permitted to order outpatient services. For example, § 482.53(c)(4) states, ''Nuclear medicine services must be ordered only by practitioners whose scope of Federal or State licensure and whose defined staff privileges allow such referrals.'' In practice, however, it is not unusual for physicians without medical staff privileges to refer their patients to the hospital for common outpatient nuclear medicine tests, such as myocardial perfusion scans used in conjunction with cardiac stress tests and hepatobiliary scans used in the detection of gallbladder disease. So long as the hospital's medical staff policies and procedures permit this, we do not believe our regulations should present a barrier. Another example concerns the administration of outpatient chemotherapy. In accordance with § 482.23(c), concerning preparation and administration of drugs, ''Drugs and biologicals must be prepared and administered in accordance with Federal and State laws, the orders of the practitioner or practitioners responsible for the patient's care as specified under § 482.12(c), and accepted standards of practice.'' In the absence of the clarification we stated that this language could be confusing, as some hospitals

might read it to preclude providing outpatient chemotherapy on the orders of a practitioner without privileges, which may or may not be desirable to the hospital. We believe that it is more appropriate if the hospital's medical staff and governing body determine what types of outpatient services they are comfortable with providing on the basis of an order (which might commonly also be called a ''referral'') from a practitioner who does not hold medical staff privileges.

We expect these changes would be primarily neutral in terms of regulatory burden reduction for hospitals. Prior to the November 2011 revisions to the IGs, most, if not all, hospitals were already operating under what was considered standard industry practice with regard to the ordering of, and referral for, outpatient rehabilitation services by practitioners who were not on the hospital's medical staff. Since we moved quickly to clarify our outpatient services ordering policy through communications with stakeholders and further revisions to the IGs, we believe that most hospitals did not make changes to their policies and procedures that would have created burdens for them. We cannot rule out the possibility that some hospitals were deterred by the specific language of other CoPs, such as those governing nuclear medicine or administration of drugs, but we have not received information that would allow us to quantify this. We stated that this proposed change would clearly establish in regulation CMS policy on the ordering and referral of all outpatient services.

We received a total of 35 comments from individuals, medical societies, professional societies, hospital associations and national organizations on this proposal. The comments were generally supportive of our proposal. Here we respond to specific comments:

Comment: Several commenters expressed support for our proposal, but suggested that the language be modified to add language to require that practitioners not appointed to the medical staff be authorized in accordance with both State law *and* policies adopted by the medical staff.

Response: We appreciate the commenters' support. We also agree with the recommendation and have modified the proposed regulatory language as suggested.

Comment: Several commenters expressed concern regarding both the burden and the practicality of requiring hospitals to obtain information about the current scope of practice for a practitioner in another state and then to determine if the practitioner's ordered services are within those parameters. These commenters believe that CMS should clarify the proposed requirement that the hospital must check the licensure status of the practitioner in the State where he or she provides care to the patient. They also asked if CMS expected the hospital to set up a credentials file for the non-medical staff practitioner who orders outpatient services, maintain information on his or her State scope of practice, and show that a determination was made that the ability to order the specific outpatient services was within his or her respective State scope of practice.

Response: Hospitals have the flexibility to determine whether or not they will allow a practitioner who is not a member of the medical staff to order outpatient services as well as the ability to establish through medical staff bylaws and hospital policy other parameters for who will and who will not be authorized to order outpatient services. If a hospital is unable or unwilling to verify the respective State scope of practice, licensure, etc., for a practitioner, the hospital is not required to authorize the practitioner to order outpatient services in its facility. If a hospital does allow practitioners not on the hospital's medical staff to order hospital outpatient services, the hospital must be able to demonstrate compliance with the regulatory requirement.

Comment: Several commenters noted that non-hospital providers of similar outpatient services do not have similar requirements and believe that hospitals should not be held to a higher requirement than non-hospital providers of similar services. They believe that requiring a higher standard of hospitals would be an unnecessary burden, increase hospital costs, and provide limited, or no, benefit to patients. Another commenter stated that the hospital CEOs with whom they have spoken believe that hospitals already have better policies than non-hospital providers of the same services that are not subject to the same regulatory requirements.

Response: We are aware that there are other provider types who provide outpatient services and we understand the commenters' concerns about these providers having differing regulatory requirements. These other providers are subject to requirements specific to their particular setting that also include issues such as licensure, scope of practice, and facility policies and procedures. We believe the requirements that we have established in this rule are appropriate to the hospital setting and are necessary to ensure the health and safety of patients while also ensuring that we do not create unintentional barriers to care or unnecessary limitations on professional practice. We note that this clarification to the CoP for outpatient services creates an option for hospitals and not a requirement. A hospital is required to comply with this requirement only if it chooses to allow practitioners who are not members of the medical staff to order outpatient services.

Comment: Several commenters supported the proposed revisions as written. One commenter stated that they supported the clarifying change as there was prior confusion that membership on the medical staff is required to order outpatient services. Another commenter noted that this change will improve patient access to crucial healthcare services and improve the efficiency and quality of care. They believe that it will prevent needless delays for consumers in accessing the care they need, and that it will promote earlier intervention, which they believe will in turn improve outcomes and reduce costs.

Response: We appreciate the commenters' support for our proposal.

Comment: One commenter believes that this change will ''amp up medical spending, often for useless medical imaging and other diagnostic tests.''

Response: We disagree. We understand that allowing practitioners who are not a member of the medical staff to order outpatient services has been a standard practice for many years for a majority of hospitals. We have not been presented with any evidence that our clarification will result in any increase in the number and types of outpatient services ordered. We believe that this clarification in policy will prevent the creation of new barriers to care, particularly for patients in rural areas. In addition, CMS has other regulatory mechanisms by which determinations are made as to whether specific outpatient services are medically reasonable and necessary.

Comment: One commenter requested that CMS clarify what constitutes when a practitioner is responsible for the care of the patient asks whether this includes practitioners working under the supervision of, or in collaboration with, the treating physician as well as other practitioners otherwise involved in the care of the patient.

Response: We expect that each hospital medical staff would address which categories of practitioners would be deemed ''responsible for care of the patient'' in their policies. Such practitioners could include: Any of the practitioners specified under § 482.12(c) who are involved in providing medical care to the patient; any practice partners

of the patient's attending physician who might be covering the physician's patients for a period of time if the physician is not available; any hospitalists, hospital intensivists, and specialty physicians who might have provided care to the patient during a prior hospital stay; any residents/fellows under the preceptorship or supervision of the patient's attending physician or hospitalist, intensivist or specialty physician during a prior hospital stay; and any non-physician practitioners involved in the patient's care.

Comment: One commenter expressed concern about complying with this requirement in teaching hospitals. The commenter requested that CMS clarify that a teaching hospital would not be considered out of compliance with this requirement when they allow interns, residents, and fellows to order outpatient service as part of their training program, in accordance with the hospital's medical staff bylaws, rules, and regulations as well as any other related legal requirements related to with which the hospital must comply.

Response: We do not see a conflict between this requirement and interns, residents, and fellows who are acting in accordance with their respective State's licenses and scope-of-practice laws, and their respective hospital's medical staff bylaws, rules, and regulations.

Comment: One commenter recommends that CMS specify the timeframe and the duration of the verification process for such orders, as they vary in frequency and urgency.

Response: We expect hospitals, when presented with a referral or order for outpatient services from a practitioner who does not have privileges at that hospital and for whom the hospital has not previously verified the practitioner's licensure, etc. to perform such verification before providing the ordered outpatient services to the patient. In accordance with the comments discussed above, we are finalizing the changes to § 482.54 as proposed with two minor revisions. On the recommendation of commenters, we are revising § 482.54(c)(4) by adding the phrase, ''State law'' so that the provision is now finalized to read, ''. . . authorized in accordance with *State law and* policies adopted by the medical staff, and approved by the governing body, to order the applicable outpatient services.'' Additionally, we are also revising § 482.54(c)(4)(ii) by adding the phrase, ''the medical staff'' so that this provision is now finalized as applying to all practitioners ''not appointed to the medical staff, but who satisfy the above criteria for authorization by *the medical staff and* the hospital for ordering the applicable outpatient services for their patients.'' We believe that this additional revision is necessary to clarify that it is a hospital's medical staff that initially recommends authorizing these ordering privileges, after which the governing body, or the hospital, approves them.

6. Special Requirements for Hospital Providers of Long-Term Care Services (''Swing-Beds'') (§ 482.66)

Currently, these requirements are located in Subpart E of Part 482, Requirements for specialty hospitals. As such, the requirements fall outside of those requirements that can be surveyed by an Accreditation Organization (AO), such as TJC, AOA, or DNV, as part of its CMS-approved Medicare hospital accreditation program. We believe the requirements at § 482.66 would be more appropriately located under Subpart D of Part 482, optional hospital services, since swing-bed services are optional hospital services for eligible rural hospitals.

Therefore, we proposed to reassign all of the requirements for swing-bed services found currently at § 482.66, Subpart E, to § 482.58, Subpart D. This change would allow compliance with the swing-bed requirements to be evaluated for accredited hospitals during routine AO surveys. As indicated in the proposed rule, by no longer requiring an accredited hospital to undergo a separate survey by a State Survey Agency (SA) to determine continued compliance with the swing-bed requirements in addition to the AO survey for the other CoPs, this proposed change would likely reduce the burden on such a hospital. We welcomed public comments on this proposed change.

We received a total of 8 comments on our proposed changes to § 482.66, primarily from accreditation organizations and hospital organizations. Commenters were supportive of the proposed changes. There were no comments opposed to the proposed changes to § 482.66.

In accordance with the comments discussed above, we are reassigning all of the requirements for swing-bed services found currently at § 482.66, Subpart E, to § 482.58, Subpart D as proposed. We are also making conforming amendments to correct cross-references in §§ 413.24, 413.114, 440.1 and 485.606.

Contact for all hospital topics, CDR Scott Cooper, USPHS, (410) 786–9465.

D. Transplant Centers and Organ Procurement Organizations

1. Reports to CMS (§ 482.74)

On March 30, 2007, we published the ''Hospital Conditions of Participation: Requirements for Approval and Re-approval of Transplant Centers to Perform Transplants Final Rule'' (transplant center final rule, 72 FR 15198). In that rule, we required that transplant centers, among other things, report to CMS any significant changes related to the center's transplant program or changes that could affect its compliance with the CoPs. Among other things, transplant centers must notify us, under § 482.74(a)(2), whenever there is a decrease in the center's number of transplants or survival rates that could result in the center being out of compliance with the clinical experience (number of required transplants) or outcome (survival) requirements at § 482.82.

We routinely receive information about the number of transplants a center performs and survival information from all transplant centers. Transplant centers are required to submit these data to the Organ Procurement and Transplantation Network (OPTN) national database for transplantation. These data are provided to the Scientific Registry of Transplant Recipients (SRTR), which publicly releases outcome (survival) information every six months, after the data have been risk-adjusted. CMS also receives more recent survival information via the Social Security Master Death File. CMS receives clinical experience data and the Social Security Master Death File quarterly, as well as the risk-adjusted outcomes from the SRTR data every six months. Thus, CMS is essentially receiving the same information from the transplant programs individually that we receive routinely from one or more of the resources cited above.

In addition to the above, this notification requirement has also resulted in confusion for the transplant centers. The requirement states that transplant centers should notify CMS when they are out of compliance with a 3-year average of 10 transplants per year. Since the clinical experience standard is based on an average, a transplant center may not know if a given year's volume would be low enough to have the average fall below 10 per year and trigger reporting to CMS, particularly when the number of transplants to be performed in a future year is unknown.

Further, the requirement for notification of outcomes non-compliance is based on the difference

between the observed and the expected outcomes exceeding certain thresholds. However, the expected outcomes are not calculated until at least one year later when the one-year post-transplant tracking period for patient and graft survival is complete. The transplant program would not always know whether a given death or graft failure would put them out of compliance and require notification to CMS. Eliminating this notification requirement will also remove this confusion for the transplant centers.

Thus, the requirement for transplant centers to report a decrease in the center's number of transplants or survival rates when those results could result in the center being out of compliance with the measures in § 482.82 is unnecessary, confusing, and burdensome for transplant centers. Therefore, we proposed to eliminate the requirement at § 482.74(a)(2) that transplant centers notify us. The removal of this requirement would have no impact on the quality of care to transplant recipients, living donors, or potential donors, because our identification and follow-up processes for programs that do not meet § 482.82 remain unchanged.

We received a total of six comments on our proposed change to § 482.74 from health care providers and institutions, as well as from two national associations of transplant professionals. All of the commenters were supportive of the proposed change. We respond to specific comments below:

Comment: Most of the commenters noted that data are already routinely submitted to the OPTN and then these data are provided to the SRTR, which publicly releases outcome (survival) information every six months, after the data have been risk-adjusted. CMS also receives more recent survival information via the Social Security Master Death File. CMS receives clinical experience data and the Social Security Master Death File quarterly, as well as the risk-adjusted outcomes from the SRTR data every six months. Thus, CMS is essentially receiving the same information from the transplant programs individually that we receive routinely from one or more of the resources cited above. The commenters noted that this process is time consuming, labor intensive, and duplicative.

Response: We agree with the commenters. We believe that requiring transplant centers to report these data that are routinely available to CMS is unnecessary, confusing, and burdensome for transplant centers. In accordance with the comments discussed above, we are finalizing the change to § 482.74(a)(2) as proposed.

2. Transplant Outcome Review (§ 482.80(c) and § 482.82(c))

Sections 482.80(c), approval, and 482.82(c), reapproval, in the transplant center CoPs state that, ''[e]xcept for lung transplants, CMS will review adult and pediatric outcomes separately when a center requests Medicare approval to perform both adult and pediatric transplants.'' At the time the transplant center final rule was published (March 30, 2007), the adult data cohorts for lung transplants included transplant patients 12 years of age and older. As of June 2010, the adult data cohort includes only those transplant patients that are 18 years of age and older. The age categories for lung transplant patients are now the same as for all of the other transplants reported in the SRTR center-specific reports *(See OPTN/SRTR 2010 Annual Data Report, Rockville, MD: Department of Health and Human Services, Health Resources and Services Administration, Healthcare Systems Bureau, Division of Transplantation: 2011).* We are reviewing the adult and pediatric outcomes separately for all programs that request Medicare approval to perform both adult and pediatric transplants, including the lung transplant program. This language, ''except for lung transplants,'' is no longer necessary. Therefore, we proposed to remove the exception language for lung transplants from §§ 482.80(c) and 482.82(c).

We received a total of two comments on our proposed changes to §§ 482.80(c) and 482.82(c) from a health care provider and institution, as well as a national association of transplant professionals. All of the commenters were supportive of the proposed changes. We respond to specific comments below:

Comment: Both of the commenters supported the proposed deletion of the phrase, ''except for lung transplants.'' One commenter specifically noted that this change clarifies that ''adult and pediatric outcomes will be reviewed separately for all [transplant] programs [when they] request Medicare approval to perform both adult and pediatric transplants, including lung transplant programs.''

Response: We agree with the commenters. Since the age cohorts are now the same for all transplant patients, including lung transplants, this language is unnecessary and only causes confusion.

In accordance with the comments discussed above, we are finalizing the changes to §§ 482.80(c) and 482.82(c) as proposed.

3. Volume and Clinical Experience Requirements (§§ 482.80(c)(2) and 482.82(c)(2))

Regulations at §§ 482.80(c)(2) and 482.82(c)(2) both state ''[t]he required number of transplants must have been performed during the time frame reported in the most recent SRTR center-specific report.'' We proposed to modify this language to harmonize it with other parts of the current rule. Under the current rule, transplant centers are generally required, with some exceptions, to perform either 10 transplants over a 12-month period for initial approval (§ 482.80(b)) or an average of 10 transplants each year during the approval period (§ 482.82(c)(2)) (preceding reapproval). There is no requirement for a certain number of transplants to be performed during a particular period that would be covered in a single SRTR center-specific report. Thus, this language has resulted in transplant centers being confused about the number of transplants they are required to perform during any particular period of time covered by the SRTR center-specific reports. Therefore, we proposed to remove both §§ 482.80(c)(2) and 482.82(c)(2), and to redesignate the existing paragraph (c)(3) as (c)(2) to clarify the volume and clinical experience requirements.

We received a total of two comments on our proposed changes to §§ 482.80(c)(2) and 482.82(c)(2) from a health care provider and institution, as well as two national associations (writing together) for transplant professionals. All of the commenters were supportive of the proposed changes. We respond to specific comments below:

Comment: Both comments noted that the requirement was confusing and the proposed change would provide clarification. One of the commenters specifically noted that ''the SRTR uses a ''rolling'' time frame and [the current language] is therefore confusing.''

Response: We agree with the commenters that the current language is confusing because there is no requirement for a transplant center to perform a certain number of transplants ''during the time frame reported in the most recent SRTR center-specific report.'' Removing this language as proposed will eliminate this confusion. In accordance with the comments discussed above, we are finalizing the changes to §§ 482.80(c)(2) and 482.82(c)(2) as proposed.

4. Transplant Center Re-Approval Process

Since the effective date of the CoPs, June 28, 2007, we have completed the initial surveys of all transplant programs that participate or seek participation in Medicare (approximately 845 transplant centers in 245 transplant hospitals), and have started conducting re-approval surveys. The current process and regulatory criteria require, under particular conditions, an automatic onsite review of all CoPs under a 3-year re-approval cycle. We believe that onsite surveys for some of these transplant centers are advisable to promote the health and safety of the patients who receive a transplant in those centers. However, we believe that the time period between recertification surveys should be more flexible, certain current requirements for an onsite survey following evidence of a violation of some CMS requirements may not be necessary, and such regulatory requirements for selecting the facilities that would undergo an onsite survey do not always effectively target survey resources where they are most needed.

We proposed to remove the automatic 3-year re-approval process in favor of a schedule in which each transplant program still has a full onsite recertification survey but the time interval between such surveys for any one program may be longer or shorter than once every three years. In addition, we plan to maintain, via CMS policy, a maximum time interval within which we expect an onsite survey to occur with respect to individual transplant centers. We have a variety of sources we use to generate targeted quality information that can be used to determine the circumstances and frequency under which an onsite survey is best conducted. Examples include previous complaint surveys, prior onsite survey results, issues found during surveys of the broader hospital CoPs, data and information from the Health Resources and Services Administration (HRSA) and the SRTR, notifications of program inactivity, key personnel changes, articles from the press about quality issues, and information submitted by the program through the mitigating factors (MF) process.

We also proposed to (1) clarify that the review of mitigating factors may occur at any time if there is non-compliance with the CoPs, and (2) remove language stating that a transplant program is approved for 3 years. However, it is expected that compliance with CMS requirements is continuous, as is expected of all Medicare providers and suppliers.

Currently the regulations require that we review each transplant program's data before the end of 36 months after the program's prior approval. The regulations require a review of most other CoPs if we find that there is non-compliance with the requirements at § 482.82(a) for timeliness of data submission to the OPTN, or non-compliance with the requirements at § 482.82(b) for clinical experience, or at § 482.82(c) for patient and graft survival outcomes. An onsite survey for analysis of these data is the most common method of conducting such a review, but we have found that an onsite review for deficiencies in these areas is not always necessary if CMS determines that communication with the program and offsite analysis of information submitted by the hospital will suffice to make a final determination and/or approve a plan of correction. For instance, CMS regulations require that transplant programs submit 95 percent of their OPTN forms within 90 days of their due date. On a quarterly basis, we receive data from the OPTN that provides us with the number of forms due for each program and the number that were submitted within the required timeframe. Based on the 3-year period from mid-2008 through mid-2011, 73 transplant programs had data submission rates below 95 percent and, if due for re-approval, would have required an onsite survey. Of these 73, most (43 programs) had average data-submission rates between 90 and 95 percent. While remedial action is necessary in every case, it does not follow that these 43 programs required an automatic, onsite survey. We proposed that we can take action to address the non-compliance (such as through direct communication with hospital officials and, if necessary, application of remedies already available in law or regulation) while reserving for CMS's discretion the decision of whether or not an onsite survey is necessary or advisable.

We also receive data on a quarterly basis about the number of transplants performed at each center. Because of this data transfer, we are routinely aware of the average number of transplants being performed by or at a given transplant program. There are circumstances where it would not be in the public interest to spend the resources to perform a full onsite transplant center survey solely because the 3-year average volume is low. For example, if a transplant program had performed an average of 9.3 transplant surveys over the prior 3-year period (fewer than the current requirement of an average of 10 per year), and the most recent year indicated 14 transplants performed, sending a full team to do an onsite survey of all CoPs, for this reason alone, may not make the best use of limited resources for the hospital or for CMS.

Of the approximately 845 total transplant programs, 442 are required to meet clinical experience requirements (that is, volume requirements). Pediatric transplant programs and adult heart/lung and adult pancreas programs do not have to meet clinical experience requirements (§§ 482.80(d) and 482.82(d)). Using clinical experience data from October 1, 2008 through September 30, 2011, 30 transplant programs that were required to meet experience requirements had performed fewer than the required number of 10 transplants per year on average. If due for re-approval, these 30 programs would have required an onsite survey regardless of any other evidence CMS may have had from history, recent program improvements, or the most recent clinical experience.

We monitor and enforce Medicare's requirements for patient and graft survival rates every 6 months based on the most recent report from the SRTR. A program is out of compliance if its observed patient and graft survival is significantly lower than expected to such an extent that it crosses three thresholds set out in the CoPs at § 482.82: The observed minus expected is greater than 3, the observed divided by expected is greater than 1.5, and the one-sided p-value is less than .05 (§ 482.82(c)(3)).

We follow up with these transplant programs through an offsite survey, an onsite complaint survey, or an onsite full re-approval survey. These follow-up activities are conducted by the CMS Regional Office, a federal contractor, or the State Survey Agency (acting on CMS's behalf). The follow-up occurs at the time of non-compliance and does not wait until the re-approval survey occurs. Following the citation of an outcomes deficiency and the establishment of a date for prospective termination from Medicare participation, programs may submit an application for mitigating factors (MF) based on non-compliance with the outcomes CoP. We provide ample time between the citation and the prospectively scheduled Medicare termination date for the program to provide evidence and, via conference call, discussion of the evidence that would support the mitigating factors request. If the MF request is approved, we specify the time period for the MF

approval and remove the prospectively scheduled Medicare termination.

We also proposed to provide at the new § 488.61(c)(3)(v) an example of a set of mitigating factors that we would consider. We have granted a very small number of MF requests on the basis of the categories currently used as examples in the regulation, such as natural disasters (one case) or access to care (one case). However, we have more frequently granted MF requests in cases where the transplant center has implemented substantial program improvements that address root causes of past graft failures and/or patient deaths, has institutionalized those improvements so they may be sustained over time, and has been able to demonstrate recent outcomes data with sufficient volume and with sufficient post-transplant survival periods such that we conclude that the program is in present-day compliance with the outcomes requirements in the regulation, but for the data time lag inherent in the SRTR reports upon which we otherwise rely. CMS has approved an MF request for 35 transplant programs on this basis since the implementation of the regulation in 2007. Additional MF approvals have been made pursuant to dialogue and a binding System Improvement Agreement between CMS and the transplant center that the hospital will engage in a clear regimen of quality improvement and the hospital subsequently demonstrated both substantial completion of that regimen and improved outcomes. We believe that the addition of this example in the body of the regulation will provide better guidance for transplant centers, offer encouragement for the productive application of hospital staff expertise in making program improvements that increase patient and graft survival, and promote government transparency.

We received a total of twelve comments from nine commenters on our proposed changes to § 488.61(c) from health care providers, institutions, and associations, as well as two national associations for transplant professionals and one national accrediting organization. Overall, the majority of commenters were supportive of the proposed changes. We respond to specific comments below:

Comment: Two of the commenters disagreed with our proposal to remove the automatic three-year re-approval process. One commenter, a healthcare professional, stated that the OPTN does not do a good job of monitoring programs that have failed to meet outcome requirements or have otherwise failed to maintain their programs. The commenter indicated that CMS should realize, after six years of routine surveys, that many of the programs that are not in compliance with the CoPs are unwilling or unable to meet the requirements in the CoPs, even knowing that they would be surveyed. The commenter noted that one of the reasons for the transplant center CoPs was because of the ''very public problems'' in transplant programs. The commenter also said he thought it was foolish for CMS to abandon its most effective tool, the routine survey.

Response: We disagree with this commenter. Although we agree with the commenter that the onsite survey is an effective tool for ensuring compliance with the transplant center CoPs, we also believe onsite surveys are not necessary for all transplant centers. As discussed above, the current requirement for automatic, onsite surveys for transplant centers based solely on that transplant center's failure to be in compliance with the data submission, clinical experience, or outcome requirements in § 482.82 is often an inefficient use of CMS's survey resources. Transplant centers that are not in compliance with these requirements certainly require CMS follow-up; however, we believe that the type of follow-up should be up to CMS's discretion. Requiring automatic, onsite surveys, regardless of the degree and type of non-compliance, will inevitably result in onsite surveys being conducted at transplant centers when another type of follow-up would have adequately addressed the non-compliance with a more efficient use of CMS' limited survey resources.

Comment: Another commenter, a national accrediting organization, expressed concern over CMS not conducting on-site surveys unless the results of data analysis warranted such a review. Data gleaned from the SRTR may not be a reliable indicator of the quality of the care being delivered and the commenter did not believe that this should be the sole determinant of whether there should be an on-site survey. The commenter stated that the proposed method by which the data would be collected by CMS raises concern about whether organizations that are found deficient would have the opportunity to amend their practices before they are penalized. Transplant centers that submit unreliable data, which may or may not contain balancing measures to account for the complexities of its individual populations, risk not meeting the CMS threshold for quality care and potential unwarranted penalties. The commenter also noted that, in their experience, surveying healthcare facilities supports the need for validation of data and documentary evidence with onsite review and that they believe the proposed approach is inconsistent with CMS' evaluation of quality and safety of other high-risk healthcare programs and services.

Response: We disagree with this commenter. We will continue to conduct onsite surveys of all transplant centers. We are eliminating the 3-year approval period, which previously included a policy that onsite surveys be triggered by the failure of a center to be in compliance with the data submission, clinical experience, or outcome requirements in § 482.61(c). CMS is constantly enforcing the transplant center CoPs through the review of data from the SRTR, offsite surveys, and complaint surveys. In addition, as stated above, we will also be establishing, through CMS subregulatory policy, a maximum time interval within which we expect that each transplant center will have an onsite survey.

Regarding the commenter's concern about the SRTR data, we are obligated by the OPO CfCs to use SRTR's data (at § 486.318(a)(2) and (b)(2)). In addition to the SRTR data, we also review data from other sources and other information in determining when to survey OPOs. For example, we may conduct a survey when we receive a complaint from a healthcare provider or the public. We may also decide to conduct a survey after receiving information through another governmental agency or the media.

In regards to the commenter's concern about transplant centers having the ability to make changes to their programs before being penalized by CMS, we believe that all of the transplant centers monitor their performance on the requirements. In addition, transplant centers are required to have a comprehensive, data-driven quality assessment and performance improvement (QAPI) program that is designed to monitor and evaluate the center's performance of all transplantation services as set forth in § 482.98. Therefore, transplant centers should be aware of any problems in their programs and be working towards improving their performance.

CMS constantly monitors and enforces the transplant center CoPs through the review of available data, offsite surveys, and complaint surveys. In addition, we are not abandoning the onsite survey process. Our proposal simply allows us to use discretion, based upon our extensive experience with transplant centers, to determine when an onsite survey is necessary and

when another type of follow-up is appropriate. Also, CMS will be establishing via policy a maximum time interval within which an onsite survey must occur.

Comment: One commenter, a healthcare institution, noted that our proposed addition to the examples of mitigating factors CMS would consider in the re-approval of a transplant center in § 488.61(c) should be in set forth in paragraph (c)(4), not paragraph (c)(3).

Response: We agree with the commenter. The examples of the mitigating factors CMS will consider are set forth in § 488.61(c)(4) and the proposed additional example should also be located in that section. Therefore, we will be finalizing our additional example of a mitigating factor as proposed; however, we will be re-designating it so that it is set forth at § 488.61(c)(4)(v).

After consideration of the comments discussed above, we are finalizing the changes to § 488.61(c) as proposed, except for re-designating proposed § 488.61(c)(3)(v) as § 488.61(c)(4)(v).

5. Technical Corrections

On May 31, 2006, we published the Conditions for Coverage for Organ Procurement Organizations (OPOs) Final Rule (OPO final rule 71 FR 30982). We have discovered that there were some technical errors in that rule. Therefore, we proposed to make the following technical corrections:

- Section 486.306 states, in paragraph (a), that ''An OPO must make available to CMS documentation verifying that the OPO meets the requirements of paragraphs (b) through (d) of this section . . .'' This section only contains paragraphs (a), (b), and (c). We proposed to delete the reference to ''(d)'' in paragraph (a) and insert ''(c)'' in its place. This paragraph would then read, ''the OPO meets the requirements of paragraphs (b) and (c) of this section . . .''
- Section 486.308(b)(1) reads, in part, ''if additional time is needed to select a successor OPO to an OPO that has been de-certified.'' We proposed to remove the ''to'' between the two ''OPOs'' and replace it with ''for'' in this sentence. The paragraph would then read, ''if additional time is needed to select a successor OPO for an OPO that has been de-certified.''
- Section 486.344(d)(2)(ii) reads, in part, ''If the identify of the intended recipient is known. . . .'' We intended to say the ''identity'' of the intended recipient. We proposed to remove the word ''identify'' and replace it with ''identity.'' The clause would then read, ''If the identity of the intended recipient is known . . .''

We received one public comment in response to these proposed technical corrections. That commenter supported the corrections as proposed. Therefore, we are finalizing these changes as proposed.

In addition to the comments we received concerning our proposed changes, we also received comments that were extraneous to those changes. Since these comments address issues beyond the scope of this rule, we will not specifically respond to them here. However, we have reviewed these comments and will consider them in any future rulemaking.

Contact for all transplant center and OPO topics: Diane Corning, (410) 786–8486.

E. Long-Term Care Facilities

On August 13, 2008, we published a final rule requiring all buildings containing long term care facilities to have automatic sprinkler systems installed throughout the building (73 FR 47075). The deadline for meeting this requirement was August 13, 2013. The regulation requires that all facilities be in compliance. On August 16, 2013, CMS issued a memorandum to State survey agencies describing enforcement guidelines for this requirement (see Survey & Certification Memorandum SC–13–55, accessible at *http://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Survey-and-Cert-Letter-13-55.pdf*). Life Safety Code (LSC) surveys will continue to occur as part of normally-scheduled annual surveys, or as part of a complaint visit in which LSC deficiencies are noted or referred. LSC surveys that find a facility to be without a complete automatic sprinkler system installed in accordance with *NFPA 101, LSC, 2000 Edition and NFPA 13, Installation of Sprinkler Systems, 1999 edition* will be cited as not in compliance with CMS requirements. Facilities that are cited for not meeting the sprinkler requirement will be required to submit a plan of correction (POC) to correct the deficiency.

The 2008 final rule was based on a CMS analysis of fire safety in nursing homes, and the agency's conclusion that fire safety protections would clearly be improved by ensuring that all facilities be fully sprinklered within a reasonable period of time. Based on recent public comments and input, we believe that some facilities were not able to meet the August 2013 deadline due to the magnitude of the enterprise they are undertaking (such as large scale construction of a replacement facility) combined with recent financial and construction constraints. We therefore proposed to allow certain long term care facilities to apply for a temporary deadline extension of the sprinkler system requirement, under very limited circumstances, if they are unable to meet the deadline. Our intent is to establish a rigorous review process for all deadline extension requests. Upon finalization of this rule, CMS will continue to cite facilities that do not meet the requirement, except that CMS may grant extensions of the due date to the relatively small number of facilities that meet the extenuating circumstances set forth below.

We proposed to add a provision at § 483.70(a)(8)(iii) that would allow long term care facilities the opportunity to apply for a deadline extension, not to exceed 2 years, if all of the following conditions apply:

- The facility is in the process of replacing its current building, or undergoing major modifications in all unsprinklered living areas and that requires the movement of corridor, room, partition, or structural walls or supports to improve the living conditions for residents, in addition to the installation of a sprinkler system;
- The facility demonstrates that it has made the necessary financial commitments to complete the building replacement or modification;
- The facility has submitted construction or modification plans to the State and local authorities that are necessary for approval of the replacement building or modification prior to applying for the deadline extension; and
- The facility agrees to complete interim steps to improve fire safety of the building while the construction is being completed, as determined by CMS. This could include a fire watch, installation of temporary exits and temporary smoke detection systems, or additional smoke detection systems in the area of construction, increased fire safety inspections, additional training and awareness by staff, and additional fire drills.

An extension may be granted for up to 2 years, depending on the need and particular circumstances. We would determine the length of the extension based on the information submitted by the facility.

We also proposed to add a provision at § 483.70(a)(8)(iv) that would allow for a renewal of the deadline extension for an additional period, not to exceed 1 additional year. We proposed that a facility could only apply for a single extension renewal.

We received a total of 13 comments on our proposed sprinkler deadline extension provision from individuals and organizations such as accrediting bodies, patient advocacy groups, health care systems, and LTC facilities. Overall, the majority of commenters were supportive of the proposed changes. Here we respond to specific comments:

Comment: The majority of commenters supported the proposal and thanked us for the opportunity to comment in support of the proposal. Several commenters disagree with our proposal to grant extensions. One commenter expressed that allowing for this extension could compromise the safety of nursing homes patients, as they are continuing to live in facilities that do not have sprinklers in them during the extension period. In addition, one commenter felt that only facilities that are currently unoccupied should be able to apply for this extension to ensure the safety of patients and staff.

Response: We thank the commenters who expressed support for our proposal and agree that this regulation is necessary in order to allow facilities that have run into issues the opportunity to become compliant while also continuing to provide the safest environment possible for all patients and staff.

We understand that the commenters disagree with the proposal to grant extensions in certain circumstances because they feel that facilities have had ample time to come into compliance with the sprinkler requirement. Some facilities will not be able to meet the deadline and will need the extension to allow for the completion of construction. If the facilities are not given an extension it may cause facilities to be closed and will require patients to be moved to other facilities that may be further away and not as easily accessible. An example of unforeseen issues that may have caused a facility to be unable to meet the 2013 deadline may be delayed construction or depleting funds. For example, many providers established financial plans to construct a replacement facility that would comply with the sprinkler requirement, or to effect substantial building modifications that would include fund sprinkler compliance projects. However, following the initial CMS final rule in 2008 that mandated automatic sprinkler systems, a number of such facilities found their financial gains disappear due to the national recession, depleting the project funds, or making it impractical to sell an existing facility where the sale was necessary to fund the replacement facility. Also, challenges have come from the recent natural disasters such as Hurricane Irene in 2011 and Superstorm Sandy in 2012, causing delays in project starts and creating a backlog of projects.

We also understand the safety concerns of the commenters who disagreed with our proposal. We share their goal of improving safety for all long term care facility residents while continuing to assure resident stability and access to much needed long term care services. We are requiring that, as part of receiving an extension, a facility must implement interim fire safety measures. Interim measures may include the initiation of a fire watch, installation of temporary exits, installation of temporary smoke detection or smoke alarm systems, and increased fire safety training or fire drills for staff or other means to ensure the continued fire safety of the residents of the facility.

Comment: One commenter observed that recent natural disasters, including Hurricane Irene and Superstorm Sandy, have significantly impaired the ability of some nursing homes to meet the August 13, 2013, deadline to achieve full sprinkler status. The commenter observed that recent challenges from Superstorm Sandy in late 2012 caused delays in project starts and a backlog of construction projects and requested that we provide for an additional extension one year beyond what we proposed.

Response: We agree that natural disasters are a valid reason for a delay in compliance with the August 13th deadline. In reviewing the comments, we concluded that the original CMS proposal did not fully accommodate the significant impairments that might result from a major disaster. While section 1135 of the Act allows the Secretary to waive certain requirements in the case of a declared public health emergency, construction delays and financial hardships occasioned by a major disaster may extend far beyond the date of a declared public health emergency. While we still intend that any authority for an extension of the sprinkler deadline be narrowly construed, in this final rule we have added explicit recognition of a major disaster event as a potential basis for an extension of the due date at § 483.70(a)(8)(iii). We do believe that three years is a considerable amount of time in which to complete the construction, even if a facility is impacted by a natural disaster. Therefore, we are finalizing the extension timeframe as proposed.

Comment: Some commenters have seemingly used the public comment process to apply for an extension, while others explicitly requested an explanation of the process.

Response: We appreciate the opportunity to explain the process for submitting an application. As we proposed, and are finalizing in this rule, a facility must meet the following criteria in order to qualify for an extension:

1. The facility is in the process of replacing its current building, or undergoing major modifications in all unsprinklered living areas and that requires the movement of corridor, room, partition, or structural walls or supports to improve the living conditions for residents, in addition to the installation of a sprinkler system or has had its planned sprinkler installation so impaired by a disaster or emergency, as indicated by a declaration under section 319 of the Public Health Service Act, that CMS finds it would be impractical to meet the sprinkler installation due date.

2. The facility demonstrates that it has made the necessary financial commitments to complete the building replacement or modifications;

3. The facility has submitted construction or modification plans to the State and local authorities that are necessary for approval of the replacement building or modification prior to applying for the deadline extension; and

4. The facility agrees to complete interim steps to improve fire safety of the building while the construction is completed, as determined by CMS. This could include a fire watch, installation of temporary exits and temporary smoke detection systems or additional smoke detection system in the area of construction, increased fire inspections, additional training and awareness by staff, and additional fire drills. CMS may also require that information about these interim steps be posted in the facility in an informational manner accessible to residents and family members.

In order to demonstrate that it meets the above criteria, a facility must submit certain information. The following are examples of information that may need to be submitted by the facility. We intend for this list to be merely illustrative, and note that it does not include all possible information that may be requested by CMS in order to make the final extension decision. This list is subject to change and the process will be described in further detail in subregulatory guidance.

(1) *Organization Information:* The name, address, CCN, contact information, and other data regarding

the nursing home that is requesting the extension.

(2) *Type and Qualifications of Request:* (a) Replacement Facility or (b) Major Modification, or (c) major disaster. A request from the facility for an extension of time to complete the installation of an automatic sprinkler system and the circumstances behind the request for an extension of time, including a description of what the facility is proposing (such as a replacement of the existing facility or major modification of the living area, or reconstruction from a major disaster), and an explanation of the circumstances that prevent timely installation of the sprinklers and that qualify the request for an extension approval under terms of the regulation.

(3) *Timeframe:* The length of time for which the extension is requested.

(4) *Major Modifications:* In the case of the major modification of the living area, a description and/or drawing of the proposed work shall be submitted for review, a listing of all units affected, square footage involved, overall estimated project cost, proposed length of time for the extension, correspondence to the State Licensure Authority concerning the proposed major modifications to the facility and their response to such request, an explanation of the manner in which the modifications will improve the environment for residents, and whether any residents or residents might be negatively affected by the modifications.

(5) *Projected Milestones:* A list of project milestones for completion of the modifications or replacement of the facility will be required to be submitted for review to help in determining the length of the extension time required to complete the work proposed.

(6) *Financial Commitments:* Documentation from financial institutions attesting to the facilities financial capabilities to complete the building replacement or modifications. This could include such things as final loan approvals, final grant approval or other such things that could enable CMS to determine the financial capabilities of the facility to complete the project in a timely manner.

(7) *Construction Documentation:* Documentation concerning the submittal of construction plans and specifications for the replacement of an existing long term care facility or the modification of an existing long term care facility. This information shall include correspondence with State and local plan approval authorities indicating approval or receipt of plans for approval and the date of anticipated plan approval from the approving authorities. For facilities with partial plan approval or preliminary plan approval a copy of any final approval documentation will also be required to be submitted when received by the facility.

(8) *Interim Fire Safety Improvements:* Suggestions for any enhanced measures that the facility has implemented or could implement to strengthen resident protections against fire hazard during the time period prior to final achievement of full sprinkler status for the facility.

A facility requesting an extension of time must submit the required information to the appropriate CMS Regional Office and State survey agency. CMS Central Office will post the major substance of the requests on an appropriate CMS Web site (such as *http://www.medicare.gov/nursinghomecompare/*), together with contact information for any public input. When the CMS Regional Office is satisfied that the submitted information is complete, it will consult with the State survey agency and make a recommendation to CMS Central Office regarding the request. The CMS Regional Office will also recommend any interim steps to improve fire safety at the requesting facility. CMS Central Office will review the submitted material from the CMS Regional Office, consult with the State fire Marshall and the State Ombudsman program, and make a final determination as to whether or not to grant the requested time extension and what interim fire safety steps will be required in the facility. CMS will notify the requesting facility and State survey agency as to the final determination. While an original deficiency citation is subject to appeal consistent with 42 CFR Part 498, we note that CMS's discretion to grant an extension of the due date is not subject to judicial appeal.

If a further one time only one year extension is requested, further documentation from the facility will be required as to why the first extension requested was not adequate, when completion is anticipated, and what is being done to insure the continued fire safety of any existing building that has not had an automatic fire sprinkler system installed.

Comment: A commenter suggested that we allow a 3 year waiver for facilities purchasing a new building without sprinklers to install sprinklers.

Response: Facilities are free to purchase any building that becomes available, however the newly purchased facility will need to be in compliance before it is able to complete the Medicare process and become a Medicare approved facility. Therefore, the facility would need to be fully sprinklered before any occupancy.

Comment: A few commenters suggested changes to the criteria that a facility must meet in order to qualify for the extension. One commenter suggested that facilities applying for the extension only be required to show that they are working toward securing the necessary financial commitments. Another commenter suggested that the construction plans must be approved by state and local authorities in order to qualify.

Response: We would like to thank the commenters for giving us this opportunity to address suggestions and clarify any statements that may have been confusing. Facilities have already been given 5 years to comply with the 2013 deadline. The extensions we proposed were intentionally defined to apply only in circumstances where total facility replacement is being effected or major modification is planned. We consider these plans to be ones that are likely to be most affected by construction delays, market, or funding issues due to the recent national recession. Even in these circumstances, given the 5 year advance notice, current low interest rates, and recent improvement in the real estate markets, we expect that a serious intention to fully install sprinklers would have evidence of the necessary financial commitments. We recognize that financial commitments often have contingencies attached to them (such as a loan that is contingent upon sale of another property), and will take such factors into consideration provided that there are firm commitments in place subject to fulfillment of the pertinent contingencies and other relevant considerations. With regard to the comment regarding approval by local authorities, while we agree that receiving approval of construction plans from state and local authorities is a positive sign that a project is on track to be completed by the end of the extension period, we do not believe that such approval is absolutely necessary at the time that a facility applies for an extension. Therefore, we are finalizing the extension criteria as proposed.

Comment: One commenter suggested various types of alternative sanctions to penalize facilities for being out of compliance with the LTC sprinkler requirement. In addition, they also suggested that facilities should not be allowed to receive a waiver of liability for any fire-related injuries that occur as a result of the facility not being in compliance with the sprinkler requirement.

Response: We are allowing facilities to apply for an extension only in very limited circumstances. If a facility meets the narrow terms of the regulation, and fulfills the terms of any requirements that accompany an approval (such as enhanced procedures for added fire protection during the extension period), then imposition of a penalty would be inconsistent with CMS concurrence that the facility met the terms of the regulation. However, we project that most facilities that were not fully sprinklered, as of the time of publication of the proposed rule, will not meet the terms of this narrowly-construed extension regulation. If such facilities have not achieved full sprinkler status by the sprinkler due date, then they will indeed be subject to sanction. With regard to waivers of liability, CMS does not have authority to waive civil or criminal liability.

Comment: One commenter suggested that before applying for a waiver, facilities should have to notify the state survey agency, state long-term care ombudsman; state fire marshal; local fire marshal; consumer advocacy groups; facility residents, families and other resident representatives; and the public of its intent to request a waiver; the reasons for its request; enhanced procedures it will take to ensure the safety of residents until compliance with the sprinkler requirement is achieved; its time frame for reaching compliance; and an opportunity for those receiving notification to attach comments and recommendations to the request. In addition to submitting comments and recommendations, the state survey agency, state ombudsman, and state fire marshal should be required to sign off on the request and the facility's plans for the interim safety of residents until sprinklers are installed. The commenter suggested that CMS should consider all comments and recommendations when deciding whether to grant the waiver.

Response: We agree with the value of transparency in the process of facilities requesting extensions, as well as the CMS approval or denial process. We therefore plan to engage in a process whereby facilities will make requests to the CMS Regional Office and State survey agency. CMS Central Office will post the major substance of the requests on an appropriate CMS Web site (such as *http://www.medicare.gov/nursinghomecompare/*) together with contact information for any public input. When the CMS Regional Office is satisfied that the submitted information is complete, the staff will consult with the State survey agency and make a recommendation to CMS Central Office regarding the request. The CMS Regional Office will also approve the suggested recommended interim fire safety steps, or recommend any interim steps to improve fire safety at the requesting facility. CMS Central Office will review the submitted material from the CMS Regional Office, and make a final determination as to whether or not to grant the requested time extension and what interim fire safety steps will be required in the facility. CMS will notify the requesting facility and State survey agency as to the final determination. We remind facilities that a sprinkler deadline extension from CMS would not waive relevant State or local fire safety laws.

Comment: One commenter expressed concern that some facilities might take this required construction as an opportunity to convert facilities to different levels of care, such as skilled nursing and rehabilitation. This could cause a problem if facilities then involuntarily discharge current nursing home residents to make room for skilled nursing or rehabilitation residents.

Response: While we understand that the commenter is concerned about the possibility of this occurring, we are not aware of any facilities that have used the construction associated with installing sprinklers as an opportunity to change the care level of any beds from unskilled to skilled, or to involuntarily discharge residents during the entirety of the phase-in period. Since the vast majority of LTC facilities have already installed sprinkler systems and have not engaged in this practice, we have no basis from which to conclude that the small minority of facilities that would qualify for this extension would suddenly begin doing so. Furthermore, the LTC facility regulations at § 483.12, Admission, Transfer, and Discharge Rights, contain strict requirements that govern the discharge of residents that would effectively curb the use of involuntary discharge practices. The regulations states that, the facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless—

- The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;
- The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;
- The safety of individuals in the facility is endangered;
- The health of individuals in the facility would otherwise be endangered;
- The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility. For a resident who becomes eligible for Medicaid after admission to a nursing facility, the nursing facility may charge a resident only allowable charges under Medicaid; or
- The facility ceases to operate.

Furthermore, the regulation also requires that the long term care facility must notify the resident and, if known, a family member or legal representative of the resident of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand at least 30 days before the resident is transferred or discharged. The written notice must include the following:

- The reason for transfer or discharge;
- The effective date of transfer or discharge;
- The location to which the resident is transferred or discharged;
- A statement that the resident has the right to appeal the action to the State;
- The name, address and telephone number of the State long term care ombudsman;
- For nursing facility residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act; and
- For nursing facility residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act.

Appendix PP of the CMS State Operations Manual (*http://cms.hhs.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap_pp_guidelines_ltcf.pdf*) further directs LTC facility surveyors to closely review the clinical records of discharged residents to determine the reasons for transfer/discharge. Surveyors are also directed to communicate with the ombudsman and ask if there were any complaints regarding transfer and/or discharge, as well as the results of any ombudsman investigations. We believe that this comprehensive package of regulations and survey enforcement procedures provides an appropriate level of protection to assure that residents are not involuntarily discharged for reasons related to the installation of sprinklers in LTC facilities.

Comment: One commenter suggested public notification of noncompliance. The commenter suggested public notice in two different forms—by posting a notice in the facility and also by a special notification posted on *Nursing Home Compare.*

Response: We appreciate the commenter's suggestion. It is important to note that a facility receiving a deadline extension would not be considered non-compliant. If the facility has applied for an extension, and the extension has been granted, the facility would be considered compliant for the duration of the facility's approved time period. Therefore there would be no need to post a public notification of noncompliance.

Comment: One commenter suggested specific interim staffing requirements and monitoring efforts is required for each facility that is granted an extension. The commenter suggested that CMS impose the following requirements:

1. Hard-wired smoke alarms that automatically alert all sections of the facility and notify local fire departments and other emergency responders. These hard-wired smoke detectors should be placed in all resident rooms, public areas, laundry rooms, kitchens, basements, attics, and utility closets where combustible materials may be stored.

2. Enhanced staffing to ensure that the facility and all units within the facility are adequately staffed on all shifts.

3. Strict state survey agency monitoring to ensure that all staff on all shifts, including temporary staff, are sufficiently trained in Life Safety Code requirements and oriented to the facility and facility emergency procedures.

4. Enhanced state surveys, including Life Safety Code inspections, during the waiver period to ensure the facility complies with all interim safety requirements, including staffing levels.

5. Immediate jeopardy citations and appropriate remedies for failure to be in compliance with interim Life Safety Code requirements.

Response: We agree that each of these could be an appropriate temporary fire safety measure; however we do not agree that all of these measures are necessary in every single facility. We believe that the best way to address interim fire safety measures is to customize them to each facility. Therefore, we are finalizing the regulation text that the facility must agree to complete interim steps to improve fire safety, as determined by CMS, as proposed. We will take the commenter's recommendations into consideration as we consider the unique aspects of each extension request.

After consideration of the comments discussed above, we are finalizing the proposed changes to § 483.70(a)(8)(iii) and (iv) with the minor modifications discussed above.

Contact for long term care sprinkler topics: Kristin Shifflett, (410) 786–4133.

F. Rural Health and Primary Care

We received a total of 60 comments on our proposed regulatory changes for Critical Access Hospitals (CAHs), Rural Health Clinics (RHCs), and Federally Qualified Health Centers (FQHCs). The comments came from national and state professional associations, state medical associations, health care systems, individual and group practitioners and consumer advocacy organizations. Overall, the majority of commenters were supportive of the proposed changes. There were also some specific dissenting comments, and other comments that suggested further changes. We respond to these comments here.

1. CAH Provision of Services (§ 485.635(a))

The current CoPs at § 485.635(a)(2) require CAHs to develop their policies and procedures with the advice of a group of professional personnel that includes one or more doctors of medicine or osteopathy and one or more physician assistants, nurse practitioners, or clinical nurse specialists, if they are on staff. Currently, at least one member of the professional group must be a non-CAH staff member. We proposed to remove the requirement that a CAH must develop its patient care policies with the advice of a non-CAH staff member, thereby allowing CAHs flexibility in their approach to developing their patient care policies and procedures. Specifically, we proposed to remove the provision at the end of § 485.635(a)(2) that states, ''. . . at least one member is not a member of the CAH staff.''

Comment: All of the commenters on our proposed change to § 485.635(a)(2) agreed with removing the requirement that a CAH must develop its patient care policies with the advice of a non-CAH staff member. Several commenters stated that CAHs typically engage in network arrangements with other non-CAH hospitals and that those arrangements provide a mechanism for review and assistance with the development of appropriate patient care policies.

Response: We are pleased to have received favorable comments regarding the elimination of this requirement. After consideration of the comments discussed above, we are finalizing the changes to § 485.635(a)(2) as proposed.

2. CAH and RHC/FQHC Physician Responsibilities (§§ 485.631(b)(1)(v), 485.631(b)(2), and 491.8(b)(2))

The current requirements for CAHs, RHCs, and FQHCs specify that a physician must be present in the CAH, RHC, or FQHC for sufficient periods of time at least once in every 2-week period, to provide medical direction, medical care services, consultation, and supervision of other clinical staff. The regulation further requires a physician to be available through telecommunication for consultation, assistance with medical emergencies, or patient referral. Sections 1861(aa)(2)(B) and 1820(c)(2)(B)(iv) of the Act require supervision and oversight of services furnished by physician assistants and nurse practitioners in a CAH, RHC, and FQHC but they do not prescribe the frequency of the physician visits nor do they require onsite supervision. We proposed to revise the CAH regulations at § 485.631(b)(2) and the RHC/FQHC regulations at § 491.8(b)(2) to eliminate the requirement that a physician must be onsite at least once in every 2-week period (except in extraordinary circumstances) to provide medical care services, medical direction, consultation, and supervision. For CAHs, we proposed that a doctor of medicine or osteopathy would be required to be present for sufficient periods of time to provide medical direction, consultation, and supervision for the services provided in the CAH, and be available through direct radio or telephone communication for consultation, assistance with medical emergencies, or patient referral. For RHCs and FQHCs, we proposed that physicians would be required to periodically review the clinic or center's patient records, provide medical orders, and provide medical care services to the patients of the clinic or center.

In the course of reviewing public comments, we determined that the administrative burden on physicians and facilities could be further reduced by making an additional similar change to § 485.631(b)(1)(v). These requirements set out a similar 2-week minimum interval for physicians to review and sign a sample of outpatient records of patients cared for by nurse practitioners, clinical nurse specialists, certified nurse midwives, or physician assistants, according to the policies of the CAH and according to the State's current standards of practice. Accordingly, as discussed in further detail below and after consideration of

the public comments received, we will similarly revise § 485.631(b)(1)(v) to require that a sample of outpatient records be reviewed ''periodically.'' We believe that removing the specified 2-weeks requirements at §§ 485.631(b)(1)(v) and 485.631(b)(2), and at § 491.8(b)(2), will provide CAHs, RHCs, and FQHCs with the flexibility to manage patient care activities in such a way as to maximize staff time to provide patient access to quality care in rural and remote areas.

Finally, we note that for most outpatient therapeutic CAH services provided to Medicare beneficiaries, a physician or appropriate non-physician practitioner is still required to furnish direct supervision and be immediately available to furnish assistance and direction for the duration of the service, in accordance with 42 CFR 410.27(a)(1). We continue to believe this is an appropriate standard for Medicare payment under section 1861(s)(2)(B) of the Act, which requires these services to be furnished incident to a physician's services and applies to CAHs if the context otherwise requires under section 1861(e) of the Act (see 77 FR 68426). Unlike sections 1861(aa)(2)(B) and 1820(c)(2)(B)(iv) of the Act, our regulation at 42 CFR 410.27(a)(1) does not necessarily require a physician to furnish the required supervision if a non-physician practitioner listed in 42 CFR 410.27(g) (a clinical psychologist, licensed clinical social worker, physician assistant, nurse practitioner, clinical nurse specialist, or certified nurse-midwife) is qualified to supervise the service (see the Medicare Benefit Policy Manual (Pub. 100–02) Ch. 6 Sec. 20.5.2). The payment provisions in section 1861(s)(2)(B) of the Act and 42 CFR 410.27 are not enforced via the survey and certification process and are not evaluated as part of the assessment of compliance with the CAH CoPs.

Comment: The majority of commenters supported the proposed change to eliminate the ''2-week'' requirement, under §§ 485.631(b)(2) and 491.8(b)(2), that a physician must be physically present once in a two-week period to provide medical direction, medical care services, consultation and supervision of other clinical staff in either the CAH, RHC, or FQHC.

Many commenters stated that the increased use of telecommunications and telemedicine, and the use of non-physician practitioners under physician oversight, allow rural facilities the flexibility to schedule physician on-site services to better match the needs and requirements of the community they serve. One commenter suggested that, because of these technological advances, the current requirements do not improve the quality of care.

Comments from a large consumer group were particularly supportive of the proposal because they believe it would improve consumers' access to care in remote and underserved areas where there may be a shortage of physicians. Similarly, commenters from the rural provider community remarked that the current requirement is unnecessarily restrictive and that revising it will benefit patients by allowing practitioners and health care providers and suppliers greater flexibility. They stated that providers in remote areas may find it difficult to comply with a biweekly schedule. One commenter remarked that physically travelling to outlying clinics twice each month is not an efficient use of a physician's time, and that it was a significant part of that commenter's decision not to apply for RHC status for one of its remote clinics.

One commenter stated that States now have scope of practice laws for non-physician practitioners such as a physician assistant (PA) or a nurse practitioner (NP). These State laws specify the extent to which a PA or NP can practice independently or under remote supervision. The commenter also stated that, in a number of states, the existing RHC requirement for physician on-site availability has the practical effect of superseding state law and the regulations create an added cost to the RHC.

Response: We appreciate the comments supporting this proposed change. With the development of technology that facilitates telemedicine, a physician should have the flexibility to use a variety of ways and timeframes to provide medical direction, consultation, supervision, and medical care services, including being on-site at the facility.

The rule will allow for increased use of team-based care while still requiring the physician to be on-site, as appropriate, to ensure the delivery of quality care. Importantly, the proposed regulation would not preclude a State or a rural provider from establishing requirements for physician supervision of non-physician practitioners that are more stringent. As we stated in the proposed rule, for those CAHs that offer a range of complex services and have more than one physician on staff, a visit just once every 2 weeks could be inadequate. It is our experience that such facilities have policies and procedures in place to ensure quality provision and oversight of the services they provide.

We note that CAHs, RHCs, and FQHCs are still required to have a physician who provides medical direction and is involved in the development of the policies and procedures, provides consultation, and supervises other clinical staff. The proposed change should provide RHCs and FQHCs with the flexibility to optimize their physician on-site time to effectively meet the needs of their patients.

Comment: Several commenters requested that CMS provide additional guidance in the final rule regarding what expectations CMS has for an MD and DO's presence, given the diversity of CAHs affected. The commenters stated that CAHs differ greatly in terms of the size of the populations served and in the range and extent of services offered. One commenter stated that we should consider whether removal of the bi-weekly presence is appropriate in all cases. A commenter noted that, for some CAHs, the presence of an MD or DO may in fact be required more frequently than every two weeks. Additionally, some commenters remarked that telecommunication may not always be an appropriate mechanism for delivering care, such as in the provision of surgical services when a physician's physical presence would be required.

Some commenters asked CMS to clarify and further explain the meaning of ''sufficient periods of time,'' but others disagreed with the proposal entirely, stating that requiring a doctor to be present for ''sufficient periods of time'' is inadequate for ensuring appropriate supervision of medical care provided by non-physician practitioners.

Response: We appreciate the commenters' remarks and requests for additional guidance. We expect the policies for medical oversight and supervision at each facility to reflect the requirements of applicable State law as well as the scope of services furnished.

We believe that specifying a precise timeframe for a physician to visit the CAH, RHC, or FQHC, and provide the general oversight required under sections 1861(aa)(2)(B) and 1820(c)(2)(B)(iv) of the Act would not guarantee better health care. With the development of technology such as telemedicine, we believe a CAH, RHC, or FQHC should have the flexibility to use a variety of ways and timeframes for physician(s) to provide the necessary medical direction and oversight. For example, a physician supervising a RHC or FQHC might visit the facility more frequently than biweekly during peak seasons for certain illnesses and make less frequent visits during other times of

the year. For CAHs that offer a range of complex services, have more than one physician on staff, and have busy emergency departments and/or extensive outpatient services, a visit by a physician only once every 2 weeks could be grossly inadequate. On the other hand, a bi-weekly on-site visit may be unduly burdensome to a small CAH in a remote rural area that offers very limited services and has a low patient volume.

We note that § 485.635(a) requires a CAH and § 491.9(b) requires the RHC or FQHC to furnish health care services in accordance with appropriate written policies consistent with applicable State law. Thus, we would not expect these facilities to offer any services without adequate staffing to provide those services, including staffing or supervision by physicians as applicable. We expect each facility to evaluate its services and adjust its physician schedule accordingly, as an appropriate physician schedule would reflect the volume and nature of services offered. The amount of time spent at the CAH or RHC by the physician to provide general oversight as well as patient care will be evaluated at the time of a survey for compliance with the CoPs (CAHs) or CfCs (RHCs). FQHCs are only required to attest to their compliance to the Medicare requirements but may be surveyed in response to a complaint. We do not envision developing specific formulas for minimum amounts of time a physician is required to be present at these facilities. Rather, we would identify for further evaluation cases where we find significant disproportion between the volume of services offered and the amount of time a physician is present.

Comment: A few commenters suggested that more review and analysis is necessary before revising or eliminating this requirement, stating that patient safety should be carefully considered.

Response: We agree with the commenters that patient safety considerations are vitally important. CMS continuously analyzes patient safety issues, and we have been working steadily to reduce unnecessary regulatory burden on providers so that resources can be freed up for providing quality health care. As evidenced by the Hospital and CAH final rule issued on May 16, 2012 (77 FR 29034), we have been introducing changes only after careful review of the feedback we receive from the provider community and other stakeholders. Patient safety is paramount, and we are mindful of the financial and labor constraints impacting health care delivery in remote and rural settings. We will continue to review all regulatory matters from a patient safety and quality of care perspective.

Comment: Several commenters stated that, instead of revising the on-site review requirements to make them more flexible, quality care could be better ensured if CMS would work with stakeholder groups on the development of programs to support the few primary care physicians in rural and frontier areas and to recruit primary care physicians.

Response: We are mindful of the difficulties inherent in attracting physicians to practice in rural settings. CMS is engaged in a multi-pronged strategy to improve and expand the delivery of quality health care services. We routinely work with stakeholder groups to maximize access to quality health care services and maximize the ability of physicians to practice in rural settings. We note that The Department of Health and Human Services has established a number of different programs, such as the National Health Service Corps (NHSC), to train and recruit health care practitioners, including physicians, to provide services in rural and underserved areas. More than 40,000 primary care medical, dental, and mental and behavioral health professionals have served in the NHSC since its inception.

In addition, we recognize the tremendous opportunity to improve and deliver quality health care that is presented by telemedicine technologies and the services these technologies support. As appropriate, we encourage the use of such technologies to provide flexibility in the delivery of health care and to increase patient access to care. We also recognize that non-physician practitioners will increasingly be relied upon to assist with the delivery of essential medical services.

Comment: Another commenter asked which entities would be authorized to determine whether facilities are in compliance.

Response: The authority to determine whether or not facilities are in compliance remains with CMS, which utilizes results of surveys conducted by State survey agencies or those accrediting organizations which have Medicare CAH or RHC accreditation programs approved by CMS under Part 488.

Comment: Several commenters remarked that while the proposed rule introduces welcome changes to § 485.631(b)(2), the rule did not propose to modify the very similar requirements at § 485.631(b)(1)(v) that address physician review of outpatient records. If left unchanged, these requirements for the bi-weekly physician review of outpatient records would appear to be in conflict with the original proposal. Commenters stated that, as proposed, the new rules would create a dual standard that would be confusing and would contribute to the administrative burden for rural healthcare facilities and CAHs. One commenter specifically requested clarification of existing requirements at § 485.631(b)(1)(vi), which are related to the proposed regulation but were not addressed in the proposed rule. The requirements at § 485.631(b)(1)(vi) state that a doctor of medicine or osteopathy is not required to review and sign outpatient records of patients cared for by nurse practitioners, clinical nurse specialists, certified nurse midwives, or physician assistants where State law does not require record reviews or co-signatures, or both, by a collaborating physician.

The commenter suggested clarification was needed in either the regulatory text or in the State Operations Manual at Appendix W regarding this issue. The commenter stated that some jurisdictions are struggling with the interpretation and applicability of this CoP standard. The commenter suggested that, where there are no affirmative statements in State law explicitly requiring such record reviews, none should be required. The commenter stated that some States that do not have explicit record review requirements are in fact requiring them because of their confusion about the current CoP standard.

Response: We agree with the commenters that continuing to require a bi-weekly schedule for physicians to review and sign a sample of outpatient records of patients cared for by non-physician practitioners, as set forth at § 485.631(b)(1)(v), does not fully align with our initial, more limited, proposal. We believe the changes suggested by the commenters are appropriate and in keeping with the burden reducing goals of our initial proposal to eliminate the prescriptive 2-week physician on site visit requirement at § 485.631(b)(2).

We also appreciate the commenter's remarks about the confusion at § 485.631(b)(1)(vi) regarding a physician's responsibility to review outpatient records. Section § 485.631(b)(1)(vi) states that a physician ''is not required to review and sign outpatient records of patients cared for by nurse practitioners, clinical nurse specialists, certified nurse midwives, or physician assistants where State law does not require record reviews or co-signatures, or both, by a collaborating physician.'' Section 485.631(b)(vi) was

intended to mean that, if the applicable State law does not require a record review or co-signature, or both, by a collaborating physician, then CMS would not require the periodic record review described at § 485.631(b)(v).

Because we recognize that there has been confusion about the interaction of the current requirements of § 486.631(b)(v) and (vi), we are revising the regulatory language at § 485.631(b)(1) to address these concerns. We believe the changes suggested by the commenters are appropriate and in keeping with the burden reducing goals of our initial proposal to eliminate the 2-week physician on site visit requirement at § 485.631(b)(2). We agree with the commenters and have removed the language requiring biweekly outpatient record review.

Specifically, we will delete § 485.631(b)(1)(vi) and will revise the regulatory language at § 485.631(b)(1)(v) to state that a Medical Doctor (MD) or Doctor of Osteopathy (DO) must ''periodically'' review and sign a sample of outpatient records of patients cared for by nurse practitioners, clinical nurse specialists, certified nurse midwives, or physician assistants only to the extent required under State law where State law requires record reviews or co-signatures, or both, by a collaborating physician. If the applicable State law does not require a record review or co-signature, or both, by a collaborating physician, then CMS does not require such periodic record review.

We note that there is no regulatory requirement for the review of records to be performed onsite and in person. Thus, if the CAH has electronic medical records that can be accessed and digitally signed by the MD or DO, this method of review is acceptable.

Comment: One commenter requested clarification of the term ''outpatient,'' as used in § 485.631(b)(1)(v). The commenter wondered whether the term ''outpatient'' referred only to hospital-based outpatient services such as the Emergency Department.

Response: We interpret the term ''outpatient,'' for the purposes of the CoPs, to mean all patients receiving CAH services other than those who have been admitted as an inpatient on the basis of an inpatient admission order. It would include patients receiving observation services, emergency department services, same-day surgery services, and any other form of ambulatory care services.

Comment: One commenter suggested that, in addition to modifying the 2-week onsite requirement, that CMS should include a provision that would explicitly state the necessity of ensuring immediate availability of a physician with relevant training and expertise, whereby ''immediate availability'' would include contact by electronic or telephonic means, without delay, and interruptible. The contacted physician and means of communication should be such that it is possible for the physician to furnish appropriate assistance and direction throughout the performance of the procedure and inform the patient of provisions for post-procedural care, and such shall be contained in the standardized procedure or protocol.

Response: The CAH conditions of participation provide a regulatory structure that we believe promotes and facilitates the availability of health care professionals, including availability using electronic communications, to provide care to rural communities. We note that the requirements at § 485.618, Condition of Participation—Emergency Services, provides for immediate physician access in the event emergency care is needed. In particular, § 485.618(e) requires a CAH to have established procedures under which a doctor of medicine or osteopathy is immediately available by telephone or radio contact on a 24-hours a day basis to receive emergency calls, provide information on treatment of emergency patients, and refer patients to the CAH or other appropriate locations for treatment.

Comment: One commenter supported the proposal but urged CMS to make it clear that only the frequency requirement would change; the role of the medical director would stay the same for a CAH, RHC, or FQHC.

Response: We agree with the commenter's assessment and would like to emphasize that the role of the medical director of the CAH, RHC, or FQHC remains unchanged by our proposal. We are amending the regulations with respect to the prescribed frequency of a physician's on-site presence at a CAH, RHC, or FQHC.

In accordance with the comments discussed above, we are finalizing the changes to §§ 485.631(b)(2) and 491.8(b)(2), as proposed. We are also revising § 485.631(b)(1)(v) to require that a sample of outpatient records be periodically reviewed.

3. RHC/FQHC Definitions: Physician (§ 491.2)

We proposed to revise the definition of ''physician'' at § 491.2 to more closely conform with the definition of ''physician'' that appears under the rules governing payment and Medicare agreements with RHCs and FQHCs in Part 405 at § 405.2401(b). We proposed to revise the definition to include (1) a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State in which the function is performed; and (2) within limitations as to the specific services furnished, a doctor of dental surgery or of dental medicine, a doctor of optometry, a doctor of podiatry or surgical chiropody or a chiropractor (see section 1861(r) of the Act for specific limitations). Our proposal also specified that a physician meet the requirements of sections 1861(r), 1861(aa)(2)(B), and 1861(aa)(3)(B) of the Act.

We received a total of 40 comments on our proposed changes to § 491.2 from accrediting bodies, consumer advocacy organizations, individuals, and national health care provider organizations. Overall, the majority of commenters disagreed with the proposed changes. Here we respond to specific comments.

Comment: An overwhelming majority of commenters stated that they did not want to see an expansion of the definition of a physician beyond an MD or DO; these comments appeared to be rooted in a concern for patient safety and for proper legal oversight. They expressed the concern that changing the definition would create a conflict in §§ 491.7(a)(1) and 491.8 regarding physician responsibilities and the duties in performing oversight for an RHC/FQHC and providing medical care services. Many commenters apparently interpreted the proposed change as allowing a chiropractor, optometrist, or dentist to supervise nurse practitioners and physician assistants. For example, one commenter stated that they were not aware of any State that would permit a PA to be supervised by anyone other than a medical doctor (MD) or an osteopathic doctor (DO).

The commenters expressed concern that by altering the definition of a physician, CMS would be extending the scope of practice for certain non-physician practitioners in RHCs and FQHCs, as well as eliminating the requirement for medical direction and oversight by MDs and DOs in these facilities.

Commenters noted that, unlike the training for a dentist, optometrist, podiatrist, or a chiropractor, the broad curriculum for MDs and DOs trains medical students on all organ systems, including the important aspects of preventive, acute, chronic, continuing, rehabilitative, and end-of-life care.

Some commenters also expressed concern that other practitioners with significantly less training than MDs and DOs are promoting themselves as ''physicians,'' resulting in confusion

among patients. They stated that extending the definition would exacerbate this problem because the public currently finds it difficult to differentiate among various professionals and that allowing para-professionals to use the word ''physician'' would only complicate the issue.

A few commenters requested that we revise the definition to have it exactly conform to the definition in 42 CFR 405.2401 to specifically include residents. Another commenter stated that nurse practitioners should be included in the definition of ''physicians'' or listed with physicians as a qualified provider wherever the terms ''physician'' or ''physician services'' are used.

Conversely, several commenters agreed with expanding the definition. One commenter was unclear as to what impact the definition change would have on the cost of services in the RHC or the ability of an RHC to provide services in compliance with applicable state law.

Response: Our proposal did not—and was not intended to—change or remove the statutory supervision requirements at sections 1861(aa)(2)(B) and (aa)(3) of the Act. Rather, our intent was to clarify that other categories of physicians are permitted to practice in RHCs and FQHCs to the extent allowed by the Act and by the law of the applicable state. The Act requires a non-physician directed clinic to have an arrangement with one or more physicians (an MD or DO as described in 1861(r)) under which provision is made for an MD or DO to provide periodic reviews of services furnished by physician assistants and nurse practitioners, and to prepare medical orders to care and treat patients. Also the MD or DO must be available for consultation, patient referrals, and for advice and assistance in the management of medical emergencies.

As pointed out by a commenter, we also are not aware of any state that would allow anyone other than an MD or DO to supervise non-physician practitioners (NPPs). We stated in the proposed definition change that, within limitations as to the specific services furnished, the definition of a physician (as provided in section 1861(r)) would also include a doctor of dental surgery or of dental medicine, a doctor of optometry, podiatry, or chiropractic. However, as we reviewed the public comments regarding the proposed revision and considered the wide range of comments, it became apparent to us that most commenters had either misinterpreted or not fully understood the proposed revision. Also, making this conforming change will not impact the cost of services in the RHC or the ability of an RHC to provide services in compliance with applicable state law. With respect to the comment to include residents in the list of physicians, we do not believe that we need to specifically list residents because they are already captured under the category of physicians.

We believe that most of the commenters misinterpreted the proposed definition because we referred to the oversight functions of a doctor of medicine or osteopathy (MD/DO) by providing only the statutory citations without further discussion and that it was not apparent to the commenters that we were not instead proposing to change the oversight roles of an MD or DO. Therefore, we are clarifying our proposed definition of a physician in this final rule by stating the specific functions of a doctor of medicine or osteopathy required in the statute (sections 1861(aa)(2)(B) and (aa)(3) of the Act). We will change the definition as follows: ''Physician means the following: (1) As it pertains to the supervision, collaboration, and oversight requirements of sections 1861(aa)(2)(B) and (aa)(3) of the Act, a doctor of medicine or osteopathy legally authorized to practice medicine or surgery in the State in which the function is performed; and (2) Within limitations as to the specific services furnished, a doctor of dental surgery or of dental medicine, a doctor of optometry, a doctor of podiatry or surgical chiropody or a chiropractor (see section 1861(r) of the Act for specific limitations).''

4. Technical Correction

We proposed to correct a technical error in the regulations by amending § 491.8(a)(6) to conform to section 6213(a)(3) of OBRA '89 (Pub. L. 101–239) which requires that an NP, PA, or certified nurse-midwife (CNM) be available to furnish patient care at least 50 percent of the time the RHC operates.

Comment: The few comments that we received on this proposed correction agreed with making the technical change in the regulation to conform to the statute which requires an NP, PA, or certified nurse-midwife (CNM) to be available to furnish patient care at least 50 percent of the time the RHC operates.

Response: We appreciate the comments on this proposed change and will finalize it as proposed.

5. Comments Beyond the Scope of This Rulemaking

Comment: One commenter recommended that CMS revise rules for physician supervision of outpatient therapies in CAHs to recognize the unique patient access issues and physician and nurse shortages in remote, rural areas.

Other commenters recommended that CMS should eliminate requirements for physician supervision of nurse practitioners and other Advanced Practice Registered Nurses (APRNs). The commenters requested an explanation into why review of non-physician practitioners was necessary. One commenter explained that, in his particular state, advanced practice nurses are allowed to practice independently, and physician assistants can practice with the appropriate physician supervision. The commenter wondered why medical record review was required in CAHs, RHCs, and FQHCs. The commenter stressed that in his state, non-physician practitioners can even set up their own clinics with the right supervision, all without any medical records review.

Some commenters stated that in many cases, Medicare coverage rules arbitrarily determine which ''physician'' services are restricted to doctors of medicine and osteopathy only and which are permissible for nurse practitioners and other APRNs to provide. Commenters also recommended that nurse practitioners should be included in the definition of ''physician'' or listed with physicians as a qualified provider wherever the terms ''physician'' or ''physician services'' are used.

Some commenters favoring the proposal described their support for what they described as ''the agency's recognition of the ability of nurse practitioners and other staff to provide critical medical services to patients without the supervision of physicians.'' Some commenters expressed the view that licensed advanced nurse practitioners, if licensed to practice independently in their state, could more realistically and effectively fulfill this obligation within a time frame mutually agreed upon in accordance with the clinic's needs.

One commenter stated most RHCs are unable to participate in electronic health record incentives. The commenter urges CMS to support passage of the Rural Health Clinic Fairness Act of 2013 (H.R. 986), a bill introduced in the U.S. House of Representatives on March 6, 2013.

Several commenters stated that the list of medication classes in Part 491 may be overly specific and outdated. They suggested that we require the medical staff to review and agree upon a list of emergency supplies appropriate to the particular practice.

One commenter recommended that CMS re-evaluate the laboratory requirements to determine whether the six tests required to be available in the RHC are relevant and appropriate.

Response: We appreciate these comments and, while they are beyond the scope of this rule, we will consider these suggestions for future rulemaking.

Contacts for rural health and primary care CoP/CfC issues: Mary Collins, (410) 786–3189.

G. Solicitation of Comment on Reducing Barriers to Services in Rural Health Clinics (RHCs)

We requested comments on potential changes we could make to regulatory or other requirements to reduce barriers to telehealth, home health, hospice, or other services provided by RHCs. We requested that commenters include an explanation of why the service is needed, the barriers to providing the service, and possible solutions that comply with our legislative authority and the need for administrative accountability. We did not propose any policy changes for RHCs in these areas.

We received a total of 23 comments from national and state professional associations, state medical societies and associations, individual and group practitioners, health care systems, and consumer advocacy organizations. Commenters were appreciative of CMS's efforts to eliminate unnecessary, obsolete, and excessively burdensome regulations, and provided many thoughtful comments and suggestions to remove barriers to telehealth, home health, hospice, and other services provided by both RHCs and Federally Qualified Health Centers (FQHCs).

1. Telehealth

In the proposed rule, we stated that RHCs that are located in rural Health Professional Shortage Areas (HPSAs), or in counties outside of Metropolitan Statistical Areas (MSA), are authorized by law to be telehealth originating sites (the location of an eligible Medicare beneficiary at the time the service is furnished via a telecommunications system). We also stated that the statute authorizes physicians, nurse practitioners, physician assistants, certified nurse midwives, clinical nurse specialists, clinical psychologists, clinical social workers, and registered dietitians or nutrition professionals to be distant site providers (practitioners furnishing covered telehealth services), and that the statute does not include RHCs as distant site providers. FQHCs are also statutorily authorized to be telehealth originating site providers, and are also not included in the statutorily authorized list of distant site providers of telehealth.

We noted that RHC practitioners may be eligible to furnish and bill for telehealth distant site services when they are not working as an RHC practitioner at the RHC, but they cannot furnish and bill for telehealth services while working as an RHC practitioner because RHCs are not authorized distant site providers. Also, these practitioners cannot bill Medicare Part B while they are working for a Medicare RHC since Medicare is paying the RHC through the Medicare RHC cost report an all-inclusive rate per visit that includes all direct and indirect costs, such as the practitioner's services, space to provide those services, support staff services, related supplies, records costs, and other services. To allow separate Medicare Part B physician fee schedule payments to a practitioner while that practitioner is working for the RHC would result in duplicate Medicare payment for the telehealth service; once through the Medicare RHC cost report and again through the Medicare Part B physician fee schedule payment. This would also apply to FQHCs.

Due to the lack of resources in many rural areas for health services, especially mental health services, and the potential for telehealth to increase access to care, we asked for comments on ways to allow RHC practitioners to furnish distant site telehealth services in compliance with our statutory authority and without resulting in duplicate payment or increased cost reporting and compliance burdens.

Comment: A commenter asked for a statutory citation that identifies any service site as an authorized distant site provider of telehealth services. The commenter stated that the statute does not limit distant site providers to specific locations, and that the statute does not limit payment for telehealth services to providers billing under the Medicare physician fee schedule. The commenter suggested that Medicare establish a new revenue code and pay RHCs the all-inclusive rate for distant site telehealth services if the service qualifies and is furnished by an authorized telehealth provider.

Response: The statutory provisions related to telehealth are located in section 1834(m) of the Act. The Act lists specific sites that may serve as originating sites for telehealth, and includes RHCs and FQHCs. The Act defines ''distant site'' as ''the site at which the physician or practitioner is located at the time the service is provided via a telecommunications system.'' It then defines ''physician'' as having ''the meaning of that term in section 1861(r), and defines ''practitioner'' as having the meaning given that term in section 1842(b)(18)(C).'' Since neither the definition of ''physician'' nor the definition of ''practitioner'' includes RHCs or FQHCs, we do not believe that RHCs or FQHCs are authorized under the statute to be distant site providers of telehealth services. Establishing a new revenue code would not alleviate the requirement for a service to be statutorily authorized in order to receive payment.

Comment: Several commenters expressed their support of appropriate uses of telehealth and telemedicine services if policies are in place to assure quality of care. The commenters stated that the expansion of telehealth services should be based on analysis and evidence that shows improved access and outcomes without lowering quality of care or resulting in a two tiered system of care. They emphasized the role and responsibility of physicians in assuring quality of care and supervising non-physician practitioners and technicians furnishing telehealth services. The commenters recommended that we work with stakeholders to implement policies to ensure that physicians remain part of a patient's medical team and the technology is used to enhance the delivery of medical care.

Response: We thank the commenters for their support of using technology to enhance access to health care and their emphasis on maintaining quality of care.

Comment: A commenter suggested that RHCs bill an encounter code for a specialist or LCSW visit if the telemedicine visit is provided by the RHC, and that the RHC would pay the specialist or the LCSW.

Response: We assume that this commenter is suggesting that the RHC be allowed to carve out the telehealth service from the RHC cost report and allow specialists and LCSWs to bill an encounter on the physician fee schedule. While we appreciate the comment, telehealth is a Medicare Part B service, and RHCs and FQHCs cannot bill for Part B services that are part of the RHC or FQHC benefit during RHC or FQHC hours of operation.

Comment: A commenter expressed support for RHCs to provide distant site telehealth services for primary health

care and specialty consultation, and recommended that CMS issue regulations to allow RHCs to provide and adequately bill for distant site telehealth services.

Response: We thank the commenter for their support of RHCs and the use of telehealth services. Since RHCs are not statutorily authorized to be distant site providers of telehealth services, we are unable to issue regulations that would allow RHCs to provide and bill for distant site telehealth services.

Comment: A commenter suggested that we modify the definition of a visit at 42 CFR 405.2463 to remove the face-to-face requirement that could prohibit telehealth sessions from qualifying as a visit in RHCs and FQHCs, and revise the regulations defining ''incident to'' services (42 CFR 405.2413, 405.2415, and 405.2452) to include telehealth services. The commenter also suggested that we modify our policies to allow billing of two visits if a telehealth visit occurs on the same day as another office visit.

Response: The commenter correctly notes that for RHCs and FQHCs to be reimbursed under the all-inclusive rate, there must be a face to face encounter between the RHC or FQHC practitioner and the patient, and that this requirement would need to be modified in order for RHCs and FQHCs to be able to bill for a telehealth visit. However, since RHCs and FQHCs are not statutorily authorized to serve as distant site providers of telehealth services, we do not believe that revising the face to face requirement for telehealth services in RHCs and FQHCs would enable RHCs and FQHCs to bill for an RHC or FQHC visit that is provided via telecommunications.

The commenter also suggested that we revise the regulations defining ''incident to'' services so that telehealth services could be included in the definition of ''incident to'' services. ''Incident to'' services are included as costs on the cost report and are not separately billable as an RHC or FQHC visit. We will consider the commenter's suggestion as a possible topic for future rulemaking.

Comment: A commenter proposed that we recognize RHCs as clinician sites for the provision of telehealth services and suggested two options for RHCs to be reimbursed for these services. The first option would be to allow RHCs to be paid under Part A and have reasonable costs for the telehealth equipment and connectivity defined as allowed charges. The second option would be to allow Medicare telehealth costs to be offset by Medicare Part B payment, up to 100 percent of costs, and treat allowed telehealth costs in excess of payment as allowable RHC costs.

Response: As previously discussed, RHCs and FQHCs are not statutorily authorized to furnish distant site telehealth services, and therefore cannot bill this as an RHC or FQHC visit. RHCs and FQHCs also cannot bill Part B for a RHC or FQHC covered service while operating as an RHC or FQHC, as that would result in duplicate payments. However, we intend to explore whether some costs associated with telehealth services provided ''incident to'' an RHC or FQHC visit could be considered allowable costs.

Comment: A commenter stated that telehealth services are critically important in rural areas and Medicare should more broadly include and reimburse for telehealth services in the RHC program.

Response: We agree that telehealth services are important in rural areas and will continue to consider ways we could more broadly include and reimburse for telehealth services, especially in rural areas.

Comment: A commenter suggested that we consider eliminating the HPSA/non-MSA geographical requirements for patients receiving telehealth services; eliminate separate billing procedures for telemedicine; reimburse for telehealth services furnished by physical, respiratory, occupational, and speech therapists, licensed professional counselors and therapists, and social workers; increase reimbursement for the originating telemedicine sites; and provide reimbursement for store and forward applications. The commenter also made several recommendations regarding the credentialing and privileging of telehealth providers and facilities.

Response: Carrying out these recommendations would require statutory changes. Therefore we are unable to act on these suggestions.

2. Hospice

In the proposed rule, we stated that the hospice statute (section 1861(dd) of the Act) authorizes physicians and NPs to be attending physicians for Medicare beneficiaries that elect the Medicare hospice benefit, and that because RHCs are not statutorily authorized to be hospice providers, RHCs can only treat hospice beneficiaries for medical conditions not related to their terminal illness. FQHCs are also not statutorily authorized to be attending physicians for hospice and also can only treat hospice beneficiaries for medical conditions not related to their terminal illness.

We noted that RHC practitioners may be eligible to furnish and bill for hospice services when they are not working as an RHC practitioner at the RHC, but they cannot furnish and bill for hospice services while working as an RHC practitioner because RHCs are not authorized hospice providers. Also, these practitioners cannot bill Medicare Part B while they are working at a RHC since Medicare is paying the RHC an all-inclusive rate per visit that includes all direct and indirect costs, such as the practitioner's services, space to provide those services, support staff services, related supplies, records costs, and other services. To allow separate Medicare Part B physician fee schedule payments to a practitioner while that practitioner is working for the RHC would result in duplicate Medicare payment for the hospice services; once through the Medicare RHC all-inclusive rate and again through the Medicare Part B payment. We inadvertently omitted FQHCs from this discussion in the proposed rule, and note that this applies to them as well.

We acknowledged that in some rural areas, the RHC may be the only source of health care in the community, and there may be no other providers available during RHC hours to provide services that are related to the beneficiaries' terminal illness. This also applies to FQHCs. We specifically asked for comments on ways to allow RHC practitioners to furnish hospice services in compliance with our statutory authority and in a way that will not result in duplicate payment or increased cost reporting and compliance burdens, especially in areas with limited hospice providers.

Comment: Several commenters noted that some RHCs and FQHCs are reluctant to refer their patients to hospice care, and some beneficiaries may be reluctant to elect the hospice benefit, because they might no longer be able to receive care from their RHC or FQHC provider, and that this is especially problematic in rural areas where there may not be other available providers.

Response: We understand this concern and are interested in identifying and removing barriers to hospice care, especially in rural communities.

Comment: A commenter suggested that RHCs be allowed to provide hospice services and that reimbursement for hospice services provided by the RHC be treated as if that service had been provided in the RHC face-to-face encounter with the RHC provider.

Response: We thank the commenter for the suggestion, but RHC practitioners are not authorized to be hospice attending physicians, and reimbursing RHCs for hospice care would result in duplicate payment because the hospice is already being paid for these services.

Comment: Some commenters suggested that we allow RHC practitioners, or the RHC, to bill Part B for attending physician services furnished during RHC hours of operation, and carve this out of the RHC cost report, since they are non-RHC services.

Response: The RHC cannot bill Part B for hospice services, as RHCs are not hospice providers. However, we will consider for future rulemaking whether there may be limited situations where RHC and FQHC practitioners may be allowed to furnish certain items and services comprising hospice-related care during RHC or FQHC hours of operation and carve out all costs associated with the provision of the care.

Comment: Some commenters stated that attending physician visits are similar to most other physician visits that are billed under CPT evaluation and management codes. The commenters suggested that physicians or NPs that are employed by RHCs serve as a hospice patient's attending physician, and the RHC could bill for physician services using CPT codes, as they do with other physician services, so that the physician did not have to enroll in Part B.

Response: We appreciate the suggestion, but RHCs and FQHCs cannot bill Part B for physician services unless they terminate their RHC or FQHC certification and enroll as a Medicare Part B provider or supplier.

Comment: Some commenters stated that because PAs always work with physicians, and in some rural areas they may be the only practitioner on site, they should be authorized to provide hospice services.

Response: PAs are important members of the health care team and we understand that a PA may be the only provider immediately available in a rural area. However, authorizing PAs to provide hospice care would require a statutory change.

Comment: A commenter stated that the language in the proposed rule indicates that CMS is contemplating ways that RHCs could become qualified hospice providers, and that RHCs acting as a hospice organization should be required to meet the same conditions of participation, rules, and standards as all other Medicare-certified hospices.

Response: It was not our intent to indicate that we are contemplating ways for RHCs to become qualified hospice providers.

Comment: A commenter suggested that in order to ensure that RHC practitioners are appropriately paid for services related to a hospice patient's terminal diagnosis without duplication and without a special hospice ''carve out'', CMS could unbundle a portion of practitioner visits and payments that currently represent services provided for a hospice patient's terminal condition and then analyze the data to estimate an appropriate ''add-on'' that RHCs could be reimbursed for attending physician services on a per-capita basis. The commenter also suggested that CMS consider establishing a revenue code for services provided to hospice beneficiaries, collect data about those services on the cost report, modify cost reporting principals to make these services an allowable cost, and then account for them in the updates to the payment formula for RHCs.

Response: We appreciate these suggestions; however, they would require statutory changes.

3. Home Health

In the proposed rule, we stated that RHCs that are located in areas with a shortage of home health agencies are authorized to provide nursing care furnished by a registered nurse or a licensed practical nurse to a homebound individual, and that the care must be provided under a written treatment plan that is established and periodically reviewed by a physician, NP, or PA. We also noted that there are relatively few RHCs that provide this service, and we sought comments on whether there is a need for home health services in communities served by RHCs, if there are barriers to providing these services, and if so, what are some possible strategies to reduce or eliminate the barriers.

Comment: A commenter stated that NPs are a key component in the re-engineering of health care and vital to a coordinated care model, and requested that they be allowed to order and certify patients in need of home health care services.

Response: We agree that NPs are important team members in the provision of coordinated care. However, sections 1814(a)(2)(C) and 1835(a)(2)(A) of the Act mandate that only a physician is permitted to certify or recertify a patient as eligible to receive Medicare home health services.

Comment: A commenter stated that one of the difficulties RHCs face in providing home health services is that there is a lack of definition on what constitutes a home health service area or a home health service shortage area.

Response: We thank the commenter for identifying this issue. Unlike primary care, dental, or mental health shortage areas, there is currently no federal determination of home health shortage areas.

Comment: A commenter suggested that home health providers and home health patient stakeholder communities should determine what constitutes a home health shortage area.

Response: We agree that input from the community could be very beneficial in informing these determinations and encourage community input to the extent possible when considering home health services.

Comment: A commenter suggested that CMS broaden the physician types eligible to establish and review home health plans of care to include optometrists, and suggests that by allowing more physician types to order appropriate home health services, barriers to care will be removed.

Response: Section 1861(r) of the Act defines a physician as a doctor of optometry for purposes of ''outpatient physical therapy services'' as described at 1861(p) of the Act and ''medical or other health services'' as described at section 1861(s) of the Act. Section 1861(s) of the further describes ''medical or other health services'' as things such as physician services (general), psychologist services, and nurse-midwife services. Home health services are not included the ''medical or other health services'' section of the Act; rather, home health requirements are described in sections 1861(m) and (o) of the Act. Therefore, while we appreciate the comment, a doctor of optometry is not recognized by the Act as being eligible to perform home health services.

Comment: A commenter noted that 42 CFR 405.2416(b) includes personal care services that are covered under Medicare as services that can be provided by RHCs and FQHCs as part of visiting nurse services and recommended that our manuals clarify that this is included in addition to skilled nursing services.

Response: We thank the commenter for noting that this is an allowable service and we will review the manuals to determine whether any revisions are needed.

4. Other Services

In the proposed rule, we stated that we would welcome comments on other barriers to providing RHC services and asked for suggestions for removing those barriers.

Comment: Several commenters requested that we remove the restrictions on contracting with non-physician practitioners in RHCs, and expand our definition of ''employ'' to include independent contractors.

Response: The proposed rule titled, ''Prospective Payment System for Federally Qualified Health Centers; Changes to Contracting Policies for Rural Health Clinics; and Changes to Clinical Laboratory Improvement Amendments of 1988 Enforcement Actions for Proficiency Testing Referral'' (CMS–1443–P), published September 23, 2013 (78 CFR 58386), proposed to allow RHCs to contract with non-physician practitioners, consistent with statutory requirements that require at least one NP or PA be employed by the RHC (section 1861of the Act). The ability to contract with NPs, PAs, CNMs, CP, and CSWs will provide RHCs with additional flexibility with respect to recruiting and retaining non-physician practitioners. Until this proposal is finalized, RHCs can contract with physicians while nonphysicians must be employees of the RHC.

Comment: Several commenters noted that FQHCs can bill Diabetes Self-Management Training (DSMT) as an FQHC visit, and requested that RHCs also be able to bill for DSMT visits.

Response: The commenters are correct that DSMT is a billable visit in an FQHC but not in an RHC. Section 5114 of the Deficit Reduction Act of 2005 amended the Act [1861(aa)(3)] to include DSMT and Medical Nutrition Therapy (MNT) on the list of covered services for FQHCs when these services are furnished by a certified provider who meets the regulatory requirements. It did not add DSMT and MNT to the list of covered services for RHCs. Coverage by RHCs would require a statutory change.

Comment: A commenter requested that we allow health care services to be performed in an RHC when an RHC practitioner is not present, and noted that services such as phlebotomy can be provided by licensed practitioners in unsupervised locations such as a patient home.

Response: The RHC Conditions for Certification, at 42 CFR 491.8(a)(6), currently require that a physician, NP, PA, CNM, clinical social worker, or clinical psychologist be available to furnish patient care services at all times the clinic or center operates. Additionally, the Medicare payment rate assumes that a practitioner is on-site at all times the RHC or FQHC is operating, and includes all the costs associated with the service (for example, practitioner compensation, overhead, equipment). Therefore, changing this policy could have an impact on the RHC's or FQHC's payment rate, as the costs of operating the RHC or FQHC would increase at a time when billable visits were not occurring.

Comment: One commenter encouraged CMS to use its regulatory proposals and payment policy updates as an opportunity to remove remaining regulatory and payment barriers that are reducing consumer access to timely and efficient care and limiting health professionals from practicing to the full extent of their state practice licenses.

Response: When barriers are identified, we will take steps to remove those barriers whenever possible. As the commenter did not specify any particular barriers, we cannot provide a more specific response.

Comment: One commenter suggested that CMS allow physician assistant owned clinics to obtain a National Provider Identifier (NPI) number for purposes of billing Medicare for services.

Response: We appreciate the comment, but Section 1842(b)(6)(C) of the Act prohibits PAs from enrolling in and being paid directly for Part B services. Therefore, Medicare Part B payment can only be made to a PA's employer (unless the employer is a PA or a group of PAs), and a PA may not directly bill Medicare Part B for Medicare-covered services.

5. Comments Outside the Scope

We received several comments outside the scope of this solicitation for comments. We appreciate and will consider the commenters' suggestions, but we will not address the comments here.

Contact for RHC & FQHC Comments: Corinne Axelrod, 410–786–5620.

H. Clinical Laboratory Improvement Amendments of 1988 (CLIA)

On October 31, 1988, Congress enacted the Clinical Laboratory Improvement Amendments of 1988 (CLIA), Pub. L. 100–578. The purpose of CLIA is to ensure the accuracy and reliability of laboratory test results for all Americans. Under this authority, which was codified at 42 U.S.C. 263a, the Secretary issued regulations implementing CLIA on February 28, 1992 at 42 CFR Part 493 (57 FR 7002). The regulations specify the standards and specific conditions that must be met to achieve and maintain CLIA certification. CLIA certification is required for all laboratories, including but not limited to those that participate in Medicare and Medicaid, which test human specimens for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or impairment, or the assessment of health, of human beings.

Among other things, the regulations require laboratories conducting moderate or high-complexity testing to enroll in an approved proficiency testing (PT) program that covers all of the specialties and sub-specialties for which the laboratory is certified. There are currently 229,815 CLIA-certified laboratories. Of these laboratories, 35,084 are required to enroll in an HHS-approved PT program and are subject to all PT regulations.

Congress emphasized the importance of PT when it drafted the CLIA legislation. For example, in discussing their motivation in enacting CLIA, the Committee on Energy and Commerce noted that it ''focused particularly on proficiency testing because it is considered one of the best measures of laboratory performance'' and that proficiency testing ''is arguably the most important measure, since it reviews actual test results rather than merely gauging the potential for good results.'' (H.R. Rep. No. 100–899, at 15 (1988)) The Committee surmised that, left to their own devices, some laboratories would be inclined to treat PT samples differently than their patient specimens, as they would know that the laboratory would be judged on its performance in analyzing those samples. For example, such laboratories might be expected to perform repeated tests on the PT sample, use more highly qualified personnel than are routinely used for such testing, or send the samples out to another laboratory for analysis. As such practices would undermine the purpose of PT, the Committee noted that the CLIA statute was drafted to bar laboratories from such practices, and to impose significant penalties on those who elect to violate those bars (H.R. Rep. No. 100–899, at 16 and 24 (1988).

We proposed to make a number of clarifications and changes to the regulations governing PT under CLIA. PT is a valuable tool the laboratory can use to verify the accuracy and reliability of its testing. During PT, an HHS-approved PT program sends samples to be tested by a laboratory on a scheduled basis. After testing the PT samples, the laboratory reports its results back to the PT program for scoring. Review and analysis of PT reports by the laboratory director will alert the director to areas of testing that are not performing as expected and may also indicate subtle shifts or trends that, over time, could affect patient results. As there is no on-site, external proctor for PT testing in a laboratory, the testing relies in large part

on an honor system. The PT program places heavy reliance on each laboratory and laboratory director to self-police their analysis of PT samples to ensure that the testing is performed in accordance with the CLIA requirements. For each PT event, laboratories are required to attest that PT samples are tested in the same manner as patient specimens are tested. PT samples are to be assessed by integrating them into the laboratory's routine patient workload, and the testing itself is to be conducted by the personnel who routinely perform such testing, using the laboratory's routine methods. The laboratory is barred from engaging in inter-laboratory communication pertaining to results prior to the PT program's event cut-off date and must not send the PT samples or any portion of the PT samples to another laboratory for testing, even if it would normally send a patient specimen to another laboratory for testing.

One type of laboratory testing is ''reflex testing.'' By reflex testing, we mean confirmatory or additional laboratory testing that is automatically requested by a laboratory under its standard operating procedures for patient specimens when the laboratory's findings indicate test results that are abnormal, are outside a predetermined range, or meet other pre-established criteria for additional testing. For patient specimen testing, reflex testing may be legitimately performed by the same laboratory that performed the initial testing or may be performed by referral of the patient specimen for testing at a laboratory operating under a different CLIA certificate. For PT, reflex testing is prohibited unless it is performed by the same laboratory that performed the initial testing, is included in that laboratory's standard operating procedure, and the results are reported as part of the proficiency testing program.

Another type of laboratory testing is ''confirmatory testing.'' By confirmatory testing, we mean testing performed by a second analytical procedure that could be used to substantiate or bring into question the result of an initial laboratory test. For patient specimen testing, confirmatory testing may legitimately be performed by the same laboratory that performs the initial test or by a second laboratory operating under a different CLIA certificate than the laboratory performing the initial testing. For PT, confirmatory testing is prohibited unless it is performed by the same laboratory that performed the initial test, is included in that laboratory's standard operating procedure, and the results are reported as part of the proficiency testing program.

Any laboratory that intentionally refers its PT samples to another laboratory for analysis risks having its certification revoked for at least one year, in which case, any owner or operator of the laboratory risks being prohibited from owning or operating another laboratory for two years (42 CFR 493.1840(a)(8), (b)). The phrase ''intentionally referred'' has not been defined by the statute or regulations, but we have consistently interpreted this phrase from the onset of the program to mean general intent, as in intention to act. Whether or not acts are authorized or even known by the laboratory's management, a laboratory is responsible for the acts of its employees. Among other things, laboratories need to have procedures in place and train employees on those procedures to prevent staff from forwarding PT samples to other laboratories even in instances in which they would normally forward a patient specimen for testing.

PT samples are not to be referred to another laboratory under any circumstances. However, despite the issuance of considerable guidance and the near-universal inclusion of instructions in laboratory operations manuals, there continue to be cases where PT samples are forwarded to another laboratory for analysis. Laboratory staff are either not being made aware that the prohibition applies even in instances where they would normally forward a patient specimen for additional testing, or, due to failures in training or the lack of clarity of laboratory operating manuals, they fail to abide by the laboratory's written policies prohibiting the referral of PT samples to another laboratory.

For example, some laboratories have indicated that they have been confused by the requirement at § 493.801(b) that laboratories test PT samples in the same manner as patient specimens. If their standard operating procedure is for some types of patient specimens to be sent to another laboratory for reflex or confirmatory testing, they have erroneously believed that there would be a basis for also referring a PT sample. Furthermore, they have strenuously argued that their mistaken interpretation was innocent, and that we should find an improper, but not intentional, referral of a PT sample in those instances.

We disagree with any assertions that such referrals are ''improper'' but not ''intentional'' under our long-standing interpretation of ''intentional''. As noted above, we have consistently interpreted ''intentional'' to mean general intent, as in intention to act, and expansive case law has supported this interpretation. That said, we recognize that, in cases of a PT referral involving reflex or confirmatory testing under standard operating procedures, the revocation of a CLIA certificate, combined with the resulting potential prohibition on the owner and operator to own or operate a laboratory for 2 years, may create access issues for patients in need of laboratory services. We also note that laboratory testing protocols have changed over time, and reflex or confirmatory testing has become more prevalent, resulting in an increased risk of PT referral.

We are mindful that all healthcare beneficiaries depend on a functioning PT program conducted in accordance with the regulations and statute to ensure that laboratories provide accurate and reliable test results; however, we recognize that human error can and does occur. For these reasons, we proposed a narrowly crafted exception from the long-standing interpretation of ''intentional'' to allow for the imposition of alternative sanctions when there is a single instance of PT referral related to reflex, confirmatory, or, as discussed below, distributive testing. Laboratories are obligated to provide staff with clear standard operating procedures and effective training for all current and newly hired employees, and must ensure continued compliance with those procedures to prevent PT referral. Repeat PT referrals, even if related to reflex, confirmatory, or distributive testing, would be considered ''intentional'' and may be subject to the sanctions of revocation and ban against the owner and operator. A PT referral is a prohibited act and will always involve consequences.

In addition to the already extensive campaign to highlight the bar on PT referrals, we have considered what more we could do to further ensure laboratory awareness of this prohibition. We therefore proposed to make two changes to the CLIA regulations relevant to PT referral. The first proposed change was the addition of a statement to § 493.801(b) to explicitly note that the requirement to test PT samples in the same manner as patient specimens does not mean that it is acceptable to refer PT samples to another laboratory for testing even if that is the standard operating procedure for patient specimens. This means that, in instances where the laboratory's patient testing standard operating procedures would normally require reflex or confirmatory testing at another laboratory, the laboratory should test the PT sample as they would a patient specimen up until the point

they would typically refer a patient specimen to a second laboratory for any form of further testing. A PT sample must never be sent to another laboratory under any circumstances.

The second proposed change was to establish a narrow exception to our long-standing interpretation of what constitutes an ''intentional'' referral. We noted, however, that for all other instances in which a PT sample is referred, the standard for ''intentional'' would continue to be a general intent to act—that is, to send a PT sample to another laboratory for analysis. For the narrow exception to this general rule, we proposed that when CMS determines that a PT sample was referred to another laboratory for analysis, but the requested testing was limited to reflex, confirmatory, or distributive testing, then we would consider the referral to be improper and subject to alternative sanctions in accordance with § 493.1804(c), but not intentional, provided that, if the specimen were a patient specimen, the referral would have been in full conformance with written, legally accurate, and adequate standard operating procedures for the laboratory's testing of patient specimens, and the PT referral is not a repeat PT referral. Alternative sanctions may include any combination of civil money penalties, directed plan of correction (such as required remedial training of staff), temporary suspension of Medicare or Medicaid payments, or other sanctions specified in accordance with regulation.

By ''full conformance'' with the laboratory's written, legally accurate and adequate standard operating procedures we mean that the procedures adequately describe what is to be done, and that what is to be done is in conformance with applicable laws (such as the ban on referring PT samples to another laboratory for analysis). Furthermore, we mean that the referral policy does not afford any discretion to staff as to whether a patient specimen would be forwarded or not. For example, standard operating procedures do not allow for selectivity on the part of the laboratory staff. Rather, they require the application of pre-established criteria that result in a mandate to forward a patient specimen to another laboratory for further analysis. For example, if standard laboratory protocols dictate that all specimens showing HIV-positive test results be sent to a second laboratory for confirmatory testing, but we find that the individual referred only 1 of the 2 positive HIV PT samples, we would consider the referral to be not in conformance with the laboratory's own standard operating procedure. In this instance, the laboratory may be subject to the sanctions of revocation and ban against the owner and operator as opposed to alternative sanctions.

By providing that the referral is not a repeat PT referral, we mean that the referral is not a repeat PT referral as defined by § 493.2, as recently amended by the FQHC PPS/CLIA final rule with comment period, published in the May 2, 2014, **Federal Register** at 79 FR 25436. Specifically, there has not been an instance of identified PT referral in the two survey cycles prior to the time of the PT referral in question. Two survey cycles generally equates to a four-year period on average. This is not a precise calendar time period but is carefully recorded as a matter of actual and documented survey event dates. Both CMS and accrediting organizations perform initial surveys at least 3 months but no later than 12 months from the effective date of CLIA certification. Subsequent routine recertification surveys are performed biennially. A survey cycle means the time between an initial survey and recertification survey or the time between a recertification survey and the next recertification survey, and is approximately two years. The time interval from the effective date of the CLIA certificate until the initial certification is also included as part of the initial certification survey cycle. Complaint and validation surveys are performed on a non-routine basis, and are considered to be separate from survey cycles for the purpose of determining the timeframe for two survey cycles.

In other words, a referral would not be considered ''intentional'' if the CMS investigation reveals PT samples were sent to another laboratory for reflex, confirmatory, or distributive testing, the referral is not a repeat PT referral, and the referral occurred while acting in full conformance with the laboratory's written, legally accurate and adequate standard operating procedure. The key to this exception is the expectation that laboratories will ensure that improper referrals are addressed and eliminated, or we will find that future referrals are intentional. The exception is meant to be a one-time exception to a finding of an intentional referral by virtue of a general intent to forward a PT sample to another laboratory. Upon learning that the laboratory's training materials, training, or staff capabilities are inadequate to ensure compliance with the PT referral requirements, we expect the laboratory to correct the problems, and will treat subsequent referrals as ''intentional'' in keeping with our long-standing practices. We believe that it is reasonable to expect laboratories to maintain a heightened vigilance for this time-frame to ensure that they do not have any repeated difficulties. We requested public comments on these proposed changes.

When we were in the final steps of preparing our proposed rule for publication, Congress enacted the ''Taking Essential Steps for Testing Act of 2012'' (Pub. L. 112–202, the ''TEST Act''), on December 4, 2012. The TEST Act amended section 353 of the Public Health Service Act to provide the Secretary with discretion as to which sanctions she would apply to cases of intentional PT referrals. We therefore proposed to change the ''will'' to ''may'' in the second sentence of § 493.801(b)(4) to ensure conformance with the TEST Act, but we noted that other aspects of implementing the TEST Act would be addressed in additional rulemaking. Accordingly, in the May 2, 2014, **Federal Register** at 79 FR 25436, we published the FQHC PPS/CLIA final rule with comment period, which finalized additional proposals for implementing the TEST Act. We invited comment on the proposed change to § 493.801(b)(4) and on any suggestions or concerns the public may have regarding implementation of the TEST Act.

We received a total of 17 comments on our proposed changes to the CLIA regulations discussed above. The comments came from a variety of sources, including laboratory accreditation organizations, laboratory professional organizations, medical societies, and health care systems. Overall, the commenters were supportive of the proposed changes. They expressed appreciation for the proposed changes to the regulations and for efforts to provide additional clarity around the requirement for laboratories to test PT samples in the same manner as patient specimens. Commenters applauded CMS' efforts to enable more flexibility in the application of penalties and corrective actions under specific circumstances. No commenters opposed the changes. We respond to specific comments below:

Comment: We received one comment that described a laboratory process called ''distributive testing.'' The commenter described ''distributive testing'' as a situation in which one laboratory may perform ''pre-electrophoretic testing'' for protein electrophoresis (a method used by laboratories to separate molecules according to their size and electrical charge) and a portion of the specimen is sent to a second laboratory, with a different CLIA certificate, to perform the

actual electrophoresis. Similarly, serum protein electrophoresis requires a total protein result as well as the electrophoretic results to calculate the percentage of each serum protein components in the five major fractions. The lab performing the electrophoresis may not have the instrument required to measure total protein and typically might send the patient specimen to another lab for this result to be later used in the calculation.

The commenter asks if PT referrals that occur during such distributive testing are included in the exception established in this change.

Response: The situation described by the commenter does not conform to the definition of ''reflex'' or ''confirmatory'' testing as described in the proposed definitions. In this scenario, the electrophoresis testing is not performed because pre-electrophoretic test results are abnormal, outside a predetermined range, or used to substantiate the result of an initial laboratory test. Unlike reflex and confirmatory testing which are conditional options based upon the initial test results, distributive testing is understood to be standard practice for all patient specimens associated with a specific test. However, we agree with the commenter that there are sufficient similarities between distributive testing and reflex and confirmatory testing, that it would be appropriate to include distributive testing in the narrow exception we proposed.

We have therefore added a definition of distributive testing at § 493.2 to mean laboratory testing performed on the same specimen, or an aliquot (portion) of it, that requires sharing it between two or more laboratories to obtain all data required to complete an interpretation or calculation necessary to provide a final reportable result for the originally ordered test. When such testing occurs at multiple locations with different CLIA certificates, it is considered distributive testing. We have added the term ''distributive testing'' to § 493.801(b) and § 493.801(b)(4) so that distributive testing is treated in the same manner as reflex or confirmatory testing.

Comment: One commenter requested clarification of the term ''first offense'' and asks if a second offense would be charged only if the exact same circumstances caused a second improper referral.

Response: While we did not use the term ''first offense'' in the proposed rule, it is important to note that the narrow exception is intended to be a *one-time* exception to a finding of intentional referral. Any instance of PT referral occurring within two survey cycles subsequent to an incident that meets the criteria described in the narrowly crafted exception, whether or not the referral involves reflex, distributive, or confirmatory testing, will be treated as ''intentional'' and may result in the revocation of the CLIA certificate and the two-year prohibition from owning and operating a laboratory against the owner and operator.

Comment: One commenter asked how CMS will handle increased automation incidents of PT referral.

Response: Incidents of PT referral that are related to an automated laboratory process and rule-based laboratory computer systems have generally been associated with reflex or confirmatory testing. In these cases, alternative sanctions would be applied if the circumstances meet the defined criteria in the exception to the determination of ''intentional'' PT referral and the incident is not a repeat PT referral as discussed above. If the ''automatic incident of PT referral'' is not a direct result of the laboratory's standard operating procedure for reflex or confirmatory testing or distributive testing, the laboratory would not meet the criteria for this exception.

Comment: One commenter expressed concern about the sanctions against the director of a laboratory found to have referred a PT sample. The commenter believes if a laboratory's PT referral meets the criteria in the exception, then the laboratory director should be allowed to continue directorship of the laboratory without receiving any alternative sanctions.

Response: Revocation of the CLIA certificate is a principal sanction. In the narrowly carved out exception, alternative sanctions are applied in lieu of the revocation of the CLIA certificate. Alternative sanctions may include a directed plan of correction, civil money penalty, state onsite monitoring, or suspension of Medicare payments. Alternative sanctions are enforcement actions taken against the laboratory and not an individual such as the laboratory director. Because the CLIA certificate would not be revoked as the result of a single instance of PT referral meeting the criteria in the narrowly crafted exception, the laboratory's owner and operator would not be subject to the two-year prohibition from owning and operating a laboratory as a direct result of this incident.

Comment: One commenter asked how CMS will ensure Regional Offices and State Surveyors are consistent in the application of these changes and the associated enforcement.

Response: CMS will continue the current process that requires all suspected PT referral cases be forwarded to central office for review by a team of experts. The team will continue to thoroughly review every case to determine whether the facts support a determination of PT referral and also if the facts in the case meet the criteria described in this exception. Written guidance and training will be provided to the Regional Offices and State Agencies.

Comment: We received several comments that urged CMS to broaden the proposed exception to take in account honest mistakes made by individuals and other situations that should be eligible for more lenient enforcement.

Response: Because each case of PT referral is unique, every situation cannot be anticipated and discretely defined. The narrow exception created in this rule recognizes that mistakes do occur and we are finalizing the exception as proposed with the sole addition of distributive testing. See also our response to the next comment.

Comment: We received one comment that urged CMS to fully implement the TEST Act now rather than engaging in multiple rulemakings on same topic. The commenter noted that this rule does take some steps toward the use of discretion in PT referral cases, but expresses concern that the changes are too limited.

Response: We proposed a change in the regulations that would acknowledge the Secretary's discretion under the TEST Act, and we invited comments on this proposal as well as any suggestions or concerns about the additional rulemaking that would be needed to implement the TEST Act. The TEST Act provides the Secretary with the ability to achieve a better correlation between the nature and extent of intentional PT referral and the type and scope of sanctions or corrective actions that are imposed. We agree with the commenter that we should implement the TEST Act as soon as possible. We believe that the TEST Act will allow for policies that are in the best interests of patients, as well as promote efficiency and effectiveness in corrective action by laboratories. We are therefore finalizing the proposal to change ''will'' to ''may'' in the second sentence of § 493.801(b)(4) to ensure that this section is in compliance with the TEST Act. In the May 2, 2014, **Federal Register** at 79 FR 25436, we published the FQHC PPS final rule, which finalized additional proposals for implementing the TEST Act.

Comment: Two commenters stated that waived laboratories should be exempt from penalties associated with

PT referral since they are not required by law to participate in PT.

Response: While this comment is outside the scope of this rule, we would like to emphasize that the CLIA statute (42 U.S.C. 263a) states that laboratories holding a certificate of waiver are only exempt from subsections (f) and (g) of the statute. All other subsections apply, including the prohibition against PT referral and the statutory consequences established in subsection (i). Therefore, the statutory requirements under subsection (i) do apply to waived laboratories. Furthermore, subsection (i) of the CLIA statute refers to ''any laboratory'' that the Secretary determines has intentionally referred its proficiency testing samples. For these reasons, waived laboratories are not exempt from the ban against the referral of PT samples and the penalties required when PT referral has been substantiated.

We also note that we received other comments outside the scope of this rulemaking that we will not address here. We thank the commenters for their input and suggestions.

After consideration of the comments discussed above, we are finalizing the definitions for ''confirmatory testing'' and ''reflex testing'' and the changes to § 493.801(b) introductory text and § 493.801(b)(4) as proposed. Also, in accordance with the comments above, we are finalizing a definition for ''distributive testing'' and adding references to distributive testing to § 493.801(b) and § 493.801(b)(4).

Contact for CLIA issues: Melissa Singer, (410) 786–0365.

III. Collection of Information Requirements

This final rule does not impose any new information collection, recordkeeping, or third-party disclosure requirements. However, this final rule creates certain savings related to information collection, recordkeeping or third-party disclosure requirements. While we detail all of the estimated savings of this final rule in the regulatory impact analysis, the following paragraph provides a brief summary of the estimated savings associated with the currently approved information collection request (ICR).

This final rule would reduce the reporting requirements for transplant centers and organ procurement organizations. As stated later in the regulatory impact analysis, we are eliminating the reporting requirement at 42 CFR 482.74(a)(2). The requirement is redundant as it is a duplication of data submission under the Paperwork Reduction Act. The same information is currently being collected by the Health Services and Resources Administration (HRSA) under OMB control number 0915–0157. After the requisite notice and comment periods, we will submit a revision of the currently approved ICR for OMB review and approval.

IV. Waiver of Delayed Effective Date for Revisions to 42 CFR Part 483

We ordinarily provide a 60-day delay in the effective date of the provisions of a major rule in accordance with the Administrative Procedure Act (APA) (5 U.S.C. 553(d)), which requires a 30-day delayed effective date, and the Congressional Review Act (5 U.S.C. 801(a)(3)), which requires a 60-day delayed effective date for major rules. However, we can waive the delay in effective date if the Secretary finds, for good cause, that such delay is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons in the rule issued under 5 U.S.C. 553(d)(3) and 5 U.S.C. 808(2).

The Secretary finds that good cause exists to make certain regulatory provisions effective upon publication in the **Federal Register**. Specifically, changes to 42 CFR Part 483 in this final rule are effective immediately upon publication. We believe it is in the public interest to make the LTC facility sprinkler extension provision immediately effective. Absent such timely action, a number of nursing homes will be unable to apply for, and obtain, an extension of the due date to achieve full sprinkler status before mandatory sanctions take effect, despite their taking action to build a replacement facility or undertake major modifications that may qualify the facility for an extension of time under this final rule. Instead, such facilities will be terminated from Medicare participation and their residents will face relocation, or the nursing home will suffer mandatory imposition of a denial of payment for new admission. Section 1819(h)(2)(D) of the Act requires a denial of payment for new admissions for a facility that has been found to be out of compliance with CMS requirements if the facility has not achieved substantial compliance within three months, and Medicare termination must be effected within six months pursuant to section 1819(h)(2)(C).

Without an immediate effective date of this rule, these sanctions will take effect for a number of otherwise qualifying facilities that have been cited for noncompliance, and their residents will experience the effects (including relocation from facilities whose Medicare participation will have been terminated). While publication of the notice of proposed rulemaking for this regulation occurred on February 7, 2013, well in advance of the August 13, 2013 effective date of the sprinkler requirement, it has not been possible to issue a final rule until now. As more time has elapsed, more otherwise qualifying facilities have been cited for noncompliance and will soon face mandatory sanctions.

We also note that this rule provides discretionary authority for CMS to require that a facility implement additional, interim fire safety measures as a condition for receiving an extension. Interim measures may include, for example, the initiation of a fire watch, installation of temporary exits, installation of temporary smoke detection or smoke alarm systems, and increased fire safety training or fire drills for staff or other means to ensure the continued fire safety of the residents of the facility. We believe that an immediate effective date for all changes in this rule affecting Part 483 is in the best interest of nursing home residents and the public in general. For these reasons, we believe that a delay in the effective date of this provision is contrary to the public interest, and are making the provision effective upon publication.

V. Regulatory Impact Analysis

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 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). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). We estimate that this rulemaking is ''economically significant'' as measured by the $100 million threshold, and hence also a major rule under the Congressional Review Act. Accordingly,

we have prepared a Regulatory Impact Analysis (RIA) that, to the best of our ability, presents the costs and benefits of the rulemaking.

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. HHS 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 a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective as specified in the **DATES** section of this final rule, 60 days after date of publication in the **Federal Register**.

A. Statement of Need

In Executive Order 13563, the President recognized the importance of a streamlined, effective, efficient regulatory framework designed to promote economic growth, innovation, job creation, and competitiveness. To achieve a more robust and effective regulatory framework, the President has directed each executive agency to establish a plan for ongoing retrospective review of existing significant regulations to identify those rules that can be eliminated as obsolete, unnecessary, burdensome, or counterproductive or that can be modified to be more effective, efficient, flexible, and streamlined. This final rule continues our direct response to the President's instructions in Executive Order 13563 by reducing outmoded or unnecessarily burdensome rules, and thereby increasing the ability of health care entities to devote resources to providing high quality patient care.

B. Overall Impact

This final rule creates ongoing cost savings to providers and suppliers in many areas. Other changes clarify existing policy and relieve some administrative burdens. We have identified other kinds of savings that providers and patients will realize throughout this preamble. The cost-reducing savings that we were able to estimate are summarized in the table that follows. We requested public comments on all of our burden assumptions and estimates. As discussed later in this regulatory impact analysis, substantial uncertainty surrounds these estimates and we especially solicited comments on either our estimates of likely savings or the specific regulatory changes that drive these estimates. In the table that follows we present our best estimate of likely savings; we later address the uncertainty that surrounds these estimates.

TABLE 1—SECTION-BY-SECTION ECONOMIC IMPACT ESTIMATES *

Issue	Frequency	Number of affected entities	Likely savings or benefits ($ millions)
Ambulatory Surgical Centers:			
• Radiology Services	Recurring Annually	2,544	41
Hospitals:			
• Food and dietetic services	Recurring Annually	4,900	459
• Nuclear medicine services	Recurring Annually		77
Transplant Centers:			
• Reports to CMS & Survey Changes	Recurring Annually	60	<1
Long Term Care Facilities:			
• Sprinkler Deadline Extension	One-time	125	22
Rural Health:			
• CAH & RHC/FQHC Physician responsibilities	Recurring Annually	9,311	76
• CAH Provision of services	Recurring Annually	665	<1
CLIA:			
• PT Referral	Recurring Annually	3	[a] 2
Total			$679

* This table includes entries only for those reforms that we believe would have a measurable economic effect and for which we were able to prepare estimates.

[a] $2 million represents an upper bound on net societal savings because some portion of the estimated effect may consist of transfers from temporarily-banned lab directors to hospitals or laboratories.

As discussed later in this analysis, our estimates are substantially unchanged from the proposed rule in all but three respects. First, since the proposed rule was issued, the Department has created a working group to review current regulatory impact analysis practices and standards on a Department-wide basis. One area of concern to the working group was improving the accuracy and standardizing a wide variety of methods and calculations currently used to estimate regulatory burdens or savings that involve staff time of regulated entities. The tentative conclusion of the working group is that estimates of time cost can reasonably use salary data collected for many occupations by the Bureau of Labor Statistics (BLS) of the Department of Labor, but that the hourly wage or salary cost of employees should be doubled to include both fringe benefits (for example, health insurance and retirement) and overhead costs (rent, utilities, and other support costs) in an estimate of total costs or savings. In the proposed rule we had used a factor of approximately 50 percent. Accordingly, we are now adjusting all our estimates of employee time costs to use a factor of 100 percent. This is necessarily a rough adjustment, both because fringe benefits and overhead costs vary significantly from employer to employer, and because methods of estimating these costs also vary widely from study to study. Nonetheless, there is no practical alternative and we believe that doubling the wage or salary cost to estimate total cost is a reasonably accurate estimation method. Second, we have also updated wage and salary costs from 2012 to 2014 dollars. Both these changes increase our burden reduction savings estimates. Third, we are using

considerably more conservative estimates of likely hospital responses and subsequent savings in dietary management and oversight. Our primary estimate is now 75 percent of hospitals adopting these changes and we allow for the possibility that the overall response could be as low as 15 percent. We have also reduced our estimates of the time savings involved. These changes reduce our burden reduction savings estimates.

C. Anticipated Effects

1. Effects on Ambulatory Surgical Centers

The potential cost savings from the reduced ASC radiology services requirements are discussed in the preamble section of this rule addressing those reforms. We have calculated the savings based on the elimination of ASC requirements that are inappropriate and unnecessary in the ASC setting, primarily because some of the requirements are intended for inpatient hospital patients, which would not be applicable in the outpatient ASC setting. We estimate that assuming the average cost for affected facilities to meet the radiology services requirements would have been $16,000 annually ($4,000 × 4 quarters), the total savings will be $40.7 million ($16,000 × 2544 ASCs).

The assumption for this estimate is based on using ASC facilities across the country that provide orthopedic or pain management procedures, which are the facilities most likely to require a radiologist on staff. We reached out to the Ambulatory Surgery Center Association for assistance on the average cost and usage of radiologists in ASCs across the United States. Based on a survey of ASCs and depending on the market, location of the ASC and frequency of the visits, we utilized a $4,000 average cost per quarter that ASCs are paying for radiologist fees. In addition, we considered the total number of ASCs affected by the current radiology services requirements at an average 48 percent, or 2,544 ASCs, based on current data and the total number of Medicare certified ASCs (5,300 as of December 2011).

We received the following public comments on our estimated benefits to ASCs:

Comment: Several commenters agreed with our assertion that the proposed regulatory change would create savings for ASCs. Commenters agreed that the existing requirements are overly burdensome and unnecessary and that the changes would create savings in the costs of employing a radiologist.

Response: We agree that the existing requirements are overly burdensome and unnecessary and we thank the commenters for their support of these changes.

Comment: Several commenters also stated that the revisions will reduce the substantial administrative burden of finding a radiologist. One commenter stated that it is ''very difficult to find a radiologist that is willing to assume the responsibility for the ASC. It is also difficult to get a radiologist here in a timely fashion to review our program at the intervals required. This has added both staff time and cost to the Center that has not added value to our patient care.'' Another commenter stated that ''eliminating the need for a radiologist would help us divert those same financial and labor resources towards more relevant and meaningful projects—such as infection control and patient safety.'' Yet another commenter stated that ASCs have reported great difficulty finding radiologists willing to be part of their medical staff, as the intra-operative imaging used at ASCs does not require the specialized knowledge and skill of a radiologist,'' and that ''many ASCs do not regularly make use of any radiology, but nonetheless must face the burden of appointing a radiologist to their medical staff because on rare occasions they have the need for imaging in conjunction with a procedure.''

Response: We understand and agree with the comment. Since the final rule eliminates the requirement for this unnecessary supervision, these difficulties will disappear. We have not attempted to estimate these administrative savings, absent any data, but they could well be substantial.

Comment: Some commenters stated that, in addition to relieving burden on ASCs, it will also reduce burden for the radiologist who otherwise has no other contact or interaction with the ASC.

Response: We appreciate the comment, which confirms the key point that the existing requirement simply wastes resources. That said, it would double-count savings to estimate a burden reduction for radiologists equal to the burden reduction for ASCs. Radiologists will continue to obtain assignments commensurate with their skills and will continue to be paid for work they perform. The time they currently waste on useless work will become productive in other settings, but there is no reason to think that their amount of paid work will change. The obvious ''real'' savings from the useless work avoided should be counted only once, and we have described them as accruing to ASCs, the payers. Again, we think that there are benefits, in this case to radiologists who prefer real work to ''make-work'', that we are unable to measure.

Comment: One commenter expressed concern about the new proposal to have an MD/DO who is qualified with appropriate education and training to oversee the radiologic services. The commenter questioned whether additional education requirements might also limit those physicians who would be willing to serve in this capacity, and whether this additional layer could potentially create added costs and be burdensome. The commenter believes that, ultimately, the ASC governing body should have this accountability.

Response: We believe that we have addressed the commenter's concerns by changing the proposed provision in this final rule to require the governing body be responsible for appointing an individual that is qualified in accordance with State law and ASC policy. We have specifically not included qualification requirements and as stated in the preamble, the appointed individual may be someone already working in the ASC that is qualified to perform the required duties. This change was discussed above in section II.A. of this preamble In practice, we believe that ASCs already utilize such persons. Accordingly, we have not changed our cost estimates.

Comment: One commenter believes that we have incorrectly identified savings as transfers. The commenter stated that the RIA ''suggests that what are clearly reductions in regulatory mandates might actually be ''transfers'' that do not reduce costs. This is incorrect.'' The commenter went on to say ''it is not reasonable to assume that eliminating any of those unnecessary costs—costs that exist only because created by previous regulatory mandate—is somehow a transfer of money with no ''real'' economic effect.'' Finally, the commenter said that if we continue to make this argument we ''should produce hard evidence from either the economic literature or previous economic analyses from agencies either imposing or eliminating regulatory cost burdens that such burdens are properly labeled transfers, and demonstrate a methodology for calculating how much of such cost burden is a mere transfer and not either an increase or reduction in real economic costs.''

Response: We were concerned about how the elimination of these costs should be presented, given that some of the work done by supervising radiologists in ASCs is redundant, and therefore not useful, but—according to anecdotal evidence—still prevents the

radiologists from using their time for other valuable activities (such as self-directed activities). If the information we have about radiologists' time use is accurate, there is no question that these benefits are correctly categorized as savings. If the information we have is not entirely accurate, the benefits should be categorized as a combination of societal savings and transfers from radiologists to ASCs.

We agree with the commenter that elimination of these requirements is a reduction in ''real'' regulatory costs and not simply a change in ''transfer'' payments, as these terms are used by regulatory economists, and have amended the analysis accordingly. We are aware of no evidence suggesting anything to the contrary, either from the economic literature or from prior rulemakings. That said, the point we were trying to make was that productive work would be substituted for unnecessary work (see response to preceding comment). As we believe that the evidence upon which we base our impact analysis is sound, we are categorizing these benefits as savings.

2. Effects on Intermediate Care Facilities for Individuals Who Are Intellectually Disabled

Because we are finalizing only technical corrections to descriptive terminology, we do not estimate any costs or savings for ICFs/IID based on this final rule.

3. Effects on Hospitals

There are about 4,900 hospitals that are certified by Medicare and/or Medicaid. We use these figures to estimate the potential impacts of this final rule. We use the following average hourly costs for registered dietitians, advanced practice registered nurses, physician assistants, pharmacists, and physicians respectively: $57, $92, $93, $116, and $192 (BLS Wage Data by Area and Occupation at *http://www.bls.gov/bls/blswage.htm*, adjusted upward by 5 percent to inflate—on a projected basis—to 2014 dollars and by a further 100 percent to include fringe benefits and overhead costs).

Ordering Privileges for Registered Dietitians (RDs) (Food and Dietetic Services § 482.28)

We are revising the hospital requirements at 42 CFR 482.28 (b), ''Food and dietetic services,'' which currently requires that therapeutic diets must be prescribed by the practitioner or practitioners responsible for the care of the patients. Specifically, we are revising § 482.28(b)(1) and (2) that would change the CMS requirements to allow for flexibility in this area by requiring that all patient diets, including therapeutic diets, must be ordered by a practitioner responsible for the care of the patient, or by a qualified dietitian or qualified nutrition professional as authorized by the medical staff and in accordance with State law. With these changes to the current requirements, a hospital will have the regulatory flexibility either to appoint RDs to the medical staff and grant them specific dietary ordering privileges (including the capacity to order specific laboratory tests to monitor nutritional interventions and then modify those interventions as needed) or to authorize the ordering privileges without appointment to the medical staff, all done through the hospital's medical staff and its rules, regulations, and bylaws. In either instance, medical staff oversight of RDs and their ordering privileges will be ensured.

As we discussed previously in this rule, a 2010 retrospective cohort study [1] of 1,965 patients at an academic medical center looked at the influence of RDs with ordering privileges on appropriate parenteral nutrition (PN) usage and showed a reduction in medically inappropriate PN usage, which translated to an approximately $135,233 annual savings to the hospital after RDs were granted ordering privileges; included in this savings estimate were solution, materials and pharmacy labor costs specifically related to PN. In order to estimate the reduced costs that our changes to § 482.28 might bring to hospitals, we based our calculations on this study and its finding of $135,233 savings for a single hospital that granted ordering privileges to RDs. The study presented its figures in 2003 dollars, and to adjust to a comparable figure in 2014 dollars we used the increase in the Gross Domestic Product deflator over this period. Since that index will be up about 25 percent, our savings estimate, rounded, is $169,000. We note that Peterson et al.'s cost reduction estimate includes only PN solution and pharmacy labor costs, not the savings estimates due to the time needed to administer PN by nurses, time saved by supervising physicians, or many other categories of potential savings. There may, of course, be some minor cost increasing changes, but we know of none that would be consequential (for example, the marginal cost of a day or two eating a regular hospital diet rather than parenteral feeding would at most be a few dollars per patient, and likely close to zero). Importantly, the Peterson et al study found that inappropriate use of PN decreased only to 27 percent of patients when using nutrition support teams. Other studies have found greater reduction.[2] We use the Peterson et al estimates of dietary changes and add some, but not all, of the other likely savings to our overall estimate of savings.

We estimate that possibly 5 percent (that is, 245) of all hospitals are out of compliance with the CoPs and already granting RDs ordering privileges through appointment to the medical staff or other mechanisms and have already realized these savings. Additionally, an October 2008 study [3] surveyed 1,500 clinical nutrition managers in acute healthcare facilities nationwide in an attempt to describe the level of RD independent prescriptive authority and to explore the barriers to obtaining that authority. The authors of the study reference current CMS policy, stating that: ''. . . independent prescriptive authority via clinical privileges would not be a CMS-accepted pathway for RDs to write orders.'' This mention of the CMS requirements leads us to believe that our requirements (included in the survey response ''regulatory agencies'') might present a significant barrier to RDs obtaining dietary ordering privileges. Indeed, the results of the survey indicate that roughly 15 percent of the respondents cited ''regulatory agencies'' as a barrier to obtaining independent prescriptive authority (or dietary ordering privileges as we refer to it in this rule). However, several limitations inherent in this study lead us to question how heavily we should rely on it for the purposes of estimating how many hospitals will take advantage of this allowance under the CoPs. The survey only looked at the perceptions of clinical nutrition managers regarding barriers to RD ordering privileges and did not survey hospital administrators or governing body members on the reasons why hospitals were unable to grant these privileges to RDs at this time. We believe that such a study, had it been performed, would have been much more meaningful and reliable for our

[1] Peterson SJ, Chen Y, Sullivan CA, et al. Assessing the influence of registered dietician order-writing privileges on parenteral nutrition use. J AM Diet Assoc. 2010; 110; 1702 1711.

[2] See, for example, the achievements noted in the Ochoa and colleagues estimates, and the Trujillo and colleagues estimates, as cited in the Peterson et al study (page 1708). These studies found that with decisions made by a nutrition support team, inappropriate PN use could be reduced to as low as 15 percent. Other cited studies have found even greater effects.

[3] Weil, Sharon D., Linda Lafferty, Kathryn S. Keim, Diane Sowa and Rebecca Dowling. Registered Dietitian Prescriptive Practices in Hospitals. J AM Diet Assoc. 2008; 108; 1688–1692.

purposes in estimating how many hospitals would possibly implement the granting of ordering privileges to RDs. The authors of the study also state that ''. . . the limitations of this study must be considered and a major limitation was the small response rate (23.4 percent). . .'' (or only 351 respondents from the 1,500 clinical nutrition managers surveyed).

As a result of our concerns as to the validity of this study, we specifically discussed this issue with the American Hospital Association (AHA) and the Federation of American Hospitals (FAH), who both assured us that most hospitals will be eager to implement this change and will begin the process of granting the privileges to dietitians upon publication of the rule. Input from all stakeholders has been overwhelmingly, if not universally, supportive. Not one public comment identified any regulatory impediment, other than the hospital CoPs, to change and the comments were overwhelmingly supportive of the policy. Consequently, we believe this survey's results to be flawed or erroneous, and largely irrelevant at this point in time. However, we have decided to use its conclusions as the lower bound of possible hospital policy and practice changes based on this final rule. Therefore, based on this study, it is possible that as few as 15 percent of hospitals (or only 735 hospitals) would take advantage of these changes to revise hospital policy and realize the estimated savings.

Additionally, because there is still some degree of uncertainty involved in estimating how many hospitals will immediately take advantage of this allowance under the CoPs versus how many will elect to gradually phase in such changes to RD ordering privileges, we have chosen to present a primary estimate (based on our experience with hospitals and our discussions with stakeholders) in which 3,675 hospitals (or 75 percent) elect to make these changes, though we believe that an upper bound estimate of nearly 95 percent of hospitals might ultimately implement these changes at some point in the future. Because 75 percent is our primary estimate, we are presenting only those savings estimates and numbers here and not those for the 15-percent lower bound estimate and the 95-percent upper bound estimate. (Our Accounting Table, however, does allow for a wide range of possible lower and upper bound savings, some of which could include both upward and downward changes partially offsetting each other.) Our extensive experience with hospitals, hospital organizations, and RD professional organizations leads us to believe that by finalizing this change here, a significant number of hospitals will move to grant RDs ordering privileges. We also based our savings estimates on the following assumptions:

- The Peterson, et al., study was conducted at a 613-bed tertiary academic medical center; hospitals smaller than the one studied will have lower PN usage due to lower patient censuses and will thus have lower net savings;
- We adjusted the net savings relative to average bed size for hospitals of 164 beds (from AHA Hospital Statistics), meaning that average annual savings will be $36,513 per hospital using the 2003 figure, but $45,641 after adjusting for inflation; and
- The savings are based on the impact that RD ordering privileges had on reducing inappropriate PN usage alone and do not include other positive impacts that RD ordering privileges might have on reducing costs to hospitals, such as potential reductions in nursing time needed for dietary administration when patients switch from inappropriate PN to enteral nutrition or a regular hospital diet.

Based on the studies and these assumptions, we estimate a savings of $167,730,675 (3,675 hospitals × $45,641 in savings from reduced inappropriate PN usage = $167,730,675) annually.

As noted above, the changes we are finalizing might also help hospitals to realize other significant savings. One 2008 study [4] indicates that patients whose PN regimens were ordered by RDs have significantly fewer days of hyperglycemia (57 percent versus 23 percent) and electrolyte abnormalities (72 percent versus 39 percent) compared with patients whose PN regimens were ordered by physicians. Also, a recent literature review concludes that for at least general surgery and trauma patients, starting enteral feeding as soon as possible reduces infectious complications.[5] This will most likely translate into decreased length of stays for these patients as well as quicker recovery times and reduced incidents of readmissions after discharge from the hospital. However, we do not have any reasonable means for estimating these potential cost savings at this time.

More obviously, RDs with ordering privileges will also be able to provide medical nutrition therapy (MNT) and other nutrition services at lower costs than physicians (as well as APRNs and PAs, two categories of non-physician practitioners that have traditionally also devised and written patient dietary plans and orders). This cost savings stems in some part from significant differences in the average salaries between the professions and the time savings achieved by allowing RDs to autonomously plan, order, monitor, and modify services as needed and in a more complete and timely manner than they are currently allowed. We have estimated the savings that would be realized by hospitals through our changes in terms of the physician/APRN/PA time and salaries saved.

Physicians, APRNs, and PAs often lack the training and educational background to manage the nutritional needs of patients with the same efficiency and skill as RDs. The addition of ordering privileges enhances the ability that RDs already have to provide timely, cost-effective, and evidence-based nutrition services as the recognized nutrition experts on a hospital interdisciplinary team. A 2011 review article [6] discusses a number of additional studies that provide further evidence for the significant differences in nutrition education that exist between physicians and RDs, along with several other studies supporting the cost-effectiveness and positive patient outcomes that hospitals might achieve by granting RDs ordering privileges.

To calculate these cost savings for hospitals, we based our savings estimates on the following assumptions (some of which we have revised from those used in the proposed rule):

- Using the estimate established above, 3,675 hospitals will realize these savings;
- There is an average hourly cost difference of $69 between RDs on one side ($57 per hour) and the hourly cost average for physicians, APRNs, and PAs ($126 per hour) on the other;
- There are on average 7,000 inpatient hospital stays per hospital per year (from AHA Hospital Statistics) with each of these stays requiring at least one dietary plan and orders;
- The average hospital stay is about 5 days (from AHA Hospital Statistics);
- On average, each non-complex dietary order, including ordering and monitoring of laboratory tests,

[4] Duffy JK, Gray RL, Roberts S, Glanzer SR, Longoria SL. Independent nutrition order writing by registered dieticians reduces complications associated with nutrition support [abstract]. J Am Diet Assoc. 2008; 108 (suppl 1):A9.

[5] Caitlin S. Curtis et al, ''Enteral Feedings in Hospitalized Patients: Early versus Delayed Enteral Nutrition,'' Practical Gastroenterology, October 2009, pp. 22–30.

[6] Kinn TJ. Clinical order writing privileges. Support Line. 2011; 33; 4; 3–10.

subsequent modifications to orders, and dietary orders for discharge/transfer/outpatient follow-up as needed, will take 8 minutes (0.13 hours) of a physician's/APRN's/PA's/RD's time per patient during an average 5-day stay;

- On average, MNT or more complex dietary orders (for example, PN, tube feedings, patients with multiple co-morbidities, transition of patient from parenteral to enteral feeding, etc.), including ordering and monitoring of laboratory tests, subsequent modifications to orders, and dietary plans and orders for discharge/transfer/outpatient follow-up as needed, will take 18 minutes (0.30 hours) of a physician's/APRN's/PA's/RD's time per patient during an average 5-day stay; and
- The average number of hospital inpatient stays where the patient is determined to be either ''at risk for malnutrition'' or ''malnourished'' and/or requires MNT or a more complex dietary plan and orders for other clinical reasons is 1,400 (or 20 percent of inpatient hospital stays)[7] per hospital per year, with a remaining average of 5,600 (or 80 percent) of hospital inpatient stays per hospital per year where the patient is determined to be ''not at risk for malnutrition'' and/or requires a less complex dietary plan and orders.

The resulting savings estimate is $291,104,100 ((3,675 hospitals × 5,600 inpatient hospital stays × 0.13 hours of a physician's/APRN's/PA's/RD's time × $69 per hourly cost difference) + (3,675 hospitals × 1,400 inpatient hospital stays × 0.30 hours of a physician's/APRN's/PA's/RD's time × $69 per hourly cost difference)) annually. These hourly estimates are about 57 percent higher than in the proposed rule, due to the improved estimate for fringe benefits and overhead costs, plus inflation update. However, we have reduced our estimate of hours saved to reflect the likelihood that physician supervision will remain substantial in some cases. When combined with the savings estimate of $167,730,675 from reduced inappropriate PN usage, this brings the total savings estimate from the CoP changes to $458,834,775 (or approximately $459 million) annually. We note again that these estimates exclude some categories of cost increases (for example, internal hospital meetings to plan changes), and some substantial categories of potential savings in medical treatment costs that we have no current basis for estimating. The net effect of these omitted calculations would be substantially cost saving, and therefore would have no effect on the overall conclusion that the net benefits of this final rule are positive.

We acknowledge several additional kinds of uncertainty in our estimates of the provision's savings. For instance, we have assumed that the time physicians, APRNs or PAs save due to being relieved of diet-ordering duties will equal the time spent by RDs on those duties. RDs, being the experts in this area and more proficient in evaluating and treating the nutritional needs of patients, might actually need less time than physicians, PAs, or APRNs. As we have stated previously, we have based many of our assumptions and estimates on what we believe is the best available evidence we have from our review of the literature in this area. We have also based our overall assumptions and best estimates on our practical, ongoing experiences with hospitals in these matters. Finally, we have restricted our estimates to inpatient hospital stays and we did not include a discussion of hospital outpatient visits for nutritional services and the impact that these changes might have on hospital costs in this area. We invited public comments on the assumptions and estimates we put forth in the analysis in the proposed rule. The comments we received on the impact of this regulatory change are as follows:

Comment: Several commenters agreed with our assumptions that this regulatory change will reduce burden on physicians and create savings for hospitals.

Response: These comments support our expectation that hospitals are likely to exercise the flexibility that this final rule provides.

Comment: One commenter stated that our low estimate for nutrition savings is ''arbitrary and implausible.'' The commenter pointed out that it is based on a public opinion poll taken of dietitians who are not regulatory experts and could not have been expected to know that it is an existing CMS rule, not hospital staff, which has prevented them from assuming duties commensurate with their expertise. The commenter further stated that ''the 'low' estimate should be only a few percent below the primary estimate, and reflect the implausibility that any large fraction of hospitals would not take such obvious savings, even though faced with immense cost pressures from the Affordable Care Act provisions that will over time drastically reduce payments to hospitals.''

Response: We agree that the previous ''low'' estimate was below the likely response of hospitals to the new cost-saving option we provide. Furthermore, in this final rule we are adding other categories of professionals who may establish diets, further adding to hospital flexibility. The commenter's point that professionals expert in the performance of their duties do not necessarily understand the ultimate legal source of regulatory requirements they experience in their daily work is valid and important. Nonetheless, we cannot reasonably assume that all hospitals will exercise the flexibility we provide, or do so as soon as permitted. Accordingly, we have modified our estimate.

Comment: One commenter stated their belief that we may have underestimated the possible monetary benefits of this provision. For example, the commenter stated, a dollar estimate of what may be substantial patient health benefits has been omitted.

Response: We agree that there are potentially important and substantial health benefits from allowing the most qualified professional staff to make binding judgments on patient diets. It is quite likely that there will be both morbidity and mortality reduction benefits, as predicted in the professional literature. Nonetheless, we have no empirical data on which to estimate this category of benefit.

Nuclear Medicine Services (§ 482.53)

We proposed, and are finalizing, a change to the current requirement at § 482.53(b)(1), which requires that the in-house preparation of radiopharmaceuticals be performed by, or under the direct supervision of, an appropriately trained registered pharmacist or a doctor of medicine or osteopathy. We are removing the term ''direct'' from the current requirement. This revision allows for other appropriately trained hospital staff to prepare in-house radiopharmaceuticals under the supervision or oversight of a registered pharmacist or doctor of medicine or osteopathy, but it will not require that such supervision or oversight be exercised by the physical presence in the hospital of one of these professionals, particularly during off-hours when such a professional is not routinely present. The change directly reduces the burden of the current direct supervision requirement where it is most needed— in-house preparation of radiopharmaceuticals for after-hours/emergency performance of nuclear medicine diagnostic procedures.

Based on statistics from the Society of Nuclear Medicine and Molecular

[7] Barker LA, Gout BS, Crowe TC. Hospital malnutrition: prevalence, identification and impact on patients and the healthcare system. Int J Environ Res Public Health. 2011; 8(2); 514–527.

Imaging, an estimated 16 million nuclear medicine imaging and therapeutic procedures are performed each year in the United States. We based our estimated savings for this change on the conservative assumptions that:

- Most hospitals will take advantage of this allowance on supervision since it is consistent with the Society of Nuclear Medicine and Molecular Imaging recommendations on this issue;
- The percentage of nuclear medicine procedures performed off-hours (7 p.m.–7 a.m.) is only 10 percent of all procedures performed (or 1.6 million);
- It requires 15 minutes of an MD/DO/PharmD's time for direct supervision; and
- The average hourly cost for these categories of practitioners in 2014 is $192 including fringe benefits and overhead costs.

Therefore, we estimate hospitals savings will be $76.8 million for the change (1.6 million off-hour procedures × $192 hourly salary for MD/DO/PharmD × 15 minutes for direct supervision). We did not receive any public comments on our estimates for savings related to nuclear medicine services.

We are finalizing other revisions to the Hospital CoPs, but we do not believe those provisions will create tangible savings for hospitals.

4. Effects on Transplant Centers and Organ Procurement Organizations

Existing § 482.74(a)(2) requires transplant centers to notify CMS whenever there was a decrease in the center's number of transplants or survival rates that could result in the center being out of compliance with the clinical experience (number of required transplants) or outcome (survival) requirements at § 482.82. We are proposing to eliminate this requirement, which will reduce the burden to any transplant center that must currently report this information to CMS. This requirement functionally duplicates the data reporting and analysis requirements administered through the Health Resources and Services Administration (HRSA) of HHS, HRSA's contractor for the Scientific Registry for Transplant Recipients (SRTR), and a CMS-funded analysis of these SRTR data. These data (hereafter the SRTR data) are equally if not more timely, and equal if not better at identifying transplant center performance problems, than the data we currently collect directly.

We estimate that transplant centers make about 60 notifications each year to CMS according to § 482.74(a)(2). We believe that a staff member, probably the transplant center administrator, who will be responsible for this notification will need to review the data and notify the medical director of the possibility that the center's volume and/or survival statistics may result in failure to comply with the requirements in § 482.82 of the CoPs. Then the transplant center administrator will need to make the actual submission to CMS. We estimate costs based on average hourly costs of $192 for the medical director (physician) and $116 for the administrator. These hourly costs include the average hourly wages for these positions, plus fringe benefits and overhead and an update to 2014, as previously explained. We believe this will require 15 minutes, or .25 hours, of the medical director's time at an hourly wage of $192 and 30 minutes, or .5 hours, of the transplant center administrator's time at an average hourly cost of $106 ($192 hourly cost for medical director × .25 hours = $48 (+) $116 hourly cost for administrator × .5 hours = $58 for a total of $106) for each notification to CMS. Based on our experience with transplant centers, we estimate that transplant centers make about 60 of these notifications each year. Thus, the annual savings to transplant centers from eliminating this requirement for all transplant centers will be about $6,360 ($106 for each notification × 60 notifications = $6,360).

In addition to the savings realized by the transplant centers, the federal government will realize savings from both the cost of conducting the surveys and the cost of federal staff time in reviewing and maintaining the survey results. The surveys of the organ transplant facilities are usually conducted by both state surveyors and contractors paid by the Federal government. A survey requires an average of 182 hours to complete. Based upon our experience with previous surveys, we estimate that the combined average hourly cost, which includes fringe benefits and overhead, for the surveyors is about $150. Thus, to conduct a survey costs about $27,300 (182 hours × $150 hourly cost = $27,300). By reducing the number of surveys by 10, the federal government will sustain an estimated annual savings of $273,000 ($27,300 for each survey × 10 surveys = $273,000).

We expect that the changes to the transplant center survey process will improve federal oversight of organ transplant programs by allowing more effective targeting of survey and enforcement activities to those programs that most need such attention, and will reduce the burden of hospitals undergoing surveys that may not be necessary. We estimate that the cost of an onsite survey is $10,400 per survey multiplied by a reduction of 10 surveys per year for a total of $104,000 per year. The per-survey cost represents an estimate of the cost of personnel time spent during the onsite survey (hourly cost multiplied by the amount of time spent during a one-week onsite survey). This is consistent with costs reported by several transplant administrators which ranged between $7,334 and $15,000.

The reduction of 10 surveys each year out of the approximately 80 annual surveys completed each year represents a 12.5 percent reduction in the number of surveys. We estimate that these 10 surveys could have follow-up through alternative methods (for example, conference calls, plans of correction, etc.). This estimate is based on recent information that 43 programs that had non-compliance with data submission (that will require an onsite survey, if due for re-approval), were only slightly below the compliance threshold of 95 percent and effective follow-up could occur in some cases without an onsite survey. In addition, as part of our follow-up process every six months for non-compliance with patient and graft outcomes, we review about 15 programs every 6 months (approximately 30 programs per year). We estimate $104,000 in total savings for transplant hospitals each year.

The federal government will also realize a savings due to the staff time required to review and maintain the results of these 10 surveys. We estimate that federal staff spend about 5 hours on each survey reviewing survey results and maintaining those results. Thus, for each survey, we estimate that the federal government will realize a savings of $750 (5 hours for each survey × $150 hourly cost = $750). For all 10 surveys, we estimate the annual savings will be $7,500 ($750 for each survey × 10 surveys = $7,500).

We believe that the other changes we are finalizing for transplant centers and OPOs (at §§ 482.80(c), 482.82(c), 486.306, 486.308(b)(1), and 486.344(d)(2)(ii)) will be burden neutral.

These reforms will enable all three types of affected organizations—hospitals, State survey agencies, and Federal oversight staff—to focus resources more effectively and efficiently on detecting and dealing with genuine and important problems in transplant center performance.

5. Effects on Long Term Care Facilities

In issuing the original 2008 rule, we anticipated that the cost of the sprinkler requirement will be substantially reduced by allowing a 5-year transition

period (2008–2013). The extended transition period will permit the cost of new sprinkler systems to be subsumed (at much less expense) under a facility's normal (or accelerated) capital replacement schedule. Due to the financial recession of 2008 and problems in the real estate market, however, the plans for replacement or major modification for some nursing homes have been delayed.

We recently received communications from a number of owners who plan to replace or substantially improve an existing structure, but are unable to do so by the August 13, 2013 deadline. In such a case, the owner is faced with the prospect of investing significant resources to install a system of automatic sprinklers in the old structure by August 13, 2013, only to have those improvements soon superseded by the superior environment of the new structure. We wish to avoid the unnecessary costs involved in sprinklering an old structure that will soon be replaced. We therefore are permitting time-limited extensions of the due date for achieving full sprinkler status. Each case-specific extension will then enable more time for full sprinkler systems to be implemented through the capital replacement or renovation schedule that is feasible for the facility.

Out of approximately 15,800 nursing homes nationwide, our information system indicates that there were 64 facilities as of February 2014 that were not sprinklered, and another 497 that were partially sprinklered for a total of 561 facilities. Nursing homes have made steady progress in sprinkler installation. For example, the current inventory of unsprinklered or partially sprinklered facilities is about 994 fewer than when the February 2013 proposed rule was published (561 v. 1555). However, a much higher proportion of the remaining nursing homes are ones that we believe are building replacement facilities or undergoing major modifications and would be reliant on an extension of time to finish such work while still participating in Medicare. We originally projected that 50 unsprinklered and 75 partially sprinklered facilities would request and qualify for a deadline extension and we continue to believe these estimates are reasonable.

In the case of a deadline extension for replacement of a nursing home, the unsprinklered facilities that are being replaced will still incur the cost of installing sprinklers in the new facility, but they will not need to pay twice for such installation (once in the old facility to meet the August 13, 2013, deadline, and again in the new facility). At an average estimated installation cost of $7.95 per square foot and an average space of 50,000 square feet, the avoided cost will be approximately $19,875,000 (50 facilities times 50,000 S.F. times $7.95). The partially sprinklered facilities may save some expense since they are combining the sprinkler installation with major modifications. We assume that the partially sprinklered facilities will avoid $1.00 per square foot in savings through such economies, and assume that the average unsprinklered area is 25,000 square feet. For the partially sprinklered facilities, we therefore project that the aggregate savings is approximately $1,875,000. The combined aggregate, one-time savings will total $21,750,000.

6. Effects on Rural Health and Primary Care Providers and Suppliers

CAH and RHC/FQHC Physician Responsibilities (§§ 485.631(b)(2) and 491.8(b)(2))

We are revising the CAH regulations at § 485.631(b)(2) and the RHC/FQHC regulations at § 491.8(b)(2) to eliminate the requirement that a physician must be on-site at least once in every 2-week period (except in extraordinary circumstances) to provide medical care services, medical direction, consultation, and supervision. Based on our experience with CAHs, we estimate that the smaller and more remotely located CAHs, which represent roughly 15 percent of the 1,330 CAHs (that is, 200 CAHs), will be most affected by the removal of this provision and that its removal will produce estimated annual savings of nearly $3.1 million for CAHs.

We estimate that the majority of CAHs do not incur a burden due to the relatively large volume of services they provide. For these higher-volume CAHs, physicians are regularly onsite to supervise and provide consultation. We believe that these facilities will continue to have frequent physician visits (biweekly or more often), simply as a matter of operation. Therefore, for the majority of CAHs, we do not believe that eliminating the requirement for a biweekly physician visit will significantly reduce their financial and administrative expenses. For about 15 percent of CAHs, roughly 200 CAHs, we estimate the current burden as follows. First, we estimate that a physician, at an hourly cost of $192 (BLS Wage Data by Area and Occupation, including 100 percent for benefits and overhead costs), spends 6 hours each visit and makes bi-weekly visits (26 visits per year) to a facility to perform the duties required at § 485.631(b)(2). We estimate these visits cost $29,952 per CAH per year (6 hours per visit × 26 visits × $192 an hour = $29,952 per CAH per year).

Next, we estimate current travel expenses associated with the biweekly requirement. We estimate that, for each visit, a physician drives an average of 50 miles round trip and is reimbursed at a rate of $0.55 (the IRS mileage reimbursement rate) per mile. Thus, each visit costs approximately $28 (50 miles per visit × $0.55 per mile) for a total annual burden of $728 per CAH ($28 per visit × 26 visits = $728 annual cost per CAH). We understand that a small number of CAHs, such as those in Hawaii and Alaska, most likely incur significant additional cost for airfare and overnight accommodations. However, we do not have enough data to estimate these various costs.

We believe that eliminating the on-site, bi-weekly physician supervision requirement will reduce the physician supervision burden by 50 percent for each affected CAH. We estimate the savings as follows: $3.07 million for on-site visits ([$29,952 per CAH/2] × 200 CAHs = $2,995,200) and $72,800 in travel costs ([$728 per CAH/2] × 200 = $72,800).

In addition, CAHs are required to document the events in which an extraordinary circumstance will prevent a doctor from visiting the CAH, at a minimum, once in a 2-week period. We estimate the administrative expenses associated with the documentation requirements at § 485.631(b)(2) to be $5,720 per year. Based on sample data from the Health Resources and Services Administration (HRSA), we estimate that such circumstances may impact about 11 percent of all presently required visits for this subset of 200 CAHs. We estimate that a clerical worker costing $40 per hour in wages, benefits, and overhead, will be responsible for completing the paperwork, with each incident taking about 0.25 hours to record. Assuming 26 visits per year per CAH, with approximately 11 percent of the required visits being prevented, thereby triggering the paperwork, we estimate that the yearly cost of compliance for these 200 CAHs will be $5,720 (26 visits per year per CAH × 11 percent × 200 CAHs × 0.25 hour × $40 per hour = $5,720 per year). Thus, we estimate a total annual savings for CAHs of nearly $3.1 million ($5,720 administrative + $2,995,200 hourly + $72,800 travel = $3,073,720).

For RHCs and FQHCs, we believe burden will be reduced on all such facilities. We estimate that, presently, to perform the duties required at § 491.8(b)(2), each month a physician spends approximately 8 hours (4 hours

each visit, twice a month) on-site at an RHC or FQHC and that these visits require an additional 4 hours of travel time. We estimate a 2-hour round-trip travel time for visits to most RHCs and FQHCs, thus approximately 4 hours per month, and we note that many RHCs and FQHCs require special means of transport which may be more expensive than traveling by car. We estimate travel costs at $1,950 per clinic annually ($75 travel cost per visit × 26 visits per year = $1,950 per clinic per year). We estimate the costs for time spent for on-site visits to be $19,968 per RHC or FQHC per year (4 hours/visit × $192 an hour × 26 visits per year = $19,968 per year).

By eliminating the provision, for each RHC or FQHC we estimate travel expenses will be reduced from $1,950 to $663 per year (an annual savings of $1,287). For RHCs (3,977 total), we estimate an annual savings of $5.1 million on travel ($1,287 per year × 3,977 = $5,118,399). For FQHCs (5,134 total), we estimate they will realize $6.6 million in annual savings on travel expenses ($1,287 per year × 5,134 = $6,607,458).

We further estimate that the time spent on biweekly visits will decrease by about one third, from $19,968 to $13,319 (a $6,649 savings) per year for each RHC or FQHC. For all RHCs, we estimate an annual savings of $26.4 million from fewer hours for on-site clinician visits ($6,649 per year per RHC × 3,977 RHCs = $26,443,073). FQHCs will realize $34.1 million in annual savings from fewer hours for on-site clinician visits ($6,649 per year per FQHC × 5,134 FQHCs = $34,135,966).

We also estimate the administrative expenses associated with the documentation requirements at § 491.8(b)(2), which are triggered in the event of any ''extraordinary circumstances'' preventing any of the required bi-weekly physician visits. By comparison to travel and hourly visit costs, these expenses are relatively small. As we estimated for CAHs, we similarly estimate that such circumstances impact about 11 percent of the presently required visits for all RHCs and FQHCs. We estimate that a clerical worker, costing $40 per hour in wages, benefits, and overhead, will be responsible for completing the paperwork, with each incident taking about 0.25 hours to record. Assuming 26 visits per year, with approximately 11 percent of these being prevented, and thereby triggering the paperwork, we estimate the yearly cost of compliance for RHCs and FQHCs to be $260,574 (26 visits × 11 percent × [3977 RHCs + 5134 FQHCs] × 0.25/hour × $40 per hour = $260,574 per year for RHCs and FQHCs). Eliminating the biweekly requirement will eliminate this particular administrative cost entirely for all RHCs and FQHCs, producing a total annual savings of $113,742 for RHCs and $146,832 for FQHCs, respectively.

In total, we believe that eliminating the provision will produce annual estimated savings of $31.7 million for RHCs in travel, hourly, and administrative costs ($5,118,399 travel + $26,443,073 hourly + $113,742 administrative = $31,675,214). For FQHCs, we estimate that eliminating the provision will produce nearly $41 million in annual savings. ($6,607,458 travel + $34,135,966 hourly + $146,832 administrative = $40,890,256 per year). We note that a portion of these savings may be offset by equipment or other costs associated with increased use of telemedicine; however, we lack data with which to reliably estimate such costs. Thus for CAHs, RHCs, and FQHCs, we estimate a total annual savings of $75,639,190 million.

Provision of Services (§ 485.635(a))

We are removing the requirement that CAHs consult an individual who is not a member of the CAH staff in the development of its patient care policies; instead, we will allow CAHs greater flexibility in their approach. We estimate that removing this requirement will result in a total annual savings of $266,000 for CAHs which are not part of a rural health network and therefore, in the absence of this final rule, will need to provide orientation for a volunteer to be able to serve in this capacity. No original estimates were made regarding this requirement, which was in fact initially developed for another provider type (43 FR 30520 and 43 FR 5373), but later assumed as a requirement for CAHs in 1997 (62 FR 46037).

Based on our experience, we are aware that many CAHs use volunteers, such as current board members, community residents with a medical background, or others, to fulfill the current requirements at § 485.635(a)(2). That is, many CAHs use a volunteer as the non-CAH staff person who provides advice and assists in the development of the CAH's patient care policies. In some cases, the CAH must also invest time to make such an individual familiar with the CAH's policies and procedures. Based on our experience, we estimate that a CAH typically spends about $50 an hour for eight hours, annually, including any time required for orientation, to involve an outside individual in the development of its patient care policies. We also estimate that 665 of about 1,330 CAHs are part of a rural health network and can utilize a non-staff individual that is part of the network to fulfill this requirement. Thus, we estimate the savings based on the CAHs that are not in a network and are therefore required to pay an individual to assist with developing the policies and procedures. Thus, we estimate a total annual savings of $266,000 ($50 × 8 hours = $400 per CAH × 665 CAHs = $266,000).

RHC/FQHC Definition of a Physician (§ 491.2)

The definition of a physician in the RHC/FQHC CoP regulations does not conform to the definition of a physician in the payment and Medicare agreement regulations in Part 405 for these types of suppliers. We are revising the regulation at § 491.2 by stating the specific functions of a doctor of medicine or osteopathy required in the statute (sections 1861(aa)(2)(B) and (aa)(3) of the Act) to eliminate possible confusion in the supplier community and to facilitate the development of more specialized primary care clinics, such as those providing dental services. We believe that this change will allow for an expansion of patient services and for additional health benefits for which we do not have a basis to estimate.

7. Effects on Laboratories

In this final rule, we are making a number of clarifications and changes pertaining to the regulations governing PT referral under CLIA. We are also responding to comments made in response to the proposed changes, including making further clarifications to ensure conformance between the TEST Act and the regulations.

The first clarification is to add a statement to § 493.801(b) to explicitly note that the requirement to test PT samples in the same manner as patient specimens does not mean that it is acceptable to refer PT samples to another laboratory for testing even if that is the protocol for patient specimens. The second change establishes a narrow exception in our long-standing interpretation of what constitutes an ''intentional'' referral. In these instances, the laboratory will be subject to alternative sanctions in lieu of potential principal sanctions. Alternative sanctions may include any combination of civil money penalties, directed plan of correction (such as required remedial training of staff), temporary suspension of Medicare or Medicaid payments, or other sanctions specified in accordance with CMS regulations. Finally, we are adding

definitions for the following four terms to the regulation: reflex testing, confirmatory testing, and distributive testing.

From 2007 through 2011 there were 41 cases of cited, intentional PT referral. Of these 41 cases, we estimate that 13 will have fit the terms of this final rule, ranging from a low of 1 in any year (in 2009) to a high of 5 (in 2011). Based on discussions with the most recently affected laboratories, we estimate that the average cost of the sanctions applicable under current regulations is approximately $578,400 per laboratory. The largest single type of cost is the expense to the laboratory or hospital to contract out for management of the laboratory, and to pay laboratory director fees, due to the 2-year ban of the owner and operator pursuant to revocation of the CLIA certificate. We have not included legal expenses in this cost estimate, as it is not possible to estimate the extent to which laboratories may still appeal the imposition of the alternative sanctions in this final rule. We therefore estimate the annual fiscal savings of the changes to range from a low of $578,400 (1 laboratory) to a high of $2.9 million (5 laboratories), with an annual average estimated savings of $1.7 million (about 3 laboratories per year on average). While the macro savings may not be large, the costs to the individual laboratory or hospital that is affected can be significant.

We note, however, that the $1.7 million estimated savings to laboratories may overstate or understate the provision's net societal benefits. To the extent that new managers or support staff are putting forth effort (for example, familiarizing themselves with laboratories that they have not previously operated) as part of new management arrangements, society's resources would indeed be freed for other uses by the regulatory change. However, because laboratory director and management duties would be performed (by someone) with or without the change, some portion of the management director fees may not represent actual labor costs, but would instead involve a transfer of value (for example, from a temporarily-banned lab director who would receive severance pay in the absence of the regulatory change, to the hospital or laboratory no longer needing to make the severance payments). We lack data to estimate how much of the $1.7 million total is a transfer of this type, rather than a net societal benefit.

8. Effects on Small Entities

The RFA requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, we estimate that the great majority of the providers that will be affected by CMS rules are small entities as that term is used in the RFA. The great majority of hospitals and most other health care providers and suppliers are small entities, either by being nonprofit organizations or by meeting the SBA definition of a small business. Accordingly, the usual practice of CMS is to treat all providers and suppliers as small entities in analyzing the effects of our rules.

This final rule will save affected entities approximately $660 million a year. Most of these savings will accrue to hospitals. Although the overall magnitude of the paperwork, staffing, and related cost reductions to hospitals and CAHs under this rule is economically significant, these savings are likely to be a fraction of one percent of total hospital costs. Total national inpatient hospital spending is approximately nine hundred billion dollars a year, or an average of about $150 million per hospital, and our primary estimate of the net effect of these proposals on reducing hospital costs is about $540 million annually. This is an average of about $87,000 in savings for the 6,200 hospitals (including CAHs) that are regulated through the CoPs and is well under one percent of annual spending. It will be higher in larger hospitals, and lower in smaller hospitals, since these savings will be roughly proportional to patient volume.

Under HHS guidelines for Regulatory Flexibility Analysis, actions that do not negatively affect costs or revenues by more than 3 percent a year are not economically significant. We believe that no hospitals of any size will be negatively affected. Accordingly, we have determined that this final rule will not have a significant economic impact on a substantial number of small entities, and certify that a Final Regulatory Flexibility Analysis is not required. Notwithstanding this conclusion, we believe that this RIA and the preamble as a whole meet the requirements of the RFA for such an analysis.

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. For the preceding reasons, we have determined that this final rule will reduce costs and will therefore not have a significant negative impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2014, that is approximately $141 million. This final rule does not contain any mandates.

Executive Order 13132 establishes certain requirements that an agency must meet when it issues a proposed rule (and subsequent final rule) that impose substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This rule will not have a substantial direct effect on State or local governments, preempt States, or otherwise have a Federalism implication.

D. Alternatives Considered

From within the entire body of CoPs and CfCs, the most viable candidates for reform were those identified by stakeholders, by recent research, or by experts as unusually burdensome if not unchanged. This subset of the universe of standards is the focus of this final rule. For all of the provisions, we considered not making these changes. Ultimately, we saw no good reasons not to propose and finalize these burden-reducing changes. The great majority of the comments we received agreed with our proposals and reasoning.

For LTC facilities, we considered the option of not making any changes to the rule. However, we were persuaded by the contacts we received that bona fide efforts were being made by the nursing homes in question to achieve the best results for residents. We believe that the benefits to residents of having new, modern and fully-equipped facilities are substantial, and that the public interest is served by avoiding wastage of funds spent on retrofitting an older structure when that structure is soon to be replaced or substantially improved. We also considered the option of granting extensions of the due date when a replacement or substantial renovation is not contemplated. However, we believe that an approach that limits extensions to situations where a replacement facility or substantial renovation is involved will best balance the advisability of timely achievement to full sprinkler status and the special

challenges involved in large-scale construction projects.

Regarding the revisions to the CLIA regulations, we focused our proposals on reflex or confirmatory testing, and changes to ensure that the regulations are in conformance with the ''Taking Essential Steps for Testing Act of 2012'' (Pub. L. 112–202, the ''TEST Act''), enacted on December 4, 2012. In response to comments, we added distributive testing to the same category as reflex or confirmatory testing. Such cases, where the laboratory has followed its written, legally accurate and adequate standard operating procedure for the testing of patient specimens in full, and the PT referral is not a repeat PT referral, provide a reasonable basis for the Secretary to determine that the referral was not intentional. We are finalizing our proposals.

E. Uncertainty

Our estimates of the effects of this regulation are subject to significant uncertainty. While the Department is confident that these reforms will provide flexibilities to facilities that will yield major cost savings, there are uncertainties about the magnitude of these effects. In addition, as we previously explained, there may be significant additional health benefits. Thus, we are confident that the rule will yield substantial net benefits. In this analysis we have provided estimates to suggest the potential savings these reforms could achieve under certain assumptions. We appreciate that those assumptions are simplified, and that actual results could be substantially higher or lower. Although there is uncertainty concerning the magnitude of all of our estimates, we do not have the data to provide probable estimates as to the range of possibilities, or to estimate all categories of possible costs and benefits, including health effects. We illustratively presented one possible lower bound—for food and dietetic services—in the proposed rule. We requested comments addressing this lower bound estimate, as well as the missing or uncertain effects of other provisions, by professional societies, individual providers, provider associations, academics, and others.

Comment: We received one comment stating that we should have provided more ''low'' estimates than just the one we provided for the dietitian change. The commenter further suggested that, for other reforms in this rule, the low estimate should be set at some rounded percentage, such as 25 percent below the primary estimate, to show the substantial uncertainty of these estimates and to avoid misleading the public as to the precision that the analysis supports.

The same commenter also stated that our proposed estimated benefits could be ''considerably higher'' than estimated, both through uncertainty and because in various places the preamble identifies potentially higher benefits than were assigned dollar values. The commenter suggested that the potential benefits of each reform be shown at some rounded percentage, such as 25 percent higher, as a ''high'' estimate in the accounting statement. Without a ''high'' estimate, the ''primary'' estimate gives a misleading impression of greater precision than the analysis supports.

Response: We agree with the comment. Unfortunately, we have no empirical basis for estimating with any precision either higher or lower savings estimates. Accordingly, we have revised our estimates to show potential savings both higher and lower than those in the proposed rule. As a judgmental estimate, we believe that savings could be at least 30 percent higher, or 30 percent lower, than our primary estimates for each category of savings. These revisions are shown in the accounting statement and table.

F. Accounting Statement and Table

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf*), we have prepared an accounting statement. As previously explained, achieving the full scope of potential savings will depend on future decisions by hospitals, by State regulators and others. Many other factors will influence long-term results. Therefore, we have limited our projections to a five year period, provided upper and lower bound estimates that, with one exception, are 30 percent higher and 30 percent lower than our primary estimate, and rounded all estimates to the nearest $10 million. The exception is that for the dietary reforms estimate we are using a lower bound uptake rate by hospitals of 15 percent, which is 80 percent less than our primary estimate. Thus, these upper and lower bounds allow for the proportion of hospitals electing to reform dietary services to be substantially higher or lower than our primary estimate. Also, although we believe there are health benefits of this final rule from improved diets, we have no basis for estimating those. In addition to the estimates previously addressed in this RIA, we are also assuming that the 75 percent take up rate for reforms in dietary services that we project as our primary estimate will not be reached in the first year, and base our annualized estimate on a 60 percent rate in the first year. The annualized estimates also reflect that the long term care facility savings are one-time. Accordingly, we estimate the overall cost savings that this rule creates will be approximately $230 million to $830 million per year annualized over the next 5 years. Our primary estimate is that annualized savings will be about $640 million. Over a 5-year period, our primary estimate is that total cost savings will be approximately $3.2 billion.

TABLE 2—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED COSTS AND SAVINGS

[$in millions]

Category	Primary estimate	Lower bound	Upper bound	Units		
				Year dollars	Discount rate (percent)	Period covered
Benefits	None					
Costs:						
Annualized Monetized reductions in Costs	−$640	−$230	−$830	2014	7	2014–2018
	−$640	−$230	−$830	2014	3	2014–2018
Transfers	None					

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 416

Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 440

Grant programs—health, Medicaid.

42 CFR Part 442

Administrative practice and procedure, Health facilities, Health maintenance organizations (HMO), Medicare, Penalties, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 482

Grant programs—health, Hospitals, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 483

Grant programs—health, Health facilities, Health professions, Health records, Medicaid, Medicare, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Part 485

Grant programs—health, Health facilities, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 486

Grant programs—health, Health facilities, Medicare, Reporting and recordkeeping requirements, X-rays.

42 CFR Part 488

Administrative practice and procedure, Health facilities, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 491

Grant programs—health, Health facilities, Medicaid, Medicare, Reporting and recordkeeping requirements, Rural areas.

42 CFR Part 493

Administrative practice and procedure, Grant programs—health, Health facilities, Laboratories, Medicaid, Medicare, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; OPTIONAL PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

■ 1. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1812(d), 1814(b), 1815, 1833(a), (i), and (n), 1861(v), 1871, 1881, 1883 and 1886 of the Social Security Act (42 U.S.C. 1302, 1395d(d), 1395f(b), 1395g, 1395l(a), (i), and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww); and sec. 124 of Pub.L. 106–113 (113 Stat. 1501A–332), sec. 3201 of Pub.L. 112–96 (126 Stat. 156), and sec. 632 of Pub. L. 112–240 (126 Stat. 2354).

§ 413.24 [Amended]

■ 2. In § 413.24, paragraph (d)(5)(i)(A) is amended by removing the reference ''§ 482.66'' and by adding in its place, the reference ''§ 482.58''.

§ 413.114 [Amended]

■ 3. In § 413.114(b), the definition of ''Swing-bed hospital'' is amended by removing the reference ''§ 482.66'' and by adding in its place, the reference ''§ 482.58''.

PART 416—AMBULATORY SURGICAL SERVICES

■ 4. The authority citation for part 416 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

■ 5. Section 416.42 is amended by revising paragraph (b)(2) to read as follows:

§ 416.42 Condition for coverage—Surgical services.

* * * * *

(b) * * *

(2) A physician qualified to administer anesthesia, a certified registered nurse anesthetist (CRNA), or an anesthesiologist's assistant as defined in § 410.69(b) of this chapter, or a supervised trainee in an approved educational program. In those cases in which a non-physician administers the anesthesia, unless exempted in accordance with paragraph (c) of this section, the anesthetist must be under the supervision of the operating physician, and in the case of an anesthesiologist's assistant, under the supervision of an anesthesiologist.

* * * * *

■ 6. Section 416.49 is amended by revising paragraph (b) to read as follows:

§ 416.49 Condition for coverage—Laboratory and radiologic services.

* * * * *

(b) *Standard: Radiologic services.* (1) Radiologic services may only be provided when integral to procedures offered by the ASC and must meet the requirements specified in § 482.26(b), (c)(2), and (d)(2) of this chapter.

(2) If radiologic services are utilized, the governing body must appoint an individual qualified in accordance with State law and ASC policies who is responsible for assuring all radiologic services are provided in accordance with the requirements of this section.

PART 440—SERVICES: GENERAL PROVISIONS

■ 7. The authority citation for part 440 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

§ 440.1 [Amended]

■ 8. In § 440.1, in the entry for section 1913, the reference ''and 482.66'' is removed and the reference ''and 482.58'' is added in its place.

PART 442—STANDARDS FOR PAYMENT TO NURSING FACILITIES AND INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH INTELLECTUAL DISABILITIES

■ 9. The authority citation for part 442 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

■ 10. Section 442.101(d)(3)(ii) is revised to read as follows:

§ 442.101 Obtaining certification.

* * * * *

(d) * * *

(3) * * *

(ii) The facility submits an acceptable plan of correction covering the remaining deficiencies.

* * * * *

§ 442.105 [Removed and Reserved]

■ 11. Section 442.105 is removed and reserved.

■ 12. Section 442.110 is revised to read as follows:

§ 442.110 Certification period for ICF/IID with standard-level deficiencies.

Facilities with standard-level deficiencies may be certified under § 442.101 with a condition that the certification will continue if either of the following applies:

(a) The survey agency finds that all deficiencies have been satisfactorily corrected.

(b) The survey agency finds that the facility has made substantial progress in correcting the deficiencies and has a new plan of correction that is acceptable.

PART 482—CONDITIONS OF PARTICIPATION FOR HOSPITALS

■ 13. The authority citation for part 482 continues to read as follows:

Authority: Secs. 1102, 1871 and 1881 of the Social Security Act (42 U.S.C. 1302, 1395hh, and 1395rr), unless otherwise noted.

■ 14. Section 482.12 is amended by revising the introductory text and adding paragraph (a)(10) to read as follows:

§ 482.12 Condition of participation: Governing body.

There must be an effective governing body that is legally responsible for the conduct of the hospital. If a hospital does not have an organized governing body, the persons legally responsible for the conduct of the hospital must carry out the functions specified in this part that pertain to the governing body.

(a) * * *

(10) Consult directly with the individual assigned the responsibility for the organization and conduct of the hospital's medical staff, or his or her designee. At a minimum, this direct consultation must occur periodically throughout the fiscal or calendar year and include discussion of matters related to the quality of medical care provided to patients of the hospital. For a multi-hospital system using a single governing body, the single multi-hospital system governing body must consult directly with the individual responsible for the organized medical staff (or his or her designee) of each hospital within its system in addition to the other requirements of this paragraph (a).

* * * * *

■ 15. Section 482.22 is amended by—

■ a. Revising the introductory text and paragraph (a) introductory text.

■ b. Adding a new paragraph (b)(4).

The revisions and addition read as follows:

§ 482.22 Condition of participation: Medical staff.

The hospital must have an organized medical staff that operates under bylaws approved by the governing body, and which is responsible for the quality of medical care provided to patients by the hospital.

(a) *Standard: Eligibility and process for appointment to medical staff.* The medical staff must be composed of doctors of medicine or osteopathy. In accordance with State law, including scope-of-practice laws, the medical staff may also include other categories of physicians (as listed at § 482.12(c)(1)) and non-physician practitioners who are determined to be eligible for appointment by the governing body.

* * * * *

(b) * * *

(4) If a hospital is part of a hospital system consisting of multiple separately certified hospitals and the system elects to have a unified and integrated medical staff for its member hospitals, after determining that such a decision is in accordance with all applicable State and local laws, each separately certified hospital must demonstrate that:

(i) The medical staff members of each separately certified hospital in the system (that is, all medical staff members who hold specific privileges to practice at that hospital) have voted by majority, in accordance with medical staff bylaws, either to accept a unified and integrated medical staff structure or to opt out of such a structure and to maintain a separate and distinct medical staff for their respective hospital;

(ii) The unified and integrated medical staff has bylaws, rules, and requirements that describe its processes for self-governance, appointment, credentialing, privileging, and oversight, as well as its peer review policies and due process rights guarantees, and which include a process for the members of the medical staff of each separately certified hospital (that is, all medical staff members who hold specific privileges to practice at that hospital) to be advised of their rights to opt out of the unified and integrated medical staff structure after a majority vote by the members to maintain a separate and distinct medical staff for their hospital;

(iii) The unified and integrated medical staff is established in a manner that takes into account each member hospital's unique circumstances and any significant differences in patient populations and services offered in each hospital; and

(iv) The unified and integrated medical staff establishes and implements policies and procedures to ensure that the needs and concerns expressed by members of the medical staff, at each of its separately certified hospitals, regardless of practice or location, are given due consideration, and that the unified and integrated medical staff has mechanisms in place to ensure that issues localized to particular hospitals are duly considered and addressed.

* * * * *

■ 16. Section 482.28 is amended by revising paragraphs (b)(1) and (2) to read as follows:

§ 482.28 Condition of participation: Food and dietetic services.

* * * * *

(b) * * *

(1) Individual patient nutritional needs must be met in accordance with recognized dietary practices.

(2) All patient diets, including therapeutic diets, must be ordered by a practitioner responsible for the care of the patient, or by a qualified dietitian or qualified nutrition professional as authorized by the medical staff and in accordance with State law governing dietitians and nutrition professionals.

* * * * *

■ 17. Section 482.53 is amended by revising paragraph (b)(1) to read as follows:

§ 482.53 Condition of participation: Nuclear medicine services.

* * * * *

(b) * * *

(1) In-house preparation of radiopharmaceuticals is by, or under the supervision of, an appropriately trained registered pharmacist or a doctor of medicine or osteopathy.

* * * * *

■ 18. Section 482.54 is amended by adding paragraph (c) to read as follows:

§ 482.54 Condition of participation: Outpatient services.

* * * * *

(c) *Standard: Orders for outpatient services.* Outpatient services must be ordered by a practitioner who meets the following conditions:

(1) Is responsible for the care of the patient.

(2) Is licensed in the State where he or she provides care to the patient.

(3) Is acting within his or her scope of practice under State law.

(4) Is authorized in accordance with State law and policies adopted by the medical staff, and approved by the governing body, to order the applicable outpatient services. This applies to the following:

(i) All practitioners who are appointed to the hospital's medical staff and who have been granted privileges to order the applicable outpatient services.

(ii) All practitioners not appointed to the medical staff, but who satisfy the above criteria for authorization by the medical staff and the hospital for

ordering the applicable outpatient services for their patients.

§ 482.66 [Redesignated as § 482.58]

■ 19. Redesignate § 482.66 as § 482.58 and transfer the section from Subpart E to Subpart D.

§ 482.74 [Amended]

■ 20. Section 482.74 is amended by removing paragraph (a)(2) and redesignating paragraphs (a)(3) and (4) as paragraphs (a)(2) and (3) respectively.

■ 21. Section 482.80 is amended by—

■ a. Revising paragraph (c) introductory text.

■ b. Removing paragraph (c)(2).

■ c. Redesignating paragraph (c)(3) as paragraph (c)(2).

The revision reads as follows:

§ 482.80 Condition of participation: Data submission, clinical experience, and outcome requirements for initial approval of transplant centers.

* * * * *

(c) *Standard: Outcome requirements.* CMS will review outcomes for all transplants performed at a center, including outcomes for living donor transplants, if applicable. CMS will review adult and pediatric outcomes separately when a center requests Medicare approval to perform both adult and pediatric transplants.

* * * * *

■ 22. Section 482.82 is amended by—

■ a. Revising paragraphs (a) and (b).

■ b. Revising paragraph (c) introductory text.

■ c. Removing paragraph (c)(2).

■ d. Redesignating paragraph (c)(3) as paragraph (c)(2).

The revisions read as follows:

§ 482.82 Condition of participation: Data submission, clinical experience, and outcome requirements for re-approval of transplant centers.

* * * * *

(a) *Standard: Data submission.* No later than 90 days after the due date established by the OPTN, a transplant center must submit to the OPTN at least 95 percent of the required data submissions on all transplants (deceased and living donors) performed during the prior 3 years. Required data submissions include, but are not limited to, submission of the appropriate OPTN forms for transplant candidate registration, transplant recipient registration and follow-up, and living donor registration and follow-up.

(b) *Standard: Clinical experience.* To be considered for re-approval, an organ-specific transplant center must generally perform an average of 10 transplants per year during the prior 3 years.

(c) *Standard: Outcome requirements.* CMS will review outcomes for all transplants performed at a center, including outcomes for living donor transplants, if applicable. CMS will review adult and pediatric outcomes separately when a center requests Medicare approval to perform both adult and pediatric transplants.

* * * * *

PART 483—REQUIREMENTS FOR STATES AND LONG TERM CARE FACILITIES

■ 23. The authority citation for part 483 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

■ 24. Section 483.5 is amended by adding paragraph (f) to read as follows:

§ 483.5 Definitions.

* * * * *

(f) *Major modification* means the modification of more than 50 percent, or more than 4,500 square feet, of the smoke compartment.

■ 25. Section 483.70 is amended by adding paragraphs (a)(8)(iii) and (iv) to read as follows:

§ 483.70 Physical environment.

* * * * *

(a) * * *

(8) * * *

(iii) Subject to approval by CMS, a long term care facility may be granted an extension of the sprinkler installation deadline for a time period not to exceed 2 years from August 13, 2013, if the facility meets all of the following conditions:

(A) It is in the process of replacing its current building, or undergoing major modifications to improve the living conditions for residents in all unsprinklered living areas that requires the movement of corridor, room, partition, or structural walls or supports, in addition to the installation of a sprinkler system; or, has had its planned sprinkler installation so impaired by a disaster or emergency, as indicated by a declaration under section 319 of the Public Health Service Act, that CMS finds it would be impractical to meet the sprinkler installation due date.

(B) It demonstrates that it has made the necessary financial commitments to complete the building replacement or modification; or pursuant to a declared disaster or emergency, CMS finds it impractical to make reasonable and necessary financial commitments.

(C) Before applying for the deadline extension, it has submitted plans to State and local authorities that are necessary for approval of the replacement building or major modification that includes the required sprinkler installation, and has received approval of the plans from State and local authorities.

(D) It agrees to complete interim steps to improve fire safety, as determined by CMS.

(iv) An extension granted under paragraph (a)(8)(iii) of this section may be renewed once, for an additional period not to exceed 1 year, if the following conditions are met:

(A) CMS finds that extenuating circumstances beyond the control of the facility will prevent full compliance with the provisions in paragraph (a)(8)(i) of this section by the end of the first waiver period.

(B) All other conditions of paragraph (a)(8)(iii) of this section are met.

* * * * *

PART 485—CONDITIONS OF PARTICIPATION: SPECIALIZED PROVIDERS

■ 26. The authority citation for Part 485 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395(hh)).

§ 485.606 [Amended]

■ 27. In § 485.606, paragraph (a)(2) is amended by removing the reference ''§ 482.66'' and by adding in its place, the reference ''§ 482.58''.

■ 28. Section 485.631 is amended by revising paragraph (b)(1)(v), removing paragraph (b)(1)(vi), and revising paragraph (b)(2) to read as follows:

§ 485.631 Condition of participation: Staffing and staff responsibilities.

* * * * *

(b) * * *

(1) * * *

(v) Periodically reviews and signs a sample of outpatient records of patients cared for by nurse practitioners, clinical nurse specialists, certified nurse midwives, or physician assistants only to the extent required under State law where State law requires record reviews or co-signatures, or both, by a collaborating physician.

(2) A doctor of medicine or osteopathy is present for sufficient periods of time to provide medical direction, consultation, and supervision for the services provided in the CAH, and is available through direct radio or telephone communication or electronic communication for consultation,

assistance with medical emergencies, or patient referral.

* * * * *

■ 29. Section 485.635 is amended by revising paragraph (a)(2) to read as follows:

§ 485.635 Condition of participation: Provision of services.

(a) * * *

(2) The policies are developed with the advice of members of the CAH's professional healthcare staff, including one or more doctors of medicine or osteopathy and one or more physician assistants, nurse practitioners, or clinical nurse specialists, if they are on staff under the provisions of § 485.631(a)(1).

* * * * *

PART 486—CONDITIONS FOR COVERAGE OF SPECIALIZED SERVICES FURNISHED BY SUPPLIERS

■ 30. The authority citation for Part 486 continues to read as follows:

Authority: Secs. 1102, 1138, and 1871 of the Social Security Act (42 U.S.C. 1302, 1320b–8, and 1395hh) and section 371 of the Public Health Service Act (42 U.S.C. 273).

■ 31. Section 486.306 is amended by revising paragraph (a) to read as follows:

§ 486.306 OPO service area size designation and documentation requirements.

(a) *General documentation requirement.* An OPO must make available to CMS documentation verifying that the OPO meets the requirements of paragraphs (b) and (c) of this section at the time of application and throughout the period of its designation.

* * * * *

■ 32. Section 486.308 is amended by revising paragraph (b)(1) to read as follows:

§ 486.308 Designation of one OPO for each service area.

* * * * *

(b) * * *

(1) *General.* An OPO is normally designated for a 4-year agreement cycle. The period may be shorter, for example, if an OPO has voluntarily terminated its agreement with CMS and CMS selects a successor OPO for the balance of the 4-year agreement cycle. In rare situations, a designation period may be longer, for example, a designation may be extended if additional time is needed to select a successor OPO to replace an OPO that has been de-certified.

* * * * *

■ 33. Section 486.344 is amended by revising paragraph (d)(2)(ii) to read as follows:

§ 486.344 Condition: Evaluation and management of potential donors and organ placement and recovery.

* * * * *

(d) * * *

(2) * * *

(ii) If the identity of the intended recipient is known, the OPO has a procedure to ensure that prior to organ recovery, an individual from the OPO's staff compares the blood type of the donor with the blood type of the intended recipient, and the accuracy of the comparison is verified by a different individual;

* * * * *

PART 488—SURVEY, CERTIFICATION, AND ENFORCEMENT PROCEDURES

■ 34. The authority citation for part 488 continues to read as follows:

Authority: Secs. 1102, 1128I and 1871 of the Social Security Act, unless otherwise noted (42 U.S.C. 1302, 1320a–7j, and 1395hh); Pub. L. 110–149, 121 Stat. 1819.

■ 35. Section 488.61 is amended by—

■ a. Removing paragraph (a)(7).

■ b. Revising paragraphs (c) introductory text, (c)(1) introductory text, and (c)(1)(ii).

■ c. Removing paragraph (c)(2) and redesignating paragraphs (c)(3), (4), and (5) as paragraphs (c)(2), (3) and (4), respectively.

■ d. Revising newly designated paragraphs (c)(2), (c)(3)(i) and (c)(3)(ii).

■ e. Adding paragraph (c)(3)(v).

■ f. Revising paragraph (e).

The revisions and addition read as follows:

§ 488.61 Special procedures for approval and re-approval of organ transplant centers.

* * * * *

(c) *Re-approval procedures.* Once Medicare-approved, transplant centers, including kidney transplant centers, must be in continuous compliance with all the conditions of participation for transplant centers at §§ 482.72 through 482.104 of this chapter, except for § 482.80 (initial approval requirements).

(1) CMS will review the transplant center's data on an on-going basis and in making re-approval determinations.

* * * * *

(ii) To determine compliance with the clinical experience and outcome requirements at § 482.82(b) and (c) of this chapter, CMS will review the data contained in the most recent OPTN Data Report for the previous 3 years and 1-year patient and graft survival data contained in the most recent SRTR center-specific reports.

(2) CMS may choose to review the transplant center for compliance with §§ 482.72 through 482.76 and 482.90 through 482.104 of this chapter, using the procedures described at 42 CFR part 488, subpart A.

(3) * * *

(i) The extent to which outcome measures are met or exceeded.

(ii) Availability of Medicare-approved transplant centers in the area.

* * * * *

(v) Program improvements that substantially address root causes of graft failures or patient deaths, have been implemented and institutionalized on a sustainable basis, and that are supported by recent outcomes data such that CMS finds that the program demonstrates compliance with the requirement at § 482.82(c)(2)(ii)(C) of this chapter that the number of observed events divided by the number of expected events not be greater than 1.5.

* * * * *

(e) *Transplant Center Inactivity.* A transplant center may remain inactive and retain its Medicare approval for a period not to exceed 12 months. A transplant center must notify CMS upon its voluntary inactivation as required by § 482.74(a)(3) of this chapter.

PART 491—CERTIFICATION OF CERTAIN HEALTH FACILITIES

■ 36. The authority citation for Part 491 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302); and sec. 353 of the Public Health Service Act (42 U.S.C. 263a).

■ 37. Section 491.2 is amended by revising the definition of ''physician'' to read as follows:

§ 491.2 Definitions.

* * * * *

Physician means the following:

(1) As it pertains to the supervision, collaboration, and oversight requirements in sections 1861(aa)(2)(B) and (aa)(3) of the Act, a doctor of medicine or osteopathy legally authorized to practice medicine or surgery in the State in which the function is performed; and

(2) Within limitations as to the specific services furnished, a doctor of dental surgery or of dental medicine, a doctor of optometry, a doctor of podiatry or surgical chiropody or a chiropractor (see section 1861(r) of the Act for specific limitations).

* * * * *

■ 38. Section 491.8 is amended by revising paragraphs (a)(6) and (b) to read as follows:

§ 491.8 Staffing and staff responsibilities.

(a) * * *

(6) A physician, nurse practitioner, physician assistant, certified nurse-midwife, clinical social worker, or clinical psychologist is available to furnish patient care services at all times the clinic or center operates. In addition, for RHCs, a nurse practitioner, physician assistant, or certified nurse-midwife is available to furnish patient care services at least 50 percent of the time the RHC operates.

(b) *Physician responsibilities.* The physician performs the following:

(1) Except for services furnished by a clinical psychologist in an FQHC, which State law permits to be provided without physician supervision, provides medical direction for the clinic's or center's health care activities and consultation for, and medical supervision of, the health care staff.

(2) In conjunction with the physician assistant and/or nurse practitioner member(s), participates in developing, executing, and periodically reviewing the clinic's or center's written policies and the services provided to Federal program patients.

(3) Periodically reviews the clinic's or center's patient records, provides medical orders, and provides medical care services to the patients of the clinic or center.

* * * * *

PART 493—LABORATORY REQUIREMENTS

■ 39. The authority citation for Part 493 continues to read as follows:

Authority: Sec. 353 of the Public Health Service Act, secs. 1102, 1861(e), the sentence following sections 1861(s)(11) through 1861(s)(16) of the Social Security Act (42 U.S.C. 263a, 1302, 1395x(e), the sentence following 1395x(s)(11) through 1395x(s)(16)).

■ 40. Section 493.2 is amended by adding the definitions of ''confirmatory testing,'' ''distributive testing,'' and ''reflex testing,'' in alphabetical order to read as follows:

§ 493.2 Definitions.

* * * * *

Confirmatory testing means testing performed by a second analytical procedure that could be used to substantiate or bring into question the result of an initial laboratory test.

* * * * *

Distributive testing means laboratory testing performed on the same specimen, or an aliquot of it, that requires sharing it between two or more laboratories to obtain all data required to complete an interpretation or calculation necessary to provide a final reportable result for the originally ordered test. When such testing occurs at multiple locations with different CLIA certificates, it is considered distributive testing.

* * * * *

Reflex testing means confirmatory or additional laboratory testing that is automatically requested by a laboratory under its standard operating procedures for patient specimens when the laboratory's findings indicate test results that are abnormal, are outside a predetermined range, or meet other pre-established criteria for additional testing.

* * * * *

■ 41. Section 493.801 is amended by revising paragraphs (b) introductory text and (b)(4) to read as follows:

§ 493.801 Condition: Enrollment and testing of samples.

* * * * *

(b) *Standard: Testing of proficiency testing samples.* The laboratory must examine or test, as applicable, the proficiency testing samples it receives from the proficiency testing program in the same manner as it tests patient specimens. This testing must be conducted in conformance with paragraph (b)(4) of this section. If the laboratory's patient specimen testing procedures would normally require reflex, distributive, or confirmatory testing at another laboratory, the laboratory should test the proficiency testing sample as it would a patient specimen up until the point it would refer a patient specimen to a second laboratory for any form of further testing.

* * * * *

(4) The laboratory must not send proficiency testing samples or portions of proficiency testing samples to another laboratory for any analysis for which it is certified to perform in its own laboratory. Any laboratory that CMS determines intentionally referred a proficiency testing sample to another laboratory for analysis may have its certification revoked for at least 1 year. If CMS determines that a proficiency testing sample was referred to another laboratory for analysis, but the requested testing was limited to reflex, distributive, or confirmatory testing that, if the sample were a patient specimen, would have been in full conformance with written, legally accurate and adequate standard operating procedures for the laboratory's testing of patient specimens, and if the proficiency testing referral is not a repeat proficiency testing referral, CMS will consider the referral to be improper and subject to alternative sanctions in accordance with § 493.1804(c), but not intentional. Any laboratory that receives a proficiency testing sample from another laboratory for testing must notify CMS of the receipt of that sample regardless of whether the referral was made for reflex or confirmatory testing, or any other reason.

* * * * *

Dated: October 24, 2013.

Marilyn Tavenner,

Administrator, Centers for Medicare & Medicaid Services.

Approved: March 18, 2014.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

[FR Doc. 2014–10687 Filed 5–7–14; 4:15 pm]

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