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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30966; Amdt. No. 3598]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective July 14, 2014. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 14, 2014.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located;
3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,
4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs are available online free of charge. Visit nfdc.faa.gov to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Richard A. Dunham III, Flight Procedure Standards Branch (AFS–420) Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125), telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAP and the corresponding effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will

not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC, on June 20, 2014.

John Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
24–Jul–14	SC	Florence	Florence Rgnl	4/7548	06/04/14	This NOTAM, published in TL 14–15, is hereby rescinded in its entirety.
24–Jul–14	SC	Florence	Florence Rgnl	4/7549	06/04/14	This NOTAM, published in TL 14–15, is hereby rescinded in its entirety.
24–Jul–14	SC	Florence	Florence Rgnl	4/7550	06/04/14	This NOTAM, published in TL 14–15, is hereby rescinded in its entirety.
24–Jul–14	SC	Florence	Florence Rgnl	4/7551	06/04/14	This NOTAM, published in TL 14–15, is hereby rescinded in its entirety.
24–Jul–14	SC	Florence	Florence Rgnl	4/7552	06/04/14	This NOTAM, published in TL 14–15, is hereby rescinded in its entirety.
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24–Jul–14	LA	Rayville	John H Hooks Jr Memorial.	4/3767	06/06/14	RNAV (GPS) RWY 36, Amdt 2.
24–Jul–14	LA	Rayville	John H Hooks Jr Memorial.	4/3768	06/06/14	RNAV (GPS) RWY 18, Amdt 1.
24–Jul–14	TX	Pecos	Pecos Muni	4/3793	06/06/14	RNAV (GPS) RWY 14, Orig.
24–Jul–14	TX	Navasota	Navasota Muni	4/3854	06/06/14	RNAV (GPS) RWY 17, Orig.
24–Jul–14	ND	Bismarck	Bismarck Muni	4/4437	06/06/14	RNAV (GPS) RWY 31, Amdt 1.
24–Jul–14	OK	Oklahoma City	Sundance Airpark	4/4994	06/09/14	RNAV (GPS) RWY 35, Amdt 1.
24–Jul–14	TX	Crosbyton	Crosbyton Muni	4/5140	06/06/14	RNAV (GPS) RWY 17, Orig.
24–Jul–14	FL	Leesburg	Leesburg Intl	4/5188	06/02/14	RNAV (GPS) RWY 31, Amdt 1.
24–Jul–14	NE	Atkinson	Stuart-Atkinson Muni	4/5202	06/09/14	RNAV (GPS) RWY 11, Amdt 1.
24–Jul–14	SD	Sturgis	Sturgis Muni	4/5205	06/09/14	RNAV (GPS) RWY 11, Amdt 1.
24–Jul–14	KS	Abilene	Abilene Muni	4/5476	06/09/14	RNAV (GPS) RWY 35, Amdt 1.

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
24–Jul–14	KS	Abilene	Abilene Muni	4/5477	06/09/14	RNAV (GPS) RWY 17, Amdt 1.
24–Jul–14	KS	Ottawa	Ottawa Muni	4/5659	06/06/14	RNAV (GPS) RWY 17, Amdt 1.
24–Jul–14	TX	Houston	George Bush Intercontinental/Houston.	4/5737	06/09/14	RNAV (GPS) Z RWY 8L, Amdt 5.
24–Jul–14	TX	Houston	William P Hobby	4/5742	06/09/14	ILS OR LOC RWY 4, Amdt 41.
24–Jul–14	WA	Seattle	Boeing Field/King County Intl.	4/5823	06/09/14	RNAV (GPS) Y RWY 13R, Orig-C.
24–Jul–14	TX	Houston	George Bush Intercontinental/Houston.	4/6081	06/09/14	RNAV (RNP) Y RWY 27, Amdt 1.
24–Jul–14	TX	Houston	George Bush Intercontinental/Houston.	4/6220	06/09/14	RNAV (GPS) Z RWY 8R, Amdt 4.
24–Jul–14	IA	Belle Plaine	Belle Plaine Muni	4/6653	06/09/14	RNAV (GPS) RWY 36, Orig.
24–Jul–14	IA	Belle Plaine	Belle Plaine Muni	4/6654	06/09/14	RNAV (GPS) RWY 18, Orig.
24–Jul–14	TX	Houston	George Bush Intercontinental/Houston.	4/6726	06/09/14	RNAV (GPS) Z RWY 27, Amdt 4.
24–Jul–14	TX	Houston	George Bush Intercontinental/Houston.	4/6728	06/09/14	ILS OR LOC RWY 27, ILS RWY 27 (SA CAT I), ILS RWY 27 (CAT II & III), Amdt 10.
24–Jul–14	TX	Houston	George Bush Intercontinental/Houston.	4/6731	06/09/14	ILS OR LOC RWY 8R, ILS RWY 8R (SA CAT I & II), Amdt 25.
24–Jul–14	OH	Bellefontaine	Bellefontaine Rgnl	4/6855	06/09/14	VOR/DME RWY 25, Orig-A.
24–Jul–14	OH	Bellefontaine	Bellefontaine Rgnl	4/7070	06/09/14	RNAV (GPS) RWY 25, Amdt 1.
24–Jul–14	MO	Ava	Ava Bill Martin Memorial	4/7263	06/06/14	RNAV (GPS) RWY 13, Orig.
24–Jul–14	MO	Ava	Ava Bill Martin Memorial	4/7264	06/06/14	RNAV (GPS) RWY 31, Orig.
24–Jul–14	OK	Stigler	Stigler Rgnl	4/7555	06/09/14	RNAV (GPS) RWY 35, Amdt 1.
24–Jul–14	OK	Stigler	Stigler Rgnl	4/7556	06/09/14	RNAV (GPS) RWY 17, Orig.
24–Jul–14	TX	Houston	George Bush Intercontinental/Houston.	4/7926	06/09/14	ILS OR LOC RWY 8L, ILS RWY 8L (CAT II & III), ILS RWY 8L (SA CAT I), Amdt 4.
24–Jul–14	TX	Houston	George Bush Intercontinental/Houston.	4/7928	06/09/14	ILS OR LOC RWY 26L, ILS RWY 26L (SA CAT I), ILS RWY 26L (CAT II & III), Amdt 21.
24–Jul–14	AZ	Fort Huachuca Sierra Vista.	Sierra Vista Muni-Libby AAF.	4/8017	06/06/14	ILS OR LOC RWY 26, Amdt 4A.
24–Jul–14	IL	Canton	Ingersoll	4/8440	06/06/14	RNAV (GPS) RWY 18, Amdt 1.
24–Jul–14	AK	Dillingham	Dillingham	4/9696	06/06/14	RNAV (GPS) RWY 19, Amdt 2B.
24–Jul–14	AK	Dillingham	Dillingham	4/9699	06/06/14	LOC/DME RWY 19, Amdt 6B.
24–Jul–14	AK	Dillingham	Dillingham	4/9700	06/06/14	VOR RWY 1, Amdt 9B.
24–Jul–14	AK	Dillingham	Dillingham	4/9703	06/06/14	RNAV (GPS) RWY 1, Amdt 2B.
24–Jul–14	AK	Dillingham	Dillingham	4/9708	06/06/14	VOR/DME RWY 19, Amdt 7A.
24–Jul–14	KS	Stockton	Rooks County	4/9787	06/09/14	RNAV (GPS) RWY 36, Orig-A.
24–Jul–14	KS	Stockton	Rooks County	4/9788	06/09/14	RNAV (GPS) RWY 18, Orig-A.
24–Jul–14	MO	St Joseph	Rosecrans Memorial	4/9791	06/06/14	LOC BC RWY 17, Amdt 9.
24–Jul–14	MO	St Joseph	Rosecrans Memorial	4/9794	06/06/14	RNAV (GPS) RWY 17, Amdt 1.
24–Jul–14	IA	Guthrie Center	Guthrie County Rgnl	4/9903	06/09/14	RNAV (GPS) RWY 18, Amdt 1.
24–Jul–14	TX	Angleton/Lake Jackson	Texas Gulf Coast Rgnl	4/9930	06/06/14	ILS OR LOC RWY 17, Amdt 5.

[FR Doc. 2014–15913 Filed 7–11–14; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30965 Amdt. No. 3597]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective July 14, 2014. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 14, 2014.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit *http://www.nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Richard A. Dunham III, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPS, Takeoff Minimums and/or ODPS. The complete regulators description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The applicable FAA Forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for a special format make publication in the **Federal Register** expensive and impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. The advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA forms is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs and the effective dates of the, associated Takeoff Minimums and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPS and Takeoff Minimums and ODPS, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPS contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPS and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedures before adopting these SIAPS, Takeoff Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule '' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26,1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC, on June 20, 2014.

John Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0902 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 24 JULY 2014

Wasilla, AK, Wasilla, RNAV (GPS) RWY 4, Amdt 1
Wasilla, AK, Wasilla, RNAV (GPS) RWY 22, Orig
Wasilla, AK, Wasilla, Takeoff Minimums and Obstacle DP, Amdt 2
Geneva, AL, Geneva Muni, RNAV (GPS) RWY 11, Orig
Geneva, AL, Geneva Muni, RNAV (GPS) RWY 29, Orig
Geneva, AL, Geneva Muni, Takeoff Minimums and Obstacle DP, Orig
Prescott, AZ, Ernest A. Love Field, RNAV (GPS) RWY 21L, Amdt 2A
Boca Raton, FL, Boca Raton, RNAV (GPS) Y RWY 23, Amdt 1
Boca Raton, FL, Boca Raton, RNAV (RNP) Z RWY 23, Orig
Tampa, FL, Tampa Intl, LOC RWY 1R, Amdt 4
Tampa, FL, Tampa Intl, RNAV (GPS) RWY 1R, Amdt 3
Millen, GA, Millen, NDB RWY 17, Orig-B
Chicago, IL, Chicago Midway Intl, ILS OR LOC/DME RWY 4R, Amdt 1C
Chicago, IL, Chicago Midway Intl, ILS OR LOC/DME RWY 13C, Orig-D
Chicago, IL, Chicago Midway Intl, ILS OR LOC/DME RWY 31C, Amdt 3
Chicago, IL, Chicago Midway Intl, RNAV (GPS) RWY 4L, Orig-C
Chicago, IL, Chicago Midway Intl, RNAV (GPS) RWY 13L, Orig-C
Chicago, IL, Chicago Midway Intl, RNAV (GPS) RWY 22R, Orig-D
Chicago, IL, Chicago Midway Intl, RNAV (GPS) RWY 31R, Orig-D
Chicago, IL, Chicago Midway Intl, RNAV (GPS) Z RWY 4R, Amdt 3C

Chicago, IL, Chicago Midway Intl, RNAV (GPS) Z RWY 13C, Orig-D
Chicago, IL, Chicago Midway Intl, RNAV (GPS) Z RWY 22L, Orig-A
Chicago, IL, Chicago Midway Intl, RNAV (GPS) Z RWY 31C, Amdt 4
Chicago, IL, Chicago Midway Intl, RNAV (RNP) Y RWY 4R, Orig-A
Chicago, IL, Chicago Midway Intl, RNAV (RNP) Y RWY 13C, Amdt 2A
Chicago, IL, Chicago Midway Intl, RNAV (RNP) Y RWY 22L, Amdt 1
Chicago, IL, Chicago Midway Intl, RNAV (RNP) Y RWY 31C, Orig-A
Gaithersburg, MD, Montgomery County Airpark, NDB RWY 14, Amdt 2A, CANCELED
Greenville, ME, Greenville, Takeoff Minimums and Obstacle DP, Amdt 3
Kalispell, MT, Glacier Park Intl, VOR/DME RWY 30, Amdt 10A
Statesville, NC, Statesville Rgnl, ILS OR LOC/DME Z RWY 28, Amdt 1
Statesville, NC, Statesville Rgnl, RNAV (GPS) RWY 10, Amdt 1
Statesville, NC, Statesville Rgnl, RNAV (GPS) RWY 28, Amdt 3
Statesville, NC, Statesville Rgnl, VOR/DME RWY 10, Amdt 9
Teterboro, NJ, Teterboro, RNAV (GPS) Y RWY 19, Orig
Teterboro, NJ, Teterboro, RNAV (RNP) Z RWY 19, Orig-D
New York, NY, John F. Kennedy Intl, RNAV (GPS) X RWY 31L, Amdt 1B, CANCELED
New York, NY, John F. Kennedy Intl, RNAV (GPS) Y RWY 31L, Amdt 2
New York, NY, John F. Kennedy Intl, RNAV (GPS) Y RWY 31R, Amdt 2
New York, NY, John F. Kennedy Intl, RNAV (RNP) Z RWY 31L, Amdt 1
New York, NY, John F. Kennedy Intl, RNAV (RNP) Z RWY 31R, Amdt 1
New York, NY, La Guardia, RNAV (RNP) Z RWY 4, Amdt 1
Oklahoma City, OK, Will Rogers World, ILS OR LOC RWY 17L, Amdt 3
Oklahoma City, OK, Will Rogers World, ILS OR LOC RWY 17R, Amdt 12
Oklahoma City, OK, Will Rogers World, ILS OR LOC/DME RWY 35L, Amdt 2
Oklahoma City, OK, Will Rogers World, ILS OR LOC/DME RWY 35R, ILS RWY 35R (SA CAT I), ILS RWY 35R (CAT II), Amdt 10
Oklahoma City, OK, Will Rogers World, RNAV (GPS) RWY 13, Amdt 3
Oklahoma City, OK, Will Rogers World, RNAV (GPS) Y RWY 17L, Amdt 3
Oklahoma City, OK, Will Rogers World, RNAV (GPS) Y RWY 17R, Amdt 4
Oklahoma City, OK, Will Rogers World, RNAV (GPS) Y RWY 35L, Amdt 4
Oklahoma City, OK, Will Rogers World, RNAV (GPS) Y RWY 35R, Amdt 3
Oklahoma City, OK, Will Rogers World, RNAV (RNP) Z RWY 17L, Amdt 3
Oklahoma City, OK, Will Rogers World, RNAV (RNP) Z RWY 17R, Amdt 1
Oklahoma City, OK, Will Rogers World, RNAV (RNP) Z RWY 35L, Amdt 1
Oklahoma City, OK, Will Rogers World, RNAV (RNP) Z RWY 35R, Amdt 2
Oklahoma City, OK, Will Rogers World, Takeoff Minimums and Obstacle DP, Amdt 2
Harrisburg, PA, Capital City, ILS OR LOC RWY 8, Amdt 12
Harrisburg, PA, Capital City, RNAV (GPS) RWY 8, Amdt 1
Allendale, SC, Allendale County, VOR–A, Amdt 6
Nashville, TN, Nashville Intl, RNAV (GPS) Y RWY 2C, Amdt 1B
Blackstone, VA, Allen C Perkinson Blackstone AAF, NDB–A, Amdt 12
Richmond, VA, Richmond Intl, RNAV (GPS) Z RWY 2, Amdt 1A
Richmond, VA, Richmond Intl, RNAV (GPS) Z RWY 16, Amdt 1A
Richmond, VA, Richmond Intl, RNAV (GPS) Z RWY 20, Amdt 2
Richmond, VA, Richmond Intl, RNAV (GPS) Z RWY 34, Amdt 1A
Richmond, VA, Richmond Intl, RNAV (RNP) Y RWY 2, Orig
Richmond, VA, Richmond Intl, RNAV (RNP) Y RWY 16, Orig
Richmond, VA, Richmond Intl, RNAV (RNP) Y RWY 20, Orig
Richmond, VA, Richmond Intl, RNAV (RNP) Y RWY 34, Orig
West Dover, VT, Mount Snow, NDB RWY 1, Amdt 1, CANCELED

Effective 21 AUGUST 2014

Graford, TX, Possum Kingdom, RNAV (GPS) RWY 2, Orig-B
Graford, TX, Possum Kingdom, RNAV (GPS) RWY 20, Orig-B
Lago Vista, TX, Lago Vista TX—Rusty Allen, RNAV (GPS) RWY 15, Orig-A

[FR Doc. 2014–15915 Filed 7–11–14; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 20

Guides for the Rebuilt, Reconditioned and Other Used Automobile Parts Industry

AGENCY: Federal Trade Commission (FTC or Commission).

ACTION: Final Revisions to Guides.

SUMMARY: The Commission has completed its review of the Guides for the Rebuilt, Reconditioned and Other Used Automobile Parts Industry (Used Auto Parts Guides or Guides) and has determined to revise and retain the Guides.

DATES: This action is effective as of August 22, 2014.

ADDRESSES: The document is available on the Internet at the Commission's Web site, *www.ftc.gov*.

FOR FURTHER INFORMATION CONTACT: Jonathan L. Kessler, Federal Trade Commission, 1111 Superior Avenue, Suite 200, Cleveland, Ohio 44114, (216) 263–3436, *jkessler@ftc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The market for previously used automobile parts encompasses a broad range of parts and assemblies of parts previously used on vehicles (collectively, industry products or products). Industry products range from mechanical or body parts removed from a salvaged vehicle and put on a working vehicle without modification of any kind to parts that, after removal from the original vehicle, undergo substantial disassembly, rebuilding, inspection, and, in some instances, upgrading from their original condition, before being returned to service. The availability of these parts means vehicles stay in service longer and for a lower price than if consumers had to rely only on new parts from the manufacturer. One commenter asserted that without rebuilt or remanufactured parts, 25% of the vehicles currently on the road, and a higher percentage of off-road vehicles (e.g., construction and farm equipment) would be out of service.[1] Savings to consumers from using rebuilt or remanufactured parts range from 20–50%.[2]

The Guides for the Rebuilt, Reconditioned and Other Used Automobile Parts Industry (Used Auto Parts Guides or Guides) provide advice to industry members on how they can avoid engaging in unfair or deceptive practices that violate Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45.[3] The Guides deem certain practices to be unfair or deceptive, including the following:

1. Misrepresenting industry products as new or misrepresenting the amount of use of an industry product;

2. Misrepresenting the identity of anyone who worked on an industry product after it was removed from the original vehicle;

3. Misrepresenting the condition of an industry product or the amount of work done to it after its removal from the original vehicle.

II. Regulatory Review of the Guides

As part of its continuing program to review its rules and guides, the Commission published a notice in the **Federal Register** on May 21, 2012, seeking written comments about the Used Auto Parts Guides, including their costs, benefits, and scope.[4] Twelve

[1] Automotive Parts Remanufacturers Association (APRA), p. 1.

[2] *Id.*, p. 1; Motor & Equipment Manufacturers Association (MEMA), pp 1–2 (MEMA submitted comments on behalf of its affiliated organization, Motor & Equipment Remanufacturers Association.)

[3] The final revised guides contain a new paragraph (b) in section 20.0 describing the purpose and status of the guides, which is consistent with the Commission's long standing treatment of its industry guides. *See* 16 CFR 1.5.

[4] 77 FR 29922 (May 21, 2012).

comments were received.[5] Five of the commenters expressed support for the Guides because of the benefits they provide for consumers and/or the marketplace and suggested no specific changes.[6] Three commenters recommended changes but also expressed support for the Guides.[7] Two commenters expressly made their support for the Guides contingent on the Commission accepting their suggested changes.[8] The two remaining commenters were not clear about their support for the Guides.[9]

The Commission has determined to retain and revise the Guides. The comments show a continuing need for the Guides for the benefits they provide, including both protections for consumers and clarity for industry members.[10] Further, the Guides do not appear to impose substantial costs; none of the commenters stated that compliance with the Guides is burdensome. On balance, it appears that the benefits of the Guides outweigh their costs. Therefore, the record supports retaining them. In addition, as set forth below, the record supports certain changes to the Guides. The Commission has considered numerous other changes proposed by commenters and concluded not to adopt them.

The remainder of this Section II summarizes the record and explains the Commission's decisions as to specific items.

A. Terms Used To Describe Industry Products

Several commenters suggested that the Commission modify the Guides to define additional terms used to describe industry products. These commenters believed such definitions would further inform consumers as to the amount of work done on an industry product after its removal from the original vehicle.[11] Industry products come in a broad range of conditions. The current Guides define the terms ''rebuilt,'' ''remanufactured,'' and ''factory rebuilt,''[12] but they also mention, ''used,'' ''secondhand,'' ''repaired,'' ''reconditioned,'' and ''relined'' as examples of ''appropriate descriptive terms'' for industry products while leaving these terms undefined.[13] Commenters suggested a rough hierarchy of industry products, with ''rebuilt'' and ''remanufactured'' describing products receiving the most reworking and ''used'' or ''salvaged'' the least.[14]

The Commission recognizes that it is possible consumers might benefit from additional specificity in the meaning of terms used to refer to industry products, but based on the record, with one exception, it has determined not to change the way industry products are described. With the exception of MEMA, the commenters on this topic failed to identify what terms the Guides should define or to propose definitions for those terms. Moreover, overall, the commenters supported the Guides and believed they have been effective. In light of this support and the lack of comments suggesting specific definitions, the Commission believes the record supports only the one change described below, concerning the term ''remanufactured.''

MEMA argued specifically that the Guides should be amended so as to differentiate ''remanufactured'' from ''rebuilt''; the Guides now treat these terms as equivalent. MEMA asserted, without providing supporting data or other evidence, that including remanufactured products in the same category as products sold with little or no reworking confuses consumers. MEMA also argued that its definition of remanufactured comports with how international trade agreements use the word.[15]

MEMA proposed applying the term ''remanufactured'' only to industry products ''produced using a

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[5] The commenters consisted of (a) six trade associations: American Insurance Association (AIA), Automotive Parts Remanufacturers Association, Automotive Recyclers Association (ARA), Electric Rebuilders Association, Global Automakers, and Motor & Equipment Manufacturers Association; (b) three consumer organizations: American Automobile Association (AAA), Consumers Union, and RetireSafe; (c) two businesses: Bryner Chevrolet (Bryner) and United Auto Supply; and (d) one individual, Andrew Stilnovic.

The Commission has decided to accept and consider the delayed submission of the AIA. This entity contacted the agency on August 14, 2012, eleven days after the August 3, 2012, close of the comment period, stating that it had tried to submit its comments online and thought it had done so successfully, but that its submission did not appear on the Commission's Web site with the other comments. The Commission notes that the document the AIA submitted on August 14 is dated August 3, 2012, and accepts the AIA's explanation that it thought it had submitted the comments on time.

The Commission declines to accept a secondary submission from MEMA after the close of the comment period on August 3, 2012. On August 28, 2012, MEMA sent a letter to then-Commission Chairman Leibowitz, along with proposed revisions to the Guides that would implement the suggestions in its original comment. MEMA did not explain its failure to include these materials in its original submission, which was timely. Thus, the Commission declines to accept the August 28 submission.

[6] AIA, p. 1 (''[T]he current Guides provide a level of consistency for the repair and insurance industries . . . We do not believe there are any changes needed at this time.''); Consumers Union, p. 1 (The Guides provide ''a basic and necessary protection for consumers,'' and are still needed ''to protect consumers from deceptive practices and maintain high standards in the used car industry.''); Electric Rebuilders Association, pp. 1–2 (The Guides ''provide clear and readily understandable rules for the marketing of used parts and the steps which must be taken before a used part can be sold as rebuilt or remanufactured.''); Global Automakers, p. 1 (''The Guides provide important safeguards for consumers and should be retained.'' The terms used to describe automobile parts (original equipment manufacturer, aftermarket, rebuilt, remanufactured, salvaged, used) can be very confusing and without the Guides ''consumers may not have the information they need to make informed purchase decisions.''); RetireSafe, p. 1 (The Guides ''are well-crafted to protect consumers,'' and the FTC should ''avoid imposing any new regulatory burdens that may lead to additional costs being passed along to consumers.'').

[7] AAA, p. 1 (''AAA believes that the current FTC guidelines are extremely important to ensure that vehicle equipment information is accurately identified and labeled to avoid any confusion by consumers and automotive service and repair technicians. Overall, AAA endorses the Commission's Used Auto Parts Guides and believes they should be retained.''); APRA, p. 2 (''The Association believes that the Guides are an important tool to ensure that previously used motor vehicle parts are properly identified and that parts labeled as 'rebuilt' or 'remanufactured' have received reconditioning appropriate to the use of those terms. Therefore, except for a few modifications suggested later in this letter, the Association believes that the Guides should be retained in their current form.''); Stilnovic (''These guides are most definitely needed in this industry.'').

[8] ARA, p. 1 (''ARA's continued support of the publication of the Guides is only possible if amended.''); MEMA, p. 1 (''[T]he Guides are outdated and outmoded because they suggest that remanufactured automotive products and various used automotive products are largely equivalent . . . .''), p. 5 (''We urge the FTC not to finalize the Guides in the current format, ... [T]he Commission should overhaul the Guides to reflect this ongoing evolution of the remanufacturing industry.'').

[9] Bryner (''THANK YOU for addressing this issue . . . . The main concern I have with used parts is safety.'') (emphasis in original); United Auto Supply (''[I]t has been my experience that in MOST cases, commonly sold rebuilt/remanufactured/used aftermarket parts are clearly labeled and described correctly to the purchaser . . . . It has also been my experience that the marketplace quickly punishes anyone selling sub-standard parts of any kind, new, rebuilt, remanufactured, or used. I think there is a need for careful regulation, but there exists a risk if those regulations are hard to comply with . . . . It is my view that this problem is very well regulated by the marketplace. I am unaware of any major problems with mislabeled or misleading auto parts other than counterfeit parts which is another issue.'').

[10] *See generally supra,* note 6.

[11] *See* APRA, p. 2 (the Guides need to distinguish between a part on which no work has been done and a part on which some work has been done but not enough to qualify as ''rebuilt'' or ''remanufactured''); Bryner, p. 1 (parts from a salvage yard should be labeled as such; ''recycled'' implies some work on a previously used part); MEMA, pp 3–4 (specify that ''remanufactured'' parts are neither new nor used); *but see,* AAA, p. 1 (the current guides are important to ensure accurate identification and labeling of parts); AIA, p. 1 (the current terms are appropriate and not in need of changing).

[12] 16 CFR 20.3.

[13] 16 CFR 20.1(b).

[14] APRA, pp. 2, 5; Global Automakers, p. 1; MEMA, pp. 3–4; and Bryner.

[15] MEMA, pp. 2–3.

standardized industrial process by which previously sold, worn or non-functional products are returned to same-as-new, or better, condition and performance.'' [16] The standardized process, according to MEMA, is done in a factory and requires ''technical specifications, including engineering, quality, and testing standards to yield *fully warranted* products.'' [17] The process incorporates upgrades and corrects defects identified since the product first went on a vehicle.[18] MEMA urged the Commission ''not to finalize the Guides in the current format, which does not properly recognize the significant advancements made by the U.S. remanufacturing industry over the past 30 years.'' [19]

The Commission declines to adopt MEMA's proposed definition of ''remanufactured,'' but, as discussed below, is revising the Guides to provide that the term ''remanufactured,'' like the term ''factory rebuilt,'' should be used only if the product was rebuilt ''in a factory generally engaged in the rebuilding'' of industry products. The Commission declines to adopt MEMA's proposed definition of ''remanufactured'' because the Commission does not have a basis to believe that MEMA's specific proposal will necessarily improve consumers' understanding of the difference between remanufactured products and other industry products.[20] In addition, the record does not identify any costs or confusion resulting from definitions in the Guides not matching those in international trade agreements.

MEMA's comments, however, provided evidence that ''remanufacture'' involves a process performed in a factory setting in a way that ''rebuilt'' does not.[21] The Commission has, therefore, decided to change § 20.3 to delete ''remanufacture'' from subsection (a) and add it to subsection (b). Whereas the Guides currently impose the same requirements on use of the terms ''remanufactured'' and ''rebuilt,'' the revised Guides provide the same requirements for the use of the terms ''remanufactured'' and ''factory rebuilt.''

B. Disclosures

The May 2012 **Federal Register** Notice posed two questions about the disclosures required by the Guides: (1) should the Guides define ''clear and conspicuous,'' and (2) should the Guides specify when an installer of an industry product must disclose the use of that product to the consumer.

1. Clear and Conspicuous

The Guides provide that ''clear and conspicuous'' disclosure that the product is used or contains used parts should be made when industry products are advertised or sold. These disclosures should appear in advertisements and promotional literature, on invoices, on packaging, and on the product itself. The current Guides suggest some descriptive terms to describe a product's condition—''used,'' ''secondhand,'' ''repaired,'' ''remanufactured,'' ''reconditioned,'' ''rebuilt,'' and ''relined'' [22]—and allow codes to describe the products on invoices between different sellers.[23] Beyond these statements, however, the Guides do not prescribe specific methods for providing ''clear and conspicuous'' disclosures.

One commenter responded on this point. The APRA suggested that the Guides return to the language from before their 2002 revisions. Before these revisions, the Guides not only gave examples of terms to describe industry products,[24] but also defined ''conspicuous.'' Conspicuous disclosures were:

> of such size or color contrast and so placed as to be readily noticeable to purchasers or prospective purchasers reading advertising, sales promotional literature, or invoices containing same, or reading any representation as to content on the container in which an industry product is packed, or inspecting an industry product before installation, or with a minimum of disassembly after installation.[25]

The APRA provided no data or other evidence on this point, but it believes that the pre-2002 language was ''clearer and provided industry participants with a better understanding of how the quality of the part and the identity of the producer of the part had to be identified.'' [26]

The Commission has decided not to change the current language regarding clear and conspicuous. The current Guides afford businesses flexibility in complying with the Guide's disclosure provisions and avoid a definition that is too narrow to apply to the myriad situations in which a disclosure may be needed. Moreover, the record does not indicate that sellers of industry products are having difficulty understanding or applying the current language.[27] Therefore, the Commission has decided not to change this section of the Guides.

2. Timing of Disclosures

Three commenters addressed the timing of disclosures to consumers, responding to the **Federal Register** Notice's request for input on whether the Guides should be changed to specify when an installer of an industry product must disclose the use of the product to a consumer.[28]

The AAA suggested that verbal disclosure of an industry product be required when an installer seeks verbal authorization to proceed with a repair. The AAA also suggested that signs in the installer's facility should state that industry products may be used and that

[16] *Id.,* (emphasis in original).

[17] *Id.,* p. 3 (emphasis in original).

[18] MEMA distinguishes ''remanufactured'' from ''rebuilt'' parts. According to MEMA, an individual can rebuild a part without following the same procedure every time, and any specific rebuilt part may contain a high percentage of the components it originally contained. As we understand it, MEMA's definition of remanufacturing involves complete disassembly of an industry product into components. An assembly line starts with one component, and as the line advances additional components are added, some new, some, perhaps, used. At the end of the line the remanufactured part is complete. Each remanufactured part, however, may contain few, if any components that were together originally, and assembly of each remanufactured part follows the same procedure. The remanufacturing process incorporates any upgrades, and corrects any defects identified, since the part was made originally, changes that, according to MEMA, may not occur in a part that is ''factory rebuilt,'' as that term is defined in the Guides. *See* 16 CFR 20.3.

[19] MEMA, p. 5.

[20] Moreover, assuming, without deciding, that industry products meeting MEMA's definition of ''remanufactured'' are superior to ''rebuilt,'' ''factory rebuilt,'' or other industry products, adopting MEMA's proposed definition is not necessary to communicate this difference. Indeed, MEMA noted that it is developing ''a certification program that will let consumers and commercial customers know that remanufactured parts from MERA are truly remanufactured.'' MEMA, p. 4 (MERA stands for Motor & Equipment Remanufacturers Association, an affiliate of MEMA.) The program would include ''a process certification seal that can be affixed to the part and/or box and used in advertising and other promotional materials by participating companies.'' *Id.*

[21] MEMA, pp. 2–3. This distinction is also supported by reference to prevailing understandings of the terms. For example, Webster's Third New International Dictionary defines ''manufacture'' both as a noun (''the process or operation of making wares or other material products by hand or by machinery esp. when carried on systematically with division of labor'') and as a verb (''to produce according to an organized plan and with division of labor''). Webster's Third New International Dictionary 1378 (2002). ''Rebuilt,'' by contrast involves extensive repairs, reconstruction, restoration to a previous state, or remodeling, but does not indicate a systematic process. *See id.* at 1893.

[22] ''Recycled'' may also be used if its usage complies with the Guides for the Use of Environmental Marketing Claims, 16 CFR 260.7(e).

[23] 16 CFR 20.1(b) (2013).

[24] 16 CFR 20.1(b)(1) (2000).

[25] 16 CFR 20.1(b)(2) (2000).

[26] APRA, p. 9.

[27] In certain circumstances, the Guides do provide more information about the placement and conspicuousness of disclosures. *See* 16 CFR 20.2(b).

[28] The Guides would apply if the installer also manufactures, sells, distributes, markets, or advertises the industry product.

use of an industry product be disclosed on the consumer's invoice. The AAA further recommended that engines, transmissions, and other assemblies represented to have ''low mileage'' be accompanied by documentation of their conditions, such as pictures and Carfax reports.[29]

The APRA asserted that the Guides complement laws in some states that require mechanics to disclose the use of industry products and that without the Guides such disclosures would be ''more difficult and less effective.'' [30] The APRA, however, also asserts that disclosures by installers should be regulated by state or local agencies.[31]

Mr. Stilnovic suggested that car dealers provide consumers interested in used cars with a pamphlet alerting the consumers to the Guides and disclosing any industry products in the vehicle the consumer is considering.

None of these commenters provided data or other evidence to support their positions or indicate the extent of the problems they address, and the Commission has determined not to modify the Guides without such information. The AAA's suggestions on disclosure have intuitive appeal. The existing record, however, does not contain specific evidence of a problem with the timing of disclosures, nor does the Commission possess other evidence of such a problem. The Commission will monitor developments in this area and revise the Guides if evidence of problems with the timing of disclosures about industry products arises.

Mr. Stilnovic's suggestion of a pamphlet disclosure given in connection with used cars would impose burdens on dealers, with uncertain benefits for consumers. The disclosure would inform consumers of the Guides, but such generic information may well be of little value at the time, when the consumer's focus is on the purchase of the vehicle, not on a specific part. In addition, requiring a dealer to disclose any industry products in a vehicle could require the dealer to disclose information it does not have, such as in situations when the dealer buys the vehicle at auction. For these reasons, the Commission has chosen not to adopt this suggestion.

C. Coverage of the Guides

The May 2012 **Federal Register** Notice requested comments on whether tires should be covered by the Guides and whether the existing list of vehicles to which the Guides applied was sufficient or whether off-road vehicles such as all-terrain vehicles, construction vehicles, and dune buggies should be covered.[32] Several commenters discussed one or more of these topics, although with little analysis or data to support their positions. The Commission has decided to add tires to the Guides, but not to change the description of vehicles whose parts are covered by the Guides.

1. Tires

The current Used Auto Parts Guides expressly state that they do not apply to tires because tires are covered by a separate guide.[33] When the Used Auto Parts Guides were last reviewed, tires were covered by the Tire Advertising and Labeling Guides, which have since been rescinded.[34] The rescission announcement stated that changes in technology and tire marketing had made most of those guides obsolete and that intervening regulations by the National Highway Traffic Safety Administration already required disclosure of information consumers were likely to want when purchasing tires; the few remaining provisions of the tire guides did not warrant keeping them as a separate regulation. The rescission announcement noted that used and retreaded tires are seldom found in the consumer market but account for as much as 60% of the large truck market. The rescission announcement also noted that the failure to disclose that a tire was used or retreaded would likely constitute deception in violation of Section 5 of the FTC Act.[35]

The Commission believes the Used Auto Parts Guides should now apply to tires. The risk of overlap or contradiction between the Guides and the tire guides no longer exists, and continuing to exclude tires from the Used Auto Parts Guides could be interpreted to mean that sellers need not disclose when tires are used or retreaded. The Commission notes that two of the three commenters on this topic support having the Guides apply to tires.[36] Therefore, § 20.0 of the Guides has been changed to remove the last sentence, which contains the exclusion, and to add tires to the example list of industry products.

2. Vehicles Whose Parts Are Covered by the Guides

The current Used Auto Parts Guides apply to parts ''designed for use in automobiles, trucks, motorcycles, tractors, or similar self-propelled vehicles.'' [37] The Commission requested comments on whether this list adequately described the vehicles to which the Guides should apply. The APRA, the only commenter on this issue, advocated expressly including off-road vehicles in the Guides because the benefits of industry products are the same for owners of these vehicles as for owners of on-road vehicles and compliance by businesses would be easy. The APRA, however, did not identify existing buyer deception or seller confusion from the existing language.

The Commission has decided not to change the language in the Guides that describes the vehicles covered. From the single comment, the Commission cannot determine that a need for change exists or that any change would not have adverse effects that a more thorough record would reveal. Although it declines to amend the Guides in this regard, the Commission notes it has the authority to pursue sellers who deceive buyers of any product about that product's previous use or reworking. Section 5's broad prohibition against unfair and deceptive acts or practices continues to apply in these situations, regardless of whether the products are covered by the Guides.

D. Education

The May 21, 2012, **Federal Register** Notice asked if there is a need to educate consumers or businesses about the Guides. Several commenters responded that there is such a need, and the AAA offered to collaborate with the

[29] AAA, p. 2. Carfax is a private company that, for a fee, provides title and insurance reports on specific vehicles, including any insurance claims for repairs. The claims history may alert a prospective purchaser of the car to check carefully for latent problems.

[30] APRA, p.5.

[31] *Id.,* pp. 9–10.

[32] 77 FR 29922, 29923–29924 (May 21, 2012).

[33] 16 CFR 20.0.

[34] 69 FR 56932 (September 23, 2004).

[35] 69 FR at 56933.

[36] ARA, p. 7 (include tires in the Guides, but require ''a visual appearance inspection and tread depth evaluation to determine whether a tire should be resold''); Stilnovic (include tires in the Guides so consumers know what they are getting). The Commission declines to adopt ARA's inspection and evaluation requirements because the purpose of the Guides is to provide notice to consumers, not to establish quality standards.

The third commenter on this topic urged continued exclusion of tires because the terms used in the Guides to describe industry products have not been applied to used tires or ''mean something different when applied to tires,'' creating the potential for confusion. APRA, p. 13. The Commission does not believe the likelihood of confusion outweighs the benefits of ensuring that used tires are sold in a non-deceptive manner. Sellers of used tires are not required to use any of the terms mentioned in the Guides and may continue to use terms they have used in the past as long as the use is not deceptive.

[37] 16 CFR 20.0.

Commission on educational efforts.[38] Similarly, the APRA encouraged the FTC to promote the Guides on its Web site, through private organizations, and consumer brochures.[39]

The ARA urged the FTC to educate consumers about the potential biases of manufacturers promoting original parts.[40] MEMA requested that the Commission educate the public on the quality and benefits of remanufactured products and to support MEMA's ''Manufactured Again'' certification program.[41] Mr. Stilnovic urged education regarding the potential presence of industry products in used cars. He also suggested that the Commission provide data showing how long industry products lasted versus new products, so consumers could make more informed decisions.

No change to the Guides is needed for the Commission to augment its educational efforts on this issue, and accordingly, no change has been made on this topic. The Commission will continue to look for opportunities to educate consumers about the benefits and drawbacks of industry products and to educate businesses about their obligations when selling such products.

E. Other Comments

Commenters mentioned other topics, not discussed above.

1. American Automobile Association

The AAA suggests that ten additional items be added to the forty-seven examples in the current Guides of parts that might be sold as industry products.[42] The Commission believes the examples should be up-to-date, but stresses that the Guides provide examples of industry products, and not an exhaustive list. Accordingly, the revised Guides include some of the parts suggested by the AAA, but other parts were removed to yield a shorter list of examples overall. No substantive change is intended by removing an item from the list. The revised list includes tires.[43]

2. American Parts Remanufacturers Association

The APRA's comments included two suggestions not covered above.

a. The APRA believes that most industry products of American origin comply with the Guides but that products from foreign sources do not. The APRA suggested that the Commission (1) state explicitly in the Guides that they apply to foreign products; (2) work to increase awareness of the Guides among importers of industry products; (3) educate Immigration and Customs Enforcement about the Guides; and (4) monitor compliance with the Guides by importers. The APRA provided no indication of the scope of the alleged imported-part problem or explanation of why any Guide noncompliance that is occurring cannot be addressed through enforcement actions under Section 5 of the FTC Act.[44]

The Commission has determined that it is not necessary to amend the Guides as the APRA suggests. The Guides currently apply to the ''manufacture, sale, distribution, marketing, and advertising'' of industry products, and the Guides currently prohibit providing the means or instrumentality to others to violate the law. The Commission has jurisdiction over entities conducting business in the United States regardless of the country of origin of the original new product or of the reconstructed or otherwise used product. Therefore, as the Commission has explained previously, the Guides currently cover foreign rebuilders and importers of used auto parts who distribute or sell used auto parts in the United States.[45] Accordingly, a change in the Guides is not necessary for them to apply to importers. In addition, a change in the Guides is unnecessary to expand education efforts for businesses and other government agencies or to investigate possible violations of the FTC Act through non-compliance with the Guides.

b. The APRA also suggested that the Guides require original trademarks to be left on a rebuilt or remanufactured industry product. It argues that such information would give the consumer and/or installer greater assurance that the product was right for the consumer's vehicle.

The Commission declines to adopt this suggestion. The current Guides and law allow original markings to be left on a part if (1) the part is properly disclosed as an industry product and (2) the reworker is identified (if the reworker is different from the original manufacturer).[46] There is no need for the Guides to require a reworker to retain trademarks of the original manufacturer. If a reworker believes leaving these marks on the part provides a marketplace benefit, it can do so, and consumers and installers can choose whether to purchase from those reworkers. A reworker who believes it benefits from removing original markings (in favor, for example, of promoting its own brand as a rebuilder), can adopt that practice, and consumers and installers can choose based on their own preferences.

3. Automotive Recyclers Association

The ARA suggested three other amendments to the Guides, stating that its support for the Guides was contingent on its proposed changes.

a. The ARA requested that the Commission prosecute car manufacturers and dealers who run ads promoting new repair parts. The ARA argues that such ads unfairly or deceptively imply that industry products, including recycled original-equipment body parts, are not as good as new parts. The ARA believes such ads ''cause consumers to doubt the viability of recycled parts and cause consumers needlessly to annually spend billions of dollars. FTC should use these guides to help ensure that such anticompetitive practices cease.''[47] The ads the ARA provided, however, are in trade publications and promote the benefits of new manufacturer parts. Such general statements to a sophisticated audience have little likelihood of being broadly problematic. While the Commission would evaluate claims of deception on a case-by-case basis, it concludes that no changes to the Guides are necessary to address ARA's concerns. The Commission could take action against deceptive

[38] AAA, p. 2.

[39] APRA, p. 12.

[40] ARA, p. 2.

[41] MEMA, pp. 2, 4.

[42] AAA, p. 1; *see* 16 CFR 20.0.

[43] The current Guides list the following items as examples of parts that can be industry products: ''anti-lock brake systems, air conditioners, alternators, armatures, air brakes, brake cylinders, ball bearings, brake shoes, heavy duty vacuum brakes, calipers, carburetors, cruise controls, cylinder heads, clutches, crankshafts, constant velocity joints, differentials, drive shafts, distributors, electronic control modules, engines, fan clutches, fuel injectors, fuel pumps, front wheel drive axles, generators, master cylinders, oil pumps, power brake units, power steering gears, power steering pumps, power window motors, rack and pinion steering units, rotors, starter drives, speedometers, solenoids, smog pumps, starters, stators, throttle body injectors, torque convertors [sic], transmissions, turbo chargers, voltage regulators, windshield wiper motors, and water pumps.'' 16 CFR 20.0.

The revised Guides list the following items as examples of parts that can be industry products: ''airbags, alternators and generators, anti-lock brake systems, brake cylinders, carburetors, catalytic converters, differentials, engines, fuel injectors, hybrid drive systems and hybrid batteries, navigation and audio systems, power steering pumps, power window motors, rack and pinion units, starters, steering gears, superchargers and turbochargers, tires, transmissions and transaxles, and water pumps.'' *See infra,* text of revised § 20.0.

[44] 15 U.S.C. 45.

[45] 67 FR 9919, 9921 (March 5, 2002).

[46] 16 CFR 20.2; *Champion Spark Plug Co.,* v. *Sanders,* 331 U.S. 125 (1947).

[47] ARA, p. 2.

advertising, by car manufacturers or others, without changing the Guides.

b. The ARA believes the Guides should require car manufacturers to provide information on parts recycling in materials given to the consumer when the car is purchased as new. According to the ARA, European Union directives promote recycling and require vehicle manufacturers to provide information on the ''dismantling, storage and testing'' of components when an item is no longer useful.[48] Similarly, the ARA wants the Commission to recognize private standards setting organizations for recycled ''green'' parts and to state in the Guides that use of industry products is a form of recycling.[49]

The Commission has decided not to make these changes. Historically, the Guides have neither promoted nor discouraged the use of industry products but have instead sought to ensure that consumers have accurate information from which to make a choice. The Commission sees no reason to deviate from this position.

c. The ARA requests that the Commission require online parts sellers to be licensed in the states in which they sell.[50] The Commission declines to make this change. The purpose of the Guides is to assist industry members in avoiding unfair or deceptive acts or practices in the advertising and sale of industry products, such as misrepresentations regarding the condition of products. The Commission declines to recommend licensing requirements for online sellers and has no authority to enforce state licensing laws.

4. Bryner Chevrolet

Bryner Chevrolet took no explicit position on the Guides. Rather, it argued that safety-related industry products from a salvage yard—suspension, steering, and brake parts—are inherently dangerous and should not be used, even though insurance companies prepare estimates that include these unsafe parts. Bryner's comment fails to explain what changes to the Guides, if any, are needed to address its concerns.

The Commission has decided that Bryner's comment warrants no changes to the Guides. The comment contains no data or other evidence with which the Commission can weigh the threat to consumer safety against the benefits of access to less expensive parts. Even if the data existed, the safety of vehicles and their parts fits better within the jurisdiction of the National Highway Traffic Safety Administration rather than the FTC.[51]

III. Section by Section Discussion of the Changes

In response to the comments received and the Commission's own analysis, several changes have been made to the current Guides. This part discusses the changes to each section of the Guides.

A. Title

The title has not been changed, other than to add a comma after ''reconditioned,'' for stylistic purposes. No substantive change is intended.

B. Section 20.0 Scope and Purpose of the Guides

This section has undergone a number of changes, including the creation of two paragraphs. Paragraph (a) contains the existing § 20.0 with some revisions. First, the description of items to which the Guides apply (industry products) is changed from ''used parts and assemblies containing used parts'' to ''parts that are not new, and assemblies containing such parts.'' This change is intended to remove the circularity in the existing definition, in which ''used'' was part of the definition of ''used.'' The change also avoids potential confusion over the scope of industry products. ''Used'' sometimes refers to a part to which little has been done between its removal from one car and installation on another, with other terms applying to products receiving more reworking.[52] The change clarifies that ''industry product'' has a broad meaning that includes all parts that are not new, even parts that have been substantially reworked.[53]

Section 20.0(a) of the revised Guides differs from § 20.0 of the existing Guides in other ways. The last sentence and following parenthetical, which exclude tires from the Guides, have been removed and tires have been added to the sample list of industry products.[54] In addition, the sample list of industry products has been shortened and updated, but no substantive change is intended by these changes other than the addition of tires. Finally, the section has been edited for style and clarity, with no substantive change intended by these edits.

Paragraph (b) of revised § 20.0 is a new provision, describing the purpose and status of the Guides, which are consistent with the Commission's long-standing treatment of industry guides.

C. Section 20.1 Deception Generally

Some of the language has been amended to improve readability. In addition, the order of the list of appropriate descriptive terms has been changed to approximate the amount of reworking that some industry members believe the terms indicate.[55] No substantive change is intended by any of these modifications.

D. Section 20.2 Deception as to the Identity of a Rebuilder, Remanufacturer, Reconditioner, Reliner or Other Reworker

Section 20.2, including the title, has been changed to add ''other reworker'' to those to whom this section applies. The persons and processes mentioned in this section relate to some ways of changing a part after its removal from a vehicle—''rebuild,'' ''remanufacture,'' ''recondition,'' and ''reline''—but other terms could also apply, including ''overhaul,'' ''retread,'' ''repair,'' and ''refurbish.'' Adding ''other reworker'' clarifies that, regardless of what is done to the part, the identity of the person doing it cannot be misrepresented, and may have to be disclosed. This section also contains stylistic changes designed to improve readability without changing the section's substance.

E. Section 20.3 Misrepresentation of the Terms ''Rebuilt,'' ''Factory Rebuilt,'' ''Remanufactured,'' etc.

The parenthetical at the end of § 20.3, referring to § 20.2, has been removed as unnecessary. No substantive change is intended. The word ''remanufactured'' has been removed from subsection (a) of this section and added to subsection (b). As discussed earlier, this change results in the same requirements applying to the terms ''remanufactured'' and ''factory rebuilt.''[56]

List of Subjects in 16 CFR Part 20

Advertising, Consumer protection, Motor vehicles, Trade practices.

For the reasons stated above, the Federal Trade Commission revises 16 CFR Part 20 to read as follows:

[48] *Id.,* p. 2.

[49] *Id.,* p. 6.

[50] *Id.,* p. 5.

[51] *See* 49 CFR 1.94(b).(stating that the National Highway Traffic Safety Administration is responsible for ''establishing and enforcing safety standards and regulations,'' conducting research related to motor vehicle safety, and investigating safety-related defects in motor vehicles and motor vehicle equipment).

[52] *See supra,* note 13 and related text.

[53] The change does not create any new category of industry product. MEMA's comment described remanufactured products as ''Not New, Not Used.'' MEMA, p. 2, but the use of ''not new'' in the revised Guides is broader than MEMA's meaning of remanufactured.

[54] *See supra,* Section II.C.1.

[55] *See supra,* note 13 and related text.

[56] *See supra,* text following note 18.

PART 20—GUIDES FOR THE REBUILT, RECONDITIONED, AND OTHER USED AUTOMOBILE PARTS INDUSTRY

Sec.
20.0 Scope and purpose of the guides.
20.1 Deception generally.
20.2 Deception as to identity of a rebuilder, remanufacturer, reconditioner, reliner, or other reworker.
20.3 Misrepresentation of the terms ''rebuilt,'' ''factory rebuilt,'' ''remanufactured,'' etc.

Authority: 15 U.S.C. 41–58.

§ 20.0 Scope and purpose of the guides.

(a) The Guides in this part apply to the manufacture, sale, distribution, marketing and advertising (including advertising in electronic format, such as on the Internet) of parts that are not new, and assemblies containing such parts, that were designed for use in automobiles, trucks, motorcycles, tractors, or similar self-propelled vehicles, regardless of whether such parts or assemblies have been cleaned, repaired, reconstructed, or reworked in any other way (industry product or product). Industry products include, but are not limited to, airbags, alternators and generators, anti-lock brake systems, brake cylinders, carburetors, catalytic converters, differentials, engines, fuel injectors, hybrid drive systems and hybrid batteries, navigation and audio systems, power steering pumps, power window motors, rack and pinion units, starters, steering gears, superchargers and turbochargers, tires, transmissions and transaxles, and water pumps.

(b) These guides set forth the Federal Trade Commission's current views about the manufacture, sale, distribution, and advertising of industry products. The guides help businesses avoid making claims that are unfair or deceptive under Section 5 of the FTC Act, 15 U.S.C. 45. They do not confer any rights on any person and do not operate to bind the FTC or the public. The Commission, however, can take action under the FTC Act if a business makes a claim inconsistent with the guides. In any such enforcement action, the Commission must prove that the challenged act or practice is unfair or deceptive in violation of Section 5 of the FTC Act.

§ 20.1 Deception generally.

(a) It is unfair or deceptive to represent, directly or by implication, that any industry product is new or unused when such is not the fact, or to misrepresent the current condition, or extent of previous use, reconstruction, or repair of any industry product.

(b) It is unfair or deceptive to offer for sale or sell any industry product without disclosing, clearly and conspicuously, in advertising, in promotional literature, on invoices, and on the product's packaging that the item is an industry product. Additionally, it is unfair or deceptive to offer for sale or to sell any industry product that appears new or unused without disclosing on the product itself that it is an industry product, using appropriate descriptive terms with sufficient permanency to remain visible for a reasonable time after installation. Examples of appropriate descriptive terms include, but are not limited to ''Used,'' ''Secondhand,'' ''Repaired,'' ''Relined,'' ''Reconditioned,'' ''Rebuilt,'' or ''Remanufactured.'' If the term ''recycled'' is used, it should be used in a manner consistent with the requirements for that term set forth in the Guides for the Use of Environmental Marketing Claims, 16 CFR 260.7(e). On invoices to the trade only, the disclosure may be by use of any number, mark, or other symbol that is clearly understood by industry members as meaning that the part so marked on the invoices is not new.

(c) It is unfair or deceptive to place any means or instrumentality in the hands of others so that they may mislead consumers as to the previous use of industry products.

§ 20.2 Deception as to the identity of a rebuilder, remanufacturer, reconditioner, reliner, or other reworker.

(a) It is unfair or deceptive to misrepresent the identity of the rebuilder, remanufacturer, reconditioner, reliner or other reworker of an industry product.

(b) If the identity of the original manufacturer of an industry product, or the identity of the manufacturer for which the product was originally made, is revealed and the product was rebuilt, remanufactured, reconditioned, relined, or otherwise reworked by someone else, it is unfair or deceptive to fail to disclose such fact wherever the original manufacturer is identified in advertising or promotional literature concerning the industry product, on the container in which the product is packed, and on the product itself, in close conjunction with, and of the same permanency and conspicuousness as, the disclosure that the product is not new. Examples of such disclosures include:

(1) Disclosure of the identity of the rebuilder: ''Rebuilt by John Doe Co.''

(2) Disclosure that the industry product was rebuilt by an independent rebuilder: ''Rebuilt by an Independent Rebuilder.''

(3) Disclosure that the industry product was rebuilt by someone other than the manufacturer identified: ''Rebuilt by other than XYZ Motors.''

(4) Disclosure that the industry product was rebuilt for the identified manufacturer: ''Rebuilt for XYZ Motors.''

§ 20.3 Misrepresentation of the terms ''rebuilt,'' ''factory rebuilt,'' ''remanufactured,'' etc.

(a) It is unfair or deceptive to use the word ''Rebuilt,'' or any word of similar import, to describe an industry product which, since it was last subjected to any use, has not been dismantled and reconstructed as necessary, all of its internal and external parts cleaned and made rust and corrosion free, all impaired, defective or substantially worn parts restored to a sound condition or replaced with new, rebuilt (in accord with the provisions of this paragraph) or unimpaired used parts, all missing parts replaced with new, rebuilt or unimpaired used parts, and such rewinding or machining and other operations performed as are necessary to put the industry product in sound working condition.

(b) It is unfair or deceptive to represent an industry product as ''Remanufactured'' or ''Factory Rebuilt'' unless the product was rebuilt as described in paragraph (a) of this section at a factory generally engaged in the rebuilding of such products.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2014–16339 Filed 7–11–14; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF STATE

22 CFR Part 96

[Public Notice 8792]

RIN 1400–AD45

Adoptions: Regulatory Change To Clarify the Application of the Accreditation Requirement and Standards in Cases Covered by the Intercountry Adoption Universal Accreditation Act

AGENCY: Department of State.

ACTION: Interim final rule; request for comments.

SUMMARY: This rule amends the Department of State (Department) rule on the accreditation and approval of adoption service providers in intercountry adoptions. The revisions reflect the requirement of the Intercountry Adoption Universal Accreditation Act of 2012 (UAA) that

the accreditation standards developed in accordance with the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Convention) and the Intercountry Adoption Act of 2000 (IAA), which previously only applied in Convention adoption cases, apply also in non-Convention adoption cases. Non-convention adoption cases are known as ''orphan'' cases, defined in the Immigration and Nationality Act (INA). This rule also revises the accreditation rule by referring to the Department of Homeland Security (DHS) Convention home study regulation and deleting obsolete references, such as any reference to temporary accreditation.

DATES: The effective date of this interim final rule is July 14, 2014. The Department will accept comments on the proposed regulation up to September 12, 2014.

ADDRESSES:

- *Internet:* You may view this interim final rule and submit your comments by visiting the Regulations.gov Web site at *www.regulations.gov*, and searching for docket number DOS–2014–0015.
- *Mail or Delivery:* You may send your paper, disk, or CD–ROM submissions to the following address: Comments on Proposed Rule 22 CFR Part 96, Office of Legal Affairs, Overseas Citizen Services, U.S. Department of State, CA/OCS/L, SA–17, Floor 10, Washington, DC 20522–1710.
- All comments should include the commenter's name and the organization the commenter represents (if applicable). If the Department is unable to read your comment for any reason, the Department might not be able to consider your comment. Please be advised that all comments will be considered public comments and might be viewed by other commenters; therefore, do not include any information you would not wish to be made public. After the conclusion of the comment period, the Department will publish a final rule (in which it will address relevant comments) as expeditiously as possible.

FOR FURTHER INFORMATION CONTACT: Office of Legal Affairs, Overseas Citizen Services, U.S. Department of State, CA/OCS/L, SA–17, Floor 10, Washington, DC 20522–1710; (202) 485–6079.

SUPPLEMENTARY INFORMATION:

Why is the Department promulgating this rule?

This rule clarifies that under the Intercountry Adoption Universal Accreditation Act of 2012 (UAA), signed into law January 14, 2013, and effective July 14, 2014, the accreditation requirement and standards found in 22 CFR part 96 apply to any person (including non-profit agencies, for-profit agencies and individuals but excluding government agencies and tribal authorities), providing adoption services on behalf of prospective adoptive parents in an ''orphan'' intercountry adoption case described under section 101(b)(1)(F) of the Immigration and Nationality Act. Specifically, under Section 2 of the UAA ''[t]he provisions of title II and section 404 of the Intercountry Adoption Act of 2000 (42 U.S.C. 14901 et seq.), and related implementing regulations, shall apply to any person offering or providing adoption services in connection with a child described in section 101(b)(1)(F) of the Immigration and Nationality Act (8 U.S.C. 1101(b)(1)(F)), to the same extent as they apply to the offering or provision of adoption services in connection with a Convention adoption.''

Title II of the Intercountry Adoption Act of 2000 (IAA) (Public Law 106–279) requires that any person providing adoption services in a Convention case be an accredited, approved, or an exempted adoption service provider, and section 404 imposes civil and criminal penalties for violations of the Act. On February 15, 2006 the Department of State published implementing regulations at 71 FR 8064, on the accreditation and approval of agencies and persons in accordance with the Convention and the IAA. The UAA extends that rule from Convention cases to ''orphan'' cases. This regulatory change includes a number of technical edits to facilitate interpretation of the regulatory requirements and clarify designated accrediting entities' authority under the UAA and the IAA.

The Department is amending the regulation to make 22 CFR part 96, as affected by the UAA, easier to read. This rule will aid the accrediting entity applying the standards and adoption service providers required to comply with the standards. In particular, this rule adds references to the UAA where the IAA is referenced; adds a sentence concerning the UAA effective date; redefines ''Central Authority'' to include competent authorities, thereby clarifying how the term applies in countries that are not party to the Convention; redefines adoption records to include non-Convention case records and changes Section 96.25(b) concerning accrediting entity access to non-Convention records in cases subject to the UAA; defines the terms INA, IAA, and intercountry adoption; refers to ''accreditation and approval'' instead of to ''Convention accreditation and approval;'' revises Section 96.46(a)(4) to clarify that foreign supervised providers in non-Convention countries may not have a pattern of licensing suspensions relating to key Convention principles; and revises references to ''Convention adoption,'' ''cases subject to the Convention,'' ''Convention case,'' ''Convention country,'' and ''Convention-related activity'' to ensure that such references include non-Convention adoptions, activities, countries, and cases under the UAA.

Additionally, this rule corrects the references in 22 CFR 96.37(f)(2), and 96.47(a)(4) and (b), to refer to the correct Department of Homeland Security (DHS) definition of home study preparer and home study requirements. When the original rule was issued in 2006, DHS had not yet published its final rule concerning home studies in Convention cases. Thus, the 2006 State Department rule referred to the ''orphan'' home study requirements under 8 CFR 204.3(b) and (e), instead of the Convention home study requirements found in 8 CFR 204.301 and 311. This rule references the correct DHS regulation. The change clarifies that the home study must be prepared by an accredited agency, approved person, exempted provider, or a supervised provider. In addition, when the home study is not performed in the first instance by an accredited agency, then an accredited agency must review and approve it. The orphan and Convention home study requirements also differ concerning the required elements, applicable definitions, and the duty to disclose. The Department anticipates that DHS will publish specific guidance on how the Convention home study requirements will apply in orphan cases.

Finally, the rule amends 22 CFR Part 96 to delete obsolete provisions, including any references to temporary accreditation, deleting subpart N in its entirety. Under the IAA, temporary accreditation was only possible for a one- or two-year period following the entry into force of the Convention. Because the Convention entered into force for the United States on April 1, 2008, more than two years ago, temporary accreditation is no longer possible. The rule also deletes the section on ''special provisions for agencies and persons seeking to be accredited or approved as of the time the Convention enters into force for the United States'' and a reference to that section. Further, the rule revises requirements concerning ''notification of accreditation and approval decisions'' and ''length of accreditation or approval period,'' deleting provisions that

applied only during the transitional period to the Convention entering into force and clarifying that for purposes of the notification requirement the phrase ''accreditation or approval decisions'' refers to whether an application is granted or denied.

Cases that are grandfathered under Section 2(c) of the UAA are not affected by this rule. See the *Department's adoption Web site* and the *DHS/USCIS Web site* for information on this grandfathering provision.

The Department invites comment on the edits to 22 CFR Part 96 described above.

Regulatory Analysis

Administrative Procedure Act

The Department is publishing this rule as an interim final rule based on its determination for good cause that delaying the effect of this rule during the period of public comment would be impractical, unnecessary and contrary to public interest under Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(B). Publishing the revision now will allow the rule to be in effect on the date the UAA goes into effect. This will aid the accrediting entity in its accreditation and oversight function and avoid confusion among adoption service providers and other members of the public about how the accreditation standards apply in ''orphan'' intercountry adoption cases.

The Department will accept comments from the public for 60 days after publication.

Regulatory Flexibility Act/Executive Order 13272: Small Business

Consistent with section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Department certifies that this rule will not have a significant economic impact on a substantial number of small entities. The rule clarifies the requirements imposed by the UAA and IAA on adoption service providers providing services in ''orphan'' intercountry adoption cases described under section 101(b)(1)(F).

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48, codified at 2 U.S.C. 1532) generally requires agencies to prepare a statement before proposing any rule that may result in an annual expenditure of $100 million or more by State, local, or tribal governments, or by the private sector. This rule will not result in any such expenditure, nor will it significantly or uniquely affect small governments or the private sector.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by 5 U.S.C. 804, for purposes of congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121). 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 adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and import markets.

Executive Order 12866

The Department of State has reviewed this proposed rule to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866, and has determined that the benefits of this final regulation justify its costs. The Department does not consider this rulemaking to be an economically significant action within the scope of section 3(f)(1) of the Executive Order.

The rule does not add any new legal requirements to Part 96 but reflects the changes affected by the UAA to apply these accreditation standards in orphan cases. The UAA and this rule benefit prospective adoptive parents, children, and birth families involved in the intercountry adoption process by ensuring that adoption service providers providing services in orphan cases are subject to the same accreditation standards and ongoing oversight and monitoring that apply in Convention cases.

Concerning the cost of the UAA, the Report from the Congressional Budget Office (CBO) on October 17, 2012, notes that the UAA imposes ''a private sector mandate by requiring all providers of placement services for intercountry adoptions to be compliant with the accreditation standards of the Hague Convention.'' The report notes, further, that ''[t]he initial fees for obtaining accreditation can range between $10,000 and $16,000 depending on the size and annual revenue of the entity seeking accreditation. Annual fees to maintain accreditation are less than $1,000 on average, but are also subject to change based on the revenue of the entity. The cost of liability insurance for adoption agencies varies from state to state and can range between $10,000 and $50,000 per year.'' Overall, CBO concluded: ''Based on information gathered from industry professionals, the Department of Health and Human Services, and an accreditation agency, the number of entities that would be affected is relatively small. Therefore, CBO estimates that the aggregate cost of the mandate to the private sector would fall below the annual threshold established in UMRA ($146 million in 2012, adjusted annually for inflation).''

The Council on Accreditation (COA), the accrediting entity designated by the Department, reports that approximately forty new agencies have applied for accreditation since the UAA became law in January of 2013. This number is much fewer than COA had anticipated.

Executive Orders 12372 and 13132: Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Nor will the rule have federalism implications warranting the application of Executive Orders 12372 and No. 13132.

Executive Order 12988: Civil Justice Reform

The Department has reviewed the regulations in light of Executive Order No. 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13563: Improving Regulation and Regulatory Review

The Department has considered this rule in light of Executive Order 13563, dated January 18, 2011, and affirms that this regulation is consistent with the guidance therein.

Paperwork Reduction Act

This rule does not impose information collection requirements subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 96

Adoption, child welfare, children immigration, foreign persons.

For the reasons stated in the preamble, the Department of State amends 22 CFR part 96 as follows:

PART 96—INTERCOUNTRY ADOPTION ACCREDITATION OF AGENCIES AND APPROVAL OF PERSONS

■ 1. Revise the authority citation for part 96 to read as follows:

Authority: The Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (done at the Hague, May 29, 1993), S. Treaty Doc. 105–51 (1998), 1870 U.N.T.S. 167 (Reg. No. 31922 (1993));

The Intercountry Adoption Act of 2000, 42 U.S.C. 14901–14954; The Intercountry Adoption Universal Accreditation Act of 2012, Pub. L. 112–276, 42 U.S.C. 14925.

■ 2. Revise the heading for part 96 to read as set forth above.

■ 3. Revise § 96.1 to read as follows:

§ 96.1 Purpose.

This part provides for the accreditation and approval of agencies and persons pursuant to the Intercountry Adoption Act of 2000 (42 U.S.C. 14901–14954, Pub. L. 106–279,) and the Intercountry Adoption Universal Accreditation Act of 2012 (42 U.S.C. 14925, Pub. L. 112–276). Subpart B of this part establishes the procedures for the selection and designation of accrediting entities to perform the accreditation and approval functions. Subparts C through H establish the general procedures and standards for accreditation and approval of agencies and persons (including renewal of accreditation or approval). Subparts I through M address the oversight of accredited or approved agencies and persons.

■ 4. Amend § 96.2 as follows:

■ a. Revise the definitions ''Accredited agency'', ''Accrediting entity'', ''Adoption record'', ''Approved home study'', ''Approved person'', ''Central Authority'';

■ b. Remove the definition of ''Central Authority function'';

■ c. Revise the definitions of ''Child welfare services'' and ''Exempted provider'';

■ d. Add the definitions of ''INA'' and ''Intercountry adoption,''

■ e. Revise the definitions of ''Legal services'', ''Post-adoption'', ''Primary provider'', ''Public foreign authority'', ''Secretary'', and ''Supervised provider'';

■ f. Remove the definition of ''Temporarily accredited agency''; and

■ g. Add the definition of ''UAA''.

The revisions and additions read as follows:

§ 96.2 Definitions.

* * * * *

Accredited agency means an agency that has been accredited by an accrediting entity, in accordance with the standards in subpart F of this part, to provide adoption services in the United States in intercountry adoption cases.

Accrediting entity means an entity that has been designated by the Secretary to accredit agencies and/or to approve persons for purposes of providing adoption services in the United States in intercountry adoption cases.

* * * * *

Adoption record means any record, information, or item related to a specific intercountry adoption of a child received or maintained by an agency, person, or public domestic authority, including, but not limited to, photographs, videos, correspondence, personal effects, medical and social information, and any other information about the child.

* * * * *

Approved home study means a review of the home environment of the child's prospective adoptive parent(s) that has been:

(1) Completed by an accredited agency; or

(2) Approved by an accredited agency.

Approved person means a person that has been approved, in accordance with the standards in subpart F of this part, by an accrediting entity to provide adoption services in the United States in intercountry adoption cases.

* * * * *

Central Authority means the entity designated as such under Article 6(1) of the Convention by any Convention country, or, in the case of the United States, the United States Department of State. In countries that are not Convention countries, *Central Authority* means the relevant ''competent authority'' as defined in this section.

* * * * *

Child welfare services means services, other than those defined as ''adoption services'' in this section, that are designed to promote and protect the well-being of a family or child. Such services include, but are not limited to, recruiting and identifying adoptive parent(s) in cases of disruption (but not assuming custody of the child), arranging or providing temporary foster care for a child in connection with an intercountry adoption or providing educational, social, cultural, medical, psychological assessment, mental health, or other health-related services for a child or family in an intercountry adoption case.

* * * * *

Exempted provider means a social work professional or organization that performs a home study on prospective adoptive parent(s) or a child background study (or both) in the United States in connection with an intercountry adoption (including any reports or updates), but that is not currently providing and has not previously provided any other adoption service in the case.

* * * * *

INA means the Immigration and Nationality Act (8 U.S.C. 1101 *et seq.*), as amended.

Intercountry adoption means a Convention adoption or the adoption of a child described in INA section 101(b)(1)(F).

* * * * *

Legal services means services, other than those defined in this section as ''adoption services,'' that relate to the provision of legal advice and information and to the drafting of legal instruments. Such services include, but are not limited to, drawing up contracts, powers of attorney, and other legal instruments; providing advice and counsel to adoptive parent(s) on completing DHS or Central Authority forms; and providing advice and counsel to accredited agencies, approved persons, or prospective adoptive parent(s) on how to comply with the Convention, the IAA, the UAA, and the regulations implementing the IAA or UAA.

* * * * *

Post-adoption means after an adoption; in cases in which an adoption occurs in a foreign country and is followed by a re-adoption in the United States, it means after the adoption in the foreign country.

* * * * *

Primary provider means the accredited agency or approved person that is identified pursuant to § 96.14 as responsible for ensuring that all six adoption services are provided and for supervising and being responsible for supervised providers where used.

* * * * *

Public foreign authority means an authority operated by a national or subnational government of a foreign country.

Secretary means the Secretary of State, the Assistant Secretary of State for Consular Affairs, or any other Department of State official exercising the Secretary of State's authority under the Convention, the IAA, the UAA, or any regulations implementing the IAA or UAA, pursuant to a delegation of authority.

* * * * *

Supervised provider means any agency, person, or other non-governmental entity, including any foreign entity, regardless of whether it is called a facilitator, agent, attorney, or by any other name, that is providing one or more adoption services in an intercountry adoption case under the supervision and responsibility of an accredited agency or approved person that is acting as the primary provider in the case.

UAA means the Intercountry Adoption Universal Accreditation Act of 2012, (42 U.S.C. 14925, Pub. L. 112–276 (2012)).

§ 96.4 [Amended]

■ 5. Amend § 96.4 by removing the parenthetical phrase ''(including temporary accreditation)'' in paragraph (a) and removing the parenthetical phrase ''(including temporarily accredit)'' in paragraph (b).

■ 6. Amend § 96.6 by revising paragraphs (c), (d), (g) and (j) to read as follows:

§ 96.6 Performance criteria for designation as an accrediting entity.

* * * * *

(c) That it can monitor the performance of agencies it has accredited and persons it has approved (including their use of any supervised providers) to ensure their continued compliance with the Convention, the IAA, the UAA, and the regulations implementing the IAA or UAA;

(d) That it has the capacity to take appropriate adverse actions against agencies it has accredited and persons it has approved;

* * * * *

(g) That it has the capacity to conduct its accreditation and approval functions fairly and impartially;

* * * * *

(j) That it prohibits its employees or other individuals acting as site evaluators, including, but not limited to, volunteer site evaluators, from becoming employees or supervised providers of an agency or person for at least one year after they have evaluated such agency or person for accreditation or approval.

§ 96.7 [Amended]

■ 7. Amend § 96.7 as follows:

■ a. Remove the phrase ''and/or temporary accreditation'' in paragraph (a)(1);

■ b. Remove the phrase '', temporarily accredited agencies,'' in paragraphs (a)(3), (a)(4) and (a)(7);

■ c. Remove both iterations of the phrase '', temporarily accredited agency,'' in paragraph (a)(5);

■ d. Remove the term ''Convention'' and add in its place the term ''intercountry adoption'' in paragraph (a)(8); and

■ e. Remove the phrase ''the regulations implementing the IAA'' and add in its place the phrase ''the UAA, the regulations implementing the IAA or UAA'' in paragraph (c).

§ 96.8 [Amended]

■ 8. Amend § 96.8 as follows:

■ a. Remove the term ''Convention'' and add in its place the term ''intercountry adoption'' in paragraph (a)(1);

■ b. Remove both iterations of the term ''Convention'' in paragraph (b)(1);

■ c. Remove the phrase ''full Convention'' and ''; and'' and add a period at the end in paragraph (b)(2); and

■ d. Remove paragraph (b)(3).

§ 96.9 [Amended]

■ 9. Amend § 96.9 by removing both iterations of the phrase '', temporary accreditation,'' in paragraph (b) and removing the phrase '', temporarily accredited agencies,'' in paragraph (c).

§ 96.10 [Amended]

■ 10. Amend § 96.10 as follows:

■ a. Remove the phrase ''the regulations implementing the IAA'' and add in its place the phrase ''the UAA, the regulations implementing the IAA or UAA'' in paragraph (a);

■ b. Remove the phrase ''or a temporarily accredited agency is substantially out of compliance with the standards in § 96.104'' in paragraph (c)(1);

■ c. Remove the phrase '', temporarily accredited agencies,'' in paragraph (c)(7).

■ 11. Amend § 96.12 by revising paragraphs (a) introductory text, (a)(1), (a)(3), and (c) to read as follows:

§ 96.12 Authorized adoption service providers.

(a) Except as provided in section 505(b) of the IAA (relating to transitional cases), and once the UAA becomes effective, except as provided in section 2(c) of the UAA (relating to transitional cases), an agency or person may not offer, provide, or facilitate the provision of any adoption service in the United States in connection with an intercountry adoption unless it is:

(1) An accredited agency or an approved person;

* * * * *

(3) An exempted provider, if the exempted provider's home study or child background study will be reviewed and approved by an accredited agency pursuant to § 96.47(c) or § 96.53(b).

* * * * *

(c) Neither conferral nor maintenance of accreditation or approval, nor status as an exempted or supervised provider, nor status as a public domestic authority shall be construed to imply, warrant, or establish that, in any specific case, an adoption service has been provided consistently with the Convention, the IAA, the UAA, or the regulations implementing the IAA or UAA. Conferral and maintenance of accreditation or approval under this part establishes only that the accrediting entity has concluded, in accordance with the standards and procedures of this part, that the agency or person conducts adoption services in substantial compliance with the applicable standards set forth in this part; it is not a guarantee that in any specific case the accredited agency or approved person is providing adoption services consistently with the Convention, the IAA, the UAA, the regulations implementing the IAA or UAA, or any other applicable law, whether Federal, State, or foreign. Neither the Secretary nor any accrediting entity shall be responsible for any acts of an accredited agency, approved person, exempted provider, supervised provider, or other entity providing services in connection with an intercountry adoption.

§ 96.13 [Amended]

■ 12. Amend § 96.13 as follows:

■ a. Remove the phrase ''temporary accreditation,'' and both iterations of the phrase ''or temporarily accredited agency'' in paragraph (a);

■ b. Remove the phrase ''temporarily accredited,'' in paragraphs (b), (c), and (d);

■ c. Remove the phrase ''temporarily accredited, or'' in paragraphs (b) and (c);

■ d. Remove the phrase ''a Convention'' and add in its place the phrase ''an intercountry'' each of the four times it appears in paragraphs (b) and (c); and

■ e. Remove the term ''Convention'' and add in its place the term ''foreign'' in two places in the first and second sentences of paragraph (d).

§ 96.14 [Amended]

■ 13. Amend § 96.14 as follows:

■ a. Remove the phrases '', temporary accreditation'', '', a temporarily accredited agency'', ''temporarily accredited agency'' and all three iterations of the phrase '', temporarily accredited agency,'' in paragraph (a);

■ b. Remove the term ''Convention case'' and add in its place the term ''intercountry adoption case'' in paragraph (a);

■ c. Remove the term ''Convention'' and add in its place the term ''foreign'' in paragraphs (a)(2) through (4), (c), (c)(2), and (e);

■ d. Remove the phrase '', and § 96.104(g), in the case of temporarily accredited agencies'' in paragraph (b);

■ e. Remove the phrase '', temporarily accredited agency,'' in paragraphs (b)(1);

■ f. Remove the phrase ''or temporarily accredited agency'' in paragraph (b)(2); and

■ g. Remove the phrase ‘‘, and § 96.104(g) of subpart N, in the case of temporarily accredited agencies’’ in paragraph (c).

§ 96.15 [Amended]

■ 14. Amend § 96.15 as follows:
■ a. Remove both iterations of the term ‘‘Convention’’ and add in its place the term ‘‘foreign’’ in Example 1;
■ b. Remove the phrase ‘‘temporarily accredited,’’ in each place it occurs in Examples 1, 3, 4, 5, 6, 8, 9, 10, 11, and 12;
■ c. Remove the phrase ‘‘a Convention’’ and add in its place the phrase ‘‘an intercountry’’ in each place in Examples 2, 3, 4, 5, 6, and 7;
■ d. Remove the phrase ‘‘this Convention’’ and add in its place the phrase ‘‘this intercountry’’ in Example 3;
■ e. Remove the term ‘‘temporary accreditation,’’ in Examples 5, and 6;
■ f. Remove the term ‘‘Convention country’’ and add in its place the term ‘‘foreign country’’ in Examples 7, 8, and 11;
■ g. Add the phrase ‘‘or the UAA’’ after ‘‘requirements of the IAA’’ in Examples 8 and 9.
■ h. Remove the term ‘‘Convention Country’’ and add in its place the term ‘‘Foreign Country’’ in Examples 9 and 12;
■ i. Remove the term ‘‘Convention’’ and add in its place the term ‘‘intercountry’’ in Example 10; and
■ j. Remove the phrase ‘‘is eventually disrupted’’ and add in its place the phrase ‘‘eventually disrupts’’ in Example 10.

■ 15. Revise § 96.16 to read as follws:

§ 96.16 Public domestic authorities.

Public domestic authorities are not required to become accredited to be able to provide adoption services in intercountry adoption cases, but must comply with the Convention, the IAA, the UAA, and other applicable law when providing services in an intercountry adoption case.

■ 16. Revise § 96.17 to read as follows:

§ 96.17 Effective date of accreditation and approval requirements.

The Convention entered into force for the United States on April 1, 2008. As of that date, the regulations in subpart C of this part govern Convention adoptions between the United States and Convention countries, and require agencies or persons providing adoption services on behalf of prospective adoptive parent(s) to comply with § 96.12 and applicable Federal regulations. The Secretary maintains for the public a current listing of Convention countries. The effective date of the UAA is July 14, 2014. As of that date, consistent with the UAA, the regulations in subpart C of this part will govern adoptions of children described in INA § 101(b)(1)(F), and will require agencies or persons providing adoption services on behalf of prospective adoptive parent(s) in connection with a child described in section 101(b)(1)(F) to comply with § 96.12 and applicable Federal regulations.

■ 17. Revise § 96.18 to read as follows:

§ 96.18 Scope.

(a) Agencies are eligible to apply for ‘‘accreditation.’’ Persons are eligible to apply for ‘‘approval.’’ Applications for accreditation or approval will be processed in accordance with §§ 96.19 and 96.20.

(b) If an agency or person is reapplying for accreditation or approval following cancellation of its accreditation or approval by an accrediting entity or refusal by an accrediting entity to renew its accreditation or approval, it must comply with the procedures in § 96.78.

(c) If an agency or person that has been accredited or approved is seeking renewal, it must comply with the procedures in § 96.63.

§ 96.19 [Removed]

■ 18. Remove § 96.19.

§ 96.20 [Redesignated as § 96.19]

■ 19. Redesignated § 96.20 as § 96.19.

§ 96.19 [Amended]

■ 20. In newly redesignated § 96.19, remove the second sentence in paragraph (a).

§ 96.21 [Redesignated as § 96.20]

■ 21. Redesignate § 96.21 as § 96.20.

§ 96.21 [Reserved]

■ 22. Add reserved § 96.21.

■ 23. Revise § 96.23 to read as follows:

§ 96.23 Scope.

The provisions in this subpart govern the evaluation of agencies and persons for accreditation or approval.

§ 96.25 [Amended]

■ 24. Amend § 96.25 as follows:
■ a. Add the phrase ‘‘and cases subject to the UAA’’ after the phrase ‘‘Convention adoption case files’’ in paragraph (b);
■ b. Add ‘‘other’’ before the term ‘‘non-Convention cases’’ in paragraph (b);
■ c. Add the phrase ‘‘not subject to the UAA’’ before the phrase ‘‘prior to their inspection by the accrediting entity.’’ in paragraph (b); and
■ d. Remove the phrase ‘‘, temporarily accredited agency,’’ in paragraph (c).

§ 96.27 [Amended]

■ 25. Amend § 96.27 as follows:
■ a. Remove the term ‘‘Convention’’ in the last sentence of paragraph (c);
■ b. Remove the phrase ‘‘temporarily accredited’’ in paragraph (d);
■ c. Remove the phrase ‘‘and the IAA’’ and add in its place the phrase ‘‘, the IAA, and the UAA’’ in paragraphs (d) and (g);
■ d. Remove the phrase ‘‘has had its temporary accreditation withdrawn,’’ in paragraph (e); and
■ e. Remove the term ‘‘Convention cases’’ and add in its place the term ‘‘intercountry adoption cases’’ in paragraph (g).

Subpart F—Standards for Intercountry Adoption Accreditation and Approval

■ 26. Revise the Subpart F heading to read as set forth above.

■ 27. Revise § 96.29 to read as follows:

§ 96.29 Scope.

The provisions in this subpart provide the standards for accrediting agencies and approving persons.

§ 96.30 [Amended]

■ 28. Amend § 96.30 by removing the term ‘‘Convention’’ and adding in its place the term ‘‘foreign’’ in paragraph (d).

§ 96.31 [Amended]

■ 29. Amend § 96.31 by adding ‘‘qualifies’’ before the phrase ‘‘for nonprofit status’’ in paragraph (a).

§ 96.33 [Amended]

■ 30. Amend § 96.33 by removing both iterations of the term ‘‘Convention cases’’ and adding in their places the term ‘‘intercountry adoption cases’’ in paragraph (e) and removing the phrase ‘‘Convention-related’’ and adding in its place the phrase ‘‘intercountry adoption-related’’ in paragraph (g).

§ 96.37 [Amended]

■ 31. Amend § 96.37 as follows:
■ a. Remove the phrase ‘‘a Convention adoption’’ and add in its place the phrase ‘‘an intercountry adoption’’ in paragraph (a);
■ b. Remove the term ‘‘INA’’ in paragraph (f)(2); and
■ c. Remove the citation ‘‘8 CFR 204.3(b)’’ and add in its place the citation ‘‘8 CFR 204.301’’ in paragraph (f)(2).

§ 96.38 [Amended]

■ 32. Amend § 96.38 as follows:

■ a. Remove the phrase ''the regulations implementing the IAA'' and add in its place the phrase ''the UAA, the regulations implementing the IAA or UAA'' in paragraph (a)(1);
■ b. Remove the phrase ''adopted from a Convention country'' and add in its place the phrase ''described in INA 101(b)(1)(F) and 101(b)(1)(G)'' in paragraph (a)(2);
■ c. Remove the term ''Convention country'' and add in its place the term ''foreign country'' in paragraph (a)(3); and
■ d. Remove the phrase ''and the IAA'' and add in its place the phrase '', the IAA, and the UAA'' in paragraph (d).

§ 96.40 [Amended]

■ 33. Amend § 96.40 as follows:
■ a. Remove the term ''a Convention adoption'' and add in its place the term ''an intercountry adoption'' in paragraph (b);
■ b. Remove the term ''Convention country'' and add in its place the term ''country of origin'' in paragraphs (b)(3), (5), and (6);
■ c. Remove the term ''Convention'' before ''court documents'' in paragraph (b)(5);
■ d. Remove the term ''Convention countries'' and add in its place the term ''foreign countries'' in paragraph (f); and
■ e. Remove the term ''Convention country'' and add in its place the term ''foreign country'' in paragraphs (f), (g), and (g)(3).

§ 96.41 [Amended]

■ 34. Amend § 96.41 by removing the phrase ''or the regulations implementing the IAA'' and adding in its place the phrase ''the UAA, or the regulations implementing the IAA or UAA'' in paragraph (b).

§ 96.42 [Amended]

■ 35. Amend § 96.42 by removing the phrase ''under the Convention'' and adding in its place the phrase ''in intercountry adoption cases'' in paragraph (d).

§ 96.43 [Amended]

■ 36. Amend § 96.43 as follows:
■ a. Remove the term ''intercountry'' and add in its place the phrase ''Convention and non-Convention'' in paragraphs (b)(1) and (b)(2);
■ b. Remove the phrase ''in both Convention and non-Convention cases'' in paragraphs (b)(1) and (b)(2);
■ c. Remove the phrase ''Convention country or other'' and add in its place the term ''foreign'' in paragraph (b)(1)(i);
■ d. Remove the phrase '', Convention country, or other'' and add in its place the phrase ''or foreign'' in paragraphs (b)(1)(iii) and (b)(2)(iii);
■ e. Remove the phrase ''Convention country or other'' and add in its place the term ''foreign'' in paragraph (b)(2)(ii);
■ f. Remove the phrase ''a Convention'' and add in its place the phrase ''an intercountry'' in paragraphs (b)(3), (b)(4) and (b)(5);
■ g. Remove the term ''Convention'' and add in its place the term ''foreign'' in paragraphs (b)(3)(i) and (b)(4)(i); and
■ h. Remove the term'' Convention adoptions'' and add in its place the term ''intercountry adoptions'' in paragraph (b)(6).

§ 96.44 [Amended]

■ 37. Amend § 96.44 by removing the term ''Convention'' and adding in its place the term ''intercountry'' in paragraph (b).

§ 96.46 [Amended]

■ 38. Amend § 96.46 as follows:
■ a. Remove the term ''Convention'' and add in its place the term ''foreign'' in the section heading, and in paragraphs (a), (a)(1), (a)(3), (a)(5), and (b); and
■ b. Add the phrase ''or the Convention's principles of ensuring that intercountry adoptions take place in the best interests of children and preventing the abduction, exploitation, sale, or trafficking of children'' after the phrase ''germane to the Convention'' in paragraph (a)(4).

§ 96.47 [Amended]

■ 39. Amend § 96.47 as follows:
■ a. Remove the citation ''8 CFR 204.3(e)'' and add in its place the citation ''8 CFR 204.311'' in paragraphs (a)(4), (b), and (c)(1);
■ b. Remove both iterations of the phrase ''or temporarily accredited agency'' in paragraph (c); and
■ c. Remove the citation ''8 CFR 204.3(b)'' and add in its place the citation ''8 CFR 204.301'' in paragraph (c)(2).

§ 96.48 [Amended]

■ 40. Amend § 96.48 by removing the term ''Convention'' and adding in its place the term ''foreign'' in paragraph (b)(1) and removing the term ''Convention'' and adding in its place the term ''intercountry'' in paragraph (b)(8).

§ 96.49 [Amended]

■ 41. Amend § 96.49 by removing the term ''Convention'' and adding in its place the term ''foreign'' in paragraphs (a), (d)(1), and (d)(2).

§ 96.50 [Amended]

■ 42. Amend § 96.50 by removing both iterations of the term ''Convention'' and adding in place of them the term ''foreign'' in paragraph (g) and adding the phrase ''in Convention adoptions is'' before the phrase ''entered in compliance with'' in paragraph (h)(1).

§ 96.52 [Amended]

■ 43. Amend § 96.52 as follows:
■ a. Remove the term ''Convention'' and add in its place the term ''foreign'' in paragraphs (a), (b), and (c);
■ b. Remove the phrase ''a Convention'' and add in its place the phrase ''an intercountry'' in paragraph (e); and
■ c. Remove the phrase ''or any regulations implementing the IAA'' and add in its place the phrase ''the UAA, or any regulations implementing the IAA or UAA'' in paragraph (e).
■ 44. Revise the undesignated center heading above § 96.53 to read as follows:

* * * * *

Standards for Convention Cases in Which a Child Is Emigrating From the United States (Outgoing Cases)

* * * * *

§ 96.53 [Amended]

■ 45. Amend § 96.53 by adding the term ''Convention'' before ''cases'' in the section heading and removing both iterations of the phrase ''or temporarily accredited agency'' in paragraph (b).

§ 96.54 [Amended]

■ 46. Amend § 96.54 by adding the term ''Convention'' before the term ''cases'' in the section heading.

§ 96.55 [Amended]

■ 47. Amend § 96.55 by adding the term ''Convention'' before the term ''cases'' in the section heading.
■ 48. Revise § 96.57 to read as follows:

§ 96.57 Scope.

The provisions in this subpart establish the procedures for when the accrediting entity issues decisions on applications for accreditation or approval.
■ 49. Revise § 96.58 to read as follows:

§ 96.58 Notification of accreditation and approval decisions.

(a) The accrediting entity must routinely inform applicants in writing of its accreditation and approval decisions—whether an application has been granted or denied—as those decisions are finalized. The accrediting entity must routinely provide this information to the Secretary in writing.

(b) The accrediting entity may, in its discretion, communicate with agencies and persons that have applied for accreditation or approval about the

status of their pending applications to afford them an opportunity to correct deficiencies that may hinder or prevent accreditation or approval.

■ 50. Revise § 96.60 to read as follows:

§ 96.60 Length of accreditation or approval period.

The accrediting entity will accredit or approve an agency or person for a period of four years. The accreditation or approval period will commence on the date that the agency or person is granted accreditation or approval.

§ 96.62 [Amended]

■ 51. Amend § 96.62 by removing the second sentence.

§ 96.63 [Amended]

■ 52. Amend § 96.63 by removing both iterations of the term ''Convention'' and adding in their places the term ''intercountry adoption'' in paragraph (a).

§ 96.65 [Amended]

■ 53. Amend § 96.65 by removing the second and third sentences.

§ 96.68 [Amended]

■ 54. Amend § 96.68 by removing the phrase ''or the regulations implementing the IAA'' and adding in its place the phrase ''the UAA, or the regulations implementing the IAA or UAA'' and removing the last sentence.

§ 96.69 [Amended]

■ 55. Amend § 96.69 by removing the term ''Convention adoption'' and adding in its place the term ''intercountry adoption'' in paragraphs (b) and (c).

§ 96.70 [Amended]

■ 56. Amend § 96.70 by removing the phrase ''temporarily accredited agencies, and'' and by adding the phrase '', and agencies temporarily accredited for one or two years after the Convention entered into force'' after the term ''approved persons'' in paragraph (b)(1).

§ 96.71 [Amended]

■ 57. Amend § 96.71 by removing the phrase ''or the regulations implementing the IAA'' and adding in its place the phrase ''the UAA, or the regulations implementing the IAA or UAA'' in paragraph (b).

§ 96.74 [Amended]

■ 58. Amend § 96.74 by removing the second and third sentences.

§ 96.75 [Amended]

■ 59. Amend § 96.75 by adding '', the UAA,'' after ''IAA'' in the introductory text and removing the term ''Convention'' and adding in its place the term ''foreign'' in paragraph (e).

§ 96.77 [Amended]

■ 60. Amend § 96.77 by removing all six iterations of the term ''Convention cases'' and both iterations of the term ''Convention adoption cases'' adding in their places the term ''intercountry adoption cases'' in paragraphs (b) and (c).

§ 96.81 [Amended]

■ 61. Amend § 96.81 by removing the last two sentences.

§ 96.83 [Amended]

■ 62. Amend § 96.83 by removing the phrase ''under the Convention'' in paragraph (b)(3).

§ 96.87 [Amended]

■ 63. Amend § 96.87 by removing both iterations of the term ''Convention cases'' and both iterations of the term ''Convention adoption cases'' adding in their places the term ''intercountry adoption cases''.

§ 96.90 [Amended]

■ 64. Amend § 96.90 by removing the second sentence.

§ 96.91 [Amended]

■ 65. Amend § 96.91 as follows:

■ a. Remove the phrase ''Once the Convention has entered into force for the United States'' in paragraphs (a) and (b);

■ b. Remove the phrase ''withdrawal of temporary accreditation,'' in paragraph (a)(3); and

■ c. Remove the phrase ''a withdrawal of temporary accreditation,'' in paragraph (b)(2).

§ 96.92 [Amended]

■ 66. Amend § 96.92 by removing the phrase ''Once the Convention has entered into force for the United States'' in the introductory text.

§ 96.93 [Amended]

■ 67. Amend § 96.93 as follows:

■ a. Remove the phrase ''and any withdrawals of temporary accreditation'' in paragraph (a)(3);

■ b. Remove the term ''Convention'' and add in its place the term ''intercountry adoption'' in paragraph (b)(2); and

■ c. Remove the phrase ''or withdraws an agency's temporary accreditation'' in paragraph (c)(3).

Subpart N [Removed]

■ 68. Remove subpart N, consisting of §§ 96.95 through 96.111.

Dated: July 7, 2014.

Michele T. Bond,

Acting Assistant Secretary for Consular Affairs, U.S. Department of State.

[FR Doc. 2014–16294 Filed 7–11–14; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2014–0545]

Drawbridge Operation Regulation; New Jersey Intracoastal Waterway (NJICW), at Atlantic City, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the US 40–322 (Albany Avenue) Bridge across Inside Thorofare, NJICW mile 70.0, at Atlantic City, NJ. The deviation is necessary to facilitate the 4th Annual Atlantic City Triathlon. The deviation allows the bridge to remain in the closed position to vessels requesting a bridge opening to ensure the participants' safety and that there are no delays.

DATES: This deviation is effective from 6 a.m. to Noon on September 13 and 14, 2014.

ADDRESSES: The docket for this deviation [USCG–2014–0545] is available at *http://www.regulations.gov*. Type the docket number in the ''Search'' box and click ''Search.'' Click on the Open Docket Folder on the line associated with this deviation. 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 temporary deviation, call or email Kashanda Booker, Bridge Management Specialist, Fifth Coast Guard District, telephone (757) 398–6227, email *Kashanda.l.booker@uscg.mil*. If you have questions on reviewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Atlantic City Emergency Management Office has requested a temporary

deviation from the current operating regulation of the US 40–322 (Albany Avenue) Bridge across Inside Thorofare, NJICW mile 70.0, at Atlantic City, NJ. The closure has been requested to ensure the safety of the runners and spectators that will be participating in the 4th Annual Atlantic Triathlon on September 13th and 14th, 2014. Under this temporary deviation, the US 40–322 (Albany Avenue) Bridge will remain in the closed position from 6 a.m. to Noon on September 13 and 14, 2014.

The vertical clearance of this bascule bridge is 10 feet above mean high water in the closed position and unlimited in the open position. The current operating regulation is outlined at 33 CFR 117.733(f), which requires that on the weekdays during this time of year, the bridge shall open on signal; except that from 11 p.m. to 7 a.m., the draw need only open if at least four hours of notice is given, from 9 a.m. to 4 p.m. and from 6 p.m. to 9 p.m., the draw need only open on the hour and half hour, and from 4 p.m. to 6 p.m. the draw need not open.

Vessels that can pass under the bridge without a bridge opening may do so at all times. The bridge will be able to open for emergencies. The Atlantic Ocean is an alternate route for vessels with mast heights greater than 10 feet. The Coast Guard will inform the users of the waterway through our Local and Broadcast Notice to Mariners' of the closure periods so that vessels can plan their transits to minimize any impact caused by the temporary deviation. At all other times during the affected period, the bridge will operate as outlined at 33 CFR 117.733(f).

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

Dated: June 26, 2014.

Waverly W. Gregory, Jr.,

Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2014–16324 Filed 7–11–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2014–0504]

Drawbridge Operation Regulation; Newtown Creek, New York City, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the operation of the Pulaski Bridge across Newtown Creek, mile 0.6, at New York City, New York. The deviation is necessary to accommodate additional commuter bus traffic passing over the Pulaski Bridge as a result of the closure of the Newtown MTA G-Line Tunnel for repairs. This deviation allows the Pulaski Bridge to remain in the closed position intermittently for thirty-four days.

DATES: This deviation is effective from July 30, 2014 through September 1, 2014.

ADDRESSES: The docket for this deviation, [USCG–2014–0504] is available at *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 deviation. 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 temporary deviation, call or email Ms. Judy Leung-Yee, Project Officer, First Coast Guard District, *judy.k.leung-yee@uscg.mil*, or (212) 668–7165. If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Pulaski Bridge has a vertical clearance of 39 feet at mean high water and 43 feet at mean low water. The existing drawbridge operating regulations are found at 33 CFR 117.801(g)(1).

The owner of the bridge, New York City Department of Transportation, requested a thirty-four day bridge closure to facilitate additional commuter bus traffic resulting from the closure of the Newtown MTA G-Line Tunnel.

The Newtown MTA G-Line Tunnel is closed for scheduled repairs resulting from hurricane Sandy.

Under this temporary deviation, the Pulaski Bridge may remain in the closed position for up to six consecutive days followed by four consecutive days when the bridge will provide normal bridge openings. The Pulaski Bridge shall operate, from July 30, 2014 through September 1, 2014, as follows:

July 30 through August 4, bridge closed.

August 5 through August 8, bridge opens normally.

August 9 through August 14, bridge closed.

August 15 through August 18, bridge opens normally.

August 19 through August 24, bridge closed.

August 25 through August 28, bridge opens normally.

August 29 through September 1, bridge closed.

Notice of each bridge closure will be provided two weeks in advance in the Local Notice to Mariners.

The waterway users are commercial oil barge vessels. The Coast Guard contacted the oil facilities and no objections were received to this bridge closure schedule. Vessels that can pass under the bridge in the closed position may do so at all times. There are no alternative routes but the bridge can be opened in the event of an emergency.

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

Dated: June 26, 2014.

C.J. Bisignano,

Supervisory Bridge Management Specialist, First Coast Guard District.

[FR Doc. 2014–16326 Filed 7–11–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2014–0530]

Drawbridge Operation Regulation; New Jersey Intracoastal Waterway (NJICW), Atlantic City, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the US Route 30 (Absecon Boulevard) Bridge across Beach Thorofare, NJICW mile 67.2, and the US Route 40–322 (Albany Avenue) bridge across Inside Thorofare, NJICW mile 70.0, both at Atlantic City, NJ. The deviation is necessary to accommodate the egress of vehicles following two concert events. This deviation allows the bridge to remain in the closed to

navigation position to permit the free movement of vehicles during two separate Beach Country concerts.

DATES: This deviation is effective from 8 p.m. to 10 p.m. on Thursday July 31, 2014 and from 8 p.m. to 10 p.m. on Sunday August 3, 2014.

ADDRESSES: The docket for this deviation, USCG 2014–0530, is available at *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 deviation. 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 temporary deviation, call or e-mail Mrs. Jessica Shea, Bridge Management Specialist, Fifth Coast Guard District, telephone (757) 398–6422, email *jessica.c.shea2@uscg.mil.* If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The New Jersey Department of Transportation requested a temporary deviation from the current operating regulations of the US Route 30 (Absecon Boulevard) Bridge across Beach Thorofare, NJICW mile 67.2 and the US40–322 (Albany Avenue) across Inside Thorofare, NJICW mile 70.0, both at Atlantic City, NJ. The temporary deviation has been requested to ensure the safety of the heavy numbers of pedestrians and vehicular traffic that would be transiting over the bridges for the two concerts at Bader Field located within the city limits.

Route 30/Absecon Boulevard Bridge

The current operating regulation for this bridge is outlined fully in 33 CFR 117.733(e). During the requested closure period for the event, the draw would be required to open on the hour. In the closed position to vessels, the vertical clearance for this bascule-type bridge is 20 feet, above mean high water.

US40–322 (Albany Avenue) Bridge

The current operating regulation for this bridge is outlined fully in 33 CFR 117.733(f). During the requested closure period for the event, the draw would be required to open on the hour and half hour from 6 p.m. to 9 p.m. and open on demand from between 9 p.m. to 10 p.m. In the closed position to vessels, the vertical clearance for this bascule-type bridge is 10 feet, above mean high water.

Under this temporary deviation both bridges will be closed, from 8 p.m. to 10 p.m. on Thursday July 31, 2014 and from 8 p.m. to 10 p.m. on Sunday August 3, 2014. Between the dates of the two closure periods the bridges shall return to their regular operating schedules.

The majority of the vessels that transit the bridges this time of the year are recreational boats. Vessels able to pass through the bridges in the closed positions may do so at anytime. Both bridges will be able to open for emergencies. The Atlantic Ocean is an alternate route for vessels unable to pass through the bridges in closed positions. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the closure periods for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

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

Dated: June 30, 2014.

Waverly W. Gregory, Jr.,

Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2014–16329 Filed 7–11–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2014–0483]

Drawbridge Operation Regulations; Elizabeth River, Eastern Branch, VA

AGENCY: Coast Guard, DHS.

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

SUMMARY: The Coast Guard has issued a temporary deviation from the regulation governing the operation of the SR 175 Bridge across Lewis Channel and Black Narrows, mile 3.5, at Chincoteague, VA. This deviation will be a test to change the drawbridge operation schedule to determine whether a permanent change to the schedule is needed. This deviation will require the bridge to open on demand at all times.

DATES: This deviation is effective from 6 a.m. on August 4, 2014 through midnight on November 3, 2014.

Comments and related material must be received by the Coast Guard on or before October 2, 2014.

ADDRESSES: You may submit comments identified by docket number USCG–2014–0483 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. 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 instructions on submitting comments. To avoid duplication, please use only one of these methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this test deviation, call or email Kashanda Booker, Bridge Specialist, Fifth Coast Guard District, telephone (757) 398–6227, email *Kashanda.L.Booker@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:

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 (USCG–2014–0483), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (*http://www.regulations.gov*), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard

when you successfully transmit the comment. If you fax, hand delivery, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a phone number in the body of your document so that the Coast Guard can contact you if we have questions regarding your submission.

To submit your comment online, go to type the docket number [USCG–2014–0483], 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 them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

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 (USCG–2014–0483) 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 do not now plan to hold a public meeting. You may submit a request for one on or before October 2, 2014, using one of the four methods specified under **ADDRESSES**. Please explain why one would be beneficial. If the Coast Guard determines that a public meeting would aid this rulemaking, they will hold one at a time and place announced by a later notice in the **Federal Register**.

Basis and Purpose

Virginia Department of Transportation (VDOT), who owns and operates SR 175 Bridge across Lewis Channel and Black Narrows, mile 3.5, at Chincoteague, VA requested a temporary change to the existing bridge regulations, set out at 33 CFR 117.1005, to test a new schedule. In 2011, the new single-leaf bascule bridge was constructed on a new alignment replacing the former swing-type bridge that was located downstream from the Chincoteague maritime community. The new bridge alignment resulted in boaters having an improved channel access and the number of necessary bridge openings reduced.

In the closed position to vessels, the single-span bascule bridge has vertical clearance of 15 feet above mean high water.

The current operating schedule allows the draw to open on demand from midnight to 6 a.m., and every one and a half hours from 6 a.m. to midnight (at 6 a.m., 7:30 a.m., 9 a.m., 10:30 a.m., 12 p.m., 1:30 p.m., 3 p.m., 4:30 p.m., 6 p.m., 7:30 p.m., 9 p.m., 10:30 p.m., and midnight); except from 7 a.m., to 5 p.m. on the last consecutive Wednesday and Thursday in July, the draw need not be opened. This has been the regular operating schedule since November, 16, 2006.

The SR 175 Bridge is the only vehicular connection between the mainland and Eastern Shore of Virginia and Chincoteague Island. Tourism is a dominant industry of Chincoteague Island with activities taking place in the Town of Chincoteague, Chincoteague Island and Assateague Island.

Based on the decrease amount of vessel openings, the Chincoteague maritime community and the Accomack County Board of Supervisors favored a less restrictive opening schedule by proposing a test deviation from scheduled openings to an ''on demand'' schedule while still balancing the needs of marine and vehicular traffic. The monthly vessel openings at the SR 175 Bridge submitted by VDOT are as follows:

BRIDGE OPENING COUNTS

APR 2013	MAY 2013	JUNE 2013	JUL 2013	AUG 2013	SEPT 2013	OCT 2013	NOV 2013	DEC 2013	JAN 2014	FEB 2014	MAR 2014	APR 2014
1	4	7	7	7	6	7	3	2	0	0	0	3

The bridge logs revealed that from April 2013 to April 2014, the SR 175 Bridge had experienced only 47 total vessel openings. The vessels consist of commercial fishing, motorboats, sailboats, trawlers and yachts.

The Test Schedule

From August 4, 2014, to November 3, 2014, the draw of the SR 175 Bridge, mile 3.5, at Chincoteague, shall open on signal in accordance with the general operating regulations set out at 33 CFR 117.5.

During this test deviation, VDOT will gather data on vessel openings in hopes of eliminating the current operating schedule for vessel passage.

Additional Information

This deviation has been coordinated with the waterway users transiting in this area and there is no expectation of any significant impacts on navigation. Vessels with mast heights of less than 15 feet, above mean high water, can continue to pass underneath the bridge in the closed position.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation.

This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: June 30, 2014.

Waverly W. Gregory, Jr.,

Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2014–16330 Filed 7–11–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2014–0377]

RIN 1625–AA00

Safety Zone; Monongahela River; Pittsburgh, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Monongahela River mile 0.0 to mile 0.22. This safety zone is needed to protect vessels transiting the area and event spectators from the hazards associated with a barge-based fireworks display. Entry into this zone is prohibited unless specifically authorized by the Captain of the Port Pittsburgh or a designated representative.

DATES: This rule is effective from 8:30 p.m. until 11:00 p.m. on August 30, 2014.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2014–0377. 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 Ronald Lipscomb, Marine Safety Unit Pittsburgh, U.S. Coast Guard, at telephone 412–644–5808, email *Ronald.c.lipscomb1@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Cheryl F. 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) (5 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 the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not using the NPRM process. The Coast Guard received notice on May 3, 2014 that this barge-based fireworks display would take place. After full review of the event information and location, the Coast Guard determined that a safety zone is necessary. Delaying this rule by completing the full NPRM process would unnecessarily delay the safety zone and be contrary to public interest because the safety zone is needed to protect transiting vessels, spectators, and the personnel involved in the display from the hazards associated with fireworks displays taking place over the waterway. Completing the full NPRM process could also unnecessarily delay the planned event and possibly interfere with contractual obligations.

B. Basis and Purpose

On August 30, 2014, as a part of a Wedding Reception, the Suneri Family will sponsor a barge-based fireworks display. The display will take place in the vicinity of mile 0.1 on the Monongahela River. This event presents safety hazards for spectators and vessels navigating in the area, and therefore a safety zone is needed to protect persons and property from the hazards associated with a fireworks display over the waterway.

The legal basis and authorities for this rule 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; Public Law 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.

C. Discussion of Comments, Changes and the Final Rule

The Coast Guard is establishing a safety zone for all waters of the Monongahela River, from mile 0.0 to mile 0.22, extending the entire width of the river. Entry into this zone is prohibited to all vessels and persons except persons and vessels specifically authorized by the Captain of the Port Pittsburgh. This rule is effective on August 30, 2014 and will be enforced from 8:30 p.m. until 11:00 p.m.

D. 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. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). This rule is limited in scope and will be in effect for a limited time period. Notifications to the marine community will be made through local notice to mariners and broadcast notice to mariners. Deviation from the rule may be requested and will be considered on a case-by-case basis by the Captain of the Port or a designated representative. The impacts on routine navigation are expected to be minimal.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking.

The 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 transit the Monongahela River, mile 0.0 to 0.22 from 8:30 p.m. until 11:00 p.m. on August 30, 2014. This safety zone will not have a significant economic impact on a substantial number of small entities because this rule is limited in scope and will be in effect for a limited time period and notifications to the marine community will be contacting local industry contacts that could be operating in the area during the event. Deviation from the rule may be requested and will be considered on a case-by-case basis by the Captain of the Port or a designated representative.

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 establishes a safety zone for waters of the Monongahela River, from mile 0.0 to 0.22. This rule is categorically excluded from further review under paragraph 34(g) of figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

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.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 2. A new temporary § 165.T08–0377 is added to read as follows:

§ 165.T08–0377 Safety Zone, Monongahela River, Pittsburgh, PA.

(a) *Location.* The following area is a safety zone: all waters of the Monongahela River, mile 0.0 to 0.22, extending the entire width of the waterway.

(b) *Effective date.* This rule is effective, and will be enforced, from 8:30 p.m. until 11:00 p.m. on August 30, 2014.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Pittsburgh or a designated representative.

(2) Persons or vessels requiring entry into or passage through the zone must request permission from the Captain of the Port Pittsburgh or a designated representative. The Captain of the Port Pittsburgh representative may be contacted at 412–644–5808.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port Pittsburgh or their designated representative. Designated

Captain of the Port representatives include United States Coast Guard commissioned, warrant, and petty officers.

(d) *Information Broadcasts.* The Captain of the Port Pittsburgh 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: June 10, 2014.

L. N. Weaver,

Commander, U.S. Coast Guard, Captain of the Port Pittsburgh.

[FR Doc. 2014–16335 Filed 7–11–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2014–0536]

RIN 1625–AA00

Safety Zone; Water Ski Show, Fox River, Green Bay, WI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Fox River in Green Bay, WI. This safety zone is intended to restrict vessels from a portion of the Fox River due to a water ski show. This temporary safety zone is necessary to protect the surrounding public and vessels from the hazards associated with the water ski show.

DATES: This rule is effective without actual notice from July 14, 2014 until 7:30 p.m. August 27, 2014. For the purposes of enforcement, actual notice will be used from 6 p.m. July 9, 2014, until July 14, 2014. The eight specific July and August dates of enforcement are listed below in this rule.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2014–0536. 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 temporary rule, contact or email MST1 Joseph McCollum, U.S. Coast Guard Sector Lake Michigan, at 414–747–7148 or *Joseph.P.McCollum@uscg.mil.* If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 1–800–647–5527.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
TFR Temporary Final Rule

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) (5 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 the 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 with respect to this rule because doing so would be impracticable and contrary to the public interest. The final details for this event were not known to the Coast Guard until there was insufficient time remaining before the event to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be both impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect spectators and vessels from the hazards associated with a water ski show, which are discussed further below.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this temporary rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, waiting for a 30 day notice period to run would be impracticable and contrary to the public interest.

B. Basis and Purpose

The legal basis for this rule is the Coast Guard's authority to establish safety zones: 33 U.S.C. 1231; 33 CFR 1.05–1, 160.5; Department of Homeland Security Delegation No. 0170.1.

For 4 days in July and 4 days in August, 2014, the Coast Guard anticipates that a ski team will perform two 30-minute shows on the Fox River between the Main Street Bridge and the West Walnut Street Bridge in Green Bay, WI. These water ski shows will consist of 25 participants and three boats, operating within the main channel of the Fox River. The Captain of the Port, Lake Michigan, has determined that these water ski shows will pose a significant risk to public safety and property. Such hazards include collisions among the water ski show participant vessels and passing traffic on the Fox River.

C. Discussion of the Final Rule

With the aforementioned hazards in mind, the Captain of the Port, Lake Michigan, has determined that this temporary safety zone is necessary to ensure the safety of spectators and vessels during the water ski shows in Green Bay, WI. This rule is effective from July 9, 2014 until August 27, 2014. This rule will be enforced from 6 p.m. until 6:30 p.m., and again from 7 p.m. until 7:30 p.m. on each day of July 9, 16, 23, 30, and August 6, 13, 20, and 27, 2014. The safety zone will encompass all waters of the Fox River in Green Bay, WI from the Main Street Bridge in position 44°31′5.7″ N 088°0′ 54.7″ W to the West Walnut Street Bridge in position 44°30′54.3″ N 088°1′5.3″ W (NAD 83).

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Lake Michigan, or her designated on-scene representative. The Captain of the Port or her designated on-scene representative may be contacted via VHF Channel 16.

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. It is not ''significant'' under the regulatory policies and procedures of

the Department of Homeland Security (DHS).

We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will only impact a small area and enforced for only 30-minute intervals on 4 days in July and 4 days in August, 2014. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port or her designated on-scene representative.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this temporary rule on small entities. 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 might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of Fox River during the times that this zone is enforced in July and August, 2014.

This safety zone will not have a significant economic impact on a substantial number of small entities for the reasons cited in the *Regulatory Planning and Review* section. Additionally, before the enforcement of the zone, we would issue local Broadcast Notice to Mariners so vessel owners and operators can plan accordingly.

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 the establishment of a safety zone and, therefore it is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

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. Chapters 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.T09–0536 to read as follows:

§ 165.T09–0536 Safety Zone; Water Ski Show, Fox River, Green Bay, WI.

(a) *Location.* All waters of the Fox River in Green Bay, WI from the Main Street Bridge in position 44°31′5.7″ N 88°0′54.7″ W to the West Walnut Street Bridge in position 44°30′54.3″ N 088°1′ 5.3″ W (NAD 83).

(b) *Effective and enforcement periods.* This section is effective from July 9, 2014, until 7:30 p.m. August 27, 2014. This rule will be enforced from 6 p.m. until 6:30 p.m., and again from 7 p.m. until 7:30 p.m. on each day of July 9, 16, 23, 30, and August 6, 13, 20, and 27, 2014.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port, Lake Michigan or her designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port, Lake Michigan or her designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port, Lake Michigan is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port, Lake Michigan to act on her behalf.

(4) Vessel operators desiring to enter or operate within the safety zone must contact the Captain of the Port, Lake Michigan or her on-scene representative to obtain permission to do so. The Captain of the Port, Lake Michigan or her on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Lake Michigan or her on-scene representative.

Dated: June 30, 2014.

A.B. Cocanour,

Captain, U.S. Coast Guard, Captain of the Port, Lake Michigan.

[FR Doc. 2014–16350 Filed 7–11–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2013–1033]

Safety Zones; Annual Events Requiring Safety Zones in the Captain of the Port Lake Michigan Zone—Start of the Chicago to Mackinac Race

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the safety zone on Lake Michigan near Chicago, IL for the start of the Chicago to Mackinac Race. This zone will be enforced on July 18, 2014, from 1:30 p.m. until 4 p.m., and on July 19, 2014, from 10 a.m. until 4:30 p.m. This action is necessary and intended to ensure safety of life on navigable waters during the start of the Chicago to Mackinac Race. During the aforementioned periods, the Coast Guard will enforce restrictions upon, and control movement of, vessels in the safety zone. No person or vessel may enter the safety zone while it is being enforced without permission of the Captain of the Port, Lake Michigan.

DATES: The regulations in 33 CFR 165.929 will be enforced for safety zone (e)(45) in § 165.929, Table 165.929, on July 18, 2014, from 1:30 p.m. until 4 p.m., and on July 19, 2014, from 10 a.m. until 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: If you have questions on this document, call or email MST1 Joseph McCollum, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at (414) 747–7148, email *joseph.p.mccollum@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the Start of Chicago to Mackinac Race safety zone listed as item (e)(45) in Table 165.929 of 33 CFR 165.929. Section 165.929 lists many annual events requiring safety zones in the Captain of the Port Lake Michigan zone. This zone will encompass all waters of Lake Michigan in the vicinity of the Navy Pier at Chicago IL, within a rectangle that is approximately 1500 by 900 yards. The rectangle is bounded by the coordinates beginning at 41°53′15.1″ N, 087°35′25.8″ W; then south to 41°52′48.7″ N, 087°35′25.8″ W; then east to 41°52′49.0″ N, 087°34′26.0″ W; then north to 41°53′15″ N, 087°34′26″ W; then west, back to point of origin (NAD 83). This zone will be enforced on July 18, 2014 from 1:30 p.m. until 4 p.m., and on July 19, 2014, from 10 a.m. until 4:30 p.m.

All vessels must obtain permission from the Captain of the Port Lake Michigan or the on-scene representative to enter, move within, or exit a safety zone. Vessels and persons granted permission to enter the safety zone must obey all lawful orders or directions of the Captain of the Port Lake Michigan or a designated representative. Vessels that wish to transit through the safety zone may request permission from the Captain of the Port Lake Michigan. Requests must be made in advance and approved by the Captain of the Port before transits will be authorized. Approvals will be granted on a case by case basis.

This document is issued under authority of 33 CFR 165.929, Safety Zones; Annual events requiring safety zones in the Captain of the Port Lake Michigan zone, and 5 U.S.C. 552(a). In addition to this publication in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this event via Broadcast Notice to Mariners or Local Notice to Mariners that the regulation is in effect. The Captain of the Port, Lake Michigan, or her on-scene representative may be contacted via Channel 16, VHF–FM.

Dated: June 30, 2014.

A.B. Cocanour,

Captain, U.S. Coast Guard, Captain of the Port, Lake Michigan.

[FR Doc. 2014–16333 Filed 7–11–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2014–0539]

RIN 1625–AA00

Safety Zone; City of Menominee Fireworks; Green Bay, Menominee, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of Green Bay near in

Menominee, Michigan. This safety zone is intended to restrict vessels from a portion of Green Bay due to two fireworks displays. This temporary safety zone is necessary to protect the surrounding public and vessels from the hazards associated with the fireworks displays.

DATES: This rule is effective without actual notice from July 14, 2014 until 10:30 p.m. August 9, 2014. This rule will be enforced with actual notice from 9 p.m. on July 4, 2014 until July 14, 2014. This rule will only be enforced on July 4 and August 9, 2014, at the times specified in this rule.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2014–0539. 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 temporary rule, contact or email MST1 Joseph McCollum, U.S. Coast Guard Sector Lake Michigan, at 414–747–7148 or *Joseph.P.McCollum@uscg.mil.* If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 1–800–647–5527.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
TFR Temporary Final Rule

A. Regulatory History and Information

On March 4, 2014, the Coast Guard published a Final Rule in the **Federal Register** which listed safety zones corresponding to annual marine events in the Sector Lake Michigan zone (79 FR 12064). That final rule included a safety zone for two fireworks displays in Menominee Michigan (City of Menominee 4th of July and Waterfront Festival Fireworks). However, the Coast Guard was informed that the fireworks display locations this year will differ from what is currently published. Thus, the Coast Guard is issuing this temporary final rule to ensure that a safety zone is established around the launch position of the two fireworks displays in Menominee Michigan.

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)(5 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 the 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 with respect to this rule because doing so would be impracticable and contrary to the public interest. The final details for this event were not known to the Coast Guard until there was insufficient time remaining before the event to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be both impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect vessels and persons from the hazards associated with two fireworks displays, which are discussed further below.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this temporary rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, waiting for a 30 day notice period to run would be impracticable and contrary to the public interest.

B. Basis and Purpose

The legal basis for this rule is the Coast Guard's authority to establish safety zones: 33 U.S.C. 1231; 33 CFR 1.05–1, 160.5; Department of Homeland Security Delegation No. 0170.1.

On July 4, 2014, the City of Menominee will host its annual Fourth of July Celebration Fireworks. Additionally, on August 9, 2014, the City of Menominee will host its annual Waterfront Festival fireworks. These fireworks displays will be launched from the vicinity of the eastern breakwater of Menominee Marina. The Coast Guard anticipates that a large number of spectators will gather for these fireworks displays. The Captain of the Port, Lake Michigan, has determined that these fireworks displays will pose a significant risk to public safety and property. Such hazards include falling and/or flaming debris, and collisions among spectator vessels.

C. Discussion of the Final Rule

With the aforementioned hazards in mind, the Captain of the Port, Lake Michigan has determined that this temporary safety zone is necessary to ensure the safety of persons and vessels during the fireworks displays in the vicinity of Menominee Marina. This zone is effective from July 4, 2014 until August 9, 2014. This zone will be enforced from 9 p.m. until 10:30 p.m. on July 4, 2014 and from 9 p.m. until 10:30 p.m. on August 9, 2014. The safety zone will encompass all waters of Green Bay, in the vicinity of Menominee Marina, within a 1000-foot radius of a position at 45°6′26.3″ N and 087°35′59.2″ W (NAD 83).

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Lake Michigan or her designated on-scene representative. The Captain of the Port or her designated on-scene representative may be contacted via VHF Channel 16.

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. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for a relatively short duration on two days. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this temporary rule on small entities. 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 might be small entities: the owners or operators of vessels intending to transit or anchor in the affected portion of Green Bay on July 4 and August 9, 2014.

This safety zone will not have a significant economic impact on a substantial number of small entities for the reasons cited in the *Regulatory Planning and Review* section. Additionally, before the enforcement of this zone, we would issue local Broadcast Notice to Mariners so vessel owners and operators can plan accordingly.

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** section 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 the establishment of a safety zone and therefore it is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 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. Chapters 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.T09–0539 to read as follows:

§ 165.T09–0539 Safety Zone; City of Menominee Fireworks; Green Bay, Menominee, MI.

(a) Location. All waters of Green Bay, in the vicinity of Menominee Marina within a 1000-foot radius of a position at 45°6′26.3″ N and 087°35′59.2″ W (NAD 83).

(b) Effective and enforcement periods. This rule is effective from July 4, 2014 until August 9, 2014. This rule will be enforced with actual notice from 9 p.m. until 10:30 p.m. on July 4, 2014, and from 9 p.m. until 10:30 p.m. on August 9, 2014.

(c) Regulations. (1) In accordance with the general regulations in § 165.23, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port, Lake Michigan or her designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port, Lake Michigan or her designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port, Lake Michigan is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port, Lake Michigan to act on her behalf.

(4) Vessel operators desiring to enter or operate within the safety zone must contact the Captain of the Port, Lake Michigan or her on-scene representative to obtain permission to do so. The Captain of the Port, Lake Michigan or her on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port, Lake Michigan or her on-scene representative.

Dated: June 30, 2014.

A.B. Cocanour,

Captain, U.S. Coast Guard, Captain of the Port, Lake Michigan.

[FR Doc. 2014–16327 Filed 7–11–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Chapter II

[CFDA Number: 84.282N]

Final Priorities, Requirements, and Definitions—Charter Schools Program (CSP) Grants for National Leadership Activities

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Final priorities, requirements, and definitions.

SUMMARY: The Assistant Deputy Secretary for Innovation and Improvement announces final priorities, requirements, and definitions under the CSP Grants for National Leadership Activities. The Assistant Deputy Secretary may use one or more of these priorities, requirements, and definitions for competitions in fiscal year (FY) 2015 and later years.

DATES: *Effective Date:* These final priorities, requirements, and definitions are effective August 13, 2014.

FOR FURTHER INFORMATION CONTACT: Brian Martin, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W224, Washington, DC 20202–5970. Telephone: (202) 205–9085. Or by email: *brian.martin@ed.gov*.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Purpose of Program

The purpose of the CSP is to increase national understanding of the charter school model by—

(1) Providing financial assistance for the planning, program design, and initial implementation of charter schools;

(2) Evaluating the effects of charter schools, including the effects on students, student academic achievement, staff, and parents;

(3) Expanding the number of high-quality charter schools (as defined in the notice) available to students across the Nation; and

(4) Encouraging the States to provide support to charter schools for facilities financing in an amount that is more commensurate with the amount the States have typically provided for non-chartered public schools.

The purpose of the CSP Grants for National Leadership Activities (CFDA 84.282N) is to support efforts by eligible entities to improve the quality of charter schools by providing technical assistance and other types of support on issues of national significance and scope.

Program Authority

The CSP is authorized under 20 U.S.C. 7221–7221i; CSP Grants for National Leadership Activities are authorized under 20 U.S.C. 7221d.

The U.S. Department of Education (Department) published a notice of proposed priorities, requirements, and definitions (NPP) for the CSP Grants for National Leadership Activities in the **Federal Register** on December 3, 2013 (78 FR 72600). The NPP contained background information and our reasons for proposing the particular priorities, requirements, and definitions.

The *Analysis of Comments and Changes* section in this notice describes the differences between the priorities, requirements, and definitions we proposed in the NPP and these final priorities, requirements, and definitions. The two most significant changes are as follows:

We revised the language in *Priority 2—Improving Accountability* to clarify how applicants can describe how their projects will improve authorized public chartering agencies' capacity to approve new charter schools. We made this change because the proposed priority referred to authorized public chartering agencies' capacity to approve only high-quality charter schools, which, as defined in this notice, requires that the school show evidence of strong academic results for the past three years (or over the life of the school, if the school has been open for fewer than three years). While authorized public chartering agencies, or authorizers, should approve only high-quality charter petitions, it is not feasible for authorizers to approve only high-quality charter schools as defined in this notice, as the definition would not allow an authorizer to approve a new charter school with no academic achievement data.

We revised *Priority 3—Students with Disabilities* and *Priority 4—English Learners* to allow applicants to address the priorities by promoting collaborative activities between charter schools, non-chartered public schools, and as applicable, key special education stakeholders or key English learner stakeholders, which are designed to improve academic achievement and attainment outcomes for these student subgroups.

Public Comment: In response to our invitation in the NPP, 38 parties submitted comments on the proposed priorities, requirements, and definitions.

Generally, we do not address technical and other minor changes. In addition, we do not address comments that raise concerns not directly related to the proposed priorities, requirements, or definitions.

Analysis of Comments and Changes: An analysis of the comments and any changes in the proposed priorities, requirements, and definitions since publication of the NPP follows.

Priorities

Comment: Multiple commenters made suggestions regarding how each of the priorities should be designated (i.e.,

absolute, competitive preference, or invitational). Specifically, one commenter suggested that we use *Priority 1—Improving Efficiency through Economies of Scale* as an invitational priority because, according to the commenter, the objectives of the priority are already in place through cooperative agreements with school districts and private organizations. Another commenter suggested that due to the overall growth of English learners, *Priority 4—English Learners* should be a competitive preference priority. A third commenter suggested that *Priority 5—Personalized Technology-Enabled Learning* should be an absolute priority, as positive impact can be seen across all student subgroups.

Discussion: This notice is designed only to establish the priorities that we may choose to use in the CSP Grants for National Leadership Activities competitions in 2015 and future years. We do not designate whether a priority will be absolute, competitive, or invitational in this notice; we retain the flexibility to determine how best to designate the priorities to ensure that funded projects address the most pressing areas of need for competitions in 2015 or in future years. When inviting applications for a competition using one or more of these priorities, we will designate the type of each priority through a notice in the **Federal Register**.

Changes: None.

Comment: One commenter suggested that each of the priorities should place more of an emphasis on communication and dissemination activities in order to ensure that each project's effectiveness can be reviewed and evaluated by other organizations.

Discussion: We appreciate the suggestion and agree that the evaluation of a project and the communication and dissemination of information about a project's effectiveness are important. Because entities receiving the CSP Grants for National Leadership Activities are required to demonstrate how they will disseminate information at the charter school national level (as defined in this notice), an emphasis on communication and dissemination already exists in this notice. Although we agree project evaluation and dissemination of the results of the evaluation are critical to the CSP Grants for National Leadership Activities, we do not think it is necessary to develop a program-specific requirement regarding evaluation because evaluation design can be addressed through selection criteria. Specifically, the Education Department General Administrative Regulations (EDGAR) include a selection criterion under 34 CFR 75.210(h), Quality of the Project Evaluation, that provides selection factors that encourage applicants to conduct rigorous evaluations of their projects and disseminate relevant findings, which could be incorporated in the selection criteria for a future competition under this program.

Changes: None.

Comment: Two commenters suggested creating a priority designed to increase the development and refinement of charter school leaders. One of the commenters stated that creating a leadership pipeline was important, particularly in the current context of major reforms, including the implementation of Common Core State Standards and new teacher evaluation systems. Both commenters stated that high-quality leaders are of critical national importance as States launch new assessments aligned with college- and career-ready standards.

Discussion: We agree that improving human capital development for the charter school sector is of national significance. However, we do not think a separate priority is needed to address this issue. We note that applicants already have flexibility to incorporate activities involving human capital development as part of projects addressing *Priority 1—Improving Efficiency through Economies of Scale.*

Changes: None.

Comment: One commenter proposed that the Department add an additional priority, ''Promoting Racial and Economic Diversity.'' Another commenter proposed we add a similar priority with a focus on diversity and cultural competency. Both commenters noted that the absence of a school diversity priority is especially troubling in light of Department publications that emphasize the importance of, and offer guidance with respect to, issues regarding diversity in public education.

Discussion: We appreciate the commenters' concerns and agree that increasing diversity is important; however, we do not think a separate priority is needed. We note that efforts to increase diversity and cultural competency can be included as allowable activities under the priorities selected for CSP Grants for National Leadership Activities competitions. In addition, the eligible applicants under other CSP competitions, such as those under the CSP State Educational Agency (SEA) competition, whose grantees provide start-up and dissemination grants directly to individual charter schools, are likely better suited to increase diversity in charter schools.

Changes: None.

Comment: One commenter suggested that we create an additional priority that rewards applicants that demonstrate their schools have an expulsion and suspension rate similar to, or lower than, the schools in their surrounding communities or school districts. In addition, the commenter recommended preference be given to grant applicants under this program that have a record of serving students with disabilities and English learners at the same or better rates than their surrounding communities or school districts.

Discussion: Although we appreciate the commenter's concerns, the CSP Grants for National Leadership Activities competition is designed to support projects of national significance for charter schools and is not meant to award points based on the specific characteristics of a given school.

Changes: None.

Comment: One commenter suggested we add a priority addressing the following topics: curriculum, instruction and assessment, data-driven decision-making and analysis, performance management, and professional learning communities.

Discussion: We agree that each of the topics above, especially for the purpose of improving student achievement and teacher effectiveness, is an area of national significance. However, we do not think a separate priority is needed to address these topics as applicants already have flexibility to incorporate these topics as part of projects addressing *Priority 1—Improving Efficiency through Economies of Scale.*

Changes: None.

Comment: One commenter suggested that many charter school incubators and other investing organizations play a major role in opening and closing charter schools; therefore, the Department should consider assisting such organizations in increasing the quality of their investment processes and the sharing of their best practices under this program.

Discussion: We think investing organizations, such as charter school incubators, play an important role in the charter school sector. We note that applicants already have flexibility to incorporate these concepts as part of projects addressing *Priority 1—Improving Efficiency through Economies of Scale.*

Changes: None.

Comment: One commenter recommended removing the national scope requirement from *Priority 1—Improving Efficiency through Economies of Scale* and *Priority 2—Improving Accountability.* The commenter stated that, for Priority 1, the costs of

providing services for English learners and students with disabilities, and educators, in addition to the costs associated with bringing schools in different geographic locations together, far outweigh the costs saved by developing systems of scale. The commenter stated that Priority 2's requirement for projects of national significance and scope would exclude authorized public chartering agencies that limit their charters to only one State.

Discussion: As the CSP Grants for National Leadership Activities competition is dedicated to national activities, it is important that we award grants for projects with a national relevance. We disagree that the cost of implementing a project that is national in its scope outweighs the benefits of developing shared systems of collaboration and information. In Priority 1, the Department encourages organizations affiliated with the charter school sector to implement innovative ideas for achieving economies of scale and aggregating demand in the charter sector. Applicants addressing these priorities must describe how the project will have national significance and scope. However, the priorities do not dictate how an individual applicant should incorporate national significance or scope into its proposed project. We think that if an applicant proposed a project that would occur within only one State, but still demonstrated that the proposed project is of national significance and scope and meets all requirements, the proposed project could be eligible under Priority 1 or Priority 2.

Changes: None.

Comment: Two commenters suggested eliminating *Priority 1—Improving Efficiency through Economies of Scale.* One commenter felt that the priority does not warrant enough importance for this competition. A second commenter stated that the idea behind the priority was appealing, but that, in practice, transaction costs often outweigh any sustainable economies of scale.

Discussion: We think Priority 1 is important for this competition, as it will encourage more collaboration and improve efficiencies in the charter sector. This priority is intended to address the barriers that charter schools experience when trying to achieve economies of scale, and to promote shared systems for acquiring and developing resources supporting the charter school sector. By promoting projects of national significance that can encourage such shared systems and that support the dissemination and replication of successful practices nationally, including the assembly of communities of practice, we think eligible applicants will address the concerns and transaction costs that can potentially discourage such partnerships and collaborations. In addition, we think that the creation of partnerships and collaborations will foster the development of innovative practices in scaling operational services that may benefit schools. This priority is not only for charter school collaborations that are achieving economies of scale but could also be for organizations bringing charter schools together to develop economies of scale and thus reduce the costs and burden placed on the schools.

Changes: None.

Comment: One commenter noted that *Priority 1—Improving Efficiency through Economies of Scale* appears to indicate that urban centers may receive preferential treatment over rural areas. The commenter suggested that a competition of truly national scope must include a goal of creating and supporting both a single site and a network of vibrant rural sites, as well as serving large urban areas.

Discussion: The priorities are designed to encourage charter school projects with a national scope and significance. The definition of ''charter school national level'' used in *Priority 1—Improving Efficiency through Economies of Scale* and *Priority 2—Improving Accountability* states that the applicant's dissemination strategy at the charter school national level will consist of working across multiple States across the country, including rural and urban areas. Other priorities only require that projects are of national significance and scope, which does not give preference to urban centers over rural areas.

Changes: None.

Comment: One commenter urged that a series of in-depth cost studies be undertaken to provide a detailed overview of the types of costs associated with *Priority 1—Improving Efficiency through Economies of Scale.*

Discussion: We appreciate the commenter's concern regarding the types of costs associated with *Priority 1—Improving Efficiency through Economies of Scale.* Applicants that apply under this priority would need to describe how, and the extent to which, the activities proposed in their applications will achieve efficiencies. These narrative descriptions in the applications, along with the other measures in paragraphs (2) through (5) of Priority 1 will allow peer reviewers to evaluate whether, and to what extent, applicants will achieve efficiencies in the use of time, staff, money, services for special populations, or other resources. Provided an applicant meets all requirements under this priority, the applicant could propose to use these funds to conduct a cost study as part of its proposed project activities.

Changes: None.

Comment: One commenter asked if *Priority 1—Improving Efficiency through Economies of Scale* supports economies of scale that can arise from teacher-based cooperative arrangements or human capital management solutions. The commenter also asked how the priority would apply to individual schools, or whether a critical evaluation of office products or services, group licensing of licensed services, or a comparison with various sources of teachers and leaders from the cost efficiency perspective would be sufficient to meeting the requirements of the priority. In addition, the commenter asked if *Priority 1—Improving Efficiency through Economies of Scale* would apply to efficiencies across providers within a sector.

Discussion: Individual charter schools, provided they meet all requirements under this priority, would be eligible to apply as part of an existing or proposed partnership or consortium. An individual charter school would not be eligible to apply under this priority independent of an existing or proposed partnership or consortium. As stated in *Priority 1—Improving Efficiency through Economies of Scale,* applicants should seek innovative solutions to achieve efficiencies in the use of time, staff, money, services for special populations, or other resources for the purpose of creating, supporting, and sustaining high-quality charter schools (as defined in this notice). If teacher-based cooperative agreements, human capital management solutions, critical evaluations of office products or services, group licensing of licensed services, a comparison with various sources of teachers and leaders from the cost efficiency perspective, or other proposed activities would achieve these efficiencies, an applicant could include these activities to address Priority 1. Similarly, if proposed activities to increase the efficiencies across providers within a sector meet all requirements under this priority, an applicant could include those activities to address Priority 1.

Changes: None.

Comment: One commenter recommended that under *Priority 1—Improving Efficiency through Economies of Scale,* we consider how applicants can demonstrate that their policies, processes, and communications will achieve efficiencies in assisting special

populations, or any activities related to running a high-quality charter school.

Discussion: Priority 1—Improving Efficiency through Economies of Scale is not limited to specific economies of scale, such as assisting special populations, or the specific activities of operating a high-quality charter school (as defined in this notice). We want all applicants to consider, based on their experience, the areas of greatest need for the charter school sector to determine how to address the priority. As such, applicants have the flexibility and discretion to propose projects that achieve efficiencies in any of the areas included in the priority language.

Changes: None.

Comment: One commenter suggested that *Priority 1—Improving Efficiency through Economies of Scale* include the possibility for organizations that have collaborations already in place to apply for funding.

Discussion: Priority 1—Improving Efficiency through Economies of Scale is intended to encourage the development of consortia of charter schools that will share systems for acquiring goods or services. We edited the second introductory paragraph of *Priority 1—Improving Efficiency through Economies of Scale* to clarify that existing partnerships or consortia could apply under this priority. We agree that this change is appropriate to further the purpose of the program and Priority 1.

Changes: We changed the second introductory paragraph of Priority 1 to ''An applicant addressing this priority must apply as part of an existing or proposed partnership or consortium that includes two or more high-quality charter schools, as defined in this notice . . .''

Comment: One commenter suggested that the goal of *Priority 1—Improving Efficiency through Economies of Scale* is undermined by not including charter management organizations (CMOs) seeking to promote shared services and systems. The commenter noted that CMOs are often at the forefront of efforts to share services and systems, and that successful CMOs can serve as national models and leaders for district and charter schools in developing these shared systems and economies of scale. Conversely, another commenter suggested that *Priority 1—Improving Efficiency through Economies of Scale* clarify whether eligible applicants must be CMOs.

Discussion: To clarify, CMOs are eligible applicants under Priority 1. Eligible applicants include public and private nonprofit organizations with a mission that explicitly includes operating, supporting, or managing charter schools; this eligibility includes CMOs and many other types of organizations. In addition, upon further review, we determined that the language of the proposed priority would have allowed a single CMO to develop a partnership or consortium comprised solely of schools within its network, which was not the intent. We revised paragraph (2) of *Priority 1—Improving Efficiency through Economies of Scale* to clarify that the applicant must describe how activities will include members or proposed members that are not affiliated exclusively with a common network (e.g., a charter management organization). As such, a CMO applicant's project must include other entities beyond its current network. This requirement does not exclude CMOs from applying, but it does require project applications from CMOs to identify members of the proposed partnership or consortium beyond their network.

Change: We revised paragraph (2) of *Priority 1—Improving Efficiency through Economies of Scale* to ''The members or proposed members of the partnership or consortium, how the composition of this partnership or consortium contributes to achieving efficiencies, and the specific activities each member or proposed member will implement. Applicants must demonstrate that members of the existing or proposed partnership or consortium are not affiliated exclusively with a common network (e.g., a charter management organization).''

Comment: Two commenters made suggestions regarding consortia in *Priority 1—Improving Efficiency through Economies of Scale.* One commenter suggested that charter schools that are not yet high-quality charter schools be allowed to participate in consortia and receive services through consortia. The commenter noted that the current language could be interpreted to only allow consortia to serve schools that already meet the definition of high-quality charter schools, thus reducing the effectiveness and viability of consortia. In addition, one commenter suggested that the priority should not be limited to developing consortia of charter schools but rather encourage the development of any innovative system that achieves economies of scale in the charter sector.

Discussion: The Department would like to clarify that *Priority 1—Improving Efficiency through Economies of Scale* does not limit consortia to serving only schools that meet the definition of high-quality charter schools; however, all charter schools that apply as part of a partnership or consortium, or apply under a group application, must meet that definition. The purpose of this priority is to establish a connected group that will create an opportunity for charter schools to develop strategies and practices to assist the charter schools in becoming high-quality charter schools (as defined in this notice). This priority creates an opportunity for charter schools to develop strategies and practices that will assist them in becoming high-quality charter schools, as defined by standards in this notice or by State and authorizer standards, whichever are more rigorous. Consortia members are not limited to charter schools; they may be comprised of any organizations that meet the eligibility requirements under the Eligibility section of this notice. As discussed elsewhere in this notice, we clarified this point by editing the second introductory paragraph of Priority 1. In addition, upon further review of the priority language, we changed the first introductory paragraph of Priority 1 and paragraph (3) of Priority 1. Creating and sustaining high-quality charter schools (as defined in this notice) is a fundamental component of high-quality authorizing; however, while authorized public chartering agencies should only approve petitions from applicants that demonstrate the capacity to create high-quality charter schools, we recognize that it is not possible for newly created charter schools to meet the definition of a high-quality charter school because the definition includes a requirement that the school show evidence of strong academic results for the past three years (or over the life of the school, if the school has been open for fewer than three years). As discussed elsewhere in this notice, new charter schools would not be able to meet the requirements of this definition. In addition to language that would help in creating charter schools that demonstrate the capacity to become high-quality and in sustaining those that are high-quality, we added language to support new charter schools in becoming high-quality.

Changes: We revised the first introductory paragraph of *Priority 1—Improving Efficiency through Economies of Scale* by replacing ''creating and sustaining high-quality charter schools'' with ''creating, supporting, and sustaining high-quality charter schools (as defined in this notice).'' In addition, in paragraph (3) of Priority 1, we replaced ''How proposed project activities will help create and sustain high-quality charter schools'' with ''How the proposed project activities will help create charter schools that demonstrate the capacity to become

high-quality charter schools, support new charter schools to become high-quality charter schools, and sustain charter schools that are high-quality.''

Comment: One commenter suggested that under *Priority 1—Improving Efficiency through Economies of Scale,* we broaden the scope of allowable activities to encourage information sharing and efforts, such as developing common systems of open enrollment.

Discussion: As stated in *Priority 1—Improving Efficiency through Economies of Scale,* applicants should seek innovative solutions to achieve efficiencies in the use of time, staff, money, services for special populations, or other resources for the purpose of creating, supporting, and sustaining high-quality charter schools (as defined in this notice). As written, the priority language provides applicants the flexibility and discretion to propose projects that achieve efficiencies in any of the areas included in the priority language. As such, an applicant is not prohibited from proposing activities to encourage information sharing and efforts such as developing common systems of open enrollment so long as that applicant meets the requirements of this priority and all eligibility requirements.

Changes: None.

Comment: One commenter suggested that we add language to paragraphs (1) and (2) under *Priority 1—Improving Efficiency through Economies of Scale* that requires applicants to document the involvement of parents and other members from the community where the charter school will be located. The commenter also suggested that applicants should be required to communicate guidance, rules, policy changes, and expectations to approved charter schools and the school's student applicants in an effective and timely manner.

Discussion: We appreciate the commenter's support for family and community engagement and effective communication with charter schools and their applicants and think because of the wide range of projects that could be considered under this priority, it is not appropriate to require a family and community engagement component of all applicants. In addition, a requirement to communicate guidance, rules, policy changes, and expectations to approved charter schools and the school's student applicants in an effective and timely manner would be included in a grant application and not in this final priority. Such requirements, if any, will be detailed in the notice inviting applications or application package for any future competition under this program.

Changes: None.

Comment: None.

Discussion: Upon further review, we determined that paragraph (1) of proposed *Priority 1—Improving Efficiency through Economies of Scale,* which supports projects that improve efficiency in the ''use of time, staff, money, services for special populations, or other areas,'' should be revised. We think that the word ''areas'' is too broad, and that ''resources'' suggests achieving economic efficiencies in a way that ''areas'' does not.

Changes: In paragraph (1) of *Priority 1—Improving Efficiency through Economies of Scale,* we replaced ''areas'' with ''resources.'' This change also maintains consistency in the language with the first sentence of the priority.

Comment: None.

Discussion: Upon further review, we realized that in the introductory paragraph of *Priority 1—Improving Efficiency through Economies of Scale,* we refer to ''partnership or consortium'' but we also refer to ''consortium or consortia'' in the priority. We want to maintain consistent language in these references.

Changes: We replaced ''consortium or consortia'' in the second introductory paragraph and paragraph (1) with ''partnership or consortium.''

Comment: None.

Discussion: Upon further review, we determined that we could avoid using both ''primarily'' and ''primary'' in the same sentence in paragraph (4) of *Priority 1—Improving Efficiency through Economies of Scale* without changing the intended meaning. Accordingly, we have replaced ''primary'' with ''chief.'' In addition, in that same paragraph, we added LEAs as an example of a stakeholder group to whom the project activities could be disseminated secondarily.

Changes: We replaced the phrase ''primarily to charter schools as the primary stakeholder group'' with ''primarily to charter schools as the chief stakeholder group.'' We also included the term ''LEAs'' to read ''. . . such as charter school support organizations, LEAs, and authorized public chartering agencies, as appropriate, at the charter school national level (as defined in this notice).''

Comment: None.

Discussion: Upon further review of *Priority 1—Improving Efficiency through Economies of Scale,* we determined that the dissemination strategy required under paragraph (4) includes dissemination at the charter school national level (as defined in this notice) and this creates confusion with the ''national significance and scope'' described in paragraph (6). To clarify our intent, we have edited ''national significance and scope'' to ''national significance'' in paragraph (6).

Changes: We replaced ''national significance and scope'' with ''national significance'' in paragraph (6) of *Priority 1—Improving Efficiency through Economies of Scale.*

Comment: One commenter suggested that a statement in the background section to *Proposed Priority 2—Improving Accountability* in the NPP be retracted. The sentence in the NPP said, ''Once schools are open, accountability practices for charter schools need to be strengthened within States.'' In addition, the commenter noted that use of the term ''more consistently'' in this same section of the background in the NPP has no backing to substantiate the claim that authorizers need to review their accountability practices.

Discussion: In the background section for this priority in the NPP, we provided an explanation of the development of the priority. Because charter schools across the country are not authorized by a single entity and 43 distinct sets of State laws govern charter schools, the potential for inconsistency exists in how charter schools are held accountable for their academic, financial, and operational performance results. In addition, we think that accountability practices for charter schools need to be strengthened within States. *Priority 2—Improving Accountability* is designed to support improvements in the accountability of authorizers. Specifically, this priority aims to support the dissemination of effective authorizing practices to all authorizers so they adopt practices that will strengthen oversight.

Changes: None.

Comment: One commenter noted that the language in paragraph (2) of *Priority 2—Improving Accountability* precludes applicants that serve charter schools in one State, or one city, from the opportunity to apply for funds and to extend their reach nationally. The commenter noted that the CSP Grants for National Leadership Activities competition would exclude the best of local authorized public chartering agencies that authorize charter schools in only one State or city.

Discussion: The purpose of *Priority 2—Improving Accountability* is to ensure that applicants build authorizer capacity and disseminate successful practices within multiple regions of the United States. While this requirement

would limit local authorized public chartering agencies from applying individually, eligible applicants may apply as a partnership or consortium, allowing them to pool their experiences, skills, and resources. An authorized public chartering agency that authorizes charter schools in only one State could propose a project to improve authorized public chartering agencies' capacity at the regional level or national level.

Changes: None.

Comment: One commenter suggested that we add language to *Priority 2—Improving Accountability* that would require authorizers to develop and implement policies on how they will monitor charter applicants providing services to students with disabilities.

Discussion: To the extent that the commenter is referring to authorizer monitoring of the academic performance of charter schools, we agree that it is important for authorizers to focus in particular on students with disabilities. In addition, upon further review, we think it is also important for authorizers to focus similarly on English learners and other students in need of specialized services. Accordingly, we revised *Priority 2—Improving Accountability* by adding language that requires CSP Grants for National Leadership Activities applicants to include metrics to assess educational equity for students with disabilities, English learners, and other students in need of specialized services in their descriptions of the types of data authorizers should use to monitor and oversee charter schools. In addition, it is important to note that under section 612(a)(11) of the Individuals with Disabilities Education Act (IDEA) and 34 CFR 300.149(a)(2)(ii), the State educational agency, in carrying out its general supervisory responsibility, is required to ensure that all educational programs for students with disabilities administered in the State, including any other State agency or local agency, meet the educational standards of the State educational agency, including the requirements in the IDEA. Thus, under IDEA, the SEA has an overarching responsibility to ensure that all program requirements in the IDEA are met and to monitor implementation of those requirements by eligible entities, including charter schools that operate as LEAs that have established their eligibility under section 613 of the IDEA for Part B of the IDEA funds, and charter schools that are public schools of LEAs that receive Part B funds.

Changes: We revised paragraphs (1)(ii) and (2)(ii) of *Priority 2—Improving Accountability* to ''Monitor and oversee charter schools through measureable performance goals and multiple sources of regularly collected academic and operational performance data (using financial data, disaggregated student discipline data, and disaggregated student performance data, including metrics to assess educational equity for students with disabilities, English learners, and other students in need of specialized services).''

Comment: One commenter suggested we expand *Priority 2—Improving Accountability* to ensure the eligibility of projects proposed by charter support organizations that are designed to improve the capacity to develop and track measurable performance goals. The commenter stated that responsibility for the success of a charter school rests on the school and its governing organization, and that any priority for improved accountability must also include activities that focus on school-level accountability.

Discussion: We recognize the importance of factors, such as governance and performance management, to charter operators and authorized public chartering agencies. However, *Priority 2—Improving Accountability* is designed to address accountability through authorized public chartering agencies. The types of activities suggested by the commenter would fall within the scope of *Priority 1—Improving Efficiency through Economies of Scale.*

Changes: None.

Comment: One commenter suggested *Priority 2—Improving Accountability* be a competitive preference priority because the commenter's State does not address authorizer accountability.

Discussion: The intent of *Priority 2—Improving Accountability* is to support projects that are designed to improve authorizer capacity. We think this priority will encourage authorizers to improve their practices, even if their State does not clearly address authorizer accountability. In addition, as stated elsewhere in this notice, this action is designed only to establish the priorities that we may choose to use in the CSP Grants for National Leadership Activities competitions in 2015 and future years. We do not designate whether a priority will be absolute, competitive, or invitational in this notice.

Changes: None.

Comment: One commenter suggested that we should broaden the scope of *Priority 2—Improving Accountability* to clarify that successful applicants may work with non-authorizers that have influence over, and play a role in, improving authorizer quality.

Discussion: Applicants may propose dissemination activities described in paragraphs (3) and (4) of Priority 2 that include organizations other than authorized public chartering agencies, such as SEAs or charter support organizations, so long as authorized public chartering agencies are the primary focus of those activities. While we understand the important role of non-authorizers in authorizer accountability, the intent of this priority is to build authorizer capacity.

Changes: None.

Comment: One commenter suggested that the phrase ''within a variety of communities'' in *Priority 2—Improving Accountability* be clarified or removed, as it is unclear to the commenter whether ''communities'' means geographic communities or another type of community.

Discussion: In this context, we intend ''within a variety of communities'' to mean a variety of geographic communities, specifically communities at the regional level (as defined in this notice), or at the national level (as defined in this notice). Notably, we added definitions of ''national level'' and ''regional level,'' and these definitions include the ''variety of communities'' phrasing that the commenter referenced. Therefore, we deleted the phrase from the language of Priority 2 to avoid duplicative phrasing.

Changes: We changed the text of Priority 2, paragraph (1) to ''How the proposed project will improve, at the regional level (as defined in this notice) or the national level (as defined in this notice), authorized public chartering agencies' capacity to . . . '' We also changed the text of Priority 2, paragraph (2) to ''The applicant's prior success in improving, at the regional level (as defined in this notice) or the national level (as defined in this notice), authorized public chartering agencies' capacity to . . .''

Comment: One commenter suggested that *Priority 2—Improving Accountability* should clarify the goal of improving authorizer capacity in paragraphs (1)(i) and (2)(i) by focusing on improving standards of approval, not the capacity to approve charter schools.

Discussion: To clarify, the intent of paragraphs (1)(i) and (2)(i) is improving standards of approval by authorized public chartering agencies. We think that ambitious standards for approving charter school applications and rigorous application review processes will ensure that authorizers approve only charter school applications that demonstrate the capacity to create and sustain high-quality charter schools (as defined in this notice). Furthermore, it

is not feasible to expect authorizers to approve only high-quality charter schools, as the definition includes a requirement that the school show evidence of strong academic results for the past three years (or over the life of the school, if the school has been open for fewer than three years). We recognize that new charter schools would not be able to meet this requirement as they would not yet have evidence of strong academic results.

Changes: We replaced ''Approve only high-quality charter schools that meet the standards of a rigorous application process and review'' in paragraphs (1)(i) and (2)(i) of *Priority 2—Improving Accountability* with ''Approve only applications that demonstrate capacity to create and sustain high-quality charter schools (as defined in this notice) and meet the standards of a rigorous application process and review.''

Comment: One commenter stated that the language ''maintain portfolios of high-quality charter schools by evaluating authorizer and portfolio performance and disseminating information on the performance of those portfolios'' in proposed *Priority 2—Improving Accountability* was unclear and recommended it be removed.

Discussion: Evaluating authorizer and portfolio performance will result in more high-quality charter schools being approved; however, for the reasons discussed elsewhere in this notice, we understand that it is practically infeasible to use the ''high-quality charter school'' definition proposed in the NPP for charter school applicants that have not yet begun educating students. As such, we agree with the commenter that clarification is needed and have edited the language of *Priority 2—Improving Accountability* to provide that clarification.

In addition, while not in response to public comment, upon further review of *Priority 2—Improving Authorizer Accountability,* we removed ''and help improve the ability of other authorized public chartering agencies to produce similar results'' from paragraph (2)(iv). Our intent in this section is for applicants to include information about their prior successes in evaluating authorizer and portfolio performance and disseminating information on that performance. We did not intend for applicants that are authorized public chartering agencies to be required to show how they have helped other authorized public chartering agencies to produce similar results, as the proposed language implied.

Changes: We replaced ''Maintain portfolios of high-quality charter schools by evaluating authorizer and portfolio performance and disseminating information on the performance of those portfolios'' in *Priority 2—Improving Accountability,* paragraphs (1)(iv) and (2)(iv) with ''Evaluate authorizer and portfolio performance and disseminate information on that performance.'' We also removed ''and help improve the ability of other authorized public chartering agencies to produce similar results'' from paragraph (2)(iv).

Comment: One commenter suggested the Department encourage authorizers to employ data effectively by ensuring the data are available to and usable to relevant stakeholders, including parents and community members. The commenter also suggested that *Priority 2—Improving Accountability* support charter school authorizers that include disaggregated student data and data on student growth in their performance management systems.

Discussion: We appreciate the comments about the effective use of data, including the use of disaggregated student data to promote authorizer accountability. We believe applicants could use the dissemination activities described in *Priority 2—Improving Accountability* paragraphs (3) and (4) to ensure that data are made available to multiple stakeholders, including parents and community members. As such, we decline to edit that portion of the priority language. However, we agree that disaggregated data are important, particularly in identifying achievement gaps and discipline disparities, and including student growth data in performance management systems will improve the ability of authorizers to monitor and oversee charter schools as well as to measure performance. As such, we revised the priority language to emphasize the use of performance data.

Changes: In the introductory paragraph of *Priority 2—Improving Accountability,* we revised ''monitor and oversee charter schools using data and measurable performance goals'' to ''monitor and oversee charter schools using multiple sources of data, including disaggregated student data, and measurable performance goals.'' In addition, in paragraphs (1)(ii) and (2)(ii), we revised the language ''Monitor and oversee charter schools through the regular collection of data, including student performance and financial data, and measurable performance goals'' to ''Monitor and oversee charter schools through measurable performance goals and multiple sources of regularly collected academic and operational performance data (using financial data, disaggregated student discipline data, and disaggregated student performance data, including metrics to assess educational equity for students with disabilities, English learners, and other students in need of specialized services).'' In addition, upon further review, we revised the introductory paragraph of *Priority 2—Improving Accountability* by replacing ''communicate the performance of that portfolio'' with ''disseminate information on the performance of charter schools,'' as we think this language more closely corresponds to paragraph (3) of Priority 2.

Comment: One commenter suggested that *Priority 2—Improving Accountability* could improve accountability and authorizer practices through: Collective voluntary accountability, where a self-monitoring network could exist within the public charter school community; experimentation with new approaches such as parental influence on school accountability; and building knowledge bases, where authorized public chartering agencies could provide assistance to other authorizers in implementing successful practices that improve the quality of schools they authorize.

Discussion: The intended focus of *Priority 2—Improving Accountability* is on improving authorizer capacity, as we think effective authorizing and oversight influence charter school quality. While voluntary accountability, parental influence on accountability, and knowledge building and sharing could be components of improving accountability and authorizer practices, we think improving authorizer capacity, as described in *Priority 2—Improving Accountability,* would have the largest impact on improving accountability, and would, in turn, increase quality in the charter school sector.

Changes: None.

Comment: One commenter suggested that a research and evaluation component be added to *Priority 2—Improving Accountability* to enhance national understanding of high-quality authorizing and how policy can best support it. The commenter noted that the proposed priority should also consider how local districts and authorizers managing a diverse portfolio of schools can improve their accountability frameworks for both the public charter and non-chartered public sectors.

Discussion: In addition to meeting other requirements, successful applicants under this priority must improve authorizer capacity to evaluate authorizer and portfolio performance and disseminate that information to

help improve the ability of other authorized public chartering agencies to produce similar results. While we think research and evaluation could greatly benefit authorizers, we decline to make a change. Provided that they meet all requirements under this priority, applicants' research and evaluation activities would be allowable under this program. In addition, the selection criterion 34 CFR 75.210(h), Quality of the Project Evaluation, provides selection factors that encourage applicants to conduct rigorous evaluations of their projects, which could be incorporated in the selection criteria for a future competition under this program.

Changes: None.

Comment: One commenter suggested that the activities under *Priority 3—Students with Disabilities* do not address the need of public charter schools to provide instruction for students with disabilities in the least restrictive environment (LRE), which is a major component of the IDEA.

Discussion: We agree with the commenter that LRE is critical to the education of all children with disabilities in charter schools. Because under the IDEA, students with disabilities and their parents retain all rights under the IDEA, including the right to be educated in the LRE, we do not believe it is necessary for this priority to focus on the IDEA's LRE requirements.

Changes: None.

Comment: One commenter stated that studies have shown that the lack of enrollment of students with disabilities in public charter schools is the result of policies and practices designed to minimize the enrollment of these students and not a capacity issue. The commenter further stated that ''strategies and tools'' referenced in *Priority 3—Students with Disabilities* are not the same as the ''practices'' referred to in the recommendations from a recent report by the U.S. Government Accountability Office (GAO).[1]

Discussion: While we agree with the commenter that the enrollment of students with disabilities in public charter schools is an important issue, we find that studies on this topic have not identified a single reason for any disparity in enrollment that may occur in some schools and districts. The GAO report recommended that ''the Secretary of Education take measures to help charter schools recognize practices that may affect enrollment of students with disabilities . . . '' We think that the ''strategies and tools'' that applicants develop in response to this priority will help them identify and improve practices that may affect enrollment of students with disabilities and increase equitable access to students with disabilities in public charter schools.

Changes: None.

Comment: One commenter stated that ''promising practices,'' as used in *Priority 3—Students with Disabilities,* are instructional approaches that improve student achievement, not approaches that only increase students with disabilities' access to schools to which they already have a legal right to attend. Furthermore, the commenter stated that an abundance of knowledge already exists on how to improve student achievement, and improving the achievement of students with disabilities in public charter schools does not differ significantly from improving their achievement in non-chartered public schools.

Discussion: We disagree that ''promising practices'' only refers to instructional approaches, and we consider practices that increase equitable access to public charter schools for students with disabilities and the schools' capacity to enroll students with disabilities, as well as approaches that improve student achievement, student growth, high school graduation rates, and college enrollment rates for students with disabilities to be promising practices.

While existing resources for improving the achievement of students with disabilities can benefit public charter schools and non-chartered public schools, charter schools need to be aware of, and have access to, such resources.

Changes: None.

Comment: One commenter suggested that to better address any issues that may exist around the enrollment of students with disabilities in public charter schools, the activities should be more closely aligned with recommendations made in the GAO report on the enrollment of students with disabilities in charter schools.[2]

Discussion: The GAO report referenced above made the following recommendations:

1. Update existing guidance to ensure that public charter schools have better information about their obligations related to the enrollment of students with disabilities; and

2. Conduct additional fact finding and research to understand the factors affecting enrollment of students with disabilities in public charter schools and act upon that information, as appropriate.

We are in the process of updating existing guidance on the rights of students with disabilities in charter schools and are conducting additional fact finding and research to understand the factors affecting enrollment of students with disabilities in public charter schools. Our response to the GAO report cited above includes reviewing and documenting State policies, guidance, and reports regarding enrollment of, and services to, students with disabilities in charter schools and includes compiling a set of case studies of charter schools with both high and low enrollment of students with disabilities; these activities are continuing. In the meantime, the CSP Grants for National Leadership Activities competition includes *Priority 3—Students with Disabilities* to help address enrollment, access, and achievement of students with disabilities in charter schools.

In addition, the Department's response to the second recommendation in the GAO report stated that the CSP's grant competitions ''are likely to continue to include competitive and invitational priorities for applications that propose to improve achievement for students with disabilities.'' The inclusion of *Priority 3—Students with Disabilities* in this notice of final priorities addresses that recommendation.

Changes: None.

Comment: One commenter suggested that *Priority 3—Students with Disabilities* include a research component that would provide national leadership in discovering the nature of, and systematically identifying the solution to, the underrepresentation of students with disabilities in certain locations, as identified in the GAO report on the enrollment of students with disabilities in charter schools.[3] The commenter also suggested the Department prioritize research on the outcomes of students with disabilities who attend charter schools.

Discussion: The Department understands the importance of research and evaluation of issues around the enrollment of students with disabilities in charter schools, which may advance policies that support equitable access to charter schools for students with disabilities. While this priority does not specifically mention research components, applicants may propose activities focused on research and

[1] U.S. Government Accountability Office. ''Charter Schools: Additional Federal Attention Needed to Help Protect Access for Students with Disabilities.'' GAO–12–543: Published Jun 7, 2012. Available at: *www.gao.gov/assets/600/591435.pdf.*

[2] Id.

[3] Id.

evaluation. While not the primary intent of this program, those activities would be permitted, so long as the applicant meets all other requirements and submits an application that meets all parts of the priority.

Changes: None.

Comment: One commenter suggested that *Priority 3—Students with Disabilities* mention stand-alone strict discipline academies. Specifically, the commenter mentions that these academies do not meet the open enrollment requirement.

Discussion: To receive funding through the CSP, a charter school must meet all requirements outlined in the definition of a charter school in section 5210 of the Elementary and Secondary Education Act of 1965, as amended (ESEA).

Therefore, to qualify as an eligible applicant under the CSP Grants for National Leadership Activities competition, a charter school must meet all parts of the definition of a charter school in section 5210 of the ESEA. This includes section 5210(1)(G), which requires that a charter school comply with certain Federal civil rights laws, including section 504 of the Rehabilitation Act of 1973, and Part B of the IDEA, and section 5210(1)(H), which requires that it is a school to which parents choose to send their children, and that admits students on the basis of a lottery, if more students apply for admission than can be accommodated. Further, although we are not familiar with the requirements for ''strict discipline academies,'' charter school discipline policies and procedures must comply with the requirements of section 504 and section 615(k) of the IDEA and their implementing regulations.

Changes: None.

Comment: Several commenters suggested a third activity for *Priority 3—Students with Disabilities* and *Priority 4—English Learners.* Specifically, the commenters recommended developing cooperation and collaboration between a public charter school, a non-chartered public school, special education communities, and English learner advocacy communities be added to the priorities, as each sector would provide insightful development and promote dissemination of effective approaches to serving these students.

Discussion: We appreciate the commenters' support for *Priority 3—Students with Disabilities* and *Priority 4—English Learners.* We agree with the commenters that promoting collaborative activities between a charter school, a non-chartered public school, key special education stakeholders, and key English learner stakeholders is important. After reviewing the comments, we also consider the suggested additions to be beneficial to both *Priority 3—Students with Disabilities* and *Priority 4—English Learners.*

Changes: We added the following activity as paragraph (3) of *Priority 3—Students with Disabilities:* ''Promoting collaborative activities between charter schools, non-chartered public schools, and key special education stakeholders designed to improve student achievement, including student growth, and attainment (e.g., high school graduation rates, college enrollment rates) for students with disabilities.'' We also added the following corresponding activity as paragraph (3) of *Priority 4—English Learners:* ''Promoting collaborative activities between charter schools, non-chartered public schools, and key English learner stakeholders designed to improve student achievement, including student growth, and attainment (e.g., high school graduation rates, college enrollment rates) for English learners.''

Comment: One commenter suggested changing the wording of the ''activities'' section of *Priority 3—Students with Disabilities* to more appropriately reflect the legal obligations of public charter schools. The commenter suggested that projects designed to ensure equitable enrollment, recruitment, and opportunities in charter schools for students with disabilities would more accurately reflect the responsibility incumbent on public charter schools. Another commenter suggested that charter schools must be held accountable for ensuring access to all students and for providing meaningful teaching and instruction designed to improve educational outcomes for those students. The commenter felt that the language in the NPP did not include a focus on recruitment and serving students with disabilities.

Discussion: We agree that public charter schools must provide equitable access to students with disabilities. In this context, we think equitable access includes equitable enrollment opportunities as well as capabilities of public charter schools to meet the needs of students with disabilities during recruitment and once enrolled. In addition, we place a similar emphasis in *Priority 4—English Learners.*

Changes: We changed the language of *Priority 3—Students with Disabilities* and *Priority 4—English Learners* by replacing ''to increase access'' throughout with ''to increase equitable access.'' In Priority 3, we also changed ''increase charter schools' capacity to enroll students with disabilities'' in paragraphs (1) and (2) to ''increase charter schools' capacity to recruit, enroll, and serve students with disabilities.'' Throughout Priority 4, we made corresponding edits to maintain consistency with Priority 3. Specifically, we replaced ''increase charter schools' capacity to enroll English learners'' with ''increase charter schools' capacity to recruit, enroll, and serve English learners . . .''

Comment: None.

Discussion: After additional review, we determined that *Priority 3—Students with Disabilities* and *Priority 4—English Learners* could be clarified by consistently referring to schools as ''charter schools,'' where appropriate. In addition, we determined that, depending on the nature of the project, it may not always be appropriate for each project under Priority 3 to ''improve student achievement, student growth, high school graduation rates, and college enrollment rates for students with disabilities.'' We edited paragraph (1) of Priority 3 to ''improve student achievement, including student growth, and attainment (e.g., high school graduation rates, college enrollment rates) for students with disabilities'' to allow more flexibility. Similarly, for Priority 4, we edited paragraph (1) to ''improve student achievement, including student growth and English proficiency, and attainment (e.g., high school graduation rates, college enrollment rates) for English learners.'' We made corresponding changes to paragraph (2) of both priorities for the same reason. Finally, we added ''. . . of students with disabilities'' in the introductory paragraph of Priority 3, to maintain a consistent structure with Priority 4.

Changes: For both *Priority 3—Students with Disabilities and Priority 4—English Learners,* we inserted the word ''charter'' before schools in three places. These changes do not alter the intended meaning; rather, we are adding the word ''charter'' to ensure clarity. In addition, in paragraph (1) of both priorities, we added the phrase ''to recruit, enroll, and serve.'' We also replaced ''increase charter schools' enrollment, as well as improve achievement . . .'' with ''increase charter schools' enrollment of students with disabilities, as well as improve achievement . . .''

Comment: One commenter suggested that the Department follow the recommendations in the GAO report on

English learners in charter schools [4] to examine why charter schools are unable to provide accurate enrollment numbers of specific student populations, especially English learner populations. The commenter noted the importance of educators gaining a better understanding of the nature of the problem at a national level, which will better position researchers and practitioners to address concerns of limited access to charter schools for English learners.

Discussion: The Department agrees that a better understanding of charter school non-reporting or under-enrollment of English learners should be addressed. In response to the GAO report's finding that they were unable to compare English learners' enrollment in charter schools to English learners enrollment in non-chartered public schools due to incomplete data, the Department continues to improve its data collection and has been conducting a systematic review and reconciliation of directory data across data sources. In addition, the CSP Grants for National Leadership Activities competition includes *Priority 3—Students with Disabilities* and *Priority 4—English Learners* to help address the issues of enrollment, access, and achievement of students with disabilities and English learners in charter schools. We do not explicitly include data collection in either priority because data collection activities may be eligible project activities under Priority 3 or Priority 4.

Changes: None.

Comment: One commenter suggested that *Priority 5—Personalized, Technology-Enabled Learning* should specifically exclude virtual schools from eligibility.

Discussion: Virtual schools, provided they meet the eligibility requirements described in the *Eligibility* section, will not automatically be deemed ineligible. However, the intent of this priority is to support projects that incorporate learning models that blend traditional, classroom-based teaching and learning with virtual, online, or digital delivery of personalized instructional content, and which are national in scope.

Changes: None.

Comment: One commenter suggested that the Department expand each priority to ensure that students with disabilities are specifically mentioned as examples of the students who may require personalized and technology-based supports and services. The commenter noted that, in particular, *Priority 5—Personalized Technology-Enabled Learning* will be most effective if it builds on previous work funded by the Department that provided training to charter school authorizers and operators focused on serving students with disabilities.

Discussion: Activities that focus on students with disabilities may be included under any priority, and activities that include personalized and technology-based services would be eligible under *Priority 5—Personalized Technology-Enabled Learning.* We agree that students with disabilities can benefit from personalized learning, and *Priority 5—Personalized Technology-Enabled Learning* provides that such projects should be designed to support high-need students (as defined in this notice), which includes students with disabilities.

Changes: None.

Comment: One commenter suggested the Department clarify the types of activities that it considers essential and that would be supported under *Priority 5—Personalized Technology-Enabled Learning;* specifically, the commenter suggested highlighting blended learning as a model supported under this priority. Similarly, another commenter provided specific examples of the types of activities that should be supported under this priority. A third commenter suggested that the Department ensure *Priority 5—Personalized Technology-Enabled Learning* focus on the development of education technology and online platforms, collaborative practices, and instructional models for dissemination, in addition to research into blended learning implementation.

Discussion: The CSP Grants for National Leadership Activities competition is designed to encourage innovative solutions to address a number of public educational needs across the Nation. In order to support innovation in technology-enabled instructional models, tools, and supports, we do not want to restrict applicants to specific types of activities and have written this priority to allow applicants flexibility in the projects they propose. In addition, we note that applicants proposing projects with a focus on education technology and online platforms, collaborative practices, and instructional models for dissemination may be eligible under *Priority 1—Increasing Efficiency through Economies of Scale,* in addition to Priority 5.

Changes: None.

Comment: None.

Discussion: After additional review, we determined that the language of *Priority 5—Personalized Technology-Enabled Learning* should remain consistent with an ultimate goal of increasing overall student learning, rather than simply providing instruction. The technology-enabled instructional models, tools, and supports referenced in this priority are intended to personalize students' learning. The phrase ''personalize instruction'' that was included in the proposed priority implies an emphasis on the process, (i.e., instruction), rather than on the outcome (i.e., learning).

Changes: We removed the phrase ''personalize instruction'' from *Priority 5—Personalized Technology-Enabled Learning* and revised the priority language to say ''supports that personalize learning.''

Definitions

Comment: None.

Discussion: We added the definitions for ''national level'' and ''regional level,'' as these terms are now referenced within other parts of this notice. These definitions are used in other Department grant competitions and the definitions come from 34 CFR 77.1.

Changes: The definitions for ''national level'' and ''regional level'' have been added.

Comment: One commenter suggested the Department revise the definition of ''significant compliance issues'' to accommodate current practice by rigorous authorizers that are unlikely to revoke a charter for a single or limited event. The commenter further explained that the proposed definition reflected a zero-tolerance approach that is inappropriate, as it takes a pattern of misbehavior, or individual failures that are more egregious, to lead an authorized public chartering agency to revoke a school's charter.

Discussion: The Department agrees with the need for further clarification on the issue of compliance with Federal and State law, and authorizer policy.

Changes: We revised the definition of ''significant compliance issue'' to clarify that these are issues that, if not addressed or are representative of a pattern of misconduct or non-compliance, could lead to the revocation of a school's charter.

Comment: Two commenters suggested altering the definition of ''charter school national level.'' One commenter suggested changing the proposed definition to clarify that any public or private nonprofit organization with a mission that explicitly includes supporting charter schools is eligible for

[4] U.S. Government Accountability Office. ''Education: Education Needs to Further Examine Data Collection on English Language Learners in Charter Schools.'' GAO–13–655R: Published Jul 17, 2013. Available at: *www.gao.gov/assets/660/655930.pdf.*

this competition, including those that are able to support a wide variety of charter schools from both urban and rural areas. Another commenter noted that the definition places an undue burden on an applicant to disseminate urban-focused best practices to agencies, organizations, or groups that must serve rural agencies.

Discussion: The definition of ''charter school national level'' is not designed to limit eligible organizations, but rather to define a level at which activities take place. The Department believes that a broad, national scope for project activities and for dissemination is necessary to meet the goals of the program.

Changes: None.

Comment: Multiple commenters requested that the definition of ''high-quality charter school'' be revised. One commenter suggested the Department make the definition consistent with the definition of ''highly mobile students,'' with particular attention given to how highly mobile students and related data will be counted in accountability assessments across State lines. Two other commenters noted that the proposed definition for high-quality charter school did not take into account new schools with no achievement data and would be applied comprehensively, instead of considering additional factors that make up high-quality schools. In addition, one of those commenters stated that the proposed definition did not take into account the role of authorizers and accountability systems within applicable States.

Discussion: The definition of ''high-quality charter school'' is designed to emphasize the importance of a school's evidence of strong academic performance for the past three years, or over the life of the school, if the school has been open for fewer than three years, and we decline to make the definition consistent with that of highly mobile students, which is not used in this notice. We agree that the proposed definition of ''high-quality charter school'' should be strengthened to take into account the role of authorizers and accountability systems and have added paragraph (a)(4), which focuses on the results of a performance framework established by the State or authorized public chartering agency. In addition, we made a number of clarifying edits to paragraphs (a)(1) and (a)(3). These are not intended to change the meaning of the priority but only to clarify our intent. As described elsewhere in this document, we also edited parts of *Priority 1—Improving Efficiency through Economies of Scale* and *Priority 2—Improving Accountability* so authorizers are not held accountable for authorizing only high-quality charter schools or only having high-quality charter schools in their portfolios of schools. In addition, the insertion of ''and equitable and nondiscriminatory treatment for students'' in paragraph (a)(5) of the high-quality charter school definition is meant to ensure that compliance extends to the civil rights of students. Upon further review, we edited paragraph (a)(1) of the same definition to include high school graduation rates and college and other postsecondary enrollment rates. Paragraph (a)(3) has been similarly edited in that the list of achieved results include student attendance, retention rates, and postsecondary attendance and persistence rates.

Changes: We added the clarifying phrases ''(including, if applicable, high school graduation rates and college and other postsecondary enrollment rates)'' and ''served by the charter school'' in paragraph (a)(1). In paragraph (a)(3), we added ''student attendance and retention rates,'' ''postsecondary attendance and persistence rates,'' and ''if applicable and available'' in paragraph (a)(3). We also removed the word ''achieved'' before the word ''results'' in paragraph (a)(3), as it is redundant. We added paragraph (a)(4): ''Positive results on a performance framework established by the State or authorized public chartering agency for purposes of evaluating charter school quality'' and renumbered proposed paragraph (a)(4) to be paragraph (a)(5). In the final paragraph (a)(5), we added ''and equitable and nondiscriminatory treatment for students'' at the end of the paragraph. We also added a new paragraph (b) to the definition to clarify that an applicant can use its State's definition of high-quality charter school, provided that the State's definition is at least as rigorous as the definition included in this notice.

Comment: None.

Discussion: Upon further review of the definition of ''high-quality charter school,'' we determined that the third paragraph of this definition, which has been used in multiple Department competitions and shows how achieved results compare to results for similar lolstudents in the State, was missing. Therefore, we included language to ensure the element is discussed.

Changes: In paragraph (a)(3) of the definition for ''high-quality charter school,'' we inserted ''that are above the average academic achievement results for such students in the State.''

Comment: One commenter suggested that the definition of ''student achievement'' include other universally available measures of student learning that are tied to teacher evaluations, which currently are not addressed in the definition.

Discussion: The definition for ''student achievement'' requires that any measures used be comparable across schools, which we think is a key component of this definition. As noted elsewhere in this notice, it is important that the CSP Grants for National Leadership Activities competition use definitions consistent with other Department programs. Because of the variation in measures that tie student learning to teacher evaluations, and because proposed projects will be national in scope, we do not think that applicants would be able to compare increases in student achievement across districts and States if teacher evaluation measures were to be incorporated into this definition.

Changes: None.

Comment: Two commenters suggested that the proposed definition of ''high-need students'' should be reviewed for further clarification. One commenter suggested adding ''first generation college-bound students'' to the list of high-need student indicators. Another commenter noted that this definition should be reviewed to ensure the focus is on charter schools and not higher education.

Discussion: We agree with the commenters that it is important to ensure that each definition used in the CSP Grants for National Leadership Activities competition is appropriate to the CSP's mission. The definition for high-need students does not specifically mention charter schools or non-chartered public schools; however, any student at risk of educational failure would be included under the definition, regardless of the school that student attends.

Changes: None.

Comment: One commenter suggested that the Department develop definitions for ''rural public charter schools'' and ''Rural State.''

Discussion: Rural public charter schools and rural State are not terms that are used in these priorities, so it is unclear how those definitions would be used. Because the commenter did not provide context for this suggestion, we are unable to provide additional clarification. Applicants that want to demonstrate their commitment to serving rural areas may use elements of the definition of ''rural local educational agency,'' which is defined by other programs at the Department as an LEA that is eligible under the Small Rural School Achievement program or the Rural and Low-Income School program

authorized under Title VI, Part B of the ESEA. See *www2.ed.gov/nclb/freedom/local/reap.html.* The elements of the definition can be used by applicants to demonstrate their commitment to serving rural areas.

Changes: None.

Comment: One commenter suggested modifying the definition of ''community of practice'' to include public and private nonprofit organizations with a mission that explicitly includes supporting charter schools to better promote a community of practice within and across State lines.

Discussion: We currently include the term ''stakeholders'' in the definition, which provides a wider range of options than the suggested change. Because we do not want to unnecessarily limit participation in the community of practice (as defined in this notice), we decline to revise the term used in the definition in a manner that would limit the types of stakeholders included in the communities of practice.

Changes: None.

Comment: One commenter noted that the definition for ''logic model'' was different than the definition currently used in 34 CFR 77.1.

Discussion: As noted elsewhere in this notice, we agree that it is important the CSP Grants for National Leadership Activities competition use definitions consistent with other Department programs. As such, we will use the same definition for logic model as included in 34 CFR 77.1.

Changes: We replaced the term ''charter school logic model'' with ''logic model'' from 34 CFR 77.1.

Eligibility

Comment: One commenter suggested the language in the Eligibility section be reviewed. Specifically, the commenter felt that there is no explicit language permitting an applicant to apply as an individual nonprofit organization, although that may be implied. The commenter suggested we change ''Eligible applicants may apply as a group or consortium'' to ''Eligible applicants may apply as an individual organization as defined above or as a partnership or consortium.'' A second commenter asked whether an individual charter school operator could be an eligible applicant.

Discussion: Eligible applicants include public and private nonprofit organizations with a mission that explicitly supports operating, supporting, or managing charter schools, which makes individual organizations eligible. The intent of this grant competition is to support projects of national significance and scope; however, we agree that clarification is needed on whether individual charter schools are eligible. An individual charter school that meets all eligibility requirements could apply under this competition. We also want to clarify that eligible applicants may be organizations whose missions involve operating, supporting, and managing charter schools—not just supporting charter schools. Upon further review of the *Eligibility* section, we determined that additional clarity was needed to reflect that CMOs are eligible entities. In addition, upon further review, we added a requirement that, to the extent that eligible applicants that are partnerships or consortia include charter schools, the lead applicant, each charter school operated or managed by the lead applicant and all partnership or consortium members, including, in the case of a CMO applicant, all charter schools managed by the CMO, must meet the definition of high-quality charter school (as defined in this notice). We made this change to clarify that CMO applicants are eligible and that all charter schools in a partnership or consortium must meet the definition of high-quality charter school. We also added a requirement that eligible applicants that are charter schools may not have any significant compliance issues (as defined in this notice) to ensure that these applicants do not have any violations that did, will, or could lead to the revocation of the school's charter.

Changes: We edited the *Eligibility* section to include ''public and private nonprofit entities with a mission that explicitly includes operating, supporting, or managing charter schools.'' In addition, we added the following language to the *Eligibility* section: ''Eligible applicants that are charter schools may not have any significant compliance issues (as defined in this notice), including in the areas of student safety, financial management, civil rights, and statutory or regulatory compliance. In addition, to the extent that eligible applicants that are partnerships or consortia include charter schools, the lead applicant, each charter school operated or managed by the lead applicant, and all partnership or consortium members, including, in the case of a CMO applicant, all charter schools managed by the CMO, must meet the definition of high-quality charter school (as defined in this notice).''

Comment: One commenter suggested changing the regulations that require eligible public and private nonprofit organizations to have a mission that explicitly includes supporting charter schools so that all organizations and communities affected by such policies may apply whether or not their missions provide explicit references to supporting charter schools. The commenter recommended that community-based organizations and national intermediaries that represent the communities served by charter schools be considered as eligible entities.

Discussion: The *Eligibility* section does not preclude community-based organizations and national intermediaries from applying, provided they meet all eligibility requirements, including that their organizational missions explicitly include supporting charter schools. Because funds for the CSP Grants for National Leadership Activities competition are appropriated for charter schools, we seek to ensure that organizations supported by these funds are focused on supporting charter schools.

Changes: None.

Final Priorities

The Assistant Deputy Secretary for Innovation and Improvement establishes the following five priorities for the CSP Grants for National Leadership Activities competition. We may apply one or more of these priorities in any year in which this program is in effect.

Priority 1—Improving Efficiency through Economies of Scale

This priority is for projects of national significance and scope that promote shared systems for acquiring goods or services to achieve efficiencies in the use of time, staff, money, services for special populations, or other resources for the purpose of creating, supporting, and sustaining high-quality charter schools (as defined in this notice).

An applicant addressing this priority must apply as part of an existing or proposed partnership or consortium that includes two or more high-quality charter schools, as defined in this notice, and must include detailed descriptions (including supporting documentation) of the following:

(1) The proposed project activities of the partnership or consortium and how and to what extent the activities will achieve efficiencies in the use of time, staff, money, services for special populations, or other resources related to operating charter schools;

(2) The members or proposed members of the partnership or consortium, how the composition of this partnership or consortium contributes to achieving efficiencies, and the specific activities each member or proposed

member will implement. Applicants must demonstrate that members of the existing or proposed partnership or consortium are not affiliated exclusively with a common network (e.g., a charter management organization);

(3) How the proposed project activities will help create charter schools that demonstrate the capacity to become high-quality charter schools, support new charter schools to become high-quality charter schools, and sustain charter schools that are high-quality;

(4) How information about the proposed project activities will be disseminated primarily to charter schools as the chief stakeholder group, and secondarily to other stakeholders, such as charter school support organizations, LEAs, and authorized public chartering agencies, as appropriate, at the charter school national level (as defined in this notice);

(5) How the dissemination strategy will include assembling a community of practice (as defined in this notice) for the stakeholder group(s) served; and

(6) The national significance of the proposed project.

Priority 2—Improving Accountability

This priority is for projects of national significance and scope that are designed to improve authorized public chartering agencies' capacity to conduct rigorous application reviews; monitor and oversee charter schools using multiple sources of data, including disaggregated student data, and measurable performance goals; close underperforming schools; replicate and expand high-performing schools; maintain a portfolio of high-quality charter schools; and evaluate and disseminate information on the performance of charter schools.

Applicants addressing this priority must provide detailed descriptions (including supporting documentation) of the following:

(1) How the proposed project will improve, at the regional level (as defined in this notice) or the national level (as defined in this notice), authorized public chartering agencies' capacity to:

i. Approve only applications that demonstrate capacity to create and sustain high-quality charter schools (as defined in this notice) and meet the standards of a rigorous application process and review;

ii. Monitor and oversee charter schools through measurable performance goals and multiple sources of regularly collected academic and operational performance data (using financial data, disaggregated student discipline data, and disaggregated student performance data, including metrics to assess educational equity for students with disabilities, English learners, and other students in need of specialized services);

iii. Identify schools eligible for renewal and those that should be closed, through clear renewal and revocation criteria; and

iv. Evaluate authorizer and portfolio performance and disseminate information on that performance;

(2) The applicant's prior success in improving, at the regional level (as defined in this notice) or the national level (as defined in this notice), authorized public chartering agencies' capacity to:

i. Approve only applications that demonstrate the capacity to create and sustain high-quality charter schools (as defined in this notice) and meet the standards of a rigorous application process and review;

ii. Monitor and oversee charter schools through measurable performance goals and multiple sources of regularly collected academic and operational performance data (using financial data, disaggregated student discipline data, and disaggregated student performance data, including metrics to assess educational equity for students with disabilities, English learners, and other students in need of specialized services);

iii. Identify schools eligible for renewal and those that should be closed, through clear renewal and revocation criteria; and

iv. Evaluate authorizer and portfolio performance and disseminate information on that performance;

(3) How dissemination activities focus on authorized public chartering agencies as the primary stakeholder group, and secondarily on other stakeholders, such as charter school support organizations or charter schools, as appropriate, at the charter school national level (as defined in this notice);

(4) How the dissemination strategy will include assembling a community of practice (as defined in this notice) for the stakeholder group(s) served; and

(5) The national significance of the proposed project.

Priority 3—Students With Disabilities

This priority is for projects of national significance and scope that are designed to increase equitable access to charter schools for students with disabilities and increase charter schools' enrollment of students with disabilities, as well as improve achievement (including student achievement and student growth) and attainment (including high school graduation rates and college enrollment rates) for students with disabilities in charter schools, through one or more of the following activities:

(1) Developing strategies and tools to increase equitable access to charter schools for students with disabilities and increase charter schools' capacity to recruit, enroll, and serve students with disabilities, and improve student achievement, including student growth, and attainment (e.g., high school graduation rates, college enrollment rates) for students with disabilities.

(2) Disseminating promising practices for increasing equitable access to charter schools for students with disabilities; increasing charter schools' capacity to recruit, enroll, and serve students with disabilities; and improving student achievement, including student growth, and attainment (e.g., high school graduation rates, college enrollment rates) for students with disabilities.

(3) Promoting collaborative activities between charter schools, non-chartered public schools, and key special education stakeholders designed to improve student achievement, including student growth, and attainment (e.g., high school graduation rates, college enrollment rates) for students with disabilities.

Priority 4—English Learners

This priority is for projects of national significance and scope that are designed to increase equitable access to charter schools for English learners and increase charter schools' enrollment of English learners, as well as improve academic achievement (including student achievement and student growth) and attainment (including English proficiency, high school graduation rates, and college enrollment rates) for English learners, through one or more of the following activities:

(1) Developing strategies and tools to increase equitable access to charter schools for English learners; increase charter schools' capacity to recruit, enroll, and serve English learners; and improve student achievement, including student growth and English proficiency, and attainment (e.g., high school graduation rates, college enrollment rates) for English learners.

(2) Disseminating promising practices for increasing equitable access to charter schools for English learners; increasing charter schools' capacity to recruit, enroll, and serve English learners; and improving student achievement, including student growth and English proficiency, and attainment (e.g., high school graduation rates, college enrollment rates) for English learners.

(3) Promoting collaborative activities between charter schools, non-chartered public schools, and key English learner stakeholders designed to improve student achievement, including student growth and English proficiency, and attainment (e.g., high school graduation rates, college enrollment rates) for English learners.

Priority 5—Personalized Technology-Enabled Learning

This priority is for projects of national significance and scope that are designed to improve achievement and attainment outcomes for high-need students (as defined in this notice) through the development and implementation in charter schools of technology-enabled instructional models, tools, and supports that personalize learning.

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Final Requirements

The Assistant Deputy Secretary for Innovation and Improvement establishes the following program requirements for the CSP Grants for National Leadership Activities competitions. We may apply one or more of these requirements in any year in which this program is in effect. By requiring that applicants provide a logic model supporting their projects and restricting eligibility for grants to specific types of entities, the Department will ensure that grantees have the preparation and experience to be successful with a CSP Grants for National Leadership Activities grant.

Application Requirements

(a) *Logic Model:* An applicant for a CSP Grants for National Leadership Activities grant must provide a logic model (as defined in this notice) supporting its project.

(b) *Eligibility:* Eligible applicants include (1) State educational agencies (SEAs) in States with a State statute specifically authorizing the establishment of charter schools; (2) authorized public chartering agencies; (3) public and private nonprofit organizations with a mission that explicitly includes operating, supporting, or managing charter schools; and (4) public and private nonprofit organizations in partnership with an SEA, authorized public chartering agency, or a public or private nonprofit organization with a mission that explicitly includes supporting charter schools. Eligible applicants may apply as a partnership or consortium and, if so applying, must comply with the requirements for group applications set forth in 34 CFR 75.127–75.129.

Eligible applicants that are charter schools may not have any significant compliance issues (as defined in this notice), including in the areas of student safety, financial management, civil rights, and statutory or regulatory compliance. In addition, to the extent that eligible applicants that are partnerships or consortia include charter schools, the lead applicant, each charter school operated or managed by the lead applicant, and all partnership or consortium members, including, in the case of a CMO applicant, all charter schools managed by the CMO, must meet the definition of high-quality charter school (as defined in this notice).

Final Definitions

In addition to the definitions otherwise included in section 5210 of the ESEA, which includes the definition of ''charter school,'' and 34 CFR 77.1, we are establishing the following definitions for the CSP Grants for National Leadership Activities competition. We may apply one or more of these definitions in any year in which this program is in effect.

Charter school national level means, with respect to an applicant's dissemination strategy, that the strategy covers a wide variety of charter schools, authorized public chartering agencies, charter support organizations, and other stakeholder groups within multiple States across the country, including rural and urban areas.

Community of practice means a group of stakeholders that interacts regularly to solve a persistent problem or to improve practice in an area that is important to them and the success of the grant project.

Graduation rate means a four-year adjusted cohort graduation rate consistent with 34 CFR 200.19(b)(1) and may also include an extended-year adjusted cohort graduation rate consistent with 34 CFR 200.19(b)(1)(v) if the State in which the proposed project is implemented has been approved by the Secretary to use such a rate under Title I of the ESEA.

High-need students means children and students at risk of educational failure, such as children and students who are living in poverty, who are English Learners, who are far below grade level or who are not on track to becoming college- or career-ready by graduation, who have left school or college before receiving, respectively, a regular high school diploma or a college degree or certificate, who are at risk of not graduating with a diploma on time, who are homeless, who are in foster care, who are pregnant or parenting teenagers, who have been incarcerated, who are new immigrants, who are migrant, or who have disabilities.

High-quality charter school means—

(a) A school that shows evidence of strong academic results for the past three years (or over the life of the school, if the school has been open for fewer than three years), based on the following factors:

(1) Increased student academic achievement and attainment (including, if applicable, high school graduation rates and college and other postsecondary enrollment rates) for all students, including, as applicable, educationally disadvantaged students served by the charter school;

(2) Either:

(i) Demonstrated success in closing historic achievement gaps for the subgroups of students described in section 1111(b)(2)(C)(v)(II) of the ESEA (20 U.S.C. 6311) at the charter school; or

(ii) No significant achievement gaps between any of the subgroups of students described in section 1111 (b)(2)(C)(v)(II) of the ESEA (20 U.S.C. 6311) at the charter school and significant gains in student academic achievement for all populations of students served by the charter school;

(3) Results (including, if applicable and available, performance on statewide tests, annual student attendance and retention rates, high school graduation rates, college and other postsecondary attendance rates, and college and other postsecondary persistence rates) for

low-income and other educationally disadvantaged students served by the charter school that are above the average academic achievement results for such students in the State;

(4) Positive results on a performance framework established by the State or authorized public chartering agency for purposes of evaluating charter school quality; and

(5) No significant compliance issues (as defined in this notice), particularly in the areas of student safety, financial management, and equitable and nondiscriminatory treatment for students; or

(b) A high-quality charter school as defined by the State, provided that the State's definition is at least as rigorous as paragraph (a).

Logic model (also referred to as theory of action), as defined in 34 CFR 77.1(c), means a well-specified conceptual framework that identifies key components of the proposed process, product, strategy, or practice (i.e., the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the relationships among the key components and outcomes, theoretically and operationally.

National level, as defined in 34 CFR 77.1(c), describes the level of scope or effectiveness of a process, product, strategy, or practice that is able to be effective in a wide variety of communities, including rural and urban areas, as well as with different groups (e.g., economically disadvantaged, racial and ethnic groups, migrant populations, individuals with disabilities, English learners, and individuals of each gender).

Regional level, as defined in 34 CFR 77.1(c), describes the level of scope or effectiveness of a process, product, strategy, or practice that is able to serve a variety of communities within a State or multiple States, including rural and urban areas, as well as with different groups (e.g., economically disadvantaged, racial and ethnic groups, migrant populations, individuals with disabilities, English learners, and individuals of each gender). For an LEA-based project to be considered a regional-level project, a process, product, strategy, or practice must serve students in more than one LEA, unless the process, product, strategy, or practice is implemented in a State in which the State educational agency is the sole educational agency for all schools.

Relevant outcome, as defined in 34 CFR 77.1(c), means the student outcome(s) (or the ultimate outcome if not related to students) the proposed process, product, strategy, or practice is designed to improve; consistent with the specific goals of a program.

Significant compliance issue means a violation that did, will, or could (if not addressed or if it represents a pattern of repeated misconduct or material non-compliance) lead to the revocation of a school's charter.

Student achievement means—

(a) For tested grades and subjects—

(1) A student's score on the State's assessments under the ESEA; and, as appropriate,

(2) Other measures of student learning, such as those described in paragraph (b) of this definition, provided they are rigorous and comparable across schools.

(b) For non-tested grades and subjects: Alternative measures of student learning and performance, such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessments; and other measures of student achievement that are rigorous and comparable across schools.

Student growth means the change in achievement data for an individual student between two or more points in time. Growth may also include other measures that are rigorous and comparable across classrooms.

Final priorities, requirements, and definitions

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use one or more of these priorities, requirements, and definitions we invite applications through a notice in the **Federal Register.**

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement 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 stated in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this final regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these final priorities, requirements, and definitions only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Paperwork Reduction Act of 1995: The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. The collection of information is approved under OMB control number 1855–0026.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program. *Accessible Format:* Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to either of the program contact persons listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: July 9, 2014.

Nadya Chinoy Dabby,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. 2014–16462 Filed 7–11–14; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2011–0715, FRL–9913–28–Region–10]

Approval and Promulgation of Implementation Plans; Idaho: Infrastructure Requirements for the 1997 and 2006 Fine Particulate Matter and 2008 Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Clean Air Act (CAA) requires that each state, after a new or revised National Ambient Air Quality Standard (NAAQS) is promulgated, review their State Implementation Plan (SIP) to ensure that it meets the infrastructure requirements necessary to implement the new or revised standard. The Environmental Protection Agency (EPA) finds that the Idaho SIP meets the infrastructure requirements of the CAA for the NAAQS promulgated for fine particulate matter ($PM_{2.5}$) on July 18, 1997 and October 17, 2006, and for ozone on March 12, 2008. The EPA also finds that the Idaho SIP meets the interstate transport requirements of the CAA related to prevention of significant deterioration and visibility for the 2006 $PM_{2.5}$ and 2008 ozone NAAQS.

DATES: This final rule is effective on August 13, 2014.

ADDRESSES: The EPA has established a docket for this action under Docket Identification No. EPA–R10–OAR–2011–0715. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at EPA Region 10, Office of Air, Waste, and Toxics, AWT–107, 1200 Sixth Avenue, Seattle, Washington 98101. The EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kristin Hall at: (206) 553–6357, *hall.kristin@epa.gov,* or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us'' or ''our'' is used, it is intended to refer to the EPA. Information is organized as follows:

Table of Contents

I. Background
II. Response to Comment
III. Final Action
IV. Statutory and Executive Order Reviews

I. Background

On September 15, 2008, June 28, 2010, and August 10, 2011, Idaho made submissions to the EPA demonstrating that the Idaho SIP meets the infrastructure requirements of the CAA for the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, and 2008 ozone NAAQS. On March 26, 2014, we proposed action on these submissions (79 FR 16711). On April 15, 2014, we made a correction to our proposal because we supplied an incorrect docket number in our proposed action (79 FR 21179). However, any commenter wishing to submit comments did not need to resubmit them, because we routed the comments to the correct docket.

An explanation of the CAA requirements and implementing regulations that are met by these SIP submissions, a detailed explanation of the submissions, and the EPA's reasons for the proposed action were provided in the notice of proposed rulemaking on March 26, 2014, and will not be restated here (79 FR 16711). The public comment period for our proposed action ended on April 25, 2014, and we received one comment.

II. Response to Comment

Comment: We received the following anonymous comment through the *www.regulations.gov* Web site: ''When

the EPA can stop all the toxic emissions from the multitudes of volcanos on the earth, then and only then will I give up my wood stove!! You people need to stop telling us how to live. My taxes pay your wages and I think your organization needs to be dismantled!''

Response: Under section 110 of the CAA, states are responsible for developing provisions to address air pollution for incorporation into the SIP. The EPA's role is to evaluate these state choices to determine if the revisions meet the requirements of the CAA. Furthermore, under section 116 of the CAA, states have authority to adopt or enforce standards or requirements for the control or abatement of air pollution (except as specifically limited by the CAA). The EPA must approve state submissions so long as they meet the minimum requirements established by the CAA. *Union Electric Co.* v. *EPA,* 427 U.S. 246 (1976). To the extent that the commenter wants to influence these state choices, the comments are best submitted during the state public comment period, rather than as part of the EPA's approval or disapproval process. We have determined that the provisions selected by Idaho for inclusion in its SIP meet the CAA infrastructure requirements for the 1997 and 2006 fine particulate matter and 2008 ozone standards. We provided a copy of the comment to Idaho Department of Environmental Quality for consideration during future state rulemaking, but we are otherwise taking no further action on the comment.

III. Final Action

The EPA finds that the Idaho SIP meets the following CAA section 110(a)(2) infrastructure elements for the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, and 2008 ozone NAAQS: (A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). We also find that the Idaho SIP meets the requirements of CAA section 110(a)(2)(D)(i)(II) as it applies to prevention of significant deterioration and visibility for the 2006 $PM_{2.5}$ and 2008 ozone NAAQS. This action is being taken under section 110 of the CAA.

IV. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 12, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Particulate matter, and Reporting and recordkeeping requirements.

Dated: June 16, 2014.

Dennis J. McLerran,

Regional Administrator, Region 10.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart N—Idaho

■ 2. In § 52.670, the table in paragraph (e) is amended by adding three entries at the end of the table for ''Section 110(a)(2) Infrastructure Requirements for the 1997 $PM_{2.5}$ NAAQS,'' ''Section 110(a)(2) Infrastructure Requirements for the 2006 $PM_{2.5}$ NAAQS,'' and ''Section 110(a)(2) Infrastructure Requirements for the 2008 Ozone NAAQS.''

The additions read as follows:

§ 52.670 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED IDAHO NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES

Name of SIP provision	Applicable geographic or non-attainment area	State submittal date	EPA approval date	Comments
*	* *	*	* *	*
Section 110(a)(2) Infrastructure Requirements for the 1997 $PM_{2.5}$ NAAQS.	State-wide	9/15/2008; 6/28/2010	7/14/2014 [Insert page number where the document begins].	This action addresses the following CAA elements or portions thereof: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).
Section 110(a)(2) Infrastructure Requirements for the 2006 $PM_{2.5}$ NAAQS.	State-wide	6/28/2010; 8/10/2011	7/14/2014 [Insert page number where the document begins].	This action addresses the following CAA elements or portions thereof: 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).
Section 110(a)(2) Infrastructure Requirements for the 2008 Ozone NAAQS.	State-wide	6/28/2010	7/14/2014 [Insert page number where the document begins].	This action addresses the following CAA elements or portions thereof: 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).

[FR Doc. 2014–16299 Filed 7–11–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2013–0649; FRL–9913–41–Region–3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Section 110(a)(2) Infrastructure Requirements for the 2010 Nitrogen Dioxide National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Maryland pursuant to the Clean Air Act (CAA). Whenever new or revised National Ambient Air Quality Standards (NAAQS) are promulgated, the CAA requires states to submit a plan for the implementation, maintenance, and enforcement of such NAAQS. The plan is required to address basic program elements, including, but not limited to regulatory structure, monitoring, modeling, legal authority, and adequate resources necessary to assure attainment and maintenance of the standards. These elements are referred to as infrastructure requirements. The State of Maryland has made a submittal addressing the infrastructure requirements for the 2010 nitrogen dioxide (NO_2) NAAQS.

DATES: This final rule is effective on August 13, 2014.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2013–0649. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Ruth Knapp, (215) 814–2191, or by email *at knapp.ruth@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On February 9, 2010 (75 FR 6474), EPA established a new 1-hour primary NAAQS for NO_2 at a level of 100 parts per billion (ppb), based on a 3-year average of the 98th percentile of the yearly distribution of 1-hour daily maximum concentrations. Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS. Specifically, section 110(a)(1) requires states to submit SIPs meeting the applicable requirements of section 110(a)(2) within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe, and section 110(a)(2) requires states to address specific elements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the newly established or revised NAAQS.

The contents of a SIP submission may vary depending upon the data and analytical tools available to the state, as well as the provisions already contained in the state's SIP at the time in which the state develops and submits the submission for a new or revised NAAQS. States were required to submit such SIPs for the 2010 NO_2 NAAQS to EPA no later than January 2013.

II. Summary of SIP Revision

On April 15, 2014 (79 FR 21173), EPA published a notice of proposed rulemaking (NPR) for the State of

Maryland proposing approval of Maryland's August 14, 2013 submittal to satisfy several requirements of section 110(a)(2) of the CAA for the 2010 NO_2 NAAQS. In the NPR, EPA proposed approval of the following infrastructure elements: Sections 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M), or portions thereof. This action does not include any action on section 110(a)(2)(I) of the CAA which pertains to the nonattainment requirements of part D, Title I of the CAA, because this element is not required to be submitted by the 3-year submission deadline of CAA section 110(a)(1), and will be addressed in a separate process if necessary. The rationale which supports EPA's proposed action, including the scope of infrastructure SIPs in general, is explained in the NPR and the technical support document (TSD) accompanying the NPR and will not be restated here. The TSD is available online at *www.regulations.gov,* Docket ID Number EPA–R03–OAR–2013–0649.

III. Final Action

EPA is approving as a revision to the Maryland SIP the following infrastructure elements in Maryland's August 14, 2013 submittal for the 2010 NO_2 NAAQS: Sections 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M). This rulemaking action does not include section 110(a)(2)(I) of the CAA which pertains to the nonattainment requirements of part D, Title I of the CAA, since this element is not required to be submitted by the three year submission deadline of section 110(a)(1), and will be addressed in a separate process.

IV. Statutory and Executive Order Reviews

A. General Requirements

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

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

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 12, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, addressing infrastructure requirements of section 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M) of the CAA for the 2010 NO_2 NAAQS for the State of Maryland, may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Reporting and recordkeeping requirements.

Dated: June 25, 2014.

W.C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart V—Maryland

■ 2. In § 52.1070, the table in paragraph (e) is amended by adding the entry for ''Section 110(a)(2) Infrastructure Requirements for the 2010 Nitrogen Dioxide NAAQS'' at the end of the table to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* *	*	*	* *	* *
Section 110(a)(2) Infrastructure Requirements for the 2010 Nitrogen Dioxide NAAQS.	Statewide.	8/14/2013	7/14/2014 [Insert **Federal Register** citation].	This action addresses the following CAA elements: 110(a)(2) (A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M).

[FR Doc. 2014–16301 Filed 7–11–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2013–0542; FRL–9913–48–Region–6]

Approval and Promulgation of Implementation Plans; Texas; Revisions to the New Source Review State Implementation Plan; Flexible Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is conditionally approving revisions to the Texas New Source Review (NSR) State Implementation Plan (SIP) to establish the Texas Minor NSR Flexible Permits Program, submitted by the Texas Commission on Environmental Quality (TCEQ). The conditional approval is predicated on a commitment from TCEQ in a letter dated December 9, 2013, to adopt certain minor clarifications to the Flexible Permit Program by November 30, 2014. The EPA is finalizing this action under section 110 of the Clean Air Act (CAA).

DATES: This final rule is effective August 13, 2014.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2013–0542. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available. E.g., Confidential Business Information or other information the disclosure of which is restricted by the statute. Certain other material such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. 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: Ms. Stephanie Kordzi, Air Permits Section (6PD–R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone 214–665–7520; email address *kordzi.stephanie@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

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I. Background for This Final Action
II. Response to Comments
III. When is this action effective?
IV. Final Action
V. Statutory and Executive Order Reviews

I. Background for This Final Action

On September 23, 2009, the EPA proposed to disapprove revisions to the SIP submitted by the State of Texas that established the Flexible Permit Program. 74 FR 48480. On July 15, 2010, the EPA took final action by disapproving Texas' Flexible Permit Program. 75 FR 41312.

For a detailed discussion of our rationale for the disapproval see 75 FR 41312 (July 15, 2010). Upon finalization of the rule several parties appealed the decision to the Fifth Circuit Court of Appeals. In July and August of 2010 the State of Texas, Texas Oil & Gas Association (TXOGA), Texas Association of Manufacturers, and Business Coalition for Clean Air (BCCA) Appeal Group all filed petitions with the Fifth Circuit Court of Appeals seeking to overturn the EPA's disapproval of the Flexible Permit Program. During the same time period, the Environmental Defense Fund (EDF) and Environmental Integrity Project (EIP) moved for leave to intervene in support of the EPA's disapproval. Their request to intervene was granted by the Court. While the challenge was pending, the state adopted a modified flexible permits regulation, but did not submit it to the EPA.

On August 13, 2012, the Fifth Circuit Court of Appeals granted the petitioner's review, vacated our disapproval of the Texas Flexible Permit Program and remanded the matter back to the EPA for further review. After the Court remanded the Flexible Permit Rule to the EPA, the State, in a letter dated September 12, 2012, requested that we take action on the original Flexible Permit Program submittal package in accordance with the ruling of the Fifth Circuit Court of Appeals. Following discussions with the EPA, on September 24, 2013, Texas formally adopted and approved this SIP revision which is comprised of the original submittal that the EPA took its disapproval action on as well as rule additions agreed upon between the TCEQ and the EPA that the EPA finds are essential to the program's approvability.

On October 21, 2013, Texas formally submitted to the EPA this final revision to the SIP. The TCEQ also identified in the Flexible Permits Program SIP submittal cover letter, several sections of previous SIP submittals that are withdrawn from the EPA's consideration as revisions to the Texas SIP. Accordingly, the EPA recognizes the following sections as withdrawn by the State and no longer before us for review or action:

- 30 TAC Section 116.711(3) (last sentence only) and (11), as amended August 21, 2002, and all earlier versions withdrawn October 21, 2013.
- Adopted revisions submitted October 21, 2013. 30 TAC Section 116.715(a), only with regard to the text ''or Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA Section 112(g), 40 CFR Part 63))'', as amended August 21, 2002, and all earlier versions withdrawn on October 21, 2013.

• 30 TAC Section 116.715(c)(6) as amended August 20, 2003, and all earlier versions withdrawn October 21, 2013. 30 TAC Section 116.716(a) and (d), as adopted November 16, 1994, withdrawn October 21, 2013.

• 30 TAC Section 116.730 adopted November 16, 1994, and repealed and readopted June 17, 1998.

• 30 TAC Section 116.740(b), adopted June 17, 1998, and amended September 2, 1999, withdrawn October 21, 2013. 30 TAC Section 116.803, adopted August 21, 2002, withdrawn October 21, 2013.

The EPA is today conditionally approving the October 21, 2013, submittal. The October 21, 2013, submittal, including the Texas Order of the Commission adopting the SIP revision dated September 26, 2013, and the accompanying cover letter (available in the docket for this rulemaking), essentially resubmits all relevant portions of the prior Flexible Permits submittals and therefore constitutes the entire Flexible Permit Program. The EPA issued a notice proposing conditional approval. 79 FR 8368 (Feb. 12, 2014).

II. Response to Comments

The EPA originally proposed a comment period of 30 days but extended the comment period an additional 21 days after receiving a request from EIP on February 28, 2014. This extension provided a total of 51 days for comment, through April 4, 2014. We received comments from 5 organizations as follows: the TCEQ, the TXOGA, the Texas Industry Project (TIP), the BCCA and the EIP on behalf of the Public Citizen's Texas Office, Air Alliance Houston, Environment Texas, Texas Campaign for the Environment, and the Sierra Club. All comment letters can be found in their entirety in the docket for this rulemaking. The following section summarizes the comments received and provides responses to each. Note that comments are grouped together into categories to assist the reader.

General Comments in Support of the Proposed Approval

Comment 1: TXOGA stated that their members support the EPA's February 12, 2014, proposed conditional approval of the Texas Flexible Permit Rules as revisions to the Texas SIP. The BCCA and the TIP also expressed support of the EPA's proposed conditional approval of the Flexible Permit Program. TXOGA stated they believe the rule will help provide certainty in the air permitting process for Texas industry and continued compliance with the Federal CAA.

Response 1: The EPA appreciates the support for our proposed conditional approval. No changes were made to the final rule as a result of this comment.

Comment 2: The TCEQ supports the EPA's February 12, 2014, proposed conditional approval of the Texas Flexible Permit Rules as revisions to the Texas SIP. The TCEQ informed the EPA that on February 12, 2014, rule amendments were proposed to ensure that the text and organization of the Flexible Permit Program rules include only what is in the 2013 submittal, as well as some updated non-substantive rule text adopted in 2010. These non-substantive amendments were adopted to clarify the Flexible Permit Program and do not materially alter the Flexible Permit Program. Based on the issues litigated after the EPA's disapproval of the Flexible Permit Program rules on July 15, 2010, some of the rule amendments adopted on December 14, 2010, are not necessary for the EPA approval of the Flexible Permit Program and thus are currently proposed for repeal. The TCEQ's rulemaking is expected to fulfill the terms of the conditional approval and allow the EPA to adopt the Flexible Permit Program rules in full as a SIP revision, which will resolve the outstanding issues with regard to this Minor NSR program. Specifically, the amendments proposed by the TCEQ on February 12, 2014, regarding the following rules: 30 TAC Sections 116.13, 116.710, 116.711, 116.715, 116.716, 116.717, 116.718, 116.721, and 116.765. Of these, 30 TAC Sections 116.13; 116.710; 116.711(1), (2)(A), (B) and (C)(i) and (ii), (D)–(J), and (L)–(N); 116.715(a)–(e) and (f)(1) and (2)(B); 116.716; 116.717; 116.718; 116.721; and 116.765, will be submitted to the EPA as revisions to the Texas SIP. In addition to the re-submittal of rules adopted in 1994–2003 for the Flexible Permit Program, the 2013 SIP submittal included certain rule changes adopted by the commission in 2010 that help clarify the rules. These 2010 amendments included changes in rule format as well as some revised and additional text. The TCEQ does not consider these changes as material alterations to the program, nor was the text specifically related to the primary issues in the litigation regarding the EPA's disapproval of the Flexible Permit Program in 2010.

Response 2: The EPA agrees with the TCEQ's assessment of the scope of this approval action. The EPA appreciates the support for our proposed conditional approval. No changes were made to the final rule as a result of this comment.

Comments Regarding the Effective Date of the Regulation

Comment 3: The BCCA and the TIP request that the regulation become effective on the day of the **Federal Register** publication. In addition, TXOGA requested that the EPA finalize the conditional approval as soon as possible so the program will be a federally approved part of the Texas SIP and make the approval effective on the day of publication. These requests are based on the exceptions to the requirement for a 30 day delay in the effective date provided for in the Administrative Procedure Act (APA). The commenters state that ''EPA may properly find good cause because an immediately effective conditional approval would provide economic benefits by giving certainty to the flexible permits issued by TCEQ pursuant to the program.'' This group of commenters further states ''Texas first submitted the program to EPA in 1994 and issued approximately 140 flexible permits under the terms of the program. Thus, an immediately effective conditional approval of the Flexible Permit Program will have the effect of granting or recognizing an exemption or relieving a restriction imposed by the existing program.''

Response 3: The EPA has reviewed the request to make the rule immediately effective. The APA requires a 30 day delayed effective date unless the rule qualifies for a statutory exception. We do not agree that this rule qualifies for such an exception and therefore the rule will become effective 30 days after publication.

The commenters argue that approval of the rule will make the program a federally approved part of the SIP, providing certainty and economic benefits to the regulated community. To the extent that this is true, it is true of all SIP approvals, and provides no unique basis for making *this* SIP approval immediately effective. The commenters also appear to be suggesting that approval of this rule will make all previously-issued Texas flexible permits federally approved. Thus, the commenters point to the 140 permits that have already been ''issued by TCEQ pursuant to the program,'' [1] and assert that today's approval ''will have the effect of granting or recognizing an exemption or relieving a restriction imposed by the existing program.'' In

[1] While EPA does not dispute that Texas has issued 140 flexible permits during the life of the program, many of those permits have been ''de-flexed'' and no longer are within the scope of that program. EPA understands that approximately 25 state-only flexible permits have not been de-flexed and remain part of the state program.

sum, the commenters appear to be implying that this approval will transform state-only flexible permits issued since 1994 into federally approved permits upon the effective date of this rule. This is not the case and the EPA strongly rejects any suggestion to the contrary,

The state established and submitted for EPA approval a Flexible Permit Program in 1994. As described in detail below, the Flexible Permit Program we are conditionally approving today consists of 18 revisions to the Texas Administrative Code presented to the EPA in 7 submittals between 1994 and 2013 and contains new provisions that were never in any earlier version of the Flexible Permit Program submitted to the EPA. Those provisions could not have been used as a legal basis for establishing terms and conditions of state-only permits issued in the 1990s. Because those permits were not issued under the regulations that we are approving today, there can be no assurance that the state-only permits fully comply with all elements of the Flexible Permits Program we are approving today. Accordingly, today's action cannot make those state-only permits federally approved unless and until a permit is reissued under the authority of the program being approved today with terms and conditions defined by that program.

In sum, therefore, the EPA finds no basis for making the rule effective immediately, and no changes were made to the final rule as a result of this comment.

Remaining Comments

Comment 4: The BCCA and the TIP request that the EPA confirm that a final conditional approval means that the rule is federally approved and that the enforceability is not deferred until the State's satisfaction of the commitment.

Response 4: The EPA agrees and confirms that the final conditional approval means that the rule is federally approved on the effective date of this **Federal Register** notice. A discussion in 71 FR 52703 at 52704, September 6, 2006, outlines the protocol regarding implementation of a conditional approval. In general, a conditional approval remains in effect (and therefore enforceable) until the EPA takes its final action that the rule is ultimately approvable or is not approvable dependent upon whether the State has met its commitments.

Comments 5–9 Summary: The EIP made several comments that effectively argue in various ways that the Flexible Permit Program can be used to authorize major source construction or modification that should be subject to Prevention of Significant Deterioration (PSD) or Non-attainment New Source Review (NNSR). The EPA summarizes and responds individually and in detail, but also wishes to introduce that discussion by explaining the basis for its overarching conclusion that the Flexible Permit Program cannot be used to authorize major source construction or modification. The EPA rejects any suggestion that the Flexible Permit Program will allow circumvention of Major NSR requirements. The EPA wants to be clear on this point both to the public and future permittees. This is a Minor NSR program. The Fifth Circuit Court of Appeals reviewed the Flexible Permit Program, and concluded that it could not be used to authorize construction or modification that should be subject to the requirements of the major source NNSR or PSD programs: ''The Flexible Permit Program does not allow Major NSR evasion because it affirmatively requires compliance with Major NSR.'' *Texas v. EPA,* 690 F.3d 670, 678 (Fifth Cir. 2012). The TCEQ clearly states this in their guidance and the EPA today is approving the Flexible Permit Program only as a Minor NSR program. Permittees who use this Minor NSR program to circumvent Major NSR are violating the approved Texas SIP. We believe that the revised Flexible Permit Program we are conditionally approving today meets the requirement of the CAA, our Minor NSR rules and the Fifth Circuit's interpretation of both. If the permit program is used in ways to circumvent Major NSR, those actions would be violations. While it does not impact program approval, it is related to enforcement and implementation.

As explained in our proposed conditional approval at 79 FR 8368, 8380, February 12, 2014, the Texas rules as submitted October 21, 2013, and found in 30 TAC Sections 116.711(H) & (I) require that all flexible permit applications contain information demonstrating that each facility complies with PSD and NNSR requirements.

Comment 5: The EIP commented that Flexible Permit changes may be made without evaluating Major NSR applicability.

Response 5: The EPA disagrees with the commenter's assertion regarding a permittee's responsibilities to make changes in accordance with Major NSR permitting requirements. As noted, the Texas rules as submitted October 21, 2013, and found in 30 TAC Sections 116.711(H) & (I) [2] require that all flexible permit applications contain information for each facility [3] demonstrating compliance with Prevention of Significant Deterioration (PSD) and non-attainment new source review (NNSR) requirements. Further, the facilities (units) covered under a flexible permit cap are created in accordance with 30 TAC Section 116.716(c), which requires compliance with all PSD and NNSR requirements for applicable facilities (units) subject to major BACT and LAER requirements up to the permit limit on potential to emit. Those individual facilities that are not subject to major BACT or LAER as defined in 30 TAC Section 116.10 are calculated based on expected maximum capacity (i.e., potential to emit). The calculated emission levels for all facilities (units) are then summed, and capped and the total is analyzed to ensure compliance with NAAQS requirements. If changes are made to the stationary source that vary from the permit application representations, the applicant is required to amend or alter the flexible permit in accordance with procedures set out in 30 TAC Section 116.721, which are analogous to already SIP approved rules regarding changes found in Subchapter B, 30 TAC Section 116.116. However, emission ''flexibility'' between ''facilities'' (units) is allowed under the cap as long as operations are consistent with permit application representations and individual, applicable BACT and LAER requirements for each individual affected major PSD and LAER facility (unit) are met. No changes have been made to the final rule as a result of this comment.

Comment 6: The EIP commented that flexible permits improperly tie Major NSR applicability requirements to increases in allowable emissions.

Response 6: The EPA disagrees with the commenter's assertion that Major NSR applicability is determined based on allowable emission increases. All sources must submit a permit application for an amendment or alteration when changes are made at the source that vary from existing application representations. Changes meeting the criteria resulting in the need for PSD and NNSR review require each facility (unit) to comply with all applicable requirements as stated in accordance with 30 TAC Sections 116.711(H) & (I). The TCEQ PSD regulations are already SIP approved

[2] The TCEQ notified the EPA in its comment letter of April 1, 2014, that this requirement will be renumbered in the updated rule as 30 TAC Sections 116.711(2)(H) & (I) in response to their commitment letter of December 9, 2013.

[3] The EPA notes TCEQ's definition of ''facility'' as an individual ''unit'' see 30 TAC Section 116.10(4) definition of facility.

and require a stationary source to analyze emission increases based on actual emissions as stated in PSD requirements found in 30 TAC Section 116.160(c). The TCEQ defines project netting in 30 TAC Section 116.12(28) as ''The sum of the following: the project emissions increase, minus any source-wide creditable emission decreases proposed at the source between the date of application for the modification and the date the resultant modification begins emitting. Baseline actual emissions shall be used to determine emissions increases and decreases. Increases and decreases must meet the creditability criteria listed under the definition of net emissions increase in this section.'' No changes have been made to the final rule as a result of this comment.

Comment 7: The EIP commented that flexible permit caps exceed baseline actual emissions.

Response 7: The EPA agrees that flexible permit caps, when established, can exceed baseline actual emissions for the facilities (units) the cap will cover. The rules at 30 TAC Section 116.716(c) define how a flexible permit cap is established. There are no federal guidelines that prohibit developing a flexible permit cap for a Minor NSR permit action using ''potential to emit'' emission thresholds provided the emission values, as represented in the permit application and used in establishing a cap limit, are fully evaluated for potential NAAQS violations and NSR permitting requirements in the initial permit action. A Minor NSR flexible permit cap is not a Plantwide Applicability Limit (PAL). PALs covering all facilities (units) at a stationary source, both major and minor, are to be based on each individual baseline actual emission for each individual facility (unit).

A grouping of facilities (units) for which flexibility is desired is determined by the permit applicant. Provided there are no deviations from the application representations and the emission increases do not exceed significant threshold categories for Major PSD and NNSR requirements, the permittee is afforded some flexibility in how compliance with the flexible permit cap emission limitations are met. In any case, any facility (unit) also subject to individual BACT emission limitations must always demonstrate compliance with that emission limitation as well. (See Response No. 6 above for a discussion of how emission caps must be established.)

Regarding the eight permit examples provided by EIP in Attachment A, all sources cited must submit permit applications for amendments or alterations in accordance with 30 TAC Section 116.721 if, and when changes are made at the source that vary from existing application representations. Those modification requirements are analogous to already SIP-approved rules found in 30 TAC Section 116.116. No changes have been made to the final rule as a result of this comment.

Comment 8: The EIP commented that the TCEQ has issued flexible permits that are virtually unlimited in scope.

Response 8: The EPA agrees that some of the State-only flexible permits initially issued under the state Flexible Permit Program that was not SIP-approved may not have met Clean Air Act requirements. See EPA's Fair Notice Letter dated September 25, 2007, to flexible permit holders in Texas and signed by John Blevins, Director, Compliance Assurance and Enforcement Division, EPA Region 6. However, the revised rules upon which this final conditional approval action is being taken do limit the scope of how stationary sources will be permitted to use flexible permit caps. These rules will ensure practicable enforceability of Clean Air Act requirements. The rules contain specialized monitoring, recordkeeping, and reporting elements. Specifically 30 TAC Section 116.715(c)(5)(A) requires each flexible permit to specify requirements for monitoring or demonstrating compliance with emission caps and individual emission limits in the flexible permit. Further, amended rule 30 TAC Section 116.715(c)(5)(B) requires each flexible permit to specify emission calculation methods for calculating annual and short term emissions for each pollutant. In addition, 30 TAC Section 116.715(d)(1) specifies that a flexible permit include specific monitoring, recordkeeping, and reporting conditions in flexible permits as appropriate for the type of facilities and emissions authorized under a cap. Compliance with the cap will be based on a 12 month rolling average to ensure continuous compliance. No changes have been made to the rule as a result of this comment.

Comment 9: The EIP commented that Texas' flexible permit rules indicate that flexible permits may be used to eliminate major NSR permit requirements.

Response 9: The EPA disagrees with the commenter's assertion. As explained previously, this is a Minor NSR program. The rules contain a provision found in 30 TAC Section 116.711(2)(M)(vii) which specifies that a flexible permit application must identify any terms, conditions, and representations in any Subchapter B (i.e., Major NSR) permit which will be superseded by or incorporated under a flexible permit and an analysis of how the conditions and control requirements of a subchapter B permit will be carried forward in the proposed flexible permit. Further 30 TAC Sections 116.716(c), 116.716(d), and 116.716(e) specify how to calculate an emission cap and how to handle individual emission limitations. In addition, these rules identify the facilities (units) subject to an emission cap, and outline that the permit shall clearly identify the facilities (units) subject to the emission cap so that those facilities (units) subject to Major PSD and NNSR requirements ensure compliance with major source BACT and LAER. No changes have been made to the rule as a result of this comment.

Comment 10: The EIP commented that flexible permit BACT requirements are not sufficiently stringent.

Response 10: The EPA disagrees regarding the stringency of the flexible permit control technology requirements. The Flexible Permit Program has been determined to be a Minor NSR program and the Clean Air Act does not require that minor sources employ any particular control technology. Activities made under a Flexible Permit must meet the emission control requirements for a Minor NSR program as found in 30 TAC Section 116.711(2)(C). However, for any facility (unit) that is subject to Major NSR permitting requirements, i.e., PSD, the rules contain safeguards as discussed above in Responses 5 and 9 to ensure Major NSR source BACT and LAER requirements are followed. No changes have been made to the rule as a result of this comment.

Comment 11: The EIP commented that flexible permit limits are not enforceable as a practical matter.

Response 11: The EPA disagrees with the commenter's assertion regarding enforceability of permit conditions. Information provided in Response 8 describes the requirements that flexible permits contain sufficient monitoring, recordkeeping, and reporting to demonstrate compliance. In addition, revised 30 TAC 116.715(c)(5) also states that each flexible permit specify requirements for monitoring or demonstrating compliance with emission caps and individual emission limits in the flexible permit and that each flexible permit shall specify methods for calculating annual and short term emissions for each pollutant for a given type of facility (unit). No changes have been made to the rule as a result of this comment.

Note: EIP raised a number of issues that are not directly relevant to this rulemaking. These issues cover use of Confidential Business Information, AP–42 emission factors, specific emission calculations and credible evidence rules. This rule does not directly address these subjects and they are outside the scope of this rulemaking.

Comment 12: The TCEQ commented that the EPA's discussion at Section II (last paragraph, 79, **Federal Register** 8373–8374) references 30 TAC Section 116.717 regarding adjustment of an emission cap but should most likely reference 30 TAC Section 116.715(c)(9).

Response 12: The EPA agrees with the TCEQ's comment that the incorrect citation was referenced in the February 12, 2014, **Federal Register** proposal. The correct citation is 30 TAC Section 116.715(c)(9).

III. When is this action effective?

The EPA has determined that today's final conditional approval of the Texas Flexible Permit Program is subject to the requirement to delay a rule's effective date until 30 days after publication in 5 U.S.C. 553(d) of the APA; therefore, the rule will become effective 30 days after publication.

IV. Final Action

- After careful consideration of the comments received and the responses to each comment provided above, and section 110 of the Act, the EPA is finalizing our conditional approval of the following revisions to the Texas SIP. In this final conditional approval we are revising the table at 40 CFR 52.2270(c) to reflect the approval of the following regulations into the Texas SIP: Revisions to 30 TAC Sections 39.402(a)(4) and (a)(5)—Applicability to applications for new and amended Flexible Permits—submitted July 2, 2010.
- Revisions to 30 TAC Section 116.10—General Definitions—submitted March 13, 1996; Repealed, adopted and submitted July 22, 1998; Redesignated and submitted October 4, 2002; Amended 116.10(9)(E)—submitted October 5, 2010.
- Revisions to 30 TAC Section 116.13—Flexible Permit Definitions—submitted November 29, 1994; Repealed, adopted and submitted July 22, 1998; Adopted revisions submitted October 21, 2013.
- Revisions to 30 TAC Section 116.110—Applicability—submitted November 29, 1994; Section 116.110(a)(3) Repealed, adopted and submitted July 22, 1998.
- Revisions to 30 TAC Section 116.710—Applicability—submitted November 29, 1994; Revised and submitted July 22, 1998; Revised and submitted September 11, 2000.
- Revisions to 30 TAC Section 116.711—Flexible Permit Application—submitted November 29, 1994; revised and submitted July 22, 1998; Added, redesignated and submitted April 12, 2001; Designated, added, revised and submitted September 4, 2002; and Adopted revisions submitted October 21, 2013.
- Revisions to 30 TAC Section 116.714—Application Review Schedule—submitted November 29, 1994; Revised and submitted July 22, 1998.
- Revisions to 30 TAC Section 116.715–General and Special Conditions—submitted November 29, 1994; Revised and submitted July 22, 1998; Revised and submitted September 11, 2000; Revised and submitted April 12, 2001; Revised and submitted September 4, 2002; Revised and submitted September 25, 2003.
- Revisions to 30 TAC Section 116.716—Emission Caps and Individual Emission Limitations—submitted November 29, 1994; and Adopted revisions submitted October 21, 2013.
- Revisions to 30 TAC Section 116.717—Implementation Schedule for Additional Controls—submitted November 29, 1994.
- Revisions to 30 TAC Section 116.718—Significant Emission Increase—submitted November 29, 1994.
- Revisions to 30 TAC Section 116.720—Limitation on Physical and Operational Changes—submitted November 29, 1994.
- Revisions to 30 TAC Section 116.721—Amendments and Alterations—submitted November 29, 1994; Revised and submitted July 22, 1998; Revised and submitted September 11, 2000.
- Revisions to 30 TAC Section 116.722—Distance Limitations—submitted November 29, 1994; Revised and submitted September 11, 2000.
- 30 TAC Section 116.730—Compliance History—submitted November 29, 1994; Withdrawn October 21, 2013.
- Revisions to 30 TAC Section 116.740(a)—Public Notice and Comment—submitted November 29, 1994; Designated, added and submitted July 22, 1998; Revised and submitted October 25, 1999; and Adopted revisions submitted October 21, 2013.
- Revisions to 30 TAC Section 116.750—Flexible Permit Fee—submitted November 29, 1994; Revised and submitted July 22, 1998; Revised and submitted September 11, 2000; Revised and submitted October 4, 2002; and Adopted revisions submitted October 21, 2013.
- Revisions to 30 TAC Section 116.760 Flexible Permit Renewal—submitted November 29, 1994.
- Revisions to 30 TAC Section 116.765—Compliance Schedule—submitted October 21, 2013.

The EPA is also approving the December 9, 2013, Interpretative Letter into the Texas SIP and will revise the table at 40 CFR 52.2270(e) to reflect this approval.

The EPA is conditionally approving the Flexible Permit Program into the Texas SIP. This is predicated on a commitment, as outlined in the December 9, 2013 Commitment Letter from the State, to adopt certain minor clarifications to the Flexible Permit Program by November 30, 2014, well within the one-year time limit in the statute. By taking our final action today, the Flexible Permit Program for the first time becomes an approved and thus a federally approved enforceable requirement in the Texas State Implementation Plan.

Upon receipt of the revised Flexible Permits Program as a revision to the Texas SIP, the EPA will evaluate it pursuant to our responsibilities under CAA section 110(k). If the EPA determines that the revised rule satisfies the December 9, 2013, Commitment Letter and was submitted in a timely manner, the EPA will provide notice in the **Federal Register** proposing to convert the conditional approval into a full approval in the Texas SIP. However, if the State fails to submit a SIP satisfying the commitments by the identified deadline, or if the EPA determines that the submitted SIP revision does not address the commitments, then the conditional approval will become a disapproval and the EPA will send a letter notifying the State that the SIP is disapproved. Because the Flexible Permit Program is discretionary and was not submitted to address a mandatory requirement of the Act, disapproval of the program will not trigger sanctions under Section 179(b) or start a Federal Implementation Plan clock.

As a result of our final conditional approval, and the associated revisions to 40 CFR 52.2270(c) and (e), EPA is also revising 40 CFR 52.2273 to remove paragraphs (c)(1)–(c)(3).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. See, 42 U.S.C. 7410(k); 40 CFR 52.02(a).

Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely conditionally approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 12, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposed of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) CAA.)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 26, 2014.

Ron Curry,

Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart SS—Texas

■ 2. In § 52.2270:

■ a. In paragraph (c), the table titled ''EPA Approved Regulations in the Texas SIP'' is amended by revising the entries for Sections 39.402, 116.10, 116.110; adding an entry for Section 116.13 after the entry for Section 116.12; and adding a centered heading for ''Subchapter G: Flexible Permits'' after Section 116.620 followed by entries for Sections 116.710, 116,711, 116.714, 116.715, 116.716, 116.717, 116.718, 116.720, 116.721, 116.722, 116.740, 116.750, 116.760 and 116.765.

■ b. The second table paragraph (e) titled ''EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP'' is amended by adding an entry at the end of the table for a clarification letter dated December 9, 2013.

The revisions and additions read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/Subject	State approval/ submittal date	EPA Approval date	Explanation
* *	*	*	*	* *
Section 39.402	Applicability to Air Quality Permits and Permit Amendments.	6/2/2010	7/14/2014 [Insert FR page number where document begins].	SIP includes 39.402(a)(1)–(a)(6).

EPA-APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/Subject	State approval/ submittal date	EPA Approval date	Explanation
* *	*	*	*	* *
Section 116.10	Definitions	9/15/2010	7/14/2014 [Insert FR page number where document begins].	SIP includes 30 TAC Sections 116.10 (4), (5), (6), (7), (8). (9), (10), (11)(C), (11)(D), (12)–(15) and (17) as revised by the TCEQ on 8/21/2002. The SIP also includes 30 TAC Section 116.10(9)(E), the definition of ''modification of existing facility'' as it pertains to flexible permits as adopted on 9/15/2010.
* *	*	*	*	* *
Section 116.13	Flexible Permit Definitions	9/24/2013	7/14/2014 [Insert FR page number where document begins].	
* *	*	*	*	* *
Section 116.110	Applicability	8/9/2000	7/14/2014 [Insert FR page number where document begins].	SIP includes 30 TAC Sections 116.110(a)(1), (a)(2), (a)(4), (b), (e), (f), and (g) as revised on 8/9/2000. SIP includes 30 TAC Section 116.110(a)(3) adopted on 6/17/1998. SIP does NOT include 30 TAC Sections 116.110(a)(5) or (d).
* *	*	*	*	* *
Subchapter G: Flexible Permits				
Section 116.710	Applicability	8/9/2000	7/14/2014 [Insert FR page number where document begins].	
Section 116.711	Flexible Permit Application	9/24/2013	7/14/2014 [Insert FR page number where document begins].	
Section 116.714	Application Review Schedule	6/17/1998	7/14/2014 [Insert FR page number where document begins].	
Section 116.715	General and Special Conditions.	9/24/2013	7/14/2014 [Insert FR page number where document begins].	
Section 116.716	Emission Caps and Individual Emission Limitations.	9/24/2013	7/14/2014 [Insert FR page number where document begins].	
Section 116.717	Implementation Schedule for Additional Controls.	11/16/1994	7/14/2014 [Insert FR page number where document begins].	
Section 116.718	Significant Emission Increase	11/16/1994	7/14/2014 [Insert FR page number where document begins].	
Section 116.720	Limitation on Physical and Operational Changes.	11/16/1994	7/14/2014 [Insert FR page number where document begins].	
Section 116.721	Amendments and Alterations	8/9/2000	7/14/2014 [Insert FR page number where document begins].	
Section 116.722	Distance Limitations	8/9/2000	7/14/2014 [Insert FR page number where document begins].	
Section 116.740	Public Notice and Comment	9/24/2013	7/14/2014 [Insert FR page number where document begins].	SIP includes 30 TAC Section 116.740(a).

EPA-APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/Subject	State approval/ submittal date	EPA Approval date	Explanation
Section 116.750	Flexible Permit Fee	9/24/2013	7/14/2014 [Insert FR page number where document begins].	
Section 116.760	Flexible Permit Renewal	11/16/1994		
Section 116.765	Compliance Schedule	9/24/2013	7/14/2014 [Insert FR page number where document begins].	SIP includes 30 TAC Section 116.765(b) and (c).
* *	*	*	*	* *

(e) * * *

EPA-APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP

Name of SIP provisions	Applicable geographic or nonattainment area	State submittal/ Effective date	EPA Approval date	Comments
*	*	* *	*	* *
Flexible Permits Interpretative Letter from the TCEQ.	Statewide	December 9, 2013	7/14/2014 [Insert FR page number where document begins].	Clarifies how the TCEQ implements the rules regarding (1) Director discretion; (2) BACT; (3) changes made by Standard Permits or Permits by Rule; (4) compliance with permit and permit application; and (5) start-up and shutdown emissions to ensure compliance with CAA requirements.

§ 52.2273 [Amended]

■ 3. Section 52.2273 is amended by removing and reserving paragraph (c).

[FR Doc. 2014–16328 Filed 7–11–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2014–0119; FRL–9912–19–Region–5]

Approval and Promulgation of Air Quality Implementation Plans; Illinois; Latham Pool Adjusted Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a request submitted by the Illinois Environmental Protection Agency on January 8, 2014, to revise the Illinois State Implementation Plan (SIP) for volatile organic matter (VOM). The approval revises the Illinois SIP by substituting a new party as the holder of the adjusted standard for VOM granted to Royal Fiberglass Pools, Inc. (Royal), for the facility located in Dix, Illinois. EPA approved the adjusted standard for Royal on June 27, 2011. Due to a change in ownership, the facility is now owned by Latham Pool Products, Inc., d/b/a Viking Pools. The revision amends the adjusted standard for VOM currently approved in the SIP for the facility to reflect the change in ownership. This revision does not change any of the VOM control requirements and will not result in an increase in VOM emissions at the facility.

DATES: This direct final rule is effective August 13, 2014, unless EPA receives adverse comments by August 13, 2014. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2014–0119, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. Email: *blakley.pamela@epa.gov.*
3. Fax: (312) 629–2054.
4. Mail: Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. Hand Delivery: Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2014–0119. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your

comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov index.* Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Carolyn Persoon, Environmental Engineer, at (312) 353–8290 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Carolyn Persoon, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8290, *persoon.carolyn@epa.gov.*

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

I. General Information
II. What revision did the State request be incorporated into the SIP?
III. What action is EPA taking?
IV. Statutory and Executive Order Reviews

I. General Information

A. Does this action apply to me?

This action applies only to the adjusted standard for VOM granted to Royal for the facility in Dix, Illinois (Jefferson County). This action is only a name change to reflect that the facility is now owned by Latham Pool Products, Inc., d/b/a Viking Pools. No increases in emissions at the facility are allowed by this action.

B. Has public notice been provided?

The Illinois Pollution Control Board (IPCB) granted the administrative change at a quarterly meeting which was open to the public. Prior to the meeting, public notice was given that the meeting was being held and an agenda with actions to be considered was posted on the IPCB Web site. Public notice of the administrative change was posted on the Web site and the subsequent board meeting open to the public was held on September 5, 2013, prior to the administrative order going into effect.

C. What is the background to this action?

Latham Pool Products, Inc., d/b/a Viking Pools, owns and operates a fiberglass pool manufacturing facility in the city of Dix, Illinois that was formerly owned and operated by Royal. The facility is used to manufacture fiberglass pools and emits VOM.

EPA approved the adjusted standard into the Illinois SIP on June 27, 2011 (76 FR 37272). The adjusted standard removed the 8 lb/hr VOM limit for Royal's fiberglass facility in Dix, Illinois. Although Royal was not required to comply with the 8 lb/hr rule, Royal was required to operate its facility in compliance with the National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Reinforced Plastic Composites Production at 40 CFR part 63, subpart WWWW.

EPA is approving this name change as solely an administrative change, which does not allow for any change in the emission limits for VOM, work practice standards or any other requirements in the NESHAP at 40 CFR part 63, subpart WWWW, or any other applicable Federal, state and local laws, regulations and permits.

II. What revision did the State request be incorporated into the SIP?

To reflect the change in ownership, the state has requested that EPA replace the name of the holder of the adjusted standard currently in the Illinois SIP from Royal to Latham Pool Products, Inc., d/b/a Viking Pools.

III. What action is EPA taking?

EPA is approving a revision to the Illinois SIP to substitute Latham Pool Products, Inc., d/b/a Viking Pools, as the holder of the adjusted standard for VOM that EPA previously approved into the SIP for Royal. This revision does not change any of the VOM control requirements and will not result in an increase in VOM emissions because no emission limits were increased.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective September 12, 2014 without further notice unless we receive relevant adverse written comments by September 12, 2014. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective September 12, 2014.

IV. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

• does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 12, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: May 30, 2014.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart O—Illinois

■ 2. Section 52.720 is amended by adding paragraph (c)(199) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(199) On January 8, 2014, the Illinois Environmental Protection Agency submitted a revision to its state implementation plan. The revision to the SIP substitutes Latham Pool Products, d/b/a Viking Pools, for Royal Fiberglass Pools, Inc. as the holder of the adjusted standard to the general rule, Use of Organic Material Rule, known as the eight pound per hour (8 lb/hr) rule, for volatile organic matter that was granted to Royal Fiberglass Pools, Inc. manufacturing facility located in Dix, Illinois on February 18, 2010 by the Illinois Pollution Control Board. The adjusted standard affected by the name change provides that 35 Ill. Adm. Code 215.301 does not apply to VOM emissions from Viking Pools fiberglass pool manufacturing facility in Dix, Illinois. The facility is subject to emission limit requirements set forth in the National Emissions Standards for Hazardous Air Pollutants for Reinforced Plastic Composites Production at 40 CFR 63, subpart WWWW, April 21, 2003.

(i) Incorporation by reference.

(A) Supplemental Opinion and Order of the Illinois Pollution Control Board, AS 09–4, effective September 5, 2013.

[FR Doc. 2014–16290 Filed 7–11–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2014–0323; FRL–9913–12–Region 9]

Revisions to the California State Implementation Plan, Placer County Air Pollution Control District and South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the Placer County Air Pollution Control District (PCAPCD) and South Coast Air Quality Management District (SCAQMD) portions of the California State Implementation Plan (SIP). Under the Clean Air Act (CAA or the Act), we are rescinding local rules that concern volatile organic compound (VOC) emissions from the manufacture of medium density fiberboard, melamine and phenol resins used in plasticizing paper and oxides of nitrogen (NO_X) emissions from stationary internal combustion engines.

DATES: This rule is effective on September 12, 2014 without further notice, unless EPA receives adverse comments by August 13, 2014. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2014–0323, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.

2. *Email: steckel.andrew@epa.gov.*

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information

unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901. While all documents in the docket are listed at *www.regulations.gov,* some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Arnold Lazarus, EPA Region IX, (415) 972–3024, *lazarus.arnold@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' and ''our'' refer to EPA.

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I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rule rescissions we are approving with the dates that they were rescinded by the local air agencies and submitted by the California Air Resources Board.

TABLE 1—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Rescinded	Submitted
PCAPCD	229	Fiberboard Manufacturing	6/28/1994	4/12/2012	2/12/2014
PCAPCD	230	Plastic Products and Materials—Paper Treating Operations.	6/28/1994	4/12/2012	2/12/2014
SCAQMD	1110	Emissions From Stationary Internal Combustion Engines (Demonstration).	11/6/1981	11/14/1997	5/18/1998

On April 8, 2014 EPA determined that the submittal to rescind PCAPCD rules 229 and 230 met the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

On November 18, 1998, the submittal to rescind SCAQMD Rule 1110 was deemed by operation of law to meet the completeness criteria in 40 CFR Part 51 Appendix V.

B. What is the purpose of the submitted rule rescissions?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires States to submit regulations that control VOC emissions. PCAPCD Rules 229 and 230 were originally adopted because two sources, SierraPine addressed by Rule 229, and Formica addressed by Rule 230, were emitting significant VOCs. Both sources are no longer operating in PCAPCD, so there is no longer need for these rules in PCAPCD's local rulebook or the SIP. EPA's technical support document (TSD) has more information about these rule rescissions.

Nitrogen oxides (NO_X) help produce ground-level ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires States to submit regulations that control NO_X emissions. SCAQMD Rule 1110, Emissions From Stationary Internal Combustion Engines (Demonstration) was adopted to collect emission data which SCAQMD later used to develop SCAQMD Rule 1110.1—Emissions From Stationary Internal Combustion Engines, which established emission controls on certain engines. Rule 1110 required owners and/or operators of more than 5,000 total installed rated brake horsepower of existing engines to participate in a program to demonstrate the effectiveness of methods for the reduction of NO_X emissions. Rule 1110 was repealed by SCAQMD because it was a demonstration program that has been completed. Therefore, the rule's provisions are no longer applicable. EPA's TSD has more information about this rule.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rule rescissions?

These rules describe requirements intended to help control VOC emissions from fiberboard manufacturing, and plastic products and materials—paper treating operations in PCAPCD, and NO_X emission data from stationary internal combustion engines used in demonstrating NO_X emissions in SCAQMD. These rule rescissions must not relax existing requirements consistent with CAA sections 110(l) and 193. EPA policy that we used to evaluate these rule revisions includes ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).

B. Do the rules meet the evaluation criteria?

The Districts have requested rule rescissions because they no longer have any sources subject to these rules, they do not expect any new sources in the future, and any new sources would be subject to restrictive New Source Review permitting requirements. Therefore, we believe these rule rescissions are consistent with relevant policy and guidance.

C. EPA Recommendations To Further Improve the Rules

Because these are rescissions, there are no recommendations to improve the rules.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rule rescissions because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by August

13, 2014, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on September 12, 2014. This will incorporate these rule rescissions into the federally enforceable SIP.

Please note that if EPA receives adverse comments on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 12, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: May 30, 2014.

Jared Blumenfeld,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS.

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

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

Subpart F—California

■ 2. Section 52.220, is amended by adding paragraphs (c)(121)(i)(E) and(198)(i)(B)(3) and (4) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(121) * * *

(i) * * *

(E) Previously approved on May 3, 1984 in paragraph (c)(121)(i)(C) of this section and now deleted without replacement Rule 1110.

* * * * *

(198) * * *

(i) * * *

(B) * * *

(3) Previously approved on December 14, 1994 in paragraph (c)(198)(i)(B)(1) of this section and now deleted without replacement Rule 230.

(4) Previously approved on June 8, 2001 in paragraph (c)(198)(i)(B)(2) of this section and now deleted without replacement Rule 229.

* * * * *

[FR Doc. 2014–16293 Filed 7–11–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 15

[ET Docket No. 03–201; FCC 14–80]

Unlicensed Devices and Equipment Approval

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document terminates the above captioned proceeding on unlicensed transmitter operations. Based on the record and considering that the Commission has not received any additional requests in recent years advocating the need for a spectrum etiquette requirement for unlicensed operations in the requested bands, the Commission concludes that adoption of such a requirement does not merit further evaluation at this time. In terminating this proceeding, the Commission also dismissed a pending petition for reconsideration.

DATES: Effective August 13, 2014.

FOR FURTHER INFORMATION CONTACT: Hugh Van Tuyl, Office of Engineering and Technology, 202–418–7506, *Hugh.VanTuyl@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order and Second Memorandum Opinion and Order, ET Docket No. 03–201, FCC 1480, adopted June 9, 2014 and released June 10, 2014. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room, CY–B402, Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov.* People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Summary of Order and Second Memorandum Opinion and Order

1. By this Order, the Commission terminates the above-captioned proceeding on unlicensed transmitter operations. The only substantive issues pending in this proceeding concern whether to adopt a specific ''spectrum etiquette'' requirement for unlicensed transmitters operating in the 902–928 MHz band, and whether there might be need for a similar requirement with respect to unlicensed operations in the 2.4 GHz and 5.8 GHz bands. Based on the record before us, and considering that the Commission has not received additional requests in recent years advocating the need for a spectrum etiquette requirement for unlicensed operations in these bands, the Commission concludes that adoption of such a requirement in these bands does not merit further evaluation at this time. In terminating this proceeding, the Commission also dismissed a pending petition for reconsideration.

2. Part 15 of the Commission's rules governs the operation of unlicensed radiofrequency devices, including the technical requirements for their use. As a general condition of operation, part 15 devices may not cause harmful interference to authorized radio services and must accept any interference that they receive.

3. In 2003, the Commission initiated a *Notice of Proposed Rulemaking* in this proceeding to review and update certain sections of parts 2 and 15 of our rules pertaining to technical parameters and measurement procedures related to unlicensed device operations in the 902–928 MHz band, the 2.4 GHz band, and the 5.8 GHz band. The Commission also invited comment on whether it should consider any methods to ensure efficient spectrum usage by unlicensed devices, including the ''spectrum etiquette'' sharing conditions developed by the industry for the operation of unlicensed Personal Communications Service (PCS) devices operating in the 1920–1930 MHz band. A spectrum etiquette establishes a set of steps and protocols that a device must follow before it may access the spectrum. Such an etiquette may require that a device monitor the spectrum in which it intends to operate and begin transmission only if no signal above a specified threshold is detected.

4. In July 2004, the Commission adopted a *Report and Order,* that modified several rules pertaining to these bands. The Commission, however, declined to impose any type of spectrum etiquette for any Part 15 bands. The Commission noted that most commenting parties had asserted that a spectrum etiquette requirement would tend to limit development of unlicensed operations. It also expressed concern that an etiquette requirement applying only to new devices in these heavily used unlicensed bands may not be useful in facilitating spectrum sharing if the large number of devices already authorized and used in the band were not required to follow the etiquette. The Commission also noted that the then-existing regulations, which did not require a spectrum etiquette, had resulted in very efficient use of unlicensed spectrum.

5. *MO&O and Further Notice.* In June 2007, the Commission issued its *MO&O and Further Notice,* which addressed Cellnet's petition and the spectrum etiquette issue. The Commission dismissed Cellnet's petition on the grounds that the petition and Cellnet's subsequent filings did not satisfy the Commission's rules for specific relief and timeliness; it noted that not until a 2006 *ex parte* presentation, filed over a year past the reconsideration period, did Cellnet describe a specific spectrum etiquette that it believed the Commission should require for digitally modulated spread spectrum transmitters operating in the 902–928 MHz band under § 15.247 of the rules.

6. While the Commission focused the further notice on a spectrum etiquette that would apply only to the 902–928 MHz band, the Commission also inquired generally about whether there might be a similar need to adopt rules for unlicensed devices in the 2.4 GHz and 5.8 GHz bands. The Commission stated, however, that industry standards were being developed to facilitate sharing in these bands and that it did not intend to disrupt this process.

Discussion

7. The Commission is not persuaded of the need to adopt a spectrum etiquette requirement for unlicensed operations in the 902–928 MHz band. In addition to the record before us, subsequent developments concerning unlicensed operations in the 902–928 MHz band also counsel against adoption of a spectrum etiquette requirement.

8. Since June 2007, the Commission has approved more than 2,500 unlicensed devices operating in the 902–928 MHz band. This indicates that the band continues to be heavily used under the existing rules for unlicensed operations. The Commission observes that manufacturers have developed a wide variety of different types of products under the current part 15 rules. Consistent with the Commission's decision in 2004 not to adopt an etiquette requirement, it is not concerned that adoption of such a requirement could impede design flexibility and innovation of a wide variety of devices that the current rules enable. In declining to adopt a spectrum etiquette requirement, the Commission also notes that manufacturers and users of part 15 devices can and do take various steps when designing and

deploying their equipment to promote the effective and efficient sharing between digitally modulated devices and other part 15 devices that operate in the 902–928 MHz band. For example, devices can tune to less congested frequencies or hop to a number of different frequencies to avoid interference. In addition, device operators can reduce the separation distance between the transmitter and receiver in areas where the 902–928 MHz spectrum is heavily used.

9. The Commission agrees with commenters who argued that the large number of existing devices in the 902–928 MHz band would limit the usefulness of a new etiquette since previously approved devices would not be required to comply with an etiquette. Also, no party described an etiquette that would be compatible with all types of devices that currently operate in the band. Further, as a number of commenters noted, an etiquette could potentially stifle innovation or preclude the use of certain types of devices in the 902–928 MHz band.

10. The Commission focused the further notice on whether it should adopt a spectrum etiquette requirement for unlicensed operations in the 902–928 MHz band; only a few commenters commented on a spectrum etiquette requirement in either the 2.4 GHz or 5.8 GHz bands. The Commissions agrees that there is no need for an etiquette in these bands.

11. The record before us does not establish the need for a spectrum etiquette requirement in the 902–928 MHz band. Nor is there any basis before us that establishes a need for adoption of a spectrum etiquette requirement for either the 2.4 GHz band or 5.8 GHz band. The Commission concludes that adoption of this type of requirement in these bands would not serve the public interest at this time.

Second Memorandum Opinion and Order

12. The 2004 *Report and Order* in this proceeding made several changes to part 15 of the rules regarding unlicensed operations in the 902–928 MHz band, the 2.4 GHz band, and the 5.8 GHz band. In 2004, Warren C. Havens and Telesaurus Holdings GB LLC (Havens), which are licensees in the Multilateration Location and Monitoring Service (M–LMS) in portions of the 902–928 MHz band, filed a petition for reconsideration of that order. Havens requested that the Commission suspend the rule changes adopted for unlicensed devices for operation in the 902–928 MHz band until such time as the Commission commenced and completed a formal inquiry, including notice and comment, with regard to the potential effect of such changes to M–LMS licensees that operate in portions of the band. Havens claimed that the revised part 15 rules would lead to increased spectrum use of the 902–928 MHz band by unlicensed devices and thus would adversely affect M–LMS systems by changing the ''regulatory coexistence'' between part 15 and M–LMS operations. Havens asserted that the Commission should have made no changes in the part 15 rules regarding with 902–928 MHz band without a rulemaking on part 90 M–LMS rules.

13. In the 2007 *MO&O and Further Notice,* the Commission dismissed the Havens petition, declining to suspend the part 15 rule changes. The Commission first noted that Havens did not raise any objections to any proposals for revising part 15 rules in the *Notice of Proposed Rulemaking* prior to the filing of the Havens petition. The Commission explained that, pursuant to § 1.429(b) of its rules, a petition for reconsideration that relies on facts not previously presented to the Commission will be granted only if: (1) The facts relied on relate to events which have occurred or circumstances which have changed since the last opportunity to present them to the Commission; (2) the facts relied upon were unknown to the petitioner until after his last opportunity to present them to the Commission, and he could not through the exercise of due diligence have learned of the facts in question prior to such opportunity; or (3) the Commission determines that consideration of the facts relied on is required in the public interest. The Commission concluded that Havens failed to address why it did not previously participate in this proceeding or claim that any of these three conditions were met. In addition, the Commission noted that § 1.429(c) of the Commission rules require that a petition for reconsideration state with particularity the respects in which the petitioner believes the action taken should be changed. The Commission pointed out that Havens did not identify the particular rule changes that should be suspended, and instead provided only a mere statement of belief that the part 15 rule changes in this proceeding would lead to increased use of part 15 devices in the 902–928 MHz band and thus would result in adverse effects on M–LMS operations that also operate in the portions of the band. The Commission found that Havens had provided no evidence or analysis to support this assertion. The Commission also noted that Havens had raised essentially the same arguments in its petition for reconsideration in ET Docket No. 99–231 concerning changes to the part 15 rules for spread spectrum devices, which the Commission had rejected in that proceeding. Accordingly, the Commission dismissed the Havens petition.

14. The Commission also noted that a proceeding had been initiated in 2006 to reexamine the rules for the M–LMS operating in the 902–928 MHz band (WT Docket No. 06–49), and that proceeding had been prompted partly in response to a petition for rulemaking by Progeny LMS, LLC (Progeny), another M–LMS licensee. The Commission stated that the M–LMS proceeding was the appropriate forum for addressing concerns raised by Havens about the M–LMS rules, including the operational relationship between Part 90 M–LMS devices and part 15 unlicensed devices. The Commission also noted that Havens had already participated in the proceeding to consider Progeny's earlier petition for rulemaking.

15. In July 2007, on behalf of Telesaurus, Warren Havens filed a petition for reconsideration of the Commission's dismissal of the Havens petition for reconsideration in the *MO&O and Further Notice.* Havens asserts that the Commission's decision dismissing the previous Havens petition for reconsideration should be reversed and that the relief that Havens had requested in the previous petition challenging the 2004 *Report and Order* should now be granted on the basis of the new petition. Havens claims that the 2007 petition for reconsideration is based on ''new facts.'' The arguments raised by Havens in the petition for reconsideration of the Commission's dismissal of the earlier petition for reconsideration raise no new relevant facts, and do not provide grounds for our reconsideration of the Commission's prior decision dismissing Havens earlier petition. The Commission dismisses the pending Havens petition as repetitious.

16. In dismissing this latest petition, the Commission relies on § 1.429 of the Commission's rules, as had the earlier Commission when dismissing the previous Havens petition for reconsideration in this proceeding. To the extent a petitioner seeks reconsideration of final orders in a rulemaking proceeding, the petitioner may rely on new facts and arguments not previously presented to the Commission. The Commission may grant such a petition only if: (1) The facts relied on relate to events which have occurred or circumstances which have changed since the last opportunity to present them to the Commission; (2)

the facts relied upon were unknown to the petitioner until after its last opportunity to present them to the Commission, and it could not through the exercise of due diligence have learned of the facts in question prior to such opportunity; or (3) the Commission determines that consideration of the facts relied on is required in the public interest. The Commission's rules also require that a petition for reconsideration state with particularity the respects in which the petitioner believes the action taken should be changed. Except in circumstances where the Commission has modified rules in response to a petition for reconsideration, a second petition for reconsideration may be dismissed as repetitious.

17. In the pending petition, Havens argues that the Commission erred in 2007 when dismissing the previous petition, and asserts alleged ''new facts'' as bases for its petition. In particular, Havens repeats arguments made in the earlier petition for reconsideration—namely that the Commission could not properly make any part 15 rule changes applicable to the 902–928 MHz band that were potentially adverse to M–LMS operations without a notice and comment proceeding on M–LMS. Havens again asserts that any rule part 15 rule changes are changes to the M–LMS rules. Havens also reasserts that there was no obligation for Havens to participate earlier in this part 15 proceeding. As for alleged ''new facts,'' Havens first asserts that the Commission's initiation in 2006 of the proceeding seeking comment on possible changes to the M–LMS rules for operation in the 902–928 MHz band, which could affect part 15 operations in the band, demonstrates the validity of its argument in its petition that the M–LMS rules affect part 15 and vice versa. Havens argues that since this new proceeding occurred following the release of the 2004 *Report and Order,* this constitutes a new fact. Havens also asserts that the Commission ignored all of the arguments that Havens had raised in response to a 2002 petition by an M–LMS licensee to change rules in 902–928 MHz band, which ultimately led to the Commission's initiation of the 2006 M–LMS rulemaking, and that this constitutes a new fact showing the Commission's prejudice towards Havens (and Telesaurus) and an abrogation of the Commission's duty to be impartial.

18. Havens has not demonstrated any basis for our reconsideration of the Commission's earlier dismissal. The Commission previously concluded that the initial Havens petition for reconsideration was procedurally defective and failed to establish a basis for relief. The so-called ''new facts'' alleged by Havens, and which are only unsupported assertions, do not constitute the kinds of facts contemplated under § 1.429 that would provide a basis for granting a petition for reconsideration. Further, nothing prevented Havens from participating in the rulemaking that revised part 15 rules in this proceeding. Moreover, Havens did not identify any particular rule that should be changed, nor specify how he would propose revising any particular rule. In addition, the arguments raised in the pending Havens petition for reconsideration are repetitious. For all of these reasons, the Commission dismisses the petition.

19. Finally, as the Commission noted in the *MO&O and Further Notice,* Havens has had the opportunity to present his concerns relating to potential revisions to the M–LMS rules, including the operational relationship between M–LMS devices and part 15 unlicensed devices, in the M–LMS rulemaking (WT Docket No. 06–49). Havens has been an active participant in that rulemaking.

Conclusion

20. The remaining issues raised in the this proceeding, which concern whether the Commission should adopt a spectrum etiquette requirement for unlicensed transmitters that operate under §§ 15.247 and 15.249 of the rules in the 902–928 MHz band, or possibly also for the 2.4 GHz or 5.8 GHz bands, do not merit further consideration at this time. The Commission also dismisses the pending petition for reconsideration. With these actions, the Commission terminates this proceeding.

Ordering Clauses

21. Pursuant to sections 4(i), 5(c), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 155(c), and 405(a), and § 1.429 of the Commission's Rules, 47 CFR 1.429, that the Petition for Reconsideration filed by Telesaurus GB LLC on July 23, 2007 IS *dismissed.*

22. Pursuant to the authority contained in Sections 4(i) and 4(j) of the Communications Act, as amended, 47 U.S.C. 154(i) and (j), that the proceeding in ET Docket No. 03–201 is *hereby terminated.*

23. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Order and Second Memorandum Opinion and Order,* including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

Report to Congress

24. The Commission will not send a copy of this Second Memorandum Opinion and Order pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the Commission did not adopt any new rules here.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2014–16420 Filed 7–11–14; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 15, 74, and 90

[WT Docket Nos. 08–166; 08–167; ET Docket No. 10–24; FCC 14–62]

Revisions to Rules Regarding Low Power Auxiliary Stations, Including Wireless Microphones

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission takes steps to better enable wireless microphone users to provide high quality audio services to serve a wide range of needs. The Commission expands Low Power Auxiliary Station license eligibility under its part 74 rules to include professional sound companies and owners and operators of large venues that routinely use 50 or more wireless microphones, where the use of wireless microphones is an integral part of the major productions or events they host.

DATES: *Effective:* August 13, 2014, except for § 74.832, which contains new or modified information collection requirements that require approval by the Office of Management and Budget (OMB). The Federal Communications Commission will publish a document in the **Federal Register** announcing such approval and the relevant effective date.

FOR FURTHER INFORMATION CONTACT: Bill Stafford, Wireless Telecommunications Bureau, (202) 418–0563, email *Bill.Stafford@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Report and Order (Second R&O), WT Docket Nos. 08–166; 08–167; ET Docket No. 10–24; FCC 14–62, adopted May 15, 2014, and released June 2, 2014. The full text of this document is available for inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554.

Also, it may be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554; the contractor's Web site, *http://www.bcpiweb.com*; or by calling (800) 378–3160, facsimile (202) 488–5563, or email *FCC@BCPIWEB.com.* Copies of the Second R&O also may be obtained via the Commission's Electronic Comment Filing System (ECFS) by entering the docket number WT Docket No. 08–166. Additionally, the complete item is available on the Federal Communications Commission's Web site at *http://www.fcc.gov.*

I. Introduction

1. In this Second R&O, the Commission takes steps to better enable wireless microphone users to provide high quality audio services to serve a wider range of needs. Theatrical productions, concerts, sporting events, conventions and houses of worship all depend on wireless microphones to meet their needs for high quality audio services. The actions the Commission takes shall extend license eligibility to those wireless microphone users who have needs similar to those of existing low power auxiliary stations (LPAS) licensees. Specifically, the Commission expands part 74 license eligibility to include professional sound companies and owners and operators of large venues that routinely use 50 or more wireless microphones, where the use of wireless microphones is an integral part of the major productions or events they host. The Commission concludes that this measured approach strikes an appropriate balance in providing the benefits of a license for entities and events that have a demonstrated need, while ensuring that spectrum is shared effectively with existing LPAS operations and remains available for other uses, including TV white space (TVWS) devices.

2. The actions the Commission takes in this Second R&O to expand license eligibility and protection are only one step to address a range of issues concerning the operation of wireless microphones. In the *Incentive Auction Report and Order,* (FCC 14–62, adopted May 15, 2014, and released June 2, 2014), adopted concurrently with this Second R&O, the Commission adopts several measures to accommodate the needs of wireless microphone users in the portion of the UHF band that will remain available for their operations following the incentive auction. Among other actions, the Commission revised its rules for co-channel operations to expand areas where wireless microphones may be used in the bands that will remain allocated for broadcast services, and the Commission will permit wireless microphones to operate in the 600 MHz guard bands spectrum. Although the Commission will no longer designate two TV channels exclusively for wireless microphone use after the UHF band is reorganized, the Commission intends to designate one channel for use by wireless microphones and unlicensed devices and plans to make improvements in the TV bands database to enable more timely and effective registration of wireless microphone users seeking interference protection from TVWS device operations. In addition, while wireless microphones will eventually be required to cease operating in the spectrum repurposed for wireless broadband, the Commission will allow wireless microphone users to continue to operate for 39 months following the incentive auction in order to facilitate their transition to other spectrum. Finally, recognizing the important benefits provided by wireless microphones, the Commission plans to initiate a proceeding in the near term to explore ways to help accommodate the longer-term needs of wireless microphone users through use of additional frequency bands to meet their varying needs.

II. Background

3. The Commission's rules in part 74, Subpart H, provide for licensed operations of wireless microphones primarily on frequencies allocated for television broadcasting on a secondary, non-exclusive basis. License eligibility has evolved over time and now includes the following specified entities: Licensees of radio and broadcast television stations, broadcast television network entities, certain cable television system operators, and motion picture and television program producers. These entities share the need for regular and reliable high quality audio services that are free from interference and often require a large number of wireless microphones to meet their needs. Licensees may not cause harmful interference to the operations of TV broadcast and land mobile stations operating on a primary basis and must comply with a number of technical rules. These include requirements to avoid causing harmful interference to TV broadcasting and land mobile station operations, to coordinate frequencies with other LPAS operations, to comply with specified transmission power limits and out-of-band emission limits, and to use FCC-certified equipment. LPAS licensees may receive protection from TVWS devices by registering in the TV bands database.

4. In the 2010 *Wireless Microphone Report and Order,* 75 FR 3622, January 22, 2010, the Commission first authorized unlicensed operations in the broadcast television bands in recognition of the important benefits provided by wireless microphones in performances and programs in theaters, classrooms, lecture halls, houses of worship, stadiums, and other venues. The Commission granted waivers of its rules to permit continued operations of wireless microphones on an unlicensed basis under part 15 in the core television bands, generally at a power of up to 50 milliwatts. These temporary waivers have been in effect pending further action in this docket.

5. The Commission subsequently recognized that certain types of unlicensed wireless microphone users require a large number of wireless microphones and should therefore be permitted to register in the TV bands database, upon meeting certain conditions. Specifically, the new rule provided that an unlicensed wireless microphone user must demonstrate to the Commission that it requires a large number of microphones and that it is using all TV channels not available to other users and on which wireless microphones can practicably be used. Unlike LPAS licensees, which can register directly with the database administrator, unlicensed wireless microphone users must apply to the Commission and must do so at least 30 days in advance of the event for which they seek protection.

6. In the *Wireless Microphone Further Notice,* 75 FR 3682, January 22, 2010, the Commission sought comment on whether to provide for a limited expansion of license eligibility under part 74 Subpart H of the rules. The Commission recognized that certain types of unlicensed wireless microphone users, including many large cultural, civic, sporting and religious events, may have needs that are similar to existing licensees and share the need for the kinds of interference protection that a license affords. The Commission further noted that it previously had expanded license eligibility to accommodate users with requirements similar to those of broadcast licensees. However, it noted that any ''broad expansion'' of eligibility could significantly reduce the amount of spectrum available for other uses of the TV bands, such as by TVWS devices. In addition, the Commission understood that any expansion of part 74 license eligibility would have an impact on the existing licensees and sought comment

on how expansion might affect the viability of frequency coordination among existing licensees that make use of the spectrum to address their needs. The Commission subsequently issued a public notice to refresh the record on these issues, as well as on the promotion of more efficient use of spectrum, and the impact of TVWS devices and incentive auction proceedings regarding spectrum currently allocated to TV broadcasting.

7. The Commission received 24 comments and 18 reply comments in response to the *Wireless Microphone Further Notice.* The Commission received 25 comments and 11 reply comments in response to the *Wireless Microphone Refresh Public Notice*.

III. Discussion

8. In this Second R&O, the Commission finds that it is in the public interest to provide for a limited expansion of the types of entities eligible for a part 74 LPAS license to include qualifying professional sound companies, as well as owners and operators of large venues. In order to qualify for a license, a professional sound company or venue must certify that it provides audio services or holds events that routinely use 50 or more wireless microphones, where the use of such devices is an integral part of major events or productions. Routinely using 50 or more wireless microphones means that the professional sound company or venue uses 50 or more such devices for most events or productions. Such events may include, for example, performing arts events; major sports, cultural, religious and corporate events; and large theater productions.

9. The Commission concludes that professional sound companies and venues that routinely use 50 or more wireless microphones generally have the same needs for interference protection as existing LPAS licensees in order to ensure reliable, high quality audio, particularly given the spectrum requirements associated with use of a large number of wireless microphones. This expansion will provide a meaningful benefit to entities that require the protection that a license affords without unduly reducing the amount of spectrum available for other uses in the television bands. Unlicensed wireless microphone users that do not qualify for a license may continue to operate under the terms of the existing waivers.

10. *Expanded License Eligibility.* The eligibility threshold the Commission adopts is limited to professional sound companies and venues that have the sophisticated knowledge and capability to manage use and coordination of a large number of wireless microphones, register qualifying events in the TV broadcast database, and comply with LPAS rules. As discussed in the record, these types of professional users have experience in coordinating wireless microphone uses among themselves at venues or events, even in congested markets. They also have similar needs to existing LPAS licensees in order to provide high quality audio services for large scale performances and events.

11. For purposes of the revised eligibility rule, a professional sound company is defined as an entity that provides audio services that routinely use 50 or more low power auxiliary station devices, where the use of such devices is an integral part of major events or productions. Services by a professional sound company may include the provision of equipment, as well as engineering expertise and frequency coordination. A production company that provides its own audio services, such as a touring theater company or performer, would be eligible for licensing under this definition, provided that it routinely uses 50 or more wireless microphones in connection with the performances or events.

12. Eligible venues are those that routinely use 50 more wireless microphones and may include indoor or outdoor seated facilities, including auditoriums, amphitheaters, arenas, stadiums, theaters, and houses of worship, as well as indoor or outdoor venues without fixed seating, including convention centers, conference locations, amusement parks, fairgrounds, entertainment complexes, athletic facilities, educational centers, and government locations. The venue does not have to own or operate the wireless microphones itself to qualify for the LPAS license but must routinely host large-scale productions that require 50 or more of these devices.

13. Licenses issued to large venue owners or operators are specific to a single venue and authorize operation only at that venue. The Commission allows venues that are comprised of more than one theater or stage area to be eligible provided they routinely use 50 or more wireless microphones by combining all theaters or stage areas at that same location. This will provide interference protection for all theaters and similar facilities at large multi-stage venues, and it will provide flexibility to the licensee, for example, in the event there are location changes for performances and events within the venue.

14. Expanding eligibility in this manner is consistent with the approach the Commission has previously taken with respect to part 74 LPAS license eligibility. Although licensing was initially limited to licensees of radio and broadcast television stations, the Commission expanded licensing eligibility to include motion picture and television producers on grounds that these entities had the same types of needs as existing LPAS licensees. It further noted that it would consider on a case-by-case basis license applications by ''other groups such as live entertainment program producers, etc.'' whose needs are similar to those of broadcast licensees.

15. The newly-eligible licensees have similar needs to existing LPAS licensees in order to provide high quality audio services for large scale performances and events. The Commission notes, for example, that interference protection is just as important for professional sound companies and venues that present large performances as it is for existing broadcast and broadcast-related entities because of the need to protect the quality of the performances that their audiences demand and value. For example, the Commission notes that the need for licensed LPAS devices to be free from harmful interference can be critical for large, live performances, where there may be no chance at a ''second take.''

16. The Commission concludes that routine use of 50 microphones is a reasonable threshold for identifying those entities that are more likely to require interference protection in order to ensure high quality audio services. The record shows that large events and programs regularly utilize a substantial number of wireless microphones. The number of wireless microphones used is generally an indicator of the complexity of productions and the need to ensure interference-free high audio quality. Interference protection is important for large, live performances because audiences expect ''performances of the highest caliber,'' and interference should not hinder such performances.

17. Although the number of these devices used for any event can vary based upon a variety of factors, including the nature of the performance, large events and productions often require 50 or more devices. Data submitted by parties indicate that an average of approximately 50 wireless microphones is used for theatrical performances, and that complex performances, such as musicals, often use more. These data also indicate that average wireless microphone usage at sporting events is approximately 80

microphones (although major sporting events can top 300 microphones), and that more than 150 wireless microphones on average are used at live events or shows.

18. Large events and productions have less flexibility in choosing channels to avoid interference than when only a few such devices are used. This occurs because the wireless microphone user needs to avoid causing interference to or receiving interference from operating TV station signals as well as other wireless microphones operating in close frequency and spatial proximity (e.g., among the wireless microphones being used during any one event or production). As a result, productions utilizing a large number of these devices must have access to a significant amount of spectrum that may only be available through licensed use. A production utilizing 50 devices, for example, could need interference-free access to many TV channels at any given venue. For these reasons, the Commission concludes that routine use of a minimum of 50 wireless microphones provides a reasonable basis for establishing license eligibility.

19. Finally, adopting a standard based on the number of wireless microphones—in this case, 50 or more—is in the public interest because it does not just focus on one particular class or group of users, or on the content of the presentation or event. Rather, this standard encompasses a range of professional entities that provide sound for major events and productions irrespective of the class or group of users or the content of the event or performance.

20. The limited expansion the Commission adopts strikes an appropriate balance in expanding license eligibility where there is a clear need, while ensuring that spectrum is shared effectively with the existing LPAS operations and remains available for other uses, such as by TVWS devices. Together with the provisions adopted in the *Incentive Auction Report and Order,* the expansion the Commission adopts will ensure that the reduced amount of television spectrum that remains after repacking can continue to accommodate wireless microphone operations along with other uses in an efficient and effective manner. For this reason, the Commission rejects arguments presented by parties who oppose any expansion of part 74 eligibility by arguing that such expansion will unduly reduce spectrum available for other uses, such as TVWS devices, especially in major metropolitan areas, and hinder the development of wireless broadband. The Commission also agrees that it is important ''to be flexible'' in expanding eligibility, and its new eligibility criteria are designed with that goal in mind. However, the Commission does not believe it is appropriate to expand eligibility further than the approach the Commission adopts in this order. Limiting license eligibility expansion to professional sound companies and venues that routinely use 50 or more wireless microphones strikes an appropriate balance among competing users for the more limited broadcast spectrum remaining after the repacking, while as noted below continuing to permit use by other wireless microphone users on an unlicensed basis.

21. The Commission notes at the outset that the licensing eligibility criteria the Commission establishes should have limited impact on the availability of spectrum for other users in the repacked UHF band. First, the Commission does not expect to significantly expand the types of events or use that would qualify for interference protection from TVWS devices, given that the Commission already permits events that require a large number of microphones to be registered in the database today. The Commission's rules currently allow both existing part 74 licensees and certain unlicensed users requiring large numbers of wireless microphones to register in the database for interference protection, although unlicensed users must demonstrate that they are using the TV channels not available for TVWS devices and must request registration by filing with the Commission, rather than the database administrator, at least 30 days in advance. The rules adopted in this order will enable the newly eligible entities, which generally are able to register for database protection as unlicensed users, to obtain protection in the TV bands database in a more administratively efficient manner, through the part 74 license process.

22. The Commission further observes that the actions it takes in the *Incentive Auction Report and Order* help mitigate the impact that expanding eligibility may have on other users in the band. For example, by addressing the spectrum needs of wireless microphone users in a new proceeding that the Commission will initiate in the near term to promote the use of frequency bands outside of the UHF band, the Commission potentially increases spectrum resources available to TVWS devices in the TV bands, as well as to existing and newly eligible LPAS licensees both in the TV bands and in other spectrum bands. The *Incentive Auction Report and Order* also makes additional spectrum available to TVWS devices by providing such devices access to the repurposed spectrum during the 39-month transition period, designating one channel for use by TVWS and wireless microphones and permitting them to continue operating on vacant channels allocated and assigned for primary television services, making the 600 MHz guard bands available for unlicensed use, as well as permitting unlicensed use on channel 37 subject to appropriate protections for channel 37 incumbents. Taken together, the Commission expects that these actions will help to address the existing and longer-term needs of wireless microphones and TVWS users.

23. The Commission also notes that wireless microphones and related devices may still operate on an unlicensed basis. The Commission is not persuaded by arguments that with expanded eligibility the Commission should restrict unlicensed wireless microphone use in the TV bands. The Commission finds it is in the public interest to continue the temporary waiver for unlicensed operations under part 15 that was granted in the *Wireless Microphone Report and Order,* and the Commission will make a determination on rules for unlicensed operations at a later date. This approach serves the public interest because it continues to provide a waiver for the operation of wireless microphones under part 15 for a wide range of applications, and permits the Commission to compile a record focused on unlicensed operations while the Commission considers other issues. On balance, the Commission concludes that the changes it is making best serves to address the important needs of wireless microphone users as well as other users that seek access to the broadcast spectrum that remains available for use following repacking.

24. There are parties who argue that expanding license eligibility will lead to inefficient use, remove incentives for technological advancement, and ''cement the use of inefficient technologies,'' but the Commission finds that these arguments do not provide a sufficient basis to outweigh the benefits of expanded eligibility in ensuring high quality audio services in connection with large events. Although high quality audio largely depends upon analog technology at the present time, steps have been taken during the past few years to develop and make available digital wireless microphones. The Commission has found that it is in the public interest to provide for a limited expansion of license eligibility, and the Commission will consider the current

state of digital technology for wireless microphones, along with the spectrum needs of wireless microphone and other users, in connection with a forthcoming Notice of Proposed Rulemaking on wireless microphones.

25. *Nuclear Power Plants.* The Commission denies requests to expand eligibility under Part 74 to include nuclear power plants, but the Commission modifies the NEI/UTC Waiver Letter Order to provide a uniform transmit power for operation of unlicensed low power auxiliary devices both inside and outside the nuclear power plants, as explained below. The NEI/UTC Waiver Letter Order provided nuclear power plants with additional flexibility in the operation of unlicensed low power auxiliary station devices by establishing tailored operating provisions for the use of those devices inside nuclear power plants. NEI/UTC ask that the rule waiver granted in the NEI/UTC Waiver Letter Order be codified in part 15 of the rules. They also ask that nuclear plants be made eligible under part 74 for licensed LPAS use at their plants so that they can have ''greater flexibility to use their Telex equipment in more limited outdoor applications at their facilities, such as when carrying fuel rods to storage locations.''

26. The Commission declines to expand part 74 eligibility to include nuclear power plants as unnecessary at this time because the Commission is providing increased flexibility for their operations by modifying the rule waiver to make the power limits uniform for both indoor and outdoor operations. This modification of the rule waiver obviates the need to expand eligibility to include nuclear power plants because the modified waiver will enable nuclear power plants to use their Telex equipment both indoors and outdoors at 100 milliwatts. The Commission also declines to codify the waiver provisions at this time, because there has been no showing that further relief is necessary prior to consideration of changes to its rules in connection with the forthcoming Notice of Proposed Rulemaking addressing wireless microphone use. Finally, the Commission finds that operations of these devices outside at transmit levels up to 100 milliwatts would not interfere with other users in the TV bands because the locations of nuclear power plants are known, they generally are located in remote areas, and their Telex equipment operates at a relatively low power.

27. *License Requirements.* As part of the licensing process, applicants will be required to certify and provide supporting evidence that they meet all eligibility criteria, including information showing that they routinely provide audio services or hold events that require use of 50 or more wireless microphones. The requirement that a licensee must routinely provide audio services or hold events that require use of 50 or more wireless microphones will also appear as a condition on the license. In addition, as with other licensed operations for LPAS, newly eligible licensees will be subject to all applicable rules, including the requirement that wireless microphone use is ''secondary to TV broadcasting and land mobile stations operating in the UHF–TV spectrum and must not cause harmful interference.'' If such interference occurs, the operation must immediately cease and may not resume until the interference problem has been resolved. Moreover, where two or more LPAS licensees seek to operate in the same area, the licensees should ''select frequencies or schedule operation in such manner as to avoid mutual interference.''

28. The Commission declines to modify its licensing procedures or the information required from an applicant, except to the extent necessary to reflect the modification to the rules the Commission adopts here. The new class of eligible entities is comprised of venues and professional sound companies that routinely use 50 or more wireless microphones, and the Commission does not anticipate that the licensing process should be difficult for them to follow. Further, the Commission concludes that it is not necessary to grant the request for separate licenses for individual frequency ranges because an applicant is already able to specify individual frequency ranges on its license. Finally, the Commission rejects requests to modify or waive the fees relating to LPAS. The Commission is required to assess and collect application fees pursuant to section 8 of the Communications Act of 1934, as amended, and the Commission declines to grant a waiver except pursuant to its established waiver standards for a ''specific instance for good cause shown, where such action would promote the public interest.''

29. *License Conditions.* The *Incentive Auction Report and Order* requires wireless microphones to vacate the repurposed UHF spectrum by the end of the post-auction transition period, which will be 39 months after the release of the *Channel Reassignment Public Notice.* Consistent with this deadline, the Commission expressly conditions any new LPAS licenses granted between now and that date, including licenses granted to newly eligible licensees, on the requirement to cease operating in the repurposed spectrum no later than that date. Further, the Commission delegates authority to the WTB to modify the LPAS licenses to delete the frequencies identified as repurposed in the *Channel Reassignment Public Notice,* effective as of the end of the post-auction transition period, and to make any other related changes as necessary. Following the post-auction transition period, licensees may operate only in the bands allocated for TV broadcasting.

30. *License Term.* The Commission finds that it is in the public interest to provide newly eligible licensees an initial and renewal license term not to exceed ten years. A ten-year term for these licenses is consistent with the license term of most other wireless services, such as part 27 services, cellular service, and Personal Communications Services. Moreover, a ten-year license term provides these licensees with flexibility because it is a relatively long period of time and will give them a greater degree of certainty in connection with their status and ability to receive the benefits of a license.

31. The existing rule ties the license term to that of broadcast stations in the same area of operation. The Commission declines to apply this rule to the new licensees because their operation of wireless microphones is generally not related to or affiliated with local broadcast operations, and conforming their license term to the term of local broadcast stations could lead to confusion with no corresponding benefit. The Commission notes that if it applied the existing rule to the new licensees, they would have an initial license term that is no more than eight years but could be substantially less if the license were obtained in the middle of the license term of broadcast stations located in the same area of operation. Moreover, many new professional sound company licensees may provide services in different regions. Application of the existing LPAS license term would be burdensome and confusing because it would result in different license terms for the same entity operating in different geographic areas. Finally, the Commission anticipates that many of these new licensees could be small entities and that it would ease regulatory burdens on them if their initial license term were to run for the full ten-year period.

IV. Procedural Matters

32. *Final Regulatory Flexibility Analysis.* The Regulatory Flexibility Act (RFA) requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' Accordingly, the Commission has prepared a Final Regulatory Flexibility Analysis concerning the possible impact of the rule changes contained in the Second R&O on small entities. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Wireless Microphone Further Notice.* The Commission sought written public comment on the proposals in the *Wireless Microphone Further Notice,* including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

33. The Commission believes that it would serve the public interest to analyze the possible significant economic impact of the policy and rule changes for expanded wireless microphone license eligibility on small entities. Accordingly, this FRFA contains an analysis of this impact in connection with the limited expansion of wireless microphone license eligibility within the scope of this Second R&O.

A. Need for, and Objectives of, the Report and Order

34. The Commission provides for a limited expansion of wireless microphone license eligibility under part 74, Subpart H of the Commission's rules to facilitate the operation of wireless microphones by professional sound companies and the owners and operators of large venues that use a large number of these devices. Specifically, in order to be eligible for a license, a professional sound company or venue must certify that it provides audio services or holds events that routinely use 50 or more wireless microphones, where the use of such devices is an integral part of major events or productions. Professional sound companies and large venues that meet these requirements have needs for interference protection to ensure reliable, high quality audio. Expanding wireless microphone license eligibility on this basis is in the public interest because it will benefit entities that require the protection that a license affords without unduly reducing the amount of spectrum available for other uses in the television spectrum bands. In addition, expanding license eligibility in this manner avoids distinctions based on presentation content or on particular classes or groups of users.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

35. There were no comments filed that specifically addressed the rules and policies proposed in the IRFA.

C. Description and Estimate of the Number of Small Entities to Which the Rules Would Apply

36. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein. 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 Small Business Administration (SBA).

37. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* The Commission's action may, over time, affect small entities that are not easily categorized at present. The Commission therefore describes here, at the outset, three comprehensive, statutory small entity size standards. First, nationwide, there are a total of 28.2 million small businesses, according to the SBA. In addition, a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 2012, there were approximately 2,300,000 small organizations. Finally, the term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' Census Bureau data for 2012 indicate that there were 90,056 local governments in the United States. Thus, the Commission estimates that most governmental jurisdictions are small.

38. *LPAS Licensees.* There are a total of more than 1,200 Low Power Auxiliary Station (LPAS) licenses in all bands and a total of over 600 LPAS licenses in the UHF spectrum. Existing LPAS operations are intended for uses such as wireless microphones, cue and control communications, and synchronization of TV camera signals. These low power auxiliary stations transmit over distances of approximately 100 meters.

39. *Radio* Stations. This Economic Census category ''comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources.'' The SBA defines a radio broadcast station as a small business if such station has no more than $35.5 million in annual receipts. Business concerns included in this industry are those ''primarily engaged in broadcasting aural programs by radio to the public.'' According to Commission staff review of the BIA Publications, Inc. *Master Access Radio Analyzer Database* as of November 26, 2013, about 11,331 (or about 99.9 percent) of 11,341 commercial radio stations have revenues of $35.5 million or less and thus qualify as small entities under the SBA definition.

40. The Commission notes, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. Its estimate, therefore, likely overstates the number of small entities that might be affected by its action because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies.

41. *Television Broadcasting.* This Economic Census category ''comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public.'' The SBA has created the following small business size standard for Television Broadcasting firms: Those having $14 million or less in annual receipts. The Commission has estimated the number of licensed commercial television stations to be 1,388. In addition, according to Commission staff review of the BIA Advisory Services, LLC's *Media Access Pro Television Database* on March 28, 2012, about 950 of an estimated 1,300 commercial television stations (or approximately 73 percent) had revenues of $14 million or less. The Commission therefore estimates that the majority of commercial television broadcasters are small entities.

42. The Commission notes, however, that in assessing whether a business concern qualifies as small under the

above definition, business (control) affiliations must be included. Its estimate, therefore, likely overstates the number of small entities that might be affected by its action because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

43. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 396. These stations are non-profit, and therefore considered to be small entities.

44. There are also 2,414 low power television stations, including Class A stations and 4,046 television translator stations. Given the nature of these services, the Commission will presume that all of these entities qualify as small entities under the above SBA small business size standard.

45. *Cable Television Distribution Services.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. Census data for 2007 shows that there were 3,188 firms that operated for the duration of that year. Of those, 3,144 had fewer than 1,000 employees, and 44 firms had more than 1,000 employees. Thus under this category and the associated small business size standard, the majority of such firms can be considered small.

46. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that of approximately 1,100 cable operators nationwide, all but ten are small under this size standard. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Industry data indicate that of 6,635 systems nationwide, 5,802 systems have fewer than 10,000 subscribers, and an additional 302 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small.

47. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Industry data indicate that of approximately 1,100 cable operators nationwide, all but ten are small under this size standard. The Commission notes that it neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore the Commission is unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

48. *Motion Picture and Video Producers.* This economic census category comprises ''establishments primarily engaged in producing, or producing and distributing motion pictures, videos, television programs, or television commercials.'' The SBA has developed a small business size standard for this category that includes all businesses having $30 million or less in annual receipts. Census Bureau data for 2007 show there were 9,478 firms in this category that operated that year. Of that number, 9,128 had annual receipts of $24,999,999 or less, and 43 had annual receipts ranging from not less than $25,000,000 to $100,000,000 or more. Thus, under this size standard, the majority of such businesses can be considered small entities.

49. *Broadband Radio Service (formerly Multipoint Distribution Service) and Educational Broadband Service (formerly Instructional Television Fixed Service).* Multichannel Multipoint Distribution Service (MMDS) systems often referred to as ''wireless cable,'' transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS). In its BRS/EBS Report and Order in WT Docket No. 03–66, the Commission comprehensively reviewed its policies and rules relating to the ITFS and MDS services, and replaced the MDS with the Broadband Radio Service and ITFS with the Educational Broadband Service in a new band plan at 2495–2690 MHz. In connection with the 1996 MDS auction, the Commission defined ''small business'' as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years. The SBA approved of this standard.

50. The SBA developed a small business size standard for Cable and Other Distribution, and the activities under that classification have been reclassified into Wired Telecommunications Carriers. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which is all such firms having 1,500 or fewer employees. Census data for 2007 shows that there were 3,188 firms that operated for the duration of that year. Of those, 3,144 firms had fewer than 1,000 employees, and 44 firms had 1,000 or more employees. Thus under this category and the associated small business size standard, the majority of such firms can be considered small. In addition to Census data, the Commission's internal records indicate that, as of September 2012, there are 2,241 active EBS licenses. The Commission estimates that of these 2,241 licenses, the majority are held by non-profit educational institutions and school districts, which are by statute defined as small businesses.

51. *Low Power Auxiliary Device Manufacturers: Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting

equipment.'' The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: All such firms having 750 or fewer employees. According to Census Bureau data for 2007, there were a total of 939 establishments in this category that operated for the entire year. Of this total, 912 establishments had employment of less than 500, and an additional 10 establishments had employment of 500 to 999. Thus, under this size standard, the majority of firms can be considered small.

52. *Low Power Auxiliary Device Manufacturers: Other Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing communications equipment (except telephone apparatus, and radio and television broadcast, and wireless communications equipment).'' The SBA has developed a small business size standard for Other Communications Equipment Manufacturing, which is: All such firms having 750 or fewer employees. According to Census Bureau data for 2007, there were a total of 452 establishments in this category that operated for the entire year. Of this total, 448 establishments had employment below 500, and an additional 4 establishments had employment of 500 to 999. Thus, under this size standard, the majority of firms can be considered small.

53. *Radio, Television, and Other Electronics Stores.* The Census Bureau defines this economic census category as follows: ''This U.S. industry comprises: (1) Establishments known as consumer electronics stores primarily engaged in retailing a general line of new consumer-type electronic products such as televisions, computers, and cameras; (2) establishments specializing in retailing a single line of consumer-type electronic products; (3) establishments primarily engaged in retailing these new electronic products in combination with repair and support services; (4) establishments primarily engaged in retailing new prepackaged computer software; and/or (5) establishments primarily engaged in retailing prerecorded audio and video media, such as CDs, DVDs, and tapes.'' The SBA has developed a small business size standard for Electronic Stores, which is: All such firms having $30 million or less in annual receipts. According to Census Bureau data for 2007, there were 11,358 firms in this category that operated for the entire year. Of this total, 11,323 firms had annual receipts of under $25 million, and 35 firms had receipts of $25 million or more but less than $50 million. Thus, the majority of firms in this category can be considered small.

54. *Professional Lighting and Sound Services.* After an extensive review of the NAICS industry classification system, the Commission was unable to find an exact category match for the firms which provide professional sound services for live events. The industry association for these firms, Professional Lighting and Sound Association, is an international body with 1,240 members and offices in London and New York. As its membership is both foreign and domestic, the Commission cannot ascertain how many of its members operate in the United States and would be subject to the new rules in this order.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

55. As with other licensed operations for LPAS, a licensee that is eligible under the revised rule will be subject to all applicable rules, including the requirement that wireless microphone use is ''secondary to TV broadcasting and land mobile stations operating in the UHF–TV spectrum and must not cause harmful interference.'' If such interference occurs, the operation must immediately cease and may not resume until the interference problem has been resolved. Moreover, where two or more LPAS licensees seek to operate in the same area, the licensees should ''select frequencies or schedule operation in such manner as to avoid mutual interference.''

56. The *Incentive Auction Report and Order* requires wireless microphones to vacate the repurposed UHF spectrum by the end of the post-auction transition period, which will be 39 months after the release of the *Channel Reassignment Public Notice.* Consistent with this deadline, the Second R&O conditions any new LPAS licenses granted between now and that date, including licenses granted to newly eligible licensees, on the requirement to cease operating in the repurposed spectrum no later than that date. Further, the Commission delegates authority to the Wireless Telecommunications Bureau (WTB) to modify these licenses to delete the frequencies identified as repurposed in the *Channel Reassignment Public Notice,* effective as of the end of the post-auction transition period, and to make any other related changes as necessary. Following the post-auction transition period, licensees may operate only in the bands allocated for TV broadcasting.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

57. The RFA requires an agency to describe any significant, specifically small business alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): ''(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.''

58. In the Second R&O, the Commission declines to modify its licensing procedures or the information required from an applicant, except to the extent necessary to reflect the modification to the rules the Commission adopts here. The new class of eligible entities consists of professional sound companies and owners and operators of large venues that routinely use a large number of wireless microphones, and the Commission does not anticipate that the licensing process should be difficult for them to follow. Further, the Commission concludes that it is not necessary to grant the request for separate licenses for individual frequency ranges because an applicant is already able to specify individual frequency ranges on its license. Finally, the Commission rejects requests to modify or waive the fees relating to LPAS, because the Commission is required to assess and collect application fees pursuant to Section 8 of the Communications Act of 1934, as amended.

59. The Commission's approach to eligibility in the Second R&O provides a balance by affording the benefits of a license for entities and events that have a demonstrated need, while ensuring that spectrum is shared effectively with existing LPAS operations and remains available for other uses, including TV white space (TVWS) devices. To the extent any of the entities that will be eligible for a license under the new eligibility rule are small entities, they will be able to obtain a license for their wireless microphone operations. In addition, other entities, including small entities, which do not meet the eligibility requirement, have alternatives

for their operations. Under the waiver granted in the *Wireless Microphone Report and Order* and continued in effect in the Second R&O, such entities may still operate their wireless microphones on an unlicensed basis subject to the waiver and certain other requirements. Also, operators of wireless microphones that are not licensed, which may include small entities, may also be able to register certain events, such as major sporting contests or live theatrical productions, in the TV bands databases for protection against interference from TVWS devices provided they meet the requirements in the Commission's rules.

60. The Second R&O provides newly eligible licensees an initial and renewal license term not to exceed ten years. A ten-year license term provides these licensees with flexibility because it is a relatively long period of time and will give them a greater degree of certainty in connection with their status and ability to receive the benefits of a license. In contrast, the existing rule ties the license term to that of broadcast stations in the same area of operation. The Commission notes that if it applied the existing rule to the new licensees, they would have an initial license term that is no more than eight years but could be substantially less if the license were obtained in the middle of the license term of broadcast stations located in the same area of operation. Also, many new professional sound company licensees may provide services in different regions. Application of the existing LPAS license term would be burdensome and confusing because it would result in different license terms for the same entity operating in different geographic areas. The Commission anticipates that many of these new licensees could be small entities and that it would ease regulatory burdens on them if their initial license term were to run for the full ten-year period.

F. Report to Congress

61. The Commission will send a copy of the Second R&O, including the FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Second R&O, including the FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

62. *Final Paperwork Reduction Act Analysis.* The Second R&O contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

63. *Congressional Review Act.* The Commission will send a copy of this Second R&O to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

V. Ordering Clauses

64. Accordingly, *it is ordered,* pursuant to sections 1, 4(i), 301, 302, 303, and 316 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 301, 302a, 303, and 316, that this *Second Report and Order* in WT Docket Nos. 08–166; 08–167, and ET Docket No. 10–24 *is adopted.*

65. *It is further ordered* that part 74 of the Commission's rules, 47 CFR part 74, *is amended* as set forth in Appendix B of the Second R&O, and such amendments *shall be effective* 30 days after the date of publication in the **Federal Register**, except for section 74.832, which contains new or modified information collection requirements that require approval by the Office of Management and Budget (OMB) under the PRA. The Federal Communications Commission will publish a document in the **Federal Register** announcing such approval and the relevant effective date.

66. *It is further ordered* that all low power auxiliary station licenses granted between the effective date of this Second Report and Order and the end of the post-auction transition period *are conditioned* as stated herein and that all low power auxiliary station licenses granted to large venue owners or operators and professional sound companies *are conditioned* as stated herein.

67. *It is further ordered* that the temporary waiver granted in the *Wireless Microphones Report and Order,* which permits certain unlicensed operation of wireless microphones in the broadcast television spectrum, shall continue in effect pending the outcome of further proceedings.

68. *It is further ordered* that the NEI/UTC Waiver Letter Order is modified as stated herein. As modified, it shall continue in effect pending the outcome of further proceedings.

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

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

List of Subjects

47 CFR Part 15

Communications equipment, Radio.

47 CFR Part 74

Communications equipment, Microphones, Radio, Reporting and recordkeeping requirements.

47 CFR Part 90

Communications equipment, Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 74 as follows:

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

■ 1. The authority citation for part 74 is revised to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 307, 309, 336 and 554.

■ 2. Section 74.15 is amended by revising paragraph (b) to read as follows:

§ 74.15 Station license period.

* * * * *

(b) Licenses for stations or systems in the Auxiliary Broadcast Service held by a licensee of a broadcast station will be issued for a period running concurrently with the license of the associated broadcast station with which it is licensed. Licenses held by eligible networks for the purpose of providing program service to affiliated stations under subpart D of this part, and by eligible networks, cable television operators, motion picture producers and television program producers under subpart H of this part will be issued for

a period running concurrently with the normal licensing period for broadcast stations located in the same area of operation. Licenses held by large venue owners or operators and professional sound companies under subpart H of this part will be issued for a period not to exceed ten years from the date of initial issuance or renewal.

* * * * *

■ 3. Section 74.801 is amended by adding definitions of ''Large venue owner or operator'' and ''Professional sound company'' to read as follows:

§ 74.801 Definitions.

* * * * *

Large venue owner or operator. Large venue owner or operator refers to a person or organization that owns or operates a venue that routinely uses 50 or more low power auxiliary station devices, where the use of such devices is an integral part of major events or productions. Routinely using 50 or more low power auxiliary station devices means that the venue owner or operator uses 50 or more such devices for most events or productions.

* * * * *

Professional sound company. Professional sound company refers to a person or organization that provides audio services that routinely use 50 or more low power auxiliary station devices, where the use of such devices is an integral part of major events or productions. Routinely using 50 or more low power auxiliary station devices means that the professional sound company uses 50 or more such devices for most events or productions.

* * * * *

■ 4. Section 74.831 is revised to read as follows:

§ 74.831 Scope of service and permissible transmissions.

The license for a low power auxiliary station authorizes the transmission of cues and orders to production personnel and participants in broadcast programs, motion pictures, and major events or productions and in the preparation therefor, the transmission of program material by means of a wireless microphone worn by a performer and other participants in a program, motion picture, or major event or production during rehearsal and during the actual broadcast, filming, recording, or event or production, or the transmission of comments, interviews, and reports from the scene of a remote broadcast. Low power auxiliary stations operating in the 944–952 MHz band may, in addition, transmit synchronizing signals and various control signals to portable or hand-carried TV cameras which employ low power radio signals in lieu of cable to deliver picture signals to the control point at the scene of a remote broadcast.

■ 5. Section 74.832 is amended by adding paragraphs (a)(7) and (8) and revising paragraphs (d), (e), and (f) to read as follows:

§ 74.832 Licensing Requirements and Procedures.

(a) * * *

(7) Large venue owners or operators as defined in § 74.801.

(8) Professional sound companies as defined in § 74.801.

* * * * *

(d) Cable television operations, motion picture and television program producers, large venue owners or operators, and professional sound companies may be authorized to operate low power auxiliary stations only in the bands allocated for TV broadcasting.

(e) An application for low power auxiliary stations or for a change in an existing authorization shall specify the broadcast station, or the network with which the low power broadcast auxiliary facilities are to be principally used as given in paragraph (h) of this section; or it shall specify the motion picture or television production company, the cable television operator, the professional sound company, or, if applicable, the venue with which the low power broadcast auxiliary facilities are to be solely used. A single application, filed on FCC Form 601 may be used in applying for the authority to operate one or more low power auxiliary units. The application must specify the frequency bands which will be used. Motion picture producers, television program producers, cable television operators, large venue owners or operators, and professional sound companies are required to attach a single sheet to their application form explaining in detail the manner in which the eligibility requirements given in paragraph (a) of this section are met. In addition, large venue owners or operators and professional sound companies shall include on the attachment the following certification and shall sign and date the certification: ''The applicant hereby certifies that it routinely uses 50 or more low power auxiliary station devices, where the use of such devices is an integral part of major events or productions.''

(f) Applications for the use of the bands allocated for TV broadcasting must specify the usual area of operation within which the low power auxiliary station will be used. This area of operation may, for example, be specified as the metropolitan area in which the broadcast licensee serves, the usual area within which motion picture and television producers are operating, or the location of the venue. Licenses issued to large venue owners or operators are specific to a single venue and authorize operation only at that venue. Because low power auxiliary stations operating in these bands will only be permitted in areas removed from existing co-channel TV broadcast stations, licensees have full responsibility to ensure that operation of their stations does not occur at distances less than those specified in § 74.802(b).

* * * * *

[FR Doc. 2014–14865 Filed 7–11–14; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 79, No. 134
Monday, July 14, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2014–0263; Airspace Docket No. 13–ASW–27]

Proposed Establishment of Class E Airspace; Thomas, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Thomas, OK. Controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at Thomas Muni Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at the airport.

DATES: Comments must be received on or before August 28, 2014.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2014–0263/Airspace Docket No. 13–ASW–27, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Raul Garza, Jr., Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone: 817–321–7654.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2014–0263/Airspace Docket No. 13–ASW–27.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267–9677 to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by establishing Class E airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Thomas Muni Airport, Thomas, OK, to accommodate new standard instrument approach procedures. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9X, dated August 7, 2013 and effective September 15, 2013, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish controlled airspace at Thomas Muni Airport, Thomas, OK.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9X, Airspace Designations and Reporting Points, dated August 7, 2013 and effective September 15, 2013, is amended as follows:

Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW OK E5 Thomas, OK [New]

Thomas Muni Airport, OK
(Lat. 35°44′01″ N., long. 98°43′50″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Thomas Muni Airport.

Issued in Fort Worth, TX, on June 30, 2014.

Walter Tweedy,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2014–16349 Filed 7–11–14; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 304

Rules and Regulations Under the Hobby Protection Act

AGENCY: Federal Trade Commission.

ACTION: Request for public comments.

SUMMARY: The Federal Trade Commission (''Commission'') requests public comment on the overall costs and benefits, and regulatory and economic impact, of its Rules and Regulations Under the Hobby Protection Act (''Rules''), as part of the agency's regular review of all its regulations and guides.

DATES: Comments must be received on or before September 22, 2014.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Hobby Protection Rules Review'' on your comment. You may file your comment online at *https://ftcpublic.commentworks.com/ftc/hobbyprotectionrules,* by following the instructions on the Web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex B), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex B), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Joshua S. Millard (202) 326–2454, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave. NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

On November 29, 1973, the President signed into law the Hobby Protection Act (''Act''), 15 U.S.C. 2101–06. The Act requires manufacturers and importers of ''imitation political items'' [1] to ''plainly and permanently'' mark them with the ''calendar year'' the items were manufactured. *Id.* § 2101(a). The Act also requires manufacturers and importers of ''imitation numismatic items'' [2] to ''plainly and permanently'' mark these items with the word ''copy.'' *Id.* § 2101(b). The Act directed the Commission to promulgate regulations for determining the ''manner and form'' that imitation political items and imitation numismatic items are to be permanently marked with the calendar year of manufacture or the word ''copy.'' *Id.* § 2101(c).

In 1975, the Commission issued Rules and Regulations Under the Hobby Protection Act, 16 CFR part 304.[3] The Rules track the definitions used in the Act and implement the Act's ''plain and permanent'' marking requirements by establishing the location of the marking on the item, the sizes and dimensions of the letters and numerals to be used, and how to mark incusable and nonincusable items.[4] In 1988, the Commission amended the Rules to provide additional guidance on the minimum size of letters for the word ''copy'' as a proportion of the diameter of coin reproductions.[5] 53 FR 38942 (Oct. 4, 1988).

The Commission most recently reviewed the Rules in 2004. That review yielded many comments proposing that the Commission expand coverage to products beyond the scope of the Act and address problems involving the selling (or passing off) as originals of reproductions of antiques and other items not covered by the Act. However, the Commission retained the Rules without change, noting that it did not have authority under the Act to expand the Rules as requested. 69 FR 9943 (Mar. 3, 2004).

II. Regulatory Review Program

The Commission periodically reviews all of its rules and guides. These reviews seek information about the costs and benefits of the agency's rules and guides, and their regulatory and economic impact. The information obtained assists the Commission in identifying those rules and guides that warrant modification or rescission. Therefore, the Commission solicits comments on, among other things, the economic impact of and the continuing need for the Rules; possible developments in the case law that need to be reflected in the Rules; and the effect on the Rules of any technological, economic, or other industry changes.

[1] An imitation political item is ''an item which purports to be, but in fact is not, an original political item, or which is a reproduction, copy, or counterfeit of an original political item.'' 15 U.S.C. 2106(2). The Act defines original political items as being any political button, poster, literature, sticker or any advertisement produced for use in any political cause. *Id.* section 2106(1).

[2] An imitation numismatic item is ''an item which purports to be, but in fact is not, an original numismatic item or which is a reproduction, copy, or counterfeit of an original numismatic item.'' 15 U.S.C. 2106(4). The Act defines original numismatic items to include coins, tokens, paper money, and commemorative medals which have been part of a coinage or issue used in exchange or used to commemorate a person or event. *Id.* section 2106(3).

[3] 40 FR 5459 (Feb. 6, 1975).

[4] Incusable items are those that can be impressed with a stamp.

[5] Before this amendment, if a coin were too small to comply with the minimum letter size requirements, the manufacturer or importer had to request a variance from those requirements from the Commission. Because imitation miniature coins were becoming more common, the Commission determined that it was in the public interest to allow the word ''copy'' to appear on miniature imitation coins in sizes that could be reduced proportionately with the size of the item.

III. Request for Comment

The Commission solicits comment on the following specific questions related to the Rules:

(1) Is there a continuing need for the Rules as currently promulgated? Why or why not?

(2) What benefits have the Rules provided to consumers? What evidence supports the asserted benefits?

(3) What modifications, if any, should the Commission make to the Rules to increase their benefits to consumers?

(a) What evidence supports your proposed modifications?

(b) How would these modifications affect the costs and benefits of the Rules for consumers?

(c) How would these modifications affect the costs and benefits of the Rules for businesses, particularly small businesses?

(4) What impact have the Rules had on the flow of truthful information to consumers and on the flow of deceptive information to consumers?

(5) What significant costs, if any, have the Rules imposed on consumers? What evidence supports the asserted costs?

(6) What modifications, if any, should be made to the Rules to reduce any costs imposed on consumers?

(a) What evidence supports your proposed modifications?

(b) How would these modifications affect the costs and benefits of the Rules for consumers?

(c) How would these modifications affect the costs and benefits of the Rules for businesses, particularly small businesses?

(7) What benefits, if any, have the Rules provided to businesses, and in particular to small businesses? What evidence supports the asserted benefits?

(8) What modifications, if any, should be made to the Rules to increase their benefits to businesses, and particularly to small businesses?

(a) What evidence supports your proposed modifications?

(b) How would these modifications affect the costs and benefits of the Rules for consumers?

(c) How would these modifications affect the costs and benefits of the Rules for businesses?

(9) What significant costs, if any, including costs of compliance, have the Rules imposed on businesses, particularly small businesses? What evidence supports the asserted costs?

(10) What modifications, if any, should be made to the Rules to reduce the costs imposed on businesses, and particularly on small businesses?

(a) What evidence supports your proposed modifications?

(b) How would these modifications affect the costs and benefits of the Rules for consumers?

(c) How would these modifications affect the costs and benefits of the Rules for businesses?

(11) What evidence is available concerning the degree of industry compliance with the Rules? Does this evidence indicate that the Rules should be modified? If so, why, and how? If not, why not?

(12) Are any of the Rules' requirements no longer needed? If so, explain. Please provide supporting evidence.

(13) What potentially unfair or deceptive practices concerning imitation political items and imitation numismatic items, if any, are not covered by the Rules?

(a) What evidence demonstrates the existence of such practices?

(b) With reference to such practices, should the Rules be modified? If so, why, and how? If not, why not?

(14) What modifications, if any, should be made to the Rules to account for changes in relevant technology or economic conditions?

(a) What evidence supports the proposed modifications?

(b) How would these modifications affect the costs and benefits of the Rules for consumers and businesses, particularly small businesses?

(15) Do the Rules overlap or conflict with other federal, state, or local laws or regulations? If so, how?

(a) What evidence supports the asserted conflicts?

(b) With reference to the asserted conflicts, should the Rules be modified? If so, why, and how? If not, why not?

(16) Are there foreign or international laws, regulations, or standards with respect to the products or services covered by the Rules that the Commission should consider as it reviews the Rules? If so, what are they?

(a) Should the Rules be modified in order to harmonize with these foreign or international laws, regulations, or standards? If so, why, and how? If not, why not?

(b) How would such harmonization affect the costs and benefits of the Rules for consumers and businesses, particularly small businesses?

IV. Instructions for Submitting Comments

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before September 22, 2014. Write ''Hobby Protection Rules Review'' on the comment. Your comment, including your name and your state, will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site. Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, such as a Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information.

In addition, do not include any ''[t]rade secret or any commercial or financial information which is . . . privileged or confidential,'' as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you must follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comments to be withheld from the public record. Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comment online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/hobbyprotectionrules,* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Hobby Protection Rules Review'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex B), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex B), Washington, DC 20024.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before September 22, 2014. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2014–16340 Filed 7–11–14; 8:45 am]

BILLING CODE 6750–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2011–0969; EPA–R05–OAR–2012–0991; EPA–R05–OAR–2013–0435; FRL–9913–16–Region–5]

Approval and Promulgation of Air Quality Implementation Plans; Illinois; Infrastructure SIP Requirements for the 2008 Ozone, 2010 NO_2, and 2010 SO_2 NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve some elements and disapprove other elements of a state implementation plan (SIP) submission from Illinois regarding the infrastructure requirements of section 110 of the Clean Air Act (CAA) for the 2008 8-hour ground level ozone, 2010 nitrogen dioxide (NO_2), and 2010 sulfur dioxide (SO_2) National Ambient Air Quality Standards (NAAQS). The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. Illinois already administers Federally promulgated regulations that address the proposed disapprovals described in today's rulemaking. Therefore, the state will not be obligated to submit any new or additional regulations as a result of a future final disapproval.

DATES: Comments must be received on or before August 13, 2014.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2011–0969 (2008 ozone infrastructure elements), EPA–R05–OAR–2012–0991 (2010 NO_2 infrastructure elements), or EPA–R05–OAR–2013–0435 (2010 SO_2 infrastructure elements) by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: aburano.douglas@epa.gov.*
3. *Fax:* (312) 408–2279.
4. *Mail:* Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID. EPA–R05–OAR–2011–0969 (2008 ozone infrastructure elements), EPA–R05–OAR–2012–0991 (2010 NO_2 infrastructure elements), or EPA–R05–OAR–2013–0435 (2010 SO_2 infrastructure elements). EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Andy Chang, Environmental Engineer, at (312) 886–0258 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Andy Chang, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–0258, *chang.andy@epa.gov.*

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

I. What should I consider as I prepare my comments for EPA?
II. What is the background of these SIP submissions?
  A. What state SIP submissions does this rulemaking address?
  B. Why did the state make these SIP submissions?
  C. What is the scope of this rulemaking?
III. What guidance is EPA using to evaluate these SIP submissions?

IV. What is the result of EPA's review of these SIP submissions?
A. Section 110(a)(2)(A)—Emission Limits and Other Control Measures
B. Section 110(a)(2)(B)—Ambient Air Quality Monitoring/Data System
C. Section 110(a)(2)(C)—Program for Enforcement of Control Measures; PSD
D. Section 110(a)(2)(D)—Interstate Transport
E. Section 110(a)(2)(E)—Adequate Resources
F. Section 110(a)(2)(F)—Stationary Source Monitoring System
G. Section 110(a)(2)(G)—Emergency Powers
H. Section 110(a)(2)(H)—Future SIP Revisions
I. Section 110(a)(2)(I)—Nonattainment Area Plan or Plan Revisions Under Part D
J. Section 110(a)(2)(J)—Consultation With Government Officials; Public Notifications; PSD; Visibility Protection
K. Section 110(a)(2)(K)—Air Quality Modeling/Data
L. Section 110(a)(2)(L)—Permitting Fees
M. Section 110(a)(2)(M)—Consultation/Participation by Affected Local Entities
V. What action is EPA taking?
VI. Statutory and Executive Order Reviews

I. What should I consider as I prepare my comments for EPA?

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date, and page number).
2. Follow directions—EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

II. What is the background of these SIP submissions?

A. What state SIP submissions does this rulemaking address?

This rulemaking addresses a December 31, 2012, submission and a June 11, 2014, clarification from the Illinois Environmental Protection Agency (Illinois EPA) intended to address all applicable infrastructure requirements for the 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

B. Why did the state make these SIP submissions?

Under sections 110(a)(1) and (2) of the CAA, states are required to submit infrastructure SIPs to ensure that their SIPs provide for implementation, maintenance, and enforcement of the NAAQS, including the 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS. These submissions must contain any revisions needed for meeting the applicable SIP requirements of section 110(a)(2), or certifications that their existing SIPs for the NAAQS already meet those requirements.

EPA highlighted this statutory requirement in an October 2, 2007, guidance document entitled ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards'' (2007 Memo). On September 25, 2009, EPA issued an additional guidance document pertaining to the 2006 $PM_{2.5}$ [1] NAAQS entitled ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS)'' (2009 Memo), followed by the October 14, 2011, ''Guidance on infrastructure SIP Elements Required Under Sections 110(a)(1) and (2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS)'' (2011 Memo). Most recently, EPA issued ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2)'' on September 13, 2013 (2013 Memo). The SIP submissions referenced in this rulemaking pertain to the applicable requirements of section 110(a)(1) and (2), and address the 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS. To the extent that the prevention of significant deterioration (PSD) program is comprehensive and non-NAAQS specific, a narrow evaluation of other NAAQS, such as the 1997 8-hour ozone and 2006 $PM_{2.5}$ NAAQS will be included in the appropriate sections.

C. What is the scope of this rulemaking?

EPA is acting upon the SIP submission from Illinois that address the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS. The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),'' and these SIP submissions are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must address.

EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as ''infrastructure SIP'' submissions. Although the term ''infrastructure SIP'' does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as ''nonattainment SIP'' or ''attainment plan SIP'' submissions to address the nonattainment planning requirements of part D of title I of the CAA, ''regional haze SIP'' submissions required by EPA rule to address the visibility protection requirements of CAA section 169A, and nonattainment new source review (NNSR) permit program submissions to address the permit requirements of CAA, title I, part D.

This rulemaking will not cover three substantive areas that are not integral to acting on a state's infrastructure SIP submission: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction at sources, that may be contrary to the CAA and EPA's policies addressing such excess emissions (''SSM''); (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that purport to permit revisions to SIP approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA (''director's discretion''); and, (iii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule,'' 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (''NSR

[1] $PM_{2.5}$ refers to particulate matter of 2.5 microns or less in diameter, oftentimes referred to as ''fine'' particles.

Reform''). Instead, EPA has the authority to address each one of these substantive areas in separate rulemakings. A detailed history, interpretation, and rationale as they relate to infrastructure SIP requirements can be found in EPA's May 13, 2014, proposed rule entitled, ''Infrastructure SIP Requirements for the 2008 Lead NAAQS'' in the section, ''What is the scope of this rulemaking?'' (*see* 79 FR 27241 at 27242–27245).

III. What guidance is EPA using to evaluate these SIP submissions?

EPA's guidance for these infrastructure SIP submissions is embodied in the 2007 Memo. Specifically, attachment A of this memorandum (Required Section 110 SIP Elements) identifies the statutory elements that states need to submit in order to satisfy the requirements for an infrastructure SIP submission. The 2009 Memo was issued to provide additional guidance for certain elements to meet the requirements of section 110(a)(1) and (2) of the CAA, and the 2011 Memo echoes previously issued guidance while also providing specific guidance with respect to the 2008 lead NAAQS. Lastly, the 2013 Memo identifies and further clarifies aspects of infrastructure SIPs that are not NAAQS specific.

IV. What is the result of EPA's review of these SIP submissions?

As noted in the 2011 Memo and reiterated in the 2013 Memo, pursuant to section 110(a), states must provide reasonable notice and opportunity for public hearing for all infrastructure SIP submissions. The public comment period for Illinois EPA's infrastructure SIP submission ended on December 26, 2012; during this period, the state did not receive any written comments, nor was there a request for a public hearing. EPA is also soliciting comment on our evaluation of the state's infrastructure SIP submission in this notice of proposed rulemaking. Illinois provided a detailed synopsis of how various components of its SIP meet each of the applicable requirements in section 110(a)(2) for the 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS, as applicable. The following review evaluates the state's submissions.

A. Section 110(a)(2)(A)—Emission Limits and Other Control Measures

This section requires SIPs to include enforceable emission limits and other control measures, means or techniques, schedules for compliance, and other related matters. However, EPA has long interpreted emission limits and control measures for attaining the standards as being due when nonattainment planning requirements are due.[2] In the context of an infrastructure SIP, EPA is not evaluating the existing SIP provisions for this purpose. Instead, EPA is only evaluating whether the state's SIP has basic structural provisions for the implementation of the NAAQS.

The Illinois Environmental Protection Act is contained in chapter 415, section 5, of the Illinois Compiled Statutes (415 ILCS 5). 415 ILCS 5/4 provides Illinois EPA with the authority to develop rules and regulations necessary to meet ambient air quality standards. Additionally, the Illinois Pollution Control Board (IPCB) was created under 415 ILCS 5, providing the IPCB with the authority to develop rules and regulations necessary to promote the purposes of the Illinois Environmental Protection Act. Furthermore, the IPCB ensures compliance with required laws and other elements of the state's attainment plan that are necessary to attain the NAAQS, and to comply with the requirements of the CAA (415 ILCS 5/10). EPA proposes that Illinois has met the infrastructure SIP requirements of section 110(a)(2)(A) with respect to the 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

As previously noted, EPA is not proposing to approve or disapprove any existing state provisions or rules related to SSM or director's discretion in the context of section 110(a)(2)(A).

B. Section 110(a)(2)(B)—Ambient Air Quality Monitoring/Data System

This section requires SIPs to include provisions to provide for establishing and operating ambient air quality monitors, collecting and analyzing ambient air quality data, and making these data available to EPA upon request. This review of the annual monitoring plan includes EPA's determination that the state: (i) Monitors air quality at appropriate locations throughout the state using EPA-approved Federal Reference Methods or Federal Equivalent Method monitors; (ii) submits data to EPA's Air Quality System (AQS) in a timely manner; and, (iii) provides EPA Regional Offices with prior notification of any planned changes to monitoring sites or the network plan.

Illinois EPA continues to operate an extensive monitoring network incorporating more than 200 monitors throughout the state. Illinois EPA also publishes an annual report that summarizes air quality trends. Furthermore, Illinois EPA submits yearly monitoring network plans to EPA, and EPA approved the 2014 Annual Air Monitoring Network Plan for ozone, NO_2, and SO_2 on August 21, 2013. Monitoring data from Illinois EPA are entered into AQS in a timely manner, and the state provides EPA with prior notification when changes to its monitoring network or plan are being considered. EPA proposes that Illinois has met the infrastructure SIP requirements of section 110(a)(2)(B) with respect to the 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

C. Section 110(a)(2)(C)—Program for Enforcement of Control Measures; PSD

States are required to include a program providing for enforcement of all SIP measures and the regulation of construction of new or modified stationary sources to meet NSR requirements under PSD and NNSR programs. Part C of the CAA (sections 160–169B) addresses PSD, while part D of the CAA (sections 171–193) addresses NNSR requirements.

The evaluation of Illinois EPA's submission addressing the infrastructure SIP requirements of section 110(a)(2)(C) covers: (i) Enforcement of SIP measures; (ii) Identification of oxides of nitrogen (NO_X) as a precursor to ozone provisions in the PSD program; (iii) identification of precursors to $PM_{2.5}$ and the identification of $PM_{2.5}$ and PM_{10}[3] condensables in the PSD program; (iv) $PM_{2.5}$ increments in the PSD program; and, (v) greenhouse gas (GHG) permitting and the ''Tailoring Rule.''[4]

Sub-Element 1: Enforcement of SIP Measures

Illinois continues to staff and implement an enforcement program comprised of and operated by the Compliance Section and Division of Legal Counsel. 415 ILCS 5/4 provides the Director of Illinois EPA with the

[2] See, *e.g.,* EPA's 73 FR 66964 at 67034, final rule on ''National Ambient Air Quality Standards for Lead.''

[3] PM_{10} refers to particles with diameters between 2.5 and 10 microns, oftentimes referred to as ''coarse'' particles.

[4] In EPA's April 28, 2011, proposed rulemaking for infrastructure SIPS for the 1997 ozone and $PM_{2.5}$ NAAQS, we stated that each state's PSD program must meet applicable requirements for evaluation of all regulated NSR pollutants in PSD permits (*see* 76 FR 23757 at 23760). This view was reiterated in EPA's August 2, 2012, proposed rulemaking for infrastructure SIPs for the 2006 $PM_{2.5}$ NAAQS (*see* 77 FR 45992 at 45998). In other words, if a state lacks provisions needed to adequately address NO_X as a precursor to ozone, $PM_{2.5}$ precursors, $PM_{2.5}$ and PM_{10} condensables, $PM_{2.5}$ increments, or the Federal GHG permitting thresholds, the provisions of section 110(a)(2)(C) requiring a suitable PSD permitting program must be considered not to be met irrespective of the NAAQS that triggered the requirement to submit an infrastructure SIP.

authority to implement and administer this enforcement program. Furthermore, Illinois EPA has confirmed that all enforcement actions are brought by the Office of the Illinois Attorney General or local State's Attorney offices, with whom Illinois EPA consults. EPA proposes that Illinois has met the enforcement of SIP measures requirements of section 110(a)(2)(C) with respect to the 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

EPA recognizes that Illinois has not adopted or submitted regulations intended to meet each of the PSD program and GHG permitting/Tailoring Rule sub-element requirements, as described below. However, Federally promulgated rules for each of these regulations and their associated requirements are in effect in the state, promulgated at 40 CFR 52.21. EPA has currently delegated the authority to implement these regulations to Illinois and as a result, the state has no further obligations to EPA, i.e., to submit new or revised regulations, because it already administers the Federally promulgated PSD regulations.

Sub-Element 2: Identification of NO_X as a Precursor to Ozone Provisions in the PSD Program

EPA's ''Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2; Final Rule to Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter, and Ozone NAAQS; Final Rule for Reformulated Gasoline'' (Phase 2 Rule) was published on November 29, 2005 (*see* 70 FR 71612). Among other requirements, the Phase 2 Rule obligated states to revise their PSD programs to explicitly identify NO_X as a precursor to ozone (70 FR 71612 at 71679, 71699–71700). This requirement was codified in 40 CFR 51.166, and consisted of the following [5]:

40 CFR 51.166 (b)(1)(ii): A major source that is major for volatile organic compounds (VOCs) or NO_X shall be considered major for ozone;

40 CFR 51.166 (b)(2)(ii): Any significant emissions increase (as defined at paragraph (b)(39) of this section) from any emissions units or net emissions increase (as defined in paragraph (b)(3) of this section) at a major stationary source that is significant for VOCs or NO_X shall be considered significant for ozone;

40 CFR 51.166 (b)(23)(i): Ozone: 40 tons per year (tpy) of VOCs or NO_X;

40 CFR 51.166 (b)(49)(i) [6]: Any pollutant for which a NAAQS has been promulgated and any constituents or precursors for such pollutants identified by the Administrator (*e.g.,* VOCs and NO_X) are precursors for ozone; and

40 CFR 51.166 (i)(5)(i)(e) footnote 1: No *de minimis* air quality level is provided for ozone. However, any net emissions increase of 100 tpy or more of VOCs or NO_X subject to PSD would be required to perform an ambient impact analysis, including the gathering of air quality data.

The Phase 2 Rule required that states submit SIP revisions incorporating the requirements of the rule, including these specific NO_X as a precursor to ozone provisions, by June 15, 2007 (*see* 70 FR 71612 at 71683).

Sub-Element 3: Identification of Precursors to $PM_{2.5}$ and the Identification of $PM_{2.5}$ and PM_{10} Condensables in the PSD Program

On May 16, 2008 (*see* 73 FR 28321), EPA issued the Final Rule on the ''Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$)'' (2008 NSR Rule). The 2008 NSR Rule finalized several new requirements for SIPs to address sources that emit direct $PM_{2.5}$ and other pollutants that contribute to secondary $PM_{2.5}$ formation. One of these requirements is for PSD permits to address pollutants responsible for the secondary formation of $PM_{2.5}$, otherwise known as precursors. In the 2008 rule, EPA identified precursors to $PM_{2.5}$ for the PSD program to be sulfur dioxide (SO_2) and NO_X (unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that NO_X emissions in an area are not a significant contributor to that area's ambient $PM_{2.5}$ concentrations). The 2008 NSR Rule also specifies that VOCs are not considered to be precursors to $PM_{2.5}$ in the PSD program unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of VOCs in an area are significant contributors to that area's ambient $PM_{2.5}$ concentrations.

The explicit references to SO_2, NO_X, and VOCs as they pertain to secondary $PM_{2.5}$ formation are codified at 40 CFR 51.166(b)(49)(i)(*b*) and 40 CFR 52.21(b)(50)(i)(*b*). As part of identifying pollutants that are precursors to $PM_{2.5}$, the 2008 NSR Rule also required states to revise the definition of ''significant'' as it relates to a net emissions increase or the potential of a source to emit pollutants. Specifically, 40 CFR 51.166(b)(23)(i) and 40 CFR 52.21(b)(23)(i) define ''significant'' for $PM_{2.5}$ to mean the following emissions rates: 10 tpy of direct $PM_{2.5}$; 40 tpy of SO_2; and 40 tpy of NO_X (unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that NO_X emissions in an area are not a significant contributor to that area's ambient $PM_{2.5}$ concentrations). The deadline for states to submit SIP revisions to their PSD programs incorporating these changes was May 16, 2011 (*see* 73 FR 28321 at 28341).[7]

The 2008 NSR Rule did not require states to immediately account for gases that could condense to form particulate matter, known as condensables, in $PM_{2.5}$ and PM_{10} emission limits in PSD permits. Instead, EPA determined that states had to account for $PM_{2.5}$ and PM_{10} condensables for applicability determinations and in establishing emissions limitations for $PM_{2.5}$ and PM_{10} in PSD permits beginning on or after January 1, 2011. This requirement is codified in 40 CFR 51.166(b)(49)(i)(*a*) and 40 CFR 52.21(b)(50)(i)(*a*). Revisions to states' PSD programs incorporating the inclusion of condensables were required to be submitted to EPA by May 16, 2011 (*see* 73 FR 28321 at 28341).

[5] Similar changes were codified in 40 CFR 52.21.

[6] Note that this section of 40 CFR 51.166 has been amended as a result of EPA's Final Rule on the ''Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$); the regulatory text as listed was current as of the issuance of the Phase 2 Rule. The current citation for the VOCs and NO_X as precursors for ozone are contained in 40 CFR 51.166 (b)(49)(i)(*b*)(*i*).

[7] EPA notes that on January 4, 2013, the U.S. Court of Appeals for the D.C. Circuit, in *Natural Resources Defense Council* v. *EPA*, 706 F.3d 428 (D.C. Cir.), held that EPA should have issued the 2008 NSR Rule in accordance with the CAA's requirements for PM_{10} nonattainment areas (Title I, Part D, subpart 4), and not the general requirements for nonattainment areas under subpart 1 (*Natural Resources Defense Council* v. *EPA*, No. 08–1250). As the subpart 4 provisions apply only to nonattainment areas, the EPA does not consider the portions of the 2008 rule that address requirements for $PM_{2.5}$ attainment and unclassifiable areas to be affected by the court's opinion. Moreover, EPA does not anticipate the need to revise any PSD requirements promulgated by the 2008 NSR rule in order to comply with the court's decision. Accordingly, the EPA's action on Illinois' infrastructure SIP as to elements (C), (D)(i)(II), or (J) with respect to the PSD requirements promulgated by the 2008 implementation rule does not conflict with the court's opinion. The Court's decision with respect to the nonattainment NSR requirements promulgated by the 2008 implementation rule also does not affect EPA's action on the present infrastructure action. EPA interprets the CAA to exclude nonattainment area requirements, including requirements associated with a nonattainment NSR program, from infrastructure SIP submissions due three years after adoption or revision of a NAAQS. Instead, these elements are typically referred to as nonattainment SIP or attainment plan elements, which would be due by the dates statutorily prescribed under subpart 2 through 5 under part D, extending as far as 10 years following designations for some elements.

Sub-Element 5: $PM_{2.5}$ Increments in the PSD Program

On October 20, 2010, EPA issued the final rule on the ''Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)'' (2010 NSR Rule). This rule established several components for making PSD permitting determinations for $PM_{2.5}$, including a system of ''increments'' which is the mechanism used to estimate significant deterioration of ambient air quality for a pollutant. These increments are codified in 40 CFR 51.166(c) and 40 CFR 52.21(c), and are included in the table below.

TABLE 1—$PM_{2.5}$ INCREMENTS ESTABLISHED BY THE 2010 NSR RULE IN MICROGRAMS PER CUBIC METER

	Annual arithmetic mean	24-Hour max
Class I	1	2
Class II	4	9
Class III	8	18

The 2010 NSR Rule also established a new ''major source baseline date'' for $PM_{2.5}$ as October 20, 2010, and a new trigger date for $PM_{2.5}$ as October 20, 2011. These revisions are codified in 40 CFR 51.166(b)(14)(i)(*c*) and (b)(14)(ii)(*c*), and 40 CFR 52.21(b)(14)(i)(*c*) and (b)(14)(ii)(*c*). Lastly, the 2010 NSR Rule revised the definition of ''baseline area'' to include a level of significance of 0.3 micrograms per cubic meter, annual average, for $PM_{2.5}$. This change is codified in 40 CFR 51.166(b)(15)(i) and 40 CFR 52.21(b)(15)(i).

Sub-Element 5: GHG Permitting and the ''Tailoring Rule''

On June 3, 2010, EPA issued a final rule establishing a ''common sense'' approach to addressing GHG emissions from stationary sources under the CAA permitting programs. The ''Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule,'' or ''Tailoring Rule,'' set thresholds for GHG emissions that define when permits under the NSR PSD and title V operating permit programs are required for new and existing industrial facilities (*see* 75 FR 31514). The Tailoring Rule set the GHG PSD applicability threshold at 75,000 tpy as expressed in carbon dioxide equivalent; if states have not adopted this threshold, sources with GHG emissions above 100 tpy or 250 tpy (depending on source category) would be subject to PSD, effective January 2, 2011. The lower thresholds could potentially result in certain residential and commercial sources triggering GHG PSD requirements.

On December 23, 2010, EPA issued a subsequent series of rules that put the necessary framework in place to ensure that industrial facilities can get CAA permits covering their GHG emissions when needed, and that facilities emitting GHGs at levels below those established in the Tailoring Rule do not need to obtain CAA permits.[8] Included in this series of rules was EPA's issuance of the ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans,'' referred to as the PSD SIP ''Narrowing Rule'' on December 30, 2010 (*see* 75 FR 82536). The Narrowing Rule limits, or ''narrows,'' EPA's approval of PSD programs that were previously approved into SIPs; the programs in question are those that apply PSD to sources that emit GHG. Specifically, the effect of the Narrowing Rule is that provisions that are no longer approved—*e.g.,* portions of already approved SIPs that apply PSD to GHG emissions increases from sources emitting GHG below the Tailoring Rule thresholds—now have the status of having been submitted by the state but not yet acted upon by EPA. In other words, the Narrowing Rule focuses on eliminating the PSD obligations under Federal law for sources below the Tailoring Rule thresholds.

Note that while EPA is proposing to disapprove this set of infrastructure SIP requirements of section 110(a)(2)(C), we are proposing that Illinois has met the requirement contained in section 110(a)(2)(E) regarding resources specific to permitting GHG.[9]

For the purposes of the 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS infrastructure SIPs, EPA reiterates that NSR reform regulations are not in the scope of these actions. Therefore, we are not taking action on existing NSR reform regulations for Illinois. To address the pre-construction regulation of the modification and construction of minor stationary sources and minor modifications of major stationary sources, an infrastructure SIP submission should identify the existing EPA-approved SIP provisions and/or include new provisions that govern the minor source pre-construction program that regulates emissions of the relevant NAAQS pollutants. EPA approved Illinois' minor NSR program on May 31, 1972 (37 FR 10862). Since this date, Illinois EPA and EPA have relied on the existing minor NSR program to ensure that new and modified sources not captured by the major NSR permitting programs do not interfere with attainment and maintenance of the 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

Certain sub-elements in this section overlap with elements of section 110(a)(2)(D)(i), section 110(a)(2)(E) and section 110(a)(2)(J). These links will be discussed in the appropriate areas below.

D. Section 110(a)(2)(D)—Interstate Transport

Section 110(a)(2)(D)(i)(I) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment, or interfering with maintenance, of the NAAQS in another state.

On June 11, 2014, Illinois EPA transmitted a letter to EPA clarifying that the portions of its December 31, 2012, infrastructure SIP submission with respect to section 110(a)(2)(D)(i)(I) were only intended to address the 2010 NO_2 NAAQS. In other words, the interstate transport provisions of section 110(a)(2)(D)(i)(I) that are before EPA for evaluation do not extend to the 2008 ozone or 2010 SO_2 NAAQS. In today's rulemaking, EPA is not proposing to approve or disapprove Illinois' compliance with section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone and 2010 SO_2 NAAQS. Instead, we will address the state's satisfaction of these requirements with respect to these two NAAQS in a separate rulemaking.

With respect to the 2010 NO_2 NAAQS, EPA promulgated designations for this NAAQS on February 17, 2012, stating, ''The EPA is designating areas as ''unclassifiable/attainment'' to mean that available information does not indicate that the air quality in these areas exceeds the 2010 NO_2 NAAQS'' (*see* 77 FR 9532). For comparison purposes, EPA examined the design values[10] from NO_2 monitors in Illinois

[8] *http://www.epa.gov/NSR/actions.html#2010.*

[9] Section 110(a)(2)(E) requires that states have the resources to administer an air quality management program. Some states that are not covered by the Narrowing Rule may not be able to adequately demonstrate that they have adequate personnel to issue GHG permits to all sources that emit GHG under the Tailoring Rule thresholds.

[10] The level of the 2010 NO_2 NAAQS for is 100 parts per billion (ppb) and the form is the 3-year average of the annual 98th percentile of the daily 1-hour maximum. For the most recent design values, see *http://www.epa.gov/airtrends/values.html.*

and surrounding states. The highest design value based on data collected between 2010 and 2012 was 62 parts per billion at a monitor in Chicago, Illinois. Additionally, Illinois' SIP contains two sets of substantial provisions that limit NO_2 (and SO_2) emissions from electric generating units. The Combined Pollutant Standards (CPS) are contained in Illinois Administrative Code 225.233, and the Multi-Pollutant Standards (MPS) are contained in Illinois Administrative Code 225.293–225.299. EPA believes that with the continued implementation of CPS, MPS, Federally promulgated PSD regulations, and the state's NNSR regulations found in Part 203 of the SIP, these low monitored values of NO_2 will continue in and around Illinois. In other words, the NO_2 emissions from Illinois are not expected to cause or contribute to a violation of the 2010 NO_2 NAAQS in another state, and these emissions are not likely to interfere with the maintenance of the 2010 NO_2 NAAQS in another state. Therefore, EPA proposes that Illinois has met this set of requirements related to section 110(a)(2)(D)(i)(I) for the 2010 NO_2 NAAQS.

Section 110(a)(2)(D)(i)(II) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality or to protect visibility in another state.

Illinois' satisfaction of the applicable infrastructure SIP PSD requirements for the 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS has been detailed in the section addressing section 110(a)(2)(C). As previously noted, Illinois has not adopted or submitted regulations for PSD, which results in a proposed disapproval with respect to these requirements. However, Illinois has no further obligations to EPA because it administers the Federally promulgated PSD regulations, promulgated at 40 CFR 52.21, through delegation.

States also have an obligation to ensure that sources located in nonattainment areas do not interfere with a neighboring state's PSD program. One way that this requirement can be satisfied is through an NNSR program consistent with the CAA that addresses any pollutants for which there is a designated nonattainment area within the state.

Illinois' EPA-approved NNSR regulations can be found in Part 203 of the SIP; these regulations contain provisions for how the state must treat and control sources in nonattainment areas, consistent with 40 CFR 51.165, or appendix S to 40 CFR part 51. EPA proposes that Illinois has met the requirements with respect to the prohibition of interference with a neighboring state's PSD program for the 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS related to section 110(a)(2)(D)(i)(II).

With regard to the applicable requirements for visibility protection of section 110(a)(2)(D)(i)(II), states are subject to visibility and regional haze program requirements under part C of the CAA (which includes sections 169A and 169B). The 2009 Memo, the 2011 Memo, and 2013 Memo state that these requirements can be satisfied by an approved SIP addressing reasonably attributable visibility impairment, if required, or an approved SIP addressing regional haze.

On July 6, 2012, EPA published its final approval of Illinois' regional haze plan (*see* 77 FR 39943). Notably, Illinois has two sets of provisions in its SIP that meet the Best Available Retrofit Technology requirement of electric generating stations without relying on Federally promulgated regulations such as the Clean Air Interstate Rule (CAIR) or the Cross-State Air Pollution Rule (CSAPR).[11] Therefore, EPA is proposing that Illinois has met the visibility protection requirements of section 110(a)(2)(D)(i)(II) for the 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

Section 110(a)(2)(D)(ii) requires each SIP to contain adequate provisions requiring compliance with the applicable requirements of section 126 and section 115 (relating to interstate and international pollution abatement, respectively).

Section 126(a) requires new or modified sources to notify neighboring states of potential impacts from the source. The statute does not specify the method by which the source should provide the notification. States with SIP-approved PSD programs must have a provision requiring such notification by new or modified sources. A lack of such a requirement in state rules would be grounds for disapproval of this element.

As previously mentioned, Illinois administers the Federally promulgated PSD regulations promulgated at 40 CFR 52.21, through delegation. These Federal rules contain provisions requiring new or modified sources to notify neighboring states of potential negative air quality impacts. EPA acknowledges that the state has not satisfied the requirement for a SIP submission, which results in a proposed disapproval with respect to this set of infrastructure SIP requirements of section 110(a)(2)(D)(ii). However, Illinois has no further obligations to EPA because it administers the Federally promulgated PSD regulations.

Illinois affirmed in its submission that it does not have any pending obligations under section 115. Therefore, EPA is proposing that Illinois has met the applicable infrastructure SIP requirements of section 110(a)(2)(D)(ii) related to section 115 of the CAA (international pollution abatement) for the 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

E. Section 110(a)(2)(E)—Adequate Resources

This section requires each state to provide for adequate personnel, funding, and legal authority under state law to carry out its SIP, and related issues. Section 110(a)(2)(E)(ii) also requires each state to comply with the requirements respecting state boards under section 128.

Sub-Element 1: Adequate Personnel, Funding, and Legal Authority Under State Law To Carry Out Its SIP, and Related Issues

At the time of its submittal, Illinois EPA cited the recently passed Public Act in the state that provides appropriations for the Illinois Bureau of Air Programs and associated personnel. In addition to the environmental performance partnership agreement with EPA, Illinois has confirmed that it retains all necessary resources to carry out required air programs. As discussed in previous sections, Illinois EPA has affirmed that 415 ILCS 5/4 and 415 ILCS 5/10 provide the Director, in conjunction with IPCB, with the authority to develop rules and regulations necessary to meet ambient air quality standards and respond to any EPA findings of inadequacy with the Illinois SIP program. Lastly, the IPCB ensures compliance with required laws or elements of the state's attainment plan that are necessary to attain the NAAQS, or that are necessary to comply with the requirements of the CAA. EPA proposes that Illinois has met the infrastructure SIP requirements of this portion of section 110(a)(2)(E) with respect to the 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

[11] These provisions are the CPS and MPS as alluded to in the discussion addressing section 110(a)(2)(D)(i)(I), and are contained in Illinois Administrative Code 225.233 and Illinois Administrative Code 225.293–225.299, respectively. Reliance on the CPS and MPS in the context of Illinois' regional haze plan as satisfying the visibility protection requirements of section 110(a)(2)(D)(i)(II) in lieu of dependence on Federally promulgated regulations such as CAIR or CSAPR is consistent with EPA's previous final action for the 2006 $PM_{2.5}$ NAAQS (*see* 77 FR 65478 at 65481).

As noted above in the discussion addressing section 110(a)(2)(C), the resources needed to permit all sources emitting more than 100 tpy or 250 tpy (as applicable) of GHG would require more resources than states may appear to have. This is not a concern in Illinois, because PSD permitting for GHGs is based on Federally promulgated PSD rules that ''tailor'' the applicability to 75,000 tpy (expressed as carbon dioxide equivalent).

Sub-Element 2: State Board Requirements Under Section 128 of the CAA

Section 110(a)(2)(E) also requires each SIP to contain provisions that comply with the state board requirements of section 128 of the CAA. That provision contains two explicit requirements: (i) That any board or body which approves permits or enforcement orders under this chapter shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits and enforcement orders under this chapter, and (ii) that any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.

In today's action, EPA is neither proposing to approve or disapprove the portions of the submission from Illinois intended to address the state board requirements of section 110(a)(2)(E)(ii). Instead, EPA will take separate action on compliance with section 110(a)(2)(E)(ii) for the state at a later time. EPA is working with Illinois EPA to address these requirements in the most appropriate way.

F. Section 110(a)(2)(F)—Stationary Source Monitoring System

States must establish a system to monitor emissions from stationary sources and submit periodic emissions reports. Each plan shall also require the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources. The state plan shall also require periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and correlation of such reports by each state agency with any emission limitations or standards established pursuant to this chapter. Lastly, the reports shall be available at reasonable times for public inspection.

Illinois EPA requires regulated sources to submit various reports, dependent on applicable requirements and the type of permit issued to the source. These reports are submitted to the Bureau of Air's Compliance Unit for review, and all reasonable efforts are made by Illinois EPA to maximize the effectiveness of available resources to review the required reports. EPA proposes that Illinois has satisfied the infrastructure SIP requirements of section 110(a)(2)(F) with respect to the 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

G. Section 110(a)(2)(G)—Emergency Powers

This section requires that a plan provide for authority that is analogous to what is provided in section 303 of the CAA, and adequate contingency plans to implement such authority. The 2013 Memo states that infrastructure SIP submissions should specify authority, rested in an appropriate official, to restrain any source from causing or contributing to emissions which present an imminent and substantial endangerment to public health or welfare, or the environment.

Illinois has the necessary authority to address emergency episodes, and these provisions are contained in 415 ILCS 5/34. 415 ILCS 5/43(a) authorizes the Illinois EPA to request a state's attorney from Illinois Attorney General's office to seek immediate injunctive relief in circumstances of substantial danger to the environment or to the public health of persons. EPA proposes that Illinois has met the applicable infrastructure SIP requirements for this portion of section 110(a)(2)(G) with respect to the 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

H. Section 110(a)(2)(H)—Future SIP Revisions

This section requires states to have the authority to revise their SIPs in response to changes in the NAAQS, availability of improved methods for attaining the NAAQS, or to an EPA finding that the SIP is substantially inadequate.

As previously mentioned, 415 ILCS 5/4 and 415 ILCS 5/10 provide the Director of Illinois EPA, in conjunction with IPCB, with the authority to develop rules and regulations necessary to meet ambient air quality standards. Furthermore, they have the authority to respond to any EPA findings of inadequacy with the Illinois SIP program. EPA proposes that Illinois has met the infrastructure SIP requirements of section 110(a)(2)(H) with respect to the 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

I. Section 110(a)(2)(I)—Nonattainment Area Plan or Plan Revisions Under Part D

The CAA requires that each plan or plan revision for an area designated as a nonattainment area meet the applicable requirements of part D of the CAA. Part D relates to nonattainment areas.

EPA has determined that section 110(a)(2)(I) is not applicable to the infrastructure SIP process. Instead, EPA takes action on part D attainment plans through separate processes.

J. Section 110(a)(2)(J)—Consultation With Government Officials; Public Notifications; PSD; Visibility Protection

The evaluation of the submissions from Illinois with respect to the requirements of section 110(a)(2)(J) are described below.

Sub-Element 1: Consultation With Government Officials

States must provide a process for consultation with local governments and Federal Land Managers (FLMs) carrying out NAAQS implementation requirements.

Illinois EPA is required to give notice to the Office of the Attorney General and the Illinois Department of Natural Resources during the rulemaking process. Furthermore, Illinois provides notice to reasonably anticipated stakeholders and interested parties, as well as to any FLM if the rulemaking applies to Federal land which the FLM has authority over. Additionally, Illinois EPA participates in the Lake Michigan Air Director's Consortium (LADCO), which consists of collaboration with EPA and the states of Indiana, Michigan, Minnesota, Ohio, and Wisconsin. Illinois EPA also consults with Missouri through a process established in a Memorandum of Agreement. EPA proposes that Illinois has met the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

Sub-Element 2: Public Notification

Section 110(a)(2)(J) also requires states to notify the public if NAAQS are exceeded in an area and must enhance public awareness of measures that can be taken to prevent exceedances.

Illinois EPA continues to collaborate with the Cook County Department of Environmental Control. This consists of continued and routine monitoring of air quality throughout the state, and notifying the public when unhealthy air quality is measured or forecasted. Illinois EPA actively populates EPA's AIRNOW program and distributes the

information to interested stakeholders such as Partners for Clean Air in Chicago, the Clean Air Partnership in St. Louis, and the Cook County Department of Environmental Control. The state maintains portions of its Web site specifically for air quality alerts,[12] and prepares annual data reports from its complete monitoring network. Therefore, EPA proposes that Illinois has met the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

Sub-Element 3: PSD

States must meet applicable requirements of section 110(a)(2)(C) related to PSD. Illinois' satisfaction of the applicable infrastructure SIP PSD requirements for the 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS has been detailed in the section addressing section 110(a)(2)(C). As previously noted, Illinois has not adopted or submitted regulations for PSD, which results in a proposed disapproval with respect to these requirements. However, Illinois has no further obligations to EPA because it administers the Federally promulgated PSD regulations, promulgated at 40 CFR 52.21, through delegation.

Sub-Element 4: Visibility Protection

With regard to the applicable requirements for visibility protection, states are subject to visibility and regional haze program requirements under part C of the CAA (which includes sections 169A and 169B). In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus, we find that there is no new visibility obligation ''triggered'' under section 110(a)(2)(J) when a new NAAQS becomes effective. In other words, the visibility protection requirements of section 110(a)(2)(J) are not germane to infrastructure SIPs for the 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

K. Section 110(a)(2)(K)—Air Quality Modeling/Data

SIPs must provide for performing air quality modeling for predicting effects on air quality of emissions from any NAAQS pollutant and submission of such data to EPA upon request.

Illinois EPA maintains the capability to perform modeling of the air quality impacts of emissions of all criteria pollutants, including the capability to use complex photochemical grid models. This modeling is used in support of the SIP for all nonattainment areas in the state. Illinois EPA also requires air quality modeling in support of permitting the construction of major and some minor new sources under the PSD program. These modeling data are available to EPA as well as the public upon request. Lastly, Illinois EPA participates in LADCO, which conducts regional modeling that is used for statewide planning purposes. EPA proposes that Illinois has met the infrastructure SIP requirements of section 110(a)(2)(K) with respect to the 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

L. Section 110(a)(2)(L)—Permitting Fees

This section requires SIPs to mandate each major stationary source to pay permitting fees to cover the cost of reviewing, approving, implementing, and enforcing a permit.

Illinois EPA implements and operates the title V permit program, which EPA approved on December 4, 2001 (66 FR 62946) and the provisions, requirements, and structures associated with the costs for reviewing, approving, implementing, and enforcing various types of permits are contained in 415 ILCS 5/39.5. EPA proposes that Illinois has met the infrastructure SIP requirements of section 110(a)(2)(L) for the 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

M. Section 110(a)(2)(M)—Consultation/Participation by Affected Local Entities

States must consult with and allow participation from local political subdivisions affected by the SIP.

All public participation procedures pertaining to Illinois EPA are consistent with 35 Illinois Administrative Code Part 164 (Procedures for Informational and Quasi-Legislative Public Hearings) and 35 Illinois Administrative Code Part 252 (Public Participation in the Air Pollution Control Permit Program); the latter is an approved portion of Illinois' SIP. EPA proposes that Illinois has met the infrastructure SIP requirements of section 110(a)(2)(M) with respect to the 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

V. What action is EPA taking?

EPA is proposing to approve most elements of a submission from Illinois certifying that its current SIP is sufficient to meet the required infrastructure elements under sections 110(a)(1) and (2) for the 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS. We are also proposing to disapprove some elements of the state's submission as they relate to its PSD program. As described above, Illinois already administers Federally promulgated PSD regulations through delegation, and therefore no practical effect is associated with today's proposed disapproval or future final disapproval of those elements.

EPA's proposed actions for the state's satisfaction of infrastructure SIP requirements, by element of section 110(a)(2) and NAAQS, are contained in the table below.

Element	2008 Ozone	2010 NO_2	2010 SO_2
(A): Emission limits and other control measures	A	A	A
(B): Ambient air quality monitoring and data system	A	A	A
(C)1: Enforcement of SIP measures	A	A	A
(C)2: NO_X as a precursor to ozone for PSD	D,*	D,*	D,*
(C)3: $PM_{2.5}$ Precursors/$PM_{2.5}$ and PM_{10} condensables for PSD	D,*	D,*	D,*
(C)4: $PM_{2.5}$ Increments	D,*	D,*	D,*
(C)5: GHG permitting thresholds in PSD regulations	D,*	D,*	D,*
(D)1: Contribute to nonattainment/interfere with maintenance of NAAQS	NA	A	NA
(D)2: PSD	**	**	**
(D)3: Visibility Protection	A	A	A
(D)4: Interstate Pollution Abatement	D,*	D,*	D,*
(D)5: International Pollution Abatement	A	A	A
(E): Adequate resources	A	A	A
(E): State boards	NA	NA	NA
(F): Stationary source monitoring system	A	A	A

[12] See, e.g., *http://www.epa.state.il.us/air/air-quality-menu.html.*

Element	2008 Ozone	2010 NO_2	2010 SO_2
(G): Emergency power	A	A	A
(H): Future SIP revisions	A	A	A
(I): Nonattainment area plan or plan revisions under part D	NA	NA	NA
(J)1: Consultation with government officials	A	A	A
(J)2: Public notification	A	A	A
(J)3: PSD	**	**	**
(J)4: Visibility protection	+	+	+
(K): Air quality modeling and data	A	A	A
(L): Permitting fees	A	A	A
(M): Consultation and participation by affected local entities	A	A	A

In the above table, the key is as follows:

A	Approve.
NA ...	No Action/Separate Rulemaking.
D	Disapprove.
+	Not germane to infrastructure SIPs.
*	Federally promulgated rules in place.
**	Previously discussed in element (C).

To clarify, EPA is proposing to disapprove the infrastructure SIP submission from Illinois with respect to certain PSD requirements including: (i) The explicit identification of NO_X as a precursor to ozone consistent with the Phase 2 Rule; (ii) the explicit identification of SO_2 and NO_X as $PM_{2.5}$ precursors (and the significant emissions rates for direct $PM_{2.5}$, and SO_2 and NO_X as its precursors), and the regulation of $PM_{2.5}$ and PM_{10} condensables, consistent with the requirements of the 2008 NSR Rule; (iii) the $PM_{2.5}$ increments and associated implementation rules consistent with the 2010 NSR Rule; and, (iv) permitting of GHG emitting sources at the Federal Tailoring Rule thresholds.

EPA is also proposing to disapprove the infrastructure SIP submission from with respect to the requirements of section 110(a)(2)(D)(ii) related to interstate pollution abatement. Specifically, this section requires states with PSD programs have provisions requiring a new or modified source to notify neighboring states of the potential impacts from the source, consistent with the requirements of section 126(a).

However, Illinois has no further obligations to EPA because Federally promulgated rules, promulgated at 40 CFR 52.21 are in effect in the state. EPA has delegated the authority to Illinois to administer these rules, which include provisions related to PSD and interstate pollution abatement. A final disapproval for Illinois for these infrastructure SIP requirements will not result in sanctions under section 179(a), nor will it obligate EPA to promulgate a Federal implementation plan within two years of final action if the state does not submit revisions to its PSD SIPs addressing these deficiencies. Instead, Illinois is already administering the Federally promulgated PSD regulations.

VI. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

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

Dated: June 23, 2014.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2014–16287 Filed 7–11–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2014–0119; FRL–9912–18–Region 5]

Approval and Promulgation of Air Quality Implementation Plans; Illinois; Latham Pool Adjusted Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a request submitted by the Illinois Environmental Protection Agency on January 8, 2014, to revise the Illinois State Implementation Plan (SIP) for volatile organic matter (VOM). The approval revises the Illinois SIP by substituting a new party as the holder of the adjusted

standard for VOM granted to Royal Fiberglass Pools, Inc. (Royal), for the facility located in Dix, Illinois. EPA approved the adjusted standard for Royal on June 27, 2011. Due to a change in ownership, the facility is now owned by Latham Pool Products, Inc., d/b/a Viking Pools. The revision amends the adjusted standard for VOM currently approved in the SIP for the facility to reflect the change in ownership. This revision does not change any of the VOM control requirements and will not result in an increase in VOM emissions at the facility.

DATES: Comments must be received on or before August 13, 2014.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2014–0119, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: blakley.pamela@epa.gov.*
3. *Fax:* (312) 629–2054.
4. *Mail:* Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

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

FOR FURTHER INFORMATION CONTACT: Carolyn Persoon, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8290, *persoon.carolyn@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because EPA views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: May 30, 2014.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2014–16291 Filed 7–11–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2014–0323; FRL–9913–11–Region 9]

Revisions to the California State Implementation Plan, Placer County Air Pollution Control District (PCAPCD) and South Coast Air Quality Management District (SCAQMD)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Placer County Air Pollution Control District (PCAPCD) and South Coast Air Quality Management District (SCAQMD) portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from the manufacture of medium density fiberboard, melamine and phenol resins used in plasticizing paper and oxides of nitrogen (NO_X) emissions from stationary internal combustion engines. We are proposing to rescind local rules that regulate these emission sources under the Clean Air Act (CAA or the Act).

DATES: Any comments on this proposal must arrive by August 13, 2014.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2014–0323, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.
2. *Email: steckel.andrew@epa.gov.*
3. *Mail or Deliver:* Andrew Steckel (Air–4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901. While all documents in the docket are listed at *www.regulations.gov,* some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Arnold Lazarus, EPA Region IX, (415) 972–3024, *lazarus.arnold@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: PCAPCD Rule 229, ''Fiberboard Manufacturing;'' PCAPCD Rule 230, ''Plastic Products and Materials—Paper Treating Operations;'' and SCAQMD Rule 1110, ''Emissions From Stationary Internal Combustion Engines (Demonstration).'' In the Rules and Regulations section of this **Federal Register**, we are rescinding these local

rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comments on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: May 30, 2014.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2014–16295 Filed 7–11–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

[EPA–HQ–OPPT–2011–1019; FRL–9912–42]

RIN 2070–AJ93

Hydraulic Fracturing Chemicals and Mixtures; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: EPA issued an advance notice of proposed rulemaking in the **Federal Register** of May 19, 2014, concerning hydraulic fracturing chemicals and mixtures. This document extends the comment period for 30 days, from August 18, 2014, to September 18, 2014. EPA is taking this action in response to requests for an extension to allow interested persons additional time to submit comments.

DATES: Comments, identified by docket identification (ID) number EPA–HQ–OPPT–EPA–HQ–OPPT–2011–1019, must be received on or before September 18, 2014.

ADDRESSES: Follow the detailed instructions provided under **ADDRESSES** in the **Federal Register** document of May 19, 2014 (79 FR 28664) (FRL–9909–13).

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Mark Seltzer, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–2901; email address: *seltzer.mark@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION: This document extends the public comment period established in the **Federal Register** document of May 19, 2014. In that document, the Agency requests comment on the information that should be reported or disclosed for hydraulic fracturing chemical substances and mixtures and the mechanism for obtaining this information. This mechanism could be regulatory (under the Toxic Substances Control Act (TSCA) section 8(a) and/or section 8(d)), voluntary, or a combination of both and could include best management practices, third-party certification and collection, and incentives for disclosure of this information. In addition, the Agency is seeking comment on ways of minimizing reporting burdens and costs and of avoiding the duplication of State and other Federal agency information collections, while at the same time maximizing data available for EPA risk characterization, external transparency, and public understanding. Also, EPA is soliciting comments on incentives and recognition programs that could be used to support the development and use of safer chemical substances and mixture in hydraulic fracturing. EPA is hereby extending the comment period, which was set to end on August 18, 2014, to September 18, 2014.

To submit comments, or access the docket, please follow the detailed instructions provided under **ADDRESSES** in the **Federal Register** document of May 19, 2014. If you have questions, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects in 40 CFR Chapter I

Environmental protection, Chemicals, Confidential business information, Exploration and production, Fracking, Hazardous substances, Hydraulic fracturing, Oil and gas, Reporting and recordkeeping requirements.

Dated: July 7, 2014.

James Jones,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2014–16460 Filed 7–11–14; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 700

[Docket No. 070824479–8107–02]

RIN 0648–AV53

Magnuson-Stevens Act Provisions; Environmental Review Process for Fishery Management Actions

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

ACTION: Proposed rule; withdrawal.

SUMMARY: NMFS withdraws a proposed rule that would have established new regulations pertaining to compliance with the National Environmental Policy Act (NEPA) in the context of fishery management actions developed pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (MSA). Instead of going forward with a final rule directly resulting from the 2008 proposed rule, NMFS issued an internal policy on February 19, 2013. This policy, entitled ''National Environmental Policy Act Compliance for Council-Initiated Fishery Management Actions under the Magnuson-Stevens Act'' clarifies roles and responsibilities of NMFS and the Regional Fishery Management Councils (Councils), explains timing and procedural linkages, provides guidance on documentation needs, and fosters partnerships and cooperation between NMFS and Councils on NEPA compliance.

NMFS consulted with the Councils and with the Council on Environmental Quality (CEQ) on proposed revisions to the 2013 NMFS NEPA policy directive, and based on those consultations NMFS now proposes to use this policy as a basis for issuing revised and updated NEPA procedures for MSA actions in the form of a line-office supplement to NOAA Administrative Order (NAO) 216–6. On June 30, 2014, NMFS published a **Federal Register** notice of availability of the draft revised and updated NEPA procedures for MSA actions and requested public comments, with a 90-day public comment period.

DATES: The proposed rule published on May 14, 2008 (73 FR 27998) is withdrawn as of July 14, 2014.

FOR FURTHER INFORMATION CONTACT: Steve Leathery via email at *steve.leathery@noaa.gov* or via phone at 301–427–8014.

SUPPLEMENTARY INFORMATION: The 2007 Magnuson-Stevens Reauthorization Act (MSRA) required NMFS to ''revise and update'' agency procedures to comply with the National Environmental Policy Act (NEPA) for fisheries actions. In developing a proposed approach, NMFS conducted extensive public outreach which included the following:

- Consulted with the CEQ and the Councils.
- Posted Trigger Questions, developed by NMFS, and a Strawman proposal, developed by the Council Coordination Committee (CCC), for 60-day public comment.
- NMFS made presentations at each meetings of each Council on Trigger Questions and Strawman during the 60-day period; NMFS received over 1600 comments.
- NMFS published proposed rule May 2008 with a 90-day comment period; conducted 3 NMFS-sponsored public hearings and a public workshop; conducted presentations at meetings of all eight Councils; and received over 150,000 public comments.

NMFS's initial approach was to propose a rule creating new regulatory requirements aligning the decision-making processes of the Councils and NMFS under the MSA with the analytical and procedural requirements of NEPA. The proposed rule would have required Council consideration of draft NEPA documents prior to recommending fishery management measures, and NMFS consideration of a final NEPA document during Secretarial review of the measures. These comment periods could be less than 45 days each in limited circumstances, but in no case could the combined total of days be less than 45, which is the minimum comment period established by CEQ's regulations for Environmental Impact Statements (EISs). The proposed rule would have included regulatory provisions pertaining to inadequate and incomplete information, a new categorical exclusion for exempted fishing permits, and it would have changed the name of the EIS-level NEPA compliance document for fisheries to reflect the integration of fisheries management and environmental considerations. It also would have established a new NEPA tiering mechanism modeled on fishery management plan (FMP) ''frameworks.''

NMFS published the proposed rule on May 14, 2008, and provided for a 90-day public comment period. During the public comment period, NMFS delivered presentations at meetings of all eight Councils and conducted three NMFS-sponsored public listening sessions: One in Washington, DC metro area, one in St. Petersburg, FL, and one in Seattle, WA. In addition, NMFS, Council representatives and CEQ held an interactive public workshop in the Washington DC, area. By the close of the public comment period, NMFS had received over 150,000 comment letters, many of which were form letters urging NMFS to withdraw the proposed rule and start over.

NMFS subsequently determined that it would be more appropriate to revise and update internal guidance rather than to create new regulatory requirements. On February 19, 2013, NMFS issued a policy titled ''National Environmental Policy Act Compliance for Council-Initiated Fishery Management Actions under the Magnuson-Stevens Act.'' This policy clarifies roles and responsibilities of NMFS and the Councils, explains timing and procedural linkages, provides guidance on documentation needs, and fosters partnerships and cooperation between NMFS and Councils on NEPA compliance. This policy satisfied the requirements of section 304(i) of the MSA.

After issuing the 2013 Policy Directive, NMFS consulted with the Councils and with CEQ on proposed revisions to the 2013 NMFS NEPA policy directive, and based on those consultations, NMFS now proposes to use this policy as a basis for issuing revised and updated NEPA procedures for MSA actions in the form of a line-office supplement to NOAA Administrative Order (NAO) 216–6. On June 30, 2014, NMFS published a notice of availability of the draft Revised and Updated MSA NEPA procedures (79 FR 36726). Both the 2013 Policy Directive and the draft Revised and Updated MSA NEPA Procedures are available on the web at: *http://www.nmfs.noaa.gov/sfa/laws_policies/msa/nepa.html.*

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

Dated: July 8, 2014.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2014–16426 Filed 7–11–14; 8:45 am]

BILLING CODE 3510–22–P

Notices

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

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

July 8, 2014.

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

Comments regarding these information collections are best assured of having their full effect if received by August 13, 2014. Copies of the submission(s) may be obtained by calling (202) 720–8681.

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

Agricultural Marketing Service

Title: Specified Commodities Imported into the United States Exempt from Import Requirements, 7 CFR Part 944, 980, and 999.

OMB Control Number: 0581–0167.

Summary of Collection: Section 608e of the Agricultural Marketing Agreement Act of 1937 (AMAA), as amended (7 U.S.C. 601–674), requires that whenever the Secretary of Agriculture issues grade, size, quality, or maturity regulations under domestic marketing orders, the same or comparable regulations must be used for imported commodities. Import regulations apply only during those periods when domestic marketing order regulations are in effect. No person may import products for processing or other exempt purposes unless an executed Importers Exempt Commodity Form (FV–6) accompanies the shipment. The Civil Penalty Stipulation Agreement (FV–7) is a ''volunteer'' form that provides the Agricultural Marketing Service (AMS) with an additional tool to obtain resolution of certain cases without the cost of going to a hearing.

Need and Use of the Information: The importers wishing to import commodities will use form FV–6, ''Importer's Exempt Commodity.'' The information collected includes information on the imported product (type of product and lot identification), the importer's contact information, the U.S. Customs entry number, inspection date, and intended use (processing, charity, livestock/animal feed. AMS utilizes the information to ensure that imported goods destined for exempt outlets are given no less favorable treatment than afforded to domestic goods destined for such exempt outlets.

Description of Respondents: Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 130.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 17,734.

Title: Laboratory Approval Programs.

OMB Control Number: 0581–0251.

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

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

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

Number of Respondents: 85.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 6,290.

Title: Data Collection for Container Availability.

OMB Control Number: 0581–0276.

Summary of Collection: Section 203(g) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627) directs and authorizes the collection and dissemination of marketing information including adequate outlook information, on a market area basis, for the purpose of anticipating and meeting consumer requirements aiding in the maintenance of farm income and to bring about a balance between production and utilization. As part of the Agricultural

Marketing Service (AMS), the Transportation Services Division (TSD) informs, represents, and assists agricultural shippers and government policymakers through: Market reports, representation, analysis, assistance, and responses to inquiries.

Need and Use of the Information: TSD collects data for its analysis from public resources as well as unique data sources to help the agricultural exporters make the most out of the transportation options available. The Data Collection for Container Availability provides U.S. agricultural exporters with weekly data detailing the availability of containers at select locations around the country. AMS will collect these data on a voluntary basis from ocean container carriers and then provide these up-to-date data in an aggregate report on its Web site.

Description of Respondents: Business or other for-profit.

Number of Respondents: 21.

Frequency of Responses: Reporting: Weekly.

Total Burden Hours: 1,759.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2014–16312 Filed 7–11–14; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

July 8, 2014.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

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

Food Safety and Inspection Service

Title: Survey of Meat Slaughter and Processing Establishments.

OMB Control Number: 0583–New.

Summary of Collection: The Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*). These statutes mandate that FSIS protect the public by verifying that meat products are safe, wholesome, unadulterated, and properly labeled and packaged. To assist FSIS in meeting its strategic goal to protect public health by significantly reducing the prevalence of foodborne hazards from meat products, the agency requires accurate and up-to-date information about industry's use of food safety practices and technologies. FSIS conducted a survey of establishments in 2004 to collect information on food safety practices and technologies. This was a part of a broader effort that also surveyed the egg, poultry, and meat and poultry processing industries from 2003–2006. FSIS needs to survey the meat slaughter industry again so that the agency has the most current information on industry practices for conducting regulatory impact analyses as required by the Office of Management and Budget.

Need and Use of the Information: The data collected in the survey will provide reliable and valid information regarding food safety practices in the meat industry that can be used to address a broad variety of the agency's analyses needs. FSIS will also use the survey data to provide information for evaluating the effectiveness of FSIS programs and to conduct trend analyses to assess if industry's application of food safety technologies, sanitation practices, health risk reduction, and recall readiness has improved since the initial survey was conducted. Without the information, the regulatory and economic impact analysis that FSIS is required by statute to conduct could be incomplete or misleading.

Description of Respondents: Business or other for-profit.

Number of Respondents: 590.

Frequency of Responses: Reporting: Other (once).

Total Burden Hours: 452.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2014–16305 Filed 7–11–14; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

National Institute of Food and Agriculture

Draft Guidance for Applicants for Competitive and Capacity Grants Administered by the National Institute of Food and Agriculture; Availability

AGENCY: National Institute of Food and Agriculture, USDA.

ACTION: Notice of Availability.

SUMMARY: The National Institute of Food and Agriculture (NIFA) is announcing the availability of a draft guidance entitled ''National Institute of Food and Agriculture (NIFA) Federal Assistance Policy Guide.'' The draft guidance discusses the statutory and regulatory responsibilities of recipients of Federal funds administered by NIFA. This draft guidance compiles and updates the statutory, regulatory, policy guidance previously distributed to Capacity Grant recipients as Administrative Manuals. The draft NIFA Federal Assistance Policy Guide also addresses procedures and policies followed by NIFA in the administration of Federal assistance. NIFA intends to publish a final version of the Policy Guide to reflect any public comments, as well as the requirements of the Agricultural Act of 2014 and USDA's implementation of the Office of Management and Budget ''OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards''.

DATES: All written comments must be received on or before August 13, 2014.

ADDRESSES: You may submit comments, identified by NIFA–2014–0001, by any of the following methods:

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

Email: policyguide@nifa.usda.gov. Include NIFA–2014–0001 in the subject line of the message.

Mail: Policy and Oversight Division; National Institute of Food and Agriculture; U.S. Department of Agriculture; STOP 2299; 1400 Independence Avenue SW., Washington, DC 20250–2299.

Hand Delivery/Courier: Policy and Oversight Division; National Institute of Food and Agriculture; U.S. Department of Agriculture; Room 2312, Waterfront Centre, 800 9th Street SW., Washington, DC 20024.

Instructions: All comments submitted must include the agency name and the RIN for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* Docket NIFA–2014–0001, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Melanie Krizmanich, Policy Specialist, Phone: (202) 401–1762; Email: *policyguide@nifa.usda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background Information

The National Institute of Food and Agriculture (NIFA) is announcing the availability of a draft guidance entitled ''National Institute of Food and Agriculture Federal Assistance Policy Statement.'' The draft guidance discusses the statutory and regulatory responsibilities of recipients of Federal funds distributed by the NIFA. Specifically, the Policy Statement includes NIFA application processes, application review procedures, award notification and administration, applicable cost principles and other cost considerations, prior approval requirements, administrative requirements, Capacity Grant administration and associated requirements, specific Capacity Grant program requirements, terms and conditions of all NIFA awards (Competitive and Capacity), public policy requirements, special award conditions and enforcement actions, and closeout procedures. The NIFA Federal Assistance Policy Guide updates and compiles into a single document all previously published Administrative Manuals for the grantee community. The statutory, regulatory, and policy requirements contained in the Policy Guide provide general guidance to all NIFA grant recipients. If there is a conflict with this Policy Guide and the terms and conditions of a specific award, the terms and conditions associated with the award should be followed.

This draft guidance includes information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The information collections referenced in this draft guidance related to reporting requirements and other information collections have been approved by OMB. The Policy Guide imposes no new information collections not previously approved. In accordance with the Paperwork Reduction Act, prior to the publication of any final guidance document, NIFA intends to solicit public comments and obtain OMB approval for any information collections recommended in this draft guidance that are new or that would represent material modifications to these previously approved information collections found in the NIFA regulations. The draft guidance is being distributed for comment purposes only and is not intended for implementation at this time.

II. Obtaining a Copy of the Draft Guidance

A copy of the draft guidance may be obtained by contacting Melanie Krizmanich, as directed under the **FOR FURTHER INFORMATION CONTACT** caption. Persons with access to the Internet may obtain the draft guidance at *http://www.nifa.usda.gov/business/policy_guide_notice.html.*

Done in Washington, DC, this 7 day of July, 2014.

Robert E Holland,

Acting Associate Director, Programs, National Institute of Food and Agriculture.

[FR Doc. 2014–16398 Filed 7–11–14; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on the following information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by September 12, 2014.

FOR FURTHER INFORMATION CONTACT: Michele L. Brooks, Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave. SW., STOP 1522, Room 5162, South Building, Washington, DC 20250–1522. Telephone: (202) 690–1078. Fax: (202) 720–8435 or email *Michele.brooks@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for revision.

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 will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology. Comments may be sent to: Michele L. Brooks, Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave. SW., Washington, DC 20250–1522. Telephone: (202) 690–1078, Fax: (202) 720–8435 or email: *Michele.brooks@wdc.usda.gov.*

Title: Water and Waste Loan and Grant Program.

OMB Control Number: 0572–0121.

Type of Request: Revision of a currently approved collection.

Abstract: USDA Rural Development, through the Rural Utilities Service, is authorized by Section 306 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926) to make loans to public agencies, nonprofit corporations, and Indian Tribes to fund water and waste disposal projects serving the most financially needy rural communities through the Water and Waste Disposal loan and grant program. Financial assistance should result in reasonable user costs for rural residents, rural businesses, and other rural users.The program is limited to rural

areas and small towns with a population of 10,000 or less. The Water and Waste loan and grant program is administered through 7 CFR part 1780. The items covered by this collection include forms and related documentation to support a loan application.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 3 hours per response.

Respondents: Not-for-profit institutions; State, Local or Tribal Government.

Estimated Number of Respondents: 862.

Estimated Number of Responses per Respondent: 8.

Estimated Total Annual Burden on Respondents: 107,868 hours.

Copies of this information collection can be obtained from Rebecca Hunt, Program Development and Regulatory Analysis, at (202) 205–3660, Fax: (202) 720–8435 or email: *Rebecca.hunt@wdc.usda.gov.* All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: July 3, 2014.

John Charles Padalino,

Administrator, Rural Utilities Service.

[FR Doc. 2014–16310 Filed 7–11–14; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Oregon Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that a planning meeting the Oregon Advisory Committee (Committee) to the Commission will be held on Tuesday, August 5, 2014, at the Hillsdale Library, 1525 SW Sunset Boulevard, Portland, Oregon 97239. The meeting is scheduled to begin at 1:30 p.m. and adjourn at approximately 3:00 p.m. The purpose of the meeting is to consider a draft report on the status of civil rights in Oregon.

Members of the public are entitled to submit written comments. The comments must be received in the Western Regional Office of the Commission by September 5, 2014. The address is Western Regional Office, U.S. Commission on Civil Rights, 300 N. Los Angeles Street, Suite 2010, Los Angeles, CA 90012. Persons wishing to email their comments, or to present their comments verbally at the meeting, or who desire additional information should contact Angelica Trevino, Western Regional Office, at (213) 894–3437, (or for hearing impaired TDD 913–551–1414), or by email to *atrevino@usccr.gov.* Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Western Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov*, or to contact the Western Regional Office at the above email or street address. The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Chicago, IL, July 8, 2014.

David Mussatt,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2014–16356 Filed 7–11–14; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Kansas Advisory Committee for a Meeting To Discuss Civil Rights Issues in the State and Plan Future Activities

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Kansas Advisory Committee (Committee) will hold a meeting on Wednesday, July 30, 2014, for the purpose of discussing current civil rights issues in Kansas and determining plans for the next Committee project. Members of the Advisory Committee will be presenting issues that they believe the Committee should research and issue a report to the Commission.

Members of the public are invited to make statements into the record at the meeting starting at 2:00 p.m. Member of the public are also entitled to submit written comments; the comments must be received in the regional office by August 30, 2014. Written comments may be mailed to the Central Regional Office, U.S. Commission on Civil Rights, 400 State Avenue, Suite 908, Kansas City, Kansas 66101. They may also be faxed to the Commission at (913) 551–1413, or emailed to Administrative Assistant, Corrine Sanders at *csanders@usccr.gov.* Persons who desire additional information may contact the Central Regional Office at (913) 551–1400.

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Central Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Central Regional Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Kansas Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov,* or may contact the Central Regional Office at the above email or street address.

Agenda

Welcome and Introductions, 12:00 p.m. to 12:10 p.m., Elizabeth Kronk Warner, Chair.

Discussion of Current Civil Rights Issues in Kansas, 12:15 p.m. to 1:45 p.m., Kansas Advisory Committee Members.

Future plans and actions, 1:45 p.m. to 2:00 p.m.

Open Comment, 2:00 p.m.

DATES: The meeting will be held on Wednesday, July 30, 2014, at 12:00 p.m.

ADDRESSES: The meeting will be held at the University of Kansas School of Law, 1535 West 15th Street, Green Hall—Rice Room (512), Lawrence, Kansas 66045.

Dated: July 9, 2014.

David Mussatt,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2014–16408 Filed 7–11–14; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–843]

Certain Lined Paper Products From India: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review

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

DATES: *Effective Date:* July 14, 2014.

SUMMARY: In response to a request from Kokuyo Riddhi Paper Products Private Limited (Kokuyo Riddhi), a producer/exporter of certain lined paper products (CLPP) from India, and pursuant to section 751(b) of the Tariff Act of 1930, as amended (the Act), 19 CFR 351.216 and 351.22l(c)(3)(ii), the Department of Commerce (the Department) is initiating a changed circumstances review (CCR) of the antidumping duty (AD) order on CLPP from India with regards to Kokuyo Riddhi. Based on the information received, we preliminarily determine that Kokuyo Riddhi is the successor-in-interest to Riddhi Enterprises (Riddhi) for purposes of determining AD liability. Interested parties are invited to comment on these preliminary results.

FOR FURTHER INFORMATION CONTACT: Cindy Robinson, 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; telephone: (202) 482–3797.

SUPPLEMENTARY INFORMATION:

Background

On September 28, 2006, the Department published in the **Federal Register** the AD and countervailing duty orders on CLPP from India.[1] On May 14, 2014, Kokuyo Riddhi requested that the Department conduct a CCR under section 751(b)(1) of the Act and 19 CFR 351.216(b) to determine that it is the successor-in-interest to Riddhi,[2] and assign it the cash deposit rate of its predecessor, Riddhi. Kokuyo Riddhi based its request on the claim that it operates as the same business entity as Riddhi.[3]

We received comments opposing Kokyuo Riddhi's request from the Petitioners.[4]

Scope of the Order

The merchandise covered by the *CLPP Order* is certain lined paper products, typically school supplies (for purposes of this scope definition, the actual use of or labeling these products as school supplies or non-school supplies is not a defining characteristic) composed of or including paper that incorporates straight horizontal and/or vertical lines on ten or more paper sheets (there shall be no minimum page requirement for looseleaf filler paper). The products are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 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.[5]

Initiation and Issuance of Preliminary Results of Changed Circumstances Review

Pursuant to section 751(b)(1) of the Act and 19 CFR 351.216(d), the Department will conduct a CCR upon receipt of a request from an interested party or receipt of information concerning an AD order which shows changed circumstances sufficient to warrant a review of the order.

As noted above in the ''Background'' section, we received information indicating that Riddhi transferred its notebook business to Kokuyo Riddhi, a company incorporated on October 25, 2013. Kokuyo Riddhi, assumed all operations for the production and sale of the subject merchandise. The Department determines that the information submitted by Kokuyo Riddhi constitutes sufficient evidence to warrant a CCR of this order.[6] Therefore, in accordance with section 751(b)(1) of the Act and 19 CFR 351.216(d), we are initiating a CCR based upon the information contained in Kokuyo Riddhi's submission.[7]

19 CFR 351.221(c)(3)(ii) permits the Department to combine the notice of initiation of a CCR and the notice of preliminary results if the Department concludes that expedited action is warranted. In this instance, because we have the information necessary on the record to make a preliminary finding, we find that expedited action is warranted, and are combining the notice of initiation and the notice of preliminary results in accordance with 19 CFR 351.221(c)(3)(ii).[8]

Methodology

In making a successor-in-interest determination, the Department examines several factors, including but not limited to, changes in: (1) Management; (2) production facilities; (3) supplier relationships; and (4) customer base.[9] While no single factor or combination of these factors will necessarily provide a dispositive indication of a successor-in-interest relationship, the Department will generally consider the new company to be the successor to the previous company if the new company's resulting operation is essentially similar to that of its predecessor.[10] Thus, if the evidence demonstrates that, with respect to the production and sale of the subject

[1] *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) (*CLPP Order*).

[2] *See id.*

[3] *See* CCR Request at 2, 7, and 11.

[4] Petitioners are the Association of American School Paper Suppliers.

[5] For a complete description of the Scope of the Order, *see* the memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, ''Decision Memorandum for Initiation and Preliminary Results of Changed Circumstances Review: Certain Lined Paper Products from India'' (Initiation and Preliminary Decision Memorandum), dated concurrently with and hereby adopted by this notice.

[6] *See* 19 CFR 351.216(d).

[7] *See, generally,* CCR Request.

[8] *See, e.g., Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review,* 76 FR 27005 (May 10, 2011) (*PET Film from Korea*); *Ball Bearings and Parts Thereof from Japan: Initiation and Preliminary Results of Changed-Circumstances Review,* 71 FR 14679 (March 23, 2006); *Fresh and Chilled Atlantic Salmon from Norway; Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review,* 63 FR 50880 (September 23, 1998).

[9] *See, e.g., Pressure Sensitive Plastic Tape from Italy: Preliminary Results of Antidumping Duty Changed Circumstances Review,* 75 FR 8925 (February 26, 2010), unchanged in *Pressure Sensitive Plastic Tape From Italy: Final Results of Antidumping Duty Changed Circumstances Review,* 75 FR 27706 (May 18, 2010); *Brake Rotors From the People's Republic of China: Final Results of Changed Circumstances Antidumping Duty Administrative Review,* 70 FR 69941 (November 18, 2005), citing *Brass Sheet and Strip from Canada: Final Results of Antidumping Duty Administrative Review,* 57 FR 20460 (May 13, 1992); and *Structural Steel Beams from Korea: Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review,* 66 FR 15834 (March 21, 2001).

[10] *See e.g., PET Film from Korea,* 76 FR at 27006; *Industrial Phosphoric Acid from Israel: Final Results of Antidumping Duty Changed Circumstances Review,* 59 FR 6944, 6945 (February 14, 1994); *Brass Sheet and Strip from Canada: Final Results of Antidumping Duty Administrative Review,* 57 FR 20460 (May 13, 1992) at Comments 1 and 2.

merchandise, the new company operates as the same business entity as the former predecessor company, the Department will afford the new company the same AD treatment as its predecessor, *i.e.,* will assign the new company the same cash deposit rate of its predecessor.[11]

For a full description of the methodology underlying our conclusions, *see* Preliminary Decision Memorandum.[12]

The Preliminary Decision Memorandum 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 in the Central Records Unit (CRU), room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at *http://enforcement.trade.gov/frn/index.html.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of the Changed Circumstances Review

Based on the evidence reviewed, we preliminarily determine that Kokuyo Riddhi is the successor-in-interest to Riddhi. Specifically, we find that the change of the notebook business as a result of the transfer from Riddhi to Kokuyo Riddhi resulted in no significant changes to management, production facilities, supplier relationships, and customers with respect to the production and sale of the subject merchandise. Thus, Kokuyo Riddhi operates essentially as the same business entity as Riddhi with respect to the subject merchandise.

If the Department upholds these preliminary results in the final results, Kokuyo Riddhi will retain the AD deposit rate currently assigned to Riddhi with respect to the subject merchandise (*i.e.,* zero percent cash deposit rate). If these preliminary results are adopted in the final results of this CCR, we will instruct Customs and Border Protection (CBP) to suspend liquidation of entries of CLPP made by Kokuyo Riddhi, effective on the publication date of the final results, at the cash deposit rate that is currently assigned to Riddhi (*i.e.,* zero percent *ad valorem*).[13]

Public Comment

Interested parties may submit case briefs and/or written comments not later than 30 days after the date of publication of this notice.[14] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the deadline for filing case briefs.[15] Parties who submit case or rebuttal briefs are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. All comments are to be filed electronically using IA ACCESS, and must also be served on interested parties.[16] An electronically filed document must be received successfully in its entirety by IA ACCESS by 5:00 p.m. Eastern Standard Time on the day it is due.[17]

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via IA ACCESS, within 30 days after the date of publication of this notice.[18] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If a request for a hearing is made, we will inform parties of the scheduled date for the hearing which will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and location to be determined.[19] Parties should confirm by telephone the date, time, and location of the hearing.

Consistent with 19 CFR 351.216(e), we will issue the final results of this CCR no later than 270 days after the date on which this review was initiated, or within 45 days if all parties agree to our preliminary finding.

We are issuing and publishing this finding and notice in accordance with sections 751(b)(l) and 777(i)(l) of the Act and 19 CFR 351.216 and 351.221(c)(3)(ii).

Dated: July 3, 2014.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2014–16285 Filed 7–11–14; 8:45 am]

BILLING CODE 3510–DS–P

[11] *See Fresh and Chilled Atlantic Salmon From Norway; Final Results of Changed Circumstances Antidumping Duty Administrative Review,* 64 FR 9979, 9980 (March 1, 1999).

[12] *See* Initiation and Preliminary Decision Memorandum.

[13] *See Certain Lined Paper Products from India: Final Results of Antidumping Duty Administrative Review; 2010–2011,* 78 FR 22232 (April 15, 2013).

[14] *See* 19 CFR 351.309(c)(2).

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

[16] *See* 19 CFR 351.303(b) and (f).

[17] *See* 19 CFR 351.303(b).

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

[19] *See* 19 CFR 351.310.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–801]

Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Preliminary Intent To Rescind Antidumping Duty New Shipper Review; 2012–2013

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

SUMMARY: The Department of Commerce (''the Department'') is conducting a new shipper review (''NSR'') of the antidumping duty order on certain frozen fish fillets from the Socialist Republic of Vietnam (''Vietnam''). The period of review (''POR'') is August 1, 2012, through July 31, 2013. The review covers one producer and exporter of subject merchandise, Thanh Hung Co., Ltd. D/B/A Thanh Hung Frozen Seafood Processing Import Export Co., Ltd. (''Thanh Hung''). The Department preliminarily determines that Thanh Hung's sale to the United States was not bona fide and is preliminarily rescinding this NSR. Interested parties are invited to comment on these preliminary results.

DATES: *Effective Date:* July 14, 2014.

FOR FURTHER INFORMATION CONTACT: Susan Pulongbarit, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4031.

SUPPLEMENTARY INFORMATION:

Background

On September 30, 2013, the Department initiated an NSR of fish fillets from Vietnam for the period August 1, 2012, through July 31, 2013.[1] 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,

[1] *See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Initiation of Antidumping Duty New Shipper Review,* 78 FR 59915 (September 30, 2013).

through October 16, 2013.[2] On March 19, 2014, the Department extended the time period for issuing the preliminary results by 71 days.[3] On June 11, 2014, the Department partially extended the deadline for issuing the preliminary results by 14 days.[4] The revised deadline for the preliminary results of this new shipper review is now July 2, 2014.

Scope of the Order

The product covered by the order is frozen fish fillets, including regular, shank, and strip fillets and portions thereof, whether or not breaded or marinated, of the species *Pangasius Bocourti, Pangasius Hypophthalmus* (also known as *Pangasius Pangasius*) and *Pangasius Micronemus*. These products are classifiable under tariff article codes 0304.29.6033, 0304.62.0020, 0305.59.0000, 0305.59.4000, 1604.19.2000, 1604.19.2100, 1604.19.3000, 1604.19.3100, 1604.19.4000, 1604.19.4100, 1604.19.5000, 1604.19.5100, 1604.19.6100 and 1604.19.8100 (Frozen Fish Fillets of the species *Pangasius* including basa and tra) of the Harmonized Tariff Schedule of the United States (''HTSUS'').[5] Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the order is dispositive.[6]

Methodology

The Department conducted these reviews in accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (''the Act'') and 19 CFR 351.214. For a full description of the methodology underlying our conclusions, *see* the Appendix accompanying this notice and the Preliminary Decision Memorandum. 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 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 on the internet at *http://www.trade.gov/enforcement/*. The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Bona Fide Analysis

As discussed in the *bona fide* memo, the Department preliminarily finds that the sale by Thanh Hung is not a *bona fide* sale and that the sale does not provide a reasonable or reliable basis for calculating a dumping margin.[7] Specifically, the Department reached this conclusion based on the totality of circumstances, namely: (a) The atypical nature of Thanh Hung's price and quantity; (b) extraordinary expenses arising from the transaction; (c) the importer's regular commercial interest; (d) atypical circumstances surrounding production; and (e) unreported connections to other entities.[8] Because this non-*bona fide* sale was the only sale of subject merchandise during the POR, the Department is preliminarily rescinding the NSR.

Disclosure and Public Comments

The Department will disclose analysis performed to parties to the proceeding within five days after the date of publication of this notice.[9]

Interested parties are invited to comment on the preliminary results of this review. Interested parties may submit case briefs no later than 30 days after the date of publication of the preliminary results of review.[10] Rebuttal briefs, limited to issues raised in such briefs, may be filed no later than five days after the time limit for filing the case briefs.[11]

Any interested party may request a hearing within 30 days of publication of the preliminary results in the **Federal Register**.[12] Hearing 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. Oral presentations will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.[13]

The Department intends to issue the final results of this NSR, which will include the results of its analysis of issues raised in all comments and at any hearing, within 90 days of publication of these preliminary results, pursuant to section 751(a)(2)(B)(iv) of the Act.

Assessment Rates

Upon completion of the final results, pursuant to 19 CFR 351.212(b), the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. If we proceed to a final rescission of this NSR, Thanh Hung's entry will be assessed at the rate entered.[14] If we do not proceed to a final rescission of this NSR, pursuant to 19 CFR 351.212(b)(1), we will calculate importer-specific (or customer) assessment rates on a per unit basis.[15]

[2] *See* Memorandum to the File, ''Frontseating Service Valves From the People's Republic of China: Tolling of Deadlines for Shutdown of the Federal Government,'' dated October 22, 2013.

[3] *See* Memorandum to Gary Taverman, Senior Advisor for Antidumping and Countervailing Duty Operations from Susan Pulongbarit, International Trade Compliance Analyst, Antidumping and Countervailing Duty Operations, re: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Deadline for Preliminary Results of Antidumping Duty New Shipper Review of Thanh Hung Co., Ltd. dated March 19, 2014.

[4] *See* Memorandum to Gary Taverman, Senior Advisor for Antidumping and Countervailing Duty Operations from Susan Pulongbarit, International Trade Compliance Analyst, Antidumping and Countervailing Duty Operations, re: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Deadline for Preliminary Results of Antidumping Duty New Shipper Review of Thanh Hung Co., Ltd. dated June 11, 2014.

[5] Until July 1, 2004, these products were classifiable under HTSUS 0304.20.6030 (Frozen Catfish Fillets), 0304.20.6096 (Frozen Fish Fillets, NESOI), 0304.20.6043 (Frozen Freshwater Fish Fillets) and 0304.20.6057 (Frozen Sole Fillets). Until February 1, 2007, these products were classifiable under HTSUS 0304.20.6033 (Frozen Fish Fillets of the species *Pangasius,* including basa and tra). On March 2, 2011, the Department added two HTSUS numbers at the request of U.S. Customs and Border Protection (''CBP''): 1604.19.2000 and 1604 19.3000. On January 30, 2012, the Department added eight HTSUS numbers at the request of CBP: 0304.62.0020, 0305.59.0000, 1604.19.2100, 1604.19.3100, 1604.19.4100, 1604.19.5100, 1604.19.6100 and 1604.19.8100.

[6] *See* ''Decision Memorandum for Preliminary Results of Antidumping Duty New Shipper Review: Certain Frozen Fish Fillets from the Socialist's Republic of Vietnam'' from Gary Taverman, Senior Advisor for Antidumping and Countervailing Duty Operations to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, dated June 18, 2014 (''Preliminary Decision Memorandum'') and hereby adopted by this notice, for a complete description of the Scope of the Order.

[7] *See* Memorandum to James Doyle, Director, Office V, Antidumping and Countervailing Duty Operations, through Scot T. Fullerton, Program Manager, Office V, Antidumping and Countervailing Duty Operations, from Susan Pulongbarit, International Trade Analyst, titled ''New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: *Bona Fide* Nature of Thanh Hung Co., Ltd.'s Sale,'' dated concurrently and hereby adopted by this notice.

[8] *See id.*

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

[10] *See* 19 CFR 351.309(c)(1)(ii); Parties submitting written comments must submit them pursuant to the Department's e-filing regulations. *See https://iaaccess.trade.gov/help/IA%20ACCESS%20User%20Guide.pdf.*

[11] *See* 19 CFR 351.309(d)(1)–(2).

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

[13] *See* 19 CFR 351.310(d).

[14] *See* 19 CFR 351.212(c).

[15] In the third administrative review, the Department determined that it would calculate per-unit assessment and cash deposit rates for all future reviews. *See Certain Frozen Fish Fillets from the*

Continued

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis.*[16]

In either case, the Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

Cash Deposit Requirements

Effective upon publication of the final rescission or the final results of this NSR, pursuant to section 751(a)(2)(B)(iii) of the Act and 19 CFR 351.214(e), the Department will instruct CBP to discontinue the option of posting a bond or security in lieu of a cash deposit for entries of subject merchandise by Thanh Hung. If the Department proceeds to a final rescission of this NSR, the cash deposit rate will continue to be the per-unit Vietnam-wide rate for Thanh Hung because the Department will not have determined an individual margin of dumping for Thanh Hung. If the Department issues final results for this NSR, the Department will instruct CBP to collect cash deposits, effective upon the publication of the final results, at the rates established therein.

Notification to Interested Parties

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

We are issuing and publishing this determination in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: July 2, 2014.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

1. Background
2. Scope of the Order
3. *Bona Fides* Analysis

[FR Doc. 2014–16422 Filed 7–11–14; 8:45 am]

BILLING CODE 3510–DS–P

Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and Partial Rescission, 73 FR 15479 (March 24, 2008).

[16] *See* 19 CFR 351.106(c)(2).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–856]

Steel Threaded Rod From India: Final Affirmative Countervailing Duty Determination and Partial Final Affirmative Determination of Critical Circumstances

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

SUMMARY: The Department of Commerce (''Department'') determines that countervailable subsidies are being provided to producers and exporters of steel threaded rod from India. For information on the estimated subsidy rates, see the ''Suspension of Liquidation'' section of this notice.

DATES: *Effective Date:* July 14, 2014.

FOR FURTHER INFORMATION CONTACT: Erin Begnal or Andrew Medley, 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; telephone: 202–482–1442 and 202–482–4987, respectively.

SUPPLEMENTARY INFORMATION:

Background

This investigation, which covers 13 programs, was initiated on July 24, 2013.[1] The petitioners in this investigation are All America Threaded Products Inc., Bay Standard Manufacturing, Inc., and Vulcan Threaded Products Inc. In addition to the Government of India (''GOI''), the respondents in this investigation are Mangal Steel Enterprises Ltd. (''Mangal Steel'') and Babu Exports (''Babu'').

Period of Investigation

The period for which we are measuring subsidies, or period of investigation (''POI''), is January 1, 2012, through December 31, 2012.

Case History

The events that occurred since the Department published the *Preliminary Determination* on December 19, 2013,[2] are discussed in the Memorandum to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, ''Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Steel Threaded Rod from India'' (''Issues and Decision Memorandum'').[3]

Scope of the Investigation

The merchandise covered by this investigation is steel threaded rod. For a complete description of the scope of the investigation, *see* Appendix 1 to this notice.

Critical Circumstances

In our *Preliminary Critical Circumstances Determination,* we determined that critical circumstances do not exist for Mangal Steel, but do exist with respect to imports from Babu and ''all other'' exporters of steel threaded rod from India.[4] No party submitted comments with respect to, and we made no changes to, our preliminary affirmative critical circumstances determination. Therefore, in accordance with section 705(a)(2) of the Tariff Act of 1930, as amended (''the Act''), we continue to find that critical circumstances exist with respect to imports from Babu and ''all other'' exporters of steel threaded rod from India.

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Issues and Decision Memorandum, which is hereby adopted by this notice.

[1] *See Steel Threaded Rod From India: Initiation of Countervailing Duty Investigation,* 78 FR 44532 (July 24, 2013) and accompanying Initiation Checklist.

[2] *See Steel Threaded Rod from India: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Determination,* 78 FR 76815 (December 19, 2013) (''*Preliminary Determination*'').

[3] Public versions of all business proprietary documents and all public documents are on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). Access to IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the Department's Central Records Unit, room 7046 of the main Department of Commerce building.

[4] *See Steel Threaded Rod from India: Preliminary Affirmative Determination of Critical Circumstances for the Countervailing Duty Investigation,* 79 FR 9162 (February 18, 2014) (''*Preliminary Critical Circumstances Determination*'').

A list of subsidy programs and the issues that parties raised, and to which we responded in the Issues and Decision Memorandum, is attached to this notice as Appendix 2. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at *http://enforcement.trade.gov/frn/index.html*. The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

Use of Adverse Facts Available for Babu

For purposes of this Final Determination, we continue to apply adverse facts available (''AFA'') to Babu in accordance with sections 776(a) and (b) of the Act. A full discussion of our decision to rely on AFA is presented in the Issues and Decision Memorandum under the section ''Use of Facts Otherwise Available and Adverse Inferences.''

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i) of the Act, we calculated an individual rate for each respondent. We determine the total net countervailable subsidy rates to be:

Company	Subsidy rate (percent)
Mangal Steel Enterprises Ltd. (''Mangal'')	8.61
Babu Exports (''Babu'')	39.46
All Others	8.61

Section 705(c)(5)(A)(i) of the Act states that for companies not individually investigated, we will determine an ''all others'' rate equal to the weighted average of the countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates, and any rates based entirely on acts available under section 776 of the Act.

For this final determination, because we are applying total AFA to Babu, the only calculated total net countervailable subsidy rate is the rate we determined for Mangal Steel. Therefore, for the all others rate, we are using Mangal Steel's rate.

As a result of our *Preliminary Determination* and pursuant to section 703(d) of the Act, we instructed U.S. Customs and Border Protection (''CBP'') to suspend liquidation of all entries of subject merchandise from India which were entered or withdrawn from warehouse, for consumption on or after December 19, 2013, the date of the publication of the *Preliminary Determination* in the **Federal Register**. Subsequently, as a result of our *Preliminary Critical Circumstances Determination,* we instructed CBP to suspend liquidation of all entries of subject merchandise from Babu and ''all other'' exporters of steel threaded rod from India which were entered or withdrawn from warehouse, for consumption on or after September 20, 2013, which is 90 days prior to the date of publication of the *Preliminary Determination* in the **Federal Register**.

In accordance with section 703(d) of the Act, we issued instructions to CBP to discontinue the suspension of liquidation for countervailing duty (''CVD'') purposes for subject merchandise entered, or withdrawn from warehouse, on or after April 19, 2014, but to continue the suspension of liquidation of all entries from September 20, 2013 or December 19, 2013, as applicable, through April 18, 2014.

If the International Trade Commission (''ITC'') issues a final affirmative injury determination, we will issue a CVD order and reinstate the suspension of liquidation under section 706(a) of the Act and will require a cash deposit of estimated CVDs for such entries of merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (''APO''), without the written consent of the Assistant Secretary for Enforcement and Compliance.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation that is subject to sanction.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: July 3, 2014.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix 1—Scope of the Investigation

The merchandise covered by this investigation is steel threaded rod. Steel threaded rod is certain threaded rod, bar, or studs, of carbon quality steel, having a solid, circular cross section, of any diameter, in any straight length, that have been forged, turned, cold-drawn, cold-rolled, machine straightened, or otherwise cold-finished, and into which threaded grooves have been applied. In addition, the steel threaded rod, bar, or studs subject to this investigation are nonheaded and threaded along greater than 25 percent of their total length. A variety of finishes or coatings, such as plain oil finish as a temporary rust protectant, zinc coating (*i.e.,* galvanized, whether by electroplating or hot-dipping), paint, and other similar finishes and coatings, may be applied to the merchandise.

Included in the scope of this investigation are steel threaded rod, bar, or studs, in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 1.80 percent of manganese, or
- 1.50 percent of silicon, or
- 1.00 percent of copper, or
- 0.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 1.25 percent of nickel, or
- 0.30 percent of tungsten, or
- 0.012 percent of boron, or
- 0.10 percent of molybdenum, or
- 0.10 percent of niobium, or
- 0.41 percent of titanium, or
- 0.15 percent of vanadium, or
- 0.15 percent of zirconium.

Steel threaded rod is currently classifiable under subheadings 7318.15.5051, 7318.15.5056, 7318.15.5090, and 7318.15.2095 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Excluded from the scope of this investigation are: (a) threaded rod, bar, or studs which are threaded only on one or both ends and the threading covers 25 percent or less of the total length; and (b) threaded rod, bar, or studs made to American Society for Testing and Materials (''ASTM'') A193 Grade

B7, ASTM A193 Grade B7M, ASTM A193 Grade B16, and ASTM A320 Grade L7.

Appendix 2—Subsidy Programs and Issues in the Issues and Decision Memorandum

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Selection of the Adverse Facts Available Rate
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c. Electricity Duty Exemption
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VII. CALCULATION OF THE ALL OTHERS RATE
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Comment 2: Manner in Which the Department Should Calculate the Benefit Under the Pre- and Post-Shipment Export Financing Program
Comment 3: Manner in Which the Department Should Calculate the Benefits Under the Focus Product Scheme
Comment 4: Whether the Indian Duty Drawback Program is Countervailable
Comment 5: Whether the Countervailing Duty Subsidy Rate Applied to Babu Exports is Appropriate
Comment 6: Minor Corrections to Calculations for Export Promotion of Capital Goods Scheme
IX. RECOMMENDATION

[FR Doc. 2014–16421 Filed 7–11–14; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–015]

53-Foot Domestic Dry Containers from the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation

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

FOR FURTHER INFORMATION CONTACT: Yasmin Nair at (202) 482–3813 or David Cordell at (202) 482–0408, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On May 13, 2014, the Department of Commerce (the Department) initiated a countervailing duty investigation on 53-foot domestic dry containers from the People's Republic of China (PRC).[1] Currently, the preliminary determination is due no later than July 17, 2014.

Postponement of the 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, if the petitioner makes a timely request for an extension in accordance with 19 CFR 351.205(e), section 703(c)(1)(A) of the Act allows the Department to postpone the preliminary determination until no later than 130 days after the date on which the Department initiated the investigation.

On June 18, 2014, the petitioner[2] submitted a timely request pursuant to section 703(c)(1)(A) of the Act and 19 CFR 351.205(e) to postpone the preliminary determination.[3] Therefore, in accordance with section 703(c)(1)(A) of the Act, we are fully extending the due date for the preliminary determination to not later than 130 days after the day on which the investigation was initiated. As a result, the deadline for completion of the preliminary determination is now September 22, 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: June 19, 2014.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2014–16418 Filed 7–11–14; 8:45 am]

BILLING CODE 3510–DS–P

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[1] *See 53-Foot Domestic Dry Containers From the People's Republic of China: Initiation of Countervailing Duty Investigation,* 79 FR 28679 (May 19, 2014).

[2] Stoughton Trailers, LLC (the petitioner).

[3] *See* Letter from the petitioner, entitled ''53-Foot Domestic Dry Containers from the People 's Republic of China,'' dated June 18, 2014.

[4] The actual deadline based on a 65-day extension is September 20, 2014, which is a Saturday. 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 (May 10, 2005).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–855]

Steel Threaded Rod From India: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part; 2012–2013

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

SUMMARY: The Department of Commerce (''Department'') determines that steel threaded rod (''STR'') from India is being, or is likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 735 of the Tariff Act of 1930, as amended (''the Act''). The final weighted-average dumping margins of sales at LTFV are shown in the ''Final Determination'' section of this notice.

DATES: *Effective Date:* July 14, 2014.

FOR FURTHER INFORMATION CONTACT: Paul Stolz or Raquel Silva, 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; telephone: (202) 482–4474 or (202) 482–6475, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published its *Preliminary Determination* on February 18, 2014.[1] On May 27, 2014, we received case briefs from All America Threaded Products Inc., Bay Standard Manufacturing Inc., and Vulcan Threaded Products Inc. (collectively, ''Petitioners''), and Mangal Steel Enterprises Limited (''Mangal''). On June 2, 2014, Petitioners and Mangal submitted rebuttal briefs. On June 9, 2014, the Department conducted a hearing.

Period of Investigation

The period of investigation (''POI'') is April 1, 2012, through March 31, 2013.

Scope of the Investigation

The merchandise covered by this investigation is steel threaded rod. Steel threaded rod is certain threaded rod, bar, or studs, of carbon quality steel, having a solid, circular cross section, of any diameter, in any straight length, that have been forged, turned, cold-drawn, cold-rolled, machine straightened, or otherwise cold-finished, and into which threaded grooves have been applied. In addition, the steel threaded rod, bar, or studs subject to these investigations are nonheaded and threaded along greater than 25 percent of their total length. A variety of finishes or coatings, such as plain oil finish as a temporary rust protectant, zinc coating (*i.e.,* galvanized, whether by electroplating or hot-dipping), paint, and other similar finishes and coatings, may be applied to the merchandise.

Included in the scope of this investigation are steel threaded rod, bar, or studs, in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 1.80 percent of manganese, or
- 1.50 percent of silicon, or
- 1.00 percent of copper, or
- 0.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 1.25 percent of nickel, or
- 0.30 percent of tungsten, or
- 0.012 percent of boron, or
- 0.10 percent of molybdenum, or
- 0.10 percent of niobium, or
- 0.41 percent of titanium, or
- 0.15 percent of vanadium, or
- 0.15 percent of zirconium.

Steel threaded rod is currently classifiable under subheadings 7318.15.5051, 7318.15.5056, 7318.15.5090 and 7318.15.2095 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Excluded from the scope of this investigation are: (a) Threaded rod, bar, or studs which are threaded only on one or both ends and the threading covers 25 percent or less of the total length; and (b) threaded rod, bar, or studs made to American Society for Testing and Materials (''ASTM'') A193 Grade B7, ASTM A193 Grade B7M, ASTM A193 Grade B16, and ASTM A320 Grade L7. The HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope of this investigation is dispositive.

Verification

As provided in section 782(i) of the Act, the Department verified the information submitted by Mangal for use in the final determination. The Department used standard verification procedures, including examination of relevant accounting and production records and original source documents provided by the respondent.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs for this investigation are addressed in the Issues and Decision Memorandum.[2] A list of the issues which parties raised and to which we responded in the Issues and Decision Memorandum is attached to this notice as an Appendix. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). Access to 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 Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn.* The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Determination

- We corrected certain U.S. postal zip codes reported in Mangal's U.S. sales database based on verification findings for purposes of our differential pricing analysis.[3]
- We applied partial neutral facts available to account for minor unreported sales found at verification, pursuant to section 776(a) of the Act.[4]
- We treated sales made from WCP's inventory as CEP sales, in accordance with section 772(b) of the Act.[5]

Final Determination

For the final determination, the following margins exist for the following entities for the POI:

Exporter and/or producer	Weighted-average dumping margin (percent)
Mangal Steel Enterprises Limited	16.74
Babu Exports	119.87
All Others	16.74

Critical Circumstances

In the *Preliminary Determination,* for mandatory respondent Babu Exports, in accordance with sections 776(a) and (b) of the Act, we applied facts available with an adverse inference to determine that critical circumstances exist with respect to its exports of STR to the United States.[6] Parties submitted no additional information or comments on the Department's preliminary critical circumstances determination. Thus, we made no changes to our critical circumstances analysis announced in the *Preliminary Determination.*[7] Therefore, pursuant to section 735(a)(3) of the Act, we continue to find that critical circumstances exist with respect to imports of STR from India from mandatory respondent Babu Exports. We continue to find that critical circumstances do not exist with respect to imports of STR from India from mandatory respondent, Mangal Steel, and ''all other'' exporters or producers.

[1] *See Steel Threaded Rod from India: Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances, in Part, and Postponement of Final Determination,* 79 FR 9164 (February 18, 2014) (''*Preliminary Determination*'').

[2] *See* the memorandum ''Issues and Decision Memorandum for the Final Determination in the Antidumping Duty Investigation of Steel Threaded Rod from India,'' dated concurrently with this notice (''Issues and Decision Memorandum'').

[3] *See* the CEP Verification Report at item IV. A.

[4] *Id.* at item VIII and ''Analysis Memorandum, Final Determination of Sales at Less Than Fair Value,'' (''Analysis Memo'') dated concurrently with this notice.

[5] *See* the Analysis Memo and the Issues and Decision Memorandum at Comment 2.

[6] *See Preliminary Determination,* 79 FR at 9165, and accompanying Preliminary Decision Memo, at pages 9–13.

[7] *Id.*

Disclosure

We intend to disclose to parties in this proceeding the calculations performed within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

As noted above, the Department found that critical circumstances exist with respect to imports of the merchandise under consideration from Babu Exports. Therefore, in accordance with section 735(c)(4) of the Act, we will instruct U.S. Customs and Border Protection (''CBP'') to continue to suspend liquidation of all entries of STR from India from Babu Exports that were entered, or withdrawn from warehouse, for consumption on or after the date 90 days prior to publication of the *Preliminary Determination* in the **Federal Register** and require a cash deposit for such entries as noted below. Because we did not find that critical circumstances exist with respect to Mangal and ''all other'' exporters or producers, in accordance with section 735(c)(1) of the Act, we will instruct CBP to continue to suspend liquidation of all other entries of STR from India entered, or withdrawn from warehouse, for consumption on or after the date of publication of the *Preliminary Determination* in the **Federal Register**. These suspension of liquidation instructions will remain in effect until further notice.

In the final determination of the companion countervailing duty investigation on STR from India, the Department determined that certain companies benefitted from export subsidies.[8] Pursuant to sections 735(c)(1) and 772(c)(1)(C) of the Act and 19 CFR 351.210(d), the Department will instruct CBP to require cash deposits [9] equal to the weighted-average dumping margins indicated in the table above, adjusted where appropriate for export subsidies. These cash deposit instructions will remain in effect until further notice.

International Trade Commission (''ITC'') Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our final affirmative determination of sales at LTFV. Because the final determination in this proceeding is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will 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 STR from India no later than 45 days after our final determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess antidumping duties on all imports of the merchandise under investigation entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Orders (''APO'')

This notice also serves as a reminder to the parties subject to APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination and notice are issued and published in accordance with sections 735(d) and 777(i)(1) of the Act and 19 CFR 351.210(c).

Dated: July 3, 2014.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Issues and Decision Memorandum

Summary
Background
Scope of the Investigation
Discussion of the Issues
Comment 1: Whether to Collapse Mangal and Corona
Comment 2: Whether Mangal's Sales are Constructed Export Price Sales or Export Price Sales
Comment 3: Whether the Department's Targeted Dumping Regulation was Unlawfully Withdrawn and Must be Employed in This Investigation
Comment 4: Application of the Alternative Methodology
Recommendation

[FR Doc. 2014–16419 Filed 7–11–14; 8:45 am]

BILLING CODE 3510–DS–P

[8] *See Steel Threaded Rod from India: Final Affirmative Countervailing Duty Determination and Partial Final Affirmative Determination of Critical Circumstances,* dated concurrently with this notice.

[9] *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).

DEPARTMENT OF COMMERCE

International Trade Administration

United States Travel and Tourism Advisory Board: Meeting of the United States Travel and Tourism Advisory Board

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

ACTION: Notice of an Open Meeting.

SUMMARY: The United States Travel and Tourism Advisory Board (Board) will hold its second meeting of the term on Tuesday, July 29, 2014. The Board was re-chartered in August 2013, to advise the Secretary of Commerce on matters relating to the travel and tourism industry. At the meeting, members will discuss the May 22 presidential memorandum establishing a national goal and developing airport specific action plans to enhance the entry process for international travelers to the United States, available at the White House Web site at *http://www.whitehouse.gov/the-press-office/2014/05/22/presidential-memorandum-establishing-national-goal-and-developing-airpor*. The Board's newly established subcommittees will also present initial reports and draft work plans on the Board's anticipated work examining entry, visa, infrastructure, Brand USA, cultural and natural heritage and data. The Board will deliberate the plans so that subcommittee work may begin. The agenda may change to accommodate Board business. The final agenda will be posted on the Department of Commerce Web site for the Board at *http://trade.gov/ttab*, at least one week in advance of the meeting.

DATES: Tuesday, July, 29, 2014, 10:00 a.m.–1:00 p.m. Central Daylight Time and open for public comments.

ADDRESSES: Radisson Blu, 2100 Killebrew Drive, Bloomington, MN 55425.

The meeting room will be provided upon request.

FOR FURTHER INFORMATION CONTACT: Jennifer Pilat, the United States Travel and Tourism Advisory Board, Room 4043, 1401 Constitution Avenue NW., Washington, DC 20230, telephone: 202–482–4501, email: *jennifer.pilat@trade.gov*.

SUPPLEMENTARY INFORMATION:

Background: The Board advises the Secretary of Commerce on matters relating to the U.S. travel and tourism industry.

Public Participation: The meeting will be open to the public and will be

physically accessible to people with disabilities. All guests are required to register in advance. The meeting room will be provided upon registration. Seating is limited and will be on a first come, first served basis. Requests for sign language interpretation, other auxiliary aids, or pre-registration, should be submitted no later than 5 p.m. EDT on July 21, 2014, to Jennifer Pilat, the U.S. Travel and Tourism Advisory Board, Room 4043, 1401 Constitution Avenue NW., Washington, DC 20230, telephone 202–482–4501, *OACIE@trade.gov*. Last minute requests will be accepted, but may be impossible to fill. There will be 30 minutes of time allotted for oral comments from members of the public attending the meeting. Any member of the public may submit pertinent written comments concerning the Board's affairs at any time before or after the meeting.

Comments may be submitted to Jennifer Pilat at the contact information indicated above. To be considered during the meeting, comments must be received no later than 5:00 p.m. EDT on July 21, 2014, to ensure transmission to the Board prior to the meeting.

Comments received after that date will be distributed to the members but may not be considered at the meeting. Copies of Board meeting minutes will be available within 90 days of the meeting.

Dated: July 7, 2014.

Elizabeth Emanuel,

Executive Secretary, United States Travel and Tourism Advisory Board.

[FR Doc. 2014–16292 Filed 7–11–14; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD376

Fisheries of the Gulf of Mexico and South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 39 pre-assessment webinar for HMS Smoothhound Sharks.

SUMMARY: The SEDAR assessment of the HMS Smoothhound Sharks will consist of several workshops and a series of webinars. See **SUPPLEMENTARY INFORMATION.**

DATES: The SEDAR 39 pre-assessment webinar will be held on Friday, August 1, 2014, from 10 a.m. until 12 p.m. central standard time (CST).

ADDRESSES:

Meeting Address: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR (see **FOR FURTHER INFORMATION CONTACT** below) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of the webinar.

SEDAR Address: 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator; telephone: (843) 571–4366; email: *julie.neer@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data Workshop; (2) Assessment Workshop and a series of Assessment webinars; and (3) Review Workshop. The product of the Data Workshop is a report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The assessment workshop and webinars produce a report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants include: Data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion during the data webinar are as follows:

Participants will discuss and review data analyses and decisions of the Data Workshop Panel.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the SEDAR office (see **ADDRESSES**) at least 10 business 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: July 9, 2014.

Tracey L. Thompson,

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

[FR Doc. 2014–16401 Filed 7–11–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD377

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 the Red Snapper Advisory Panel.

DATES: The meeting will be held from 8:30 a.m. until 5 p.m. on Wednesday, July 30, 2014.

ADDRESSES: The meeting will be held at the Council's office.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Atran, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630; fax: (813) 348–1711; email: *steven.atran@gulfcouncil.org.*

SUPPLEMENTARY INFORMATION: The items of discussion on the agenda are as follows:

1. Adoption of Agenda
2. Action Guide
3. Election of Chair and Vice-chair
4. Approval of January 13, 2012 minutes
5. Recreational Red Snapper Management Feedback
   a. Mississippi Recreational Summit Meeting
   b. Louisiana Recreational Fishing Survey
6. Red Snapper Recreational Accountability Measures
7. Amendment 40—Recreational Red Snapper Sector Separation Public Hearing Draft
8. Review of New State Data Collection Programs
9. Update on Headboat Collaborative Program
10. Other Business

For meeting materials see folder ''Red Snapper AP meeting—2014–07'' on Gulf Council file server. To access the file server, the URL is *https://public.gulfcouncil.org:5001/webman/index.cgi,* or go to the Council's Web site and click on the FTP link in the lower left of the Council Web site (*http://www.gulfcouncil.org*). The username and password are both ''gulfguest''. The name of the folder on the FTP server is ''Red Snapper AP meeting—2014–07''.

The Agenda is subject to change. The latest version will be posted in the ''Red Snapper AP meeting—2014–07'' folder on the Council's file server. The meeting will be Web cast over the Internet. A link to the Web cast will be available on the Council's Web site, *http://www.gulfcouncil.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 this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

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: July 9, 2014.

Tracey L. Thompson,

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

[FR Doc. 2014–16402 Filed 7–11–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Ecosystem Based Fishery Management (EBFM) Committee to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Thursday, July 31, 2014 at 9:30 a.m.

ADDRESSES:

Meeting address: The meeting will be held at the DoubleTree by Hilton, 50 Ferncroft Road, Danvers, MA 01923; telephone: (978) 777–2500; fax: (978) 750–7959.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

The EBFM Committee will hear presentations on a study about EBFM perspectives on climate change vulnerability, science, and governance for fisheries, and on ecosystem status indicators. They will also discuss the potential roles, responsibilities, and composition of a future EBFM advisory panel.

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 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

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: July 9, 2014.

Tracey L. Thompson,

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

[FR Doc. 2014–16423 Filed 7–11–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD338

Determination of Observer Programs as Qualified and Authorized by the Assistant Administrator for Fisheries

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

ACTION: Notice of Adoption of Observer Criteria, Decision on Qualified and Authorized Programs.

SUMMARY: The NMFS Assistant Administrator (AA) has determined that observers participating in observer programs, in the seven domestic fisheries in which tuna is regularly harvested, are qualified to issue observer statements for purposes of the dolphin-safe labeling program under the Dolphin Protection Consumer Information Act (DPCIA). These seven domestic fisheries are: The American Samoa Pelagic Longline Fishery, the Atlantic Bluefin Tuna Purse Seine Fishery, the Atlantic Highly Migratory Species Pelagic Longline Fishery, the California Deep-set Pelagic Longline Fishery, the California Large-mesh Drift Gillnet Fishery, the Hawaii Deep-set Longline Fishery, and the Hawaii Shallow-set Longline Fishery. Observer statements will certify that no dolphins were killed or seriously injured in the sets or other gear deployments in which

the tuna were caught and, in purse seine fisheries, that the net was not intentionally deployed on or used to encircle dolphins during the fishing trip in which the tuna were caught. The AA makes the determinations pursuant to new observer criteria, which are published in this notice, and were developed after consideration of public comment. This notice announces that these NMFS observer programs are authorized by the AA to issue observer statements for dolphin-safe labeling purposes for fishing trips that begin on or after the effective date of this notice.

DATES: Tuna product labeled ''dolphin safe'' derived from any of the seven fisheries identified in this notice must be accompanied by observer statements for observed trips beginning on or after August 13, 2014.

ADDRESSES: Copies of this notice are available from the Regional Administrator, West Coast Region (WCR), William W. Stelle, Jr., 7600 Sand Point Way NE., Bldg 1, Seattle, WA 98115–0070, or by email at *Regional Administrator.WCRHMS@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: William Jacobson, NMFS WCR, 562–980–4035.

SUPPLEMENTARY INFORMATION: Presently, only tuna product prepared from tuna harvested by purse seine vessels of more than 400 short tons carrying capacity in the eastern tropical Pacific Ocean and labeled ''dolphin safe'' is required to be accompanied by an observer's statement that the tuna meets the ''dolphin safe'' criteria under the DPCIA (16 U.S.C. 1385). Tuna product means any food product processed for retail sale and intended for human or animal consumption that contains an item under one of the harmonized tariff schedule numbers set forth at 50 CFR 216.24(f)(2)(i) or (ii), but does not include perishable items with a shelf life of less than 3 days (50 CFR 216.3). Under this definition, tuna product does not include fresh tuna nor does it include frozen tuna that has never been processed.

On July 9, 2013, NMFS published a final rule under the DPCIA titled ''Enhanced Document Requirements to Support Use of the Dolphin Safe Label on Tuna Products'' (78 FR 40997) that amended regulations at 50 CFR part 216, Subpart H. Specifically, under § 216.91(a)(2)(iii)(B) and (a)(4)(ii), the AA is authorized to determine if observers participating in observer programs using any fishing gear type in any ocean are qualified and authorized to make statements pertaining to the following written certifications. The first certification is that no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught. The second certification, if applicable, is that no purse seine net was intentionally deployed on or used to encircle dolphins during the fishing trip in which the tuna were caught. A NMFS AA determination of an observer program as ''qualified and authorized'' triggers a requirement that when an observer from the program is on board a vessel harvesting tuna destined to be labeled ''dolphin safe'' such tuna will require an observer statement. The observer statement would be executed by the observer or by an authorized representative of the nation participating in the observer program based on information provided by the observer. The observer statement would be in addition to the requirement that tuna labeled ''dolphin safe'' be accompanied by a written statement executed by the captain of the harvesting vessel (codified in § 216.91(a)(2)(ii), (a)(2)(iii)(A) and (a)(4)(i)).

On February 24, 2014, NMFS published a **Federal Register** notice soliciting public comment on development of observer criteria to assist the AA when making a determination of whether an observer program is qualified and authorized for purposes of the dolphin-safe labeling program under the DPCIA. In the only comment received, the American Tunaboat Association (ATA) stated that no observers aboard purse seine vessels, except those serving under the program organized under the joint auspices of the Inter-American Tropical Tuna Commission (IATTC) and the Agreement on the International Dolphin Conservation Program are qualified or authorized to make the certifications noted in the **Federal Register** notice. ATA strongly recommended that NMFS adopt criteria similar to the criteria used by the IATTC for training observers. NMFS agrees in part, but believes that observers participating in NMFS observer programs already undergo rigorous training programs, appropriate for the applicable fishery, and that training, where applicable, is similar to or exceeds the training given by the IATTC. NMFS training programs include such topics as dolphin species identification, dolphin mortality recognition, data collection requirements for use in making a serious injury determination, and recognition of an intentional purse seine set. After consideration of this comment, the AA adopted the final observer criteria on June 13, 2014, to be used in making qualified and authorized determinations. Satisfaction of all criteria is necessary before the AA will determine that an observer program is qualified and authorized. The final observer criteria are as follows:

- Observers are trained and able to identify dolphins endemic to the area of the fishery. ''Dolphins'' mean the species of the family Delphinidae.
- Observers, or an authorized representative participating in the observer program, as applicable, are trained and able to determine dolphin mortality and serious injury. ''Serious injury'' means any injury likely to cause mortality.
- Observers are trained and able to collect written or photographic documentation, sufficient for an authorized representative participating in the observer program, to verify or make a determination about the disposition of any dolphin, if statements certifying that no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught are to be made.
- For purse seine fisheries only: Observers are trained and able to determine whether a purse seine net was intentionally deployed on or used to encircle dolphins.
- For purse seine fisheries only: Observers are trained and able to collect written or photographic documentation, sufficient for an authorized representative participating in the observer program, to verify or make a determination that no purse seine net was intentionally deployed on or used to encircle dolphins during a fishing trip, if statements certifying that no purse seine net was intentionally deployed on or used to encircle dolphins during the fishing trip in which the tuna was harvested are to be made.
- Observers, or an authorized representative of a nation participating in the observer program based on information from the observer, as applicable, are authorized by the applicable observer authority to certify that no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were harvested, and in the case of purse seine vessels, that no purse seine net was intentionally deployed on or used to encircle dolphins during the fishing trip in which the tuna were caught.

NMFS compared the observer criteria with all U.S. observer programs operating in fisheries where tuna is regularly harvested, and concluded that observers in all seven observer programs are capable of providing the documentation necessary to complete

an observer statement for dolphin-safe labeling purposes. Under the authority at § 216.91(a)(2)(iii)(B) and (a)(4)(ii), the AA has determined that observers, or an authorized representative of the observer program, operating in the following fisheries are qualified to issue observer statements and are authorized by this notice to issue such statements on or after the effective date of this notice:

- The American Samoa Pelagic Longline Fishery
- the Atlantic Bluefin Tuna Purse Seine Fishery
- the Atlantic Highly Migratory Species Pelagic Longline Fishery
- the California Deep-set Pelagic Longline Fishery
- the California Large-mesh Drift Gillnet Fishery
- the Hawaii Deep-set Longline Fishery
- the Hawaii Shallow-set Longline Fishery

The observer statements are intended to be used for the documentation of dolphin-safe status only. Mortality and serious injury determinations under Marine Mammal Protection Act (MMPA) Section 117 will continue to be made in accordance with current NMFS policy and protocols.

The determinations are also publicized on the NMFS WCR Web site at *http://www.westcoast.fisheries.noaa.gov.* In order for tuna product made from tuna harvested in one of the fisheries listed above to be labeled ''dolphin safe,'' it must be accompanied by an observer statement, provided an observer was on board the vessel and the fishing trip began on or after the effective date of this notice. The observer statement must certify that no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught and, if applicable, that no purse seine net was intentionally deployed on or used to encircle dolphins during the fishing trip.

Dated: July 8, 2014.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2014–16455 Filed 7–11–14; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 10:00 a.m., Friday, July 18, 2014.

PLACE: 1155 21st St. NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance, Enforcement Matters, and Examinations. In the event that the times, dates, or locations of this or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

CONTACT PERSON FOR MORE INFORMATION: Christopher J. Kirkpatrick, 202–418–5964.

Natise Allen,

Executive Assistant.

[FR Doc. 2014–16483 Filed 7–10–14; 11:15 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 14–18]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 14–18 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 8, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

JUL 03 2014

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 14-18, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Singapore for defense articles and services estimated to cost $63 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

J. W. Rixey
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Transmittal No. 14–18

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Singapore

(ii) *Total Estimated Value:*

Major Defense Equipment*	$43 million
Other	$20 million
TOTAL	$63 million

* As defined in Section 47(6) of the Arms Export Control Act.

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* 913 KMU–556B/B Joint Direct Attack Munition (JDAM) kits for Mk–84 2000 lb bombs, 100 FMU–152A/B fuzes, and 300 DSU–40 Precision Laser Guidance Sets. Also included are containers, munition trailers, support equipment, spare and repair parts, test equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering and technical support, and other related elements of logistics support.

(iv) *Military Department:* Air Force (YAH)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* 3 July 2014

POLICY JUSTIFICATION

Singapore—Joint Direct Attack Munition (JDAM) Kits

The Government of Singapore has requested a possible sale of 913 KMU–556B/B Joint Direct Attack Munition (JDAM) kits for Mk–84 2000 lb bombs, 100 FMU–152A/B fuzes, and 300 DSU–40 Precision Laser Guidance Sets. Also included are containers, munition trailers, support equipment, spare and repair parts, test equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering and technical support, and other related elements of logistics support. The estimated cost is $63 million.

This proposed sale will contribute to the foreign policy objectives and strategic national security objectives of the United States by supporting Singapore as a key regional partner in counter-terrorism and an important force for political stability and economic progress in South East Asia.

Singapore is requesting these guidance sets, services and equipment to sustain its air-to-ground weapons stockpiles and to accommodate training expenditures. This sale will enable the Republic of Singapore Air Force to sustain mission-ready status to ensure it can contribute to coalition operations and meet its national defense requirements. Singapore maintains a large CONUS F–15SG training presence at Mountain Home AFB. A portion of these munitions are anticipated for use at this CONUS training facility, and will enable RSAF pilots to practice using GPS-guided munitions that will further refine their combat capability. Singapore should have no difficulty absorbing these additional munitions into its armed forces.

The proposed sale of these munitions and support will not alter the basic military balance in the region.

The principal contractor will be the Boeing Defense, Space and Security in St. Louis, Missouri. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Singapore.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 14–18

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex Item No. vii

(vii) *Sensitivity of Technology*

1. Joint Direct Attack Munition (JDAM) is not a stand-alone weapon; rather it is a term used to describe a ''bolt-on'' guidance package that converts unguided bombs into precision-guided munitions (PGMs). Weapon accuracy is dependent on target coordinates and present position as entered into the guidance control unit. The Inertial Navigation System (INS), using updates from the Global Positioning System (GPS), helps guide the bomb to the target via the use of movable tail fins. With the addition of a laser guidance nose kit, the JDAM is provided a capability to engage moving targets. The JDAM all-up-round (AUR) is Unclassified; technical data for JDAM is classified up to Secret.

2. The KMU–556 B/B MK–84 Tail Kit with GPS SAASM is the tail kit for the GBU–31B(V)1/B and GBU–56(V)/B. Information revealing SAASM implementation is classified Secret.

3. The FMU–152A/B fuze is a Multi-Delay, Multi-Arm and Proximity Sensor Compatible with General Purpose Blast: Fragmentation and Hardened-Target Penetrator Warheads. It is cockpit selectable in-flight (prior to release) when used with JDAM weapons.

4. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

5. A determination has been made that the recipient country can provide the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives as outlined in the Policy Justification.

6. All defense articles and services listed in this transmittal have been authorized for release and export to the Singapore.

[FR Doc. 2014–16332 Filed 7–11–14; 8:45 am]

BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 14–29]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 14–29 with attached transmittal and policy justification.

Dated: July 8, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

JUL 03 2014

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 14-29, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to the United Kingdom for defense articles and services estimated to cost $250 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

J. W. Rixey
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification

Transmittal No. 14–29

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* United Kingdom

(ii) *Total Estimated Value:*

Major Defense Equipment*	$0 million
Other	$250 million
Total	$250 million

* As defined in Section 47(6) of the Arms Export Control Act.

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* continued participation in the USAF/Boeing Globemaster III Sustainment Partnership which consists of support for the United Kingdom's fleet of eight Boeing C–17A Globemaster III cargo aircraft, contractor technical and logistics personnel services, support equipment, spare and repair parts, and other related elements of logistics support.

(iv) *Military Department:* Air Force (QBL)

(v) *Prior Related Cases, if any:*

FMS Case QCX-$19M-22Jan07
FMS Case QCX, Amd #1-$81M-30Oct07
FMS Case QCX, Amd #2-$242M-04Sep08
FMS Case QCX, Amd #4-$14M-10Nov10
FMS Case QCX, Amd #5-$116M-13Sep11
FMS Case QCX, Amd #6-$1M-20Jun13

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or*

Defense Services Proposed to be Sold: None

(viii) *Date Report Delivered to Congress:* 3 July 2014

POLICY JUSTIFICATION

United Kingdom—Globemaster III Sustainment Partnership

The Government of the United Kingdom (UK) has requested continued participation in the USAF/Boeing Globemaster III Sustainment Partnership which consists of support for the United Kingdom's fleet of eight Boeing C–17A Globemaster III cargo aircraft, contractor technical and logistics personnel services, support equipment, spare and repair parts, and other related elements of logistics support. The estimated cost is $250 million.

The UK is a major political and economic power in NATO and a key democratic partner of the U.S. in ensuring peace and stability in this region and around the world.

The continuation of this program will ensure the UK can effectively maintain its current force projection capability that enhances interoperability with U.S. forces. The support will provide UK with rapid global strategic mobility to deploy to austere locations. The UK is a staunch supporter of the U.S. in Iraq and Afghanistan and in overseas contingency operations.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be The Boeing Company in Long Beach, California. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government personnel or contractor representatives to the United Kingdom.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2014–16352 Filed 7–11–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 14–30]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 14–30 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 8, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

JUL 01 2014

Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 14-30, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to the United Kingdom for defense articles and services estimated to cost $140 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

J. W. Rixey
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Transmittal No. 14–30

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* United Kingdom

(ii) *Total Estimated Value:*

Major Defense Equipment*	$140 million
Other	$0 million
Total	$140 million

* As defined in Section 47(6) of the Arms Export Control Act.

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* Up to 65 Block IV All-Up-Round Torpedo Tube Launched Tomahawk Land-Attack Missiles, containers, engineering support, test equipment, operational flight test support, communications equipment, technical assistance, personnel training/equipment, spare and repair parts, and other related elements of logistics support.

(iv) *Military Department:* Navy (AHS)

(v) *Prior Related Cases:*

FMS case AGS-$154M-16Oct95
FMS case AHA-$32M-01Sep99
FMS case AHE-$36M-14Dec01
FMS case AHJ-$157M-29Mar04
FMS case GWY-$6M-21Jan00
FMS case GYU-$33M-21Jan02
FMS case LIS-$49M-18Jan04
FMS case GXQ-$91M-21Dec00
FMS case GEK-$122M-20Feb08
FMS case FAY-$165M-12Dec13

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or*

Defense Services Proposed to be Sold: See Annex attached.

(viii) *Date Report Delivered to Congress:* 1 July 2014

POLICY JUSTIFICATION

United Kingdom—Tomahawk Block IV Torpedo Launched Land-Attack Missiles

The United Kingdom (UK) has requested a possible sale of up to 65 Block IV All-Up-Round Torpedo Tube Launched Tomahawk Land-Attack Missiles, containers, engineering support, test equipment, operational flight test support, communications equipment, technical assistance, personnel training/equipment, spare and repair parts, and other related elements of logistics support. The estimated cost is $140 million.

This proposed sale will contribute to the foreign policy and national security of the United States by improving the military capabilities of the United Kingdom and enhancing weapon system standardization and interoperability. The UK is a major political and economic power and a key democratic partner of the U.S. in ensuring peace and stability around the world.

The UK needs these missiles to replenish those expended in support of coalition operations. The proposed sale will enhance the UK's ability to engage in coalition operations along with the U.S. Navy. The UK, which already has Tomahawk missiles in its inventory, will have no difficulty absorbing these additional missiles.

The proposed sale of these missiles will not alter the basic military balance in the region.

The principal contractor will be Raytheon Missile Systems Company in Tucson, Arizona. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of additional U.S. Government or contractor personnel in the United Kingdom.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 14–30

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) Of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The conventionally armed Tomahawk Block IV Land Attack Missile consists of the following classified components: Operational Embedded Software (OES), Weapons Control System Software and Mission Planning Software.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar advanced capabilities.

3. A determination has been made that the recipient government can provide substantially the same degree of protection for the technology being released as the U.S. Government. Support of the Tomahawk Land Attack Missile Conventional System to the Government of the United Kingdom is necessary in the furtherance of U.S. foreign policy and national security objectives.

4. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of the United Kingdom.

[FR Doc. 2014–16353 Filed 7–11–14; 8:45 am]

BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 14–08]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 14–08 with attached transmittal and policy justification.

Dated: July 8, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

JUL 03 2014

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 14-08, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Egypt for defense articles and services estimated to cost $69 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

J. W. Rixey
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Regional Balance (Classified Document Provided Under Separate Cover)

Transmittal No. 14–08

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Egypt

(ii) *Total Estimated Value:*

Major Defense Equipment*	$0 million.
Other	$69 million.
TOTAL	$69 million.

* As defined in Section 47(6) of the Arms Export Control Act.

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* personnel support services to support 140 U.S Government and contractor representatives at nine locations. Services will include lodging, transportation, security, medical, and other related elements of program support.

(iv) *Military Department:* Air Force (QBC, Amendment #9)

(v) Prior Related Cases, if any: Multiple cases dating back to 1980s.

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* None

(viii) *Date Report Delivered to Congress:* 3 July 2014

POLICY JUSTIFICATION

Egypt—Personnel Support Services

The Government of Egypt requests a possible sale of personnel support services to support 140 U.S Government and contractor representatives at nine locations. Services will include lodging, transportation, security, medical, and other related elements of program support. The estimated cost is $69 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country that has been and continues to be an important force for political stability and economic progress in the Middle East.

Egypt has several Foreign Military Sales (FMS) cases that require in-country support from U.S. contractor, military and civilian personnel. Egypt has requested that the U.S. Air Force consolidate the relevant personnel support cases to maximize cost savings. This notification reports the cost for the past three years of this program and the proposed one-year extension.

The proposed sale of these services will not alter the basic military balance in the region.

This principal contractor will be DynCorps in McLean, Virginia. There are no known offset agreements proposed in connection with this proposed sale.

Implementation of this proposed sale will not require the assignment of additional U.S. government or contractor representatives to manage this program.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2014–16331 Filed 7–11–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 14–21]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 14–21 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 8, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

JUL 1 2014

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 14-21, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to India for defense articles and services estimated to cost $200 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

J. W. Rixey
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Transmittal No. 14–21

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* India

(ii) *Total Estimated Value:*

Major Defense Equipment*	$88 million
Other	$112 million
Total	$200 million

* As defined in Section 47(6) of the Arms Export Control Act.

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* 12 UGM–84L Harpoon Block II Encapsulated Missiles, 10 UTM–84L Harpoon Encapsulated Training missiles, 2 Encapsulated Harpoon certification training vehicles, containers, spare and repair parts, support and test equipment, personnel training and training equipment, publications and technical data, U.S. Government and contractor engineering and logistics support services, and other related elements of logistics support.

(iv) *Military Department:* Navy (ABC)

(v) *Prior Related Cases, if any:*

FMS case AAL-$74M-15Nov10
FMS case AAP-$77M-25Jan12

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Annex attached.

(viii) *Date Report Delivered to Congress:* 1 July 2014

POLICY JUSTIFICATION

India—UGM–84L Harpoon Missiles

The Government of India has requested a possible sale of 12 UGM–84L Harpoon Block II Encapsulated Missiles, 10 UTM–84L Harpoon Encapsulated Training missiles, 2 Encapsulated Harpoon certification training vehicles, containers, spare and repair parts, support and test equipment, personnel training and training equipment, publications and technical data, U.S. Government and contractor engineering and logistics support services, and other related elements of logistics support. The estimated cost is $200 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to strengthen the U.S.-India strategic relationship and to improve the security of an important partner which continues to be an important force for political stability, peace, and economic progress in South Asia.

This Harpoon missile system will be employed on the Indian Navy's Shishumar class submarine (Type-209) and will provide enhanced capabilities in defense of critical sea lines of communication. India has already purchased Harpoon missiles for integration on Indian Air Force Jaguar aircraft and Indian Navy P–8I maritime patrol aircraft. India will have no difficulty absorbing these additional missiles into its armed forces.

This proposed sale of Harpoon missiles will not alter the basic military balance in the region.

The principal contractors will be the Boeing Company in St Louis, Missouri; and Delex Systems Inc., in Vienna, Virginia. In accordance with the Indian Defense Procurement Policy, a contractor may be expected to conclude offset agreements with the Government of India but no offset agreement is currently known to have been proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor personnel to India. However, U.S. Government or contractor personnel in-country visits will be required on a temporary basis for program, technical, and management oversight and support requirements for approximately five years.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 14–21

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The UGM–84L Harpoon Encapsulated Block II missile system is classified Confidential. The Harpoon missile is a non-nuclear tactical weapon system currently in service in the U.S. Navy and in 28 other foreign nations. It provides a day, night, and adverse weather, standoff air-to-surface capability and is an effective Anti-Surface Warfare missile. The UGM–84L incorporates components, software, and technical design information that are considered sensitive. The following components being conveyed by the proposed sale that are considered sensitive and are classified Confidential include:

a. The Radar Seeker

b. The Guidance Control Unit GPS/INS System

c. Operational Flight Program Software

d. Missile operational characteristics and performance data

These elements are essential to the ability of the Harpoon missile to selectively engage hostile targets under a wide range of operations, tactical and environmental conditions.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that the recipient country can provide the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

4. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of India.

[FR Doc. 2014–16351 Filed 7–11–14; 8:45 am]

BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Uniform Formulary Beneficiary Advisory Panel

AGENCY: Assistant Secretary of Defense (Health Affairs), DoD.

ACTION: Notice of meeting.

SUMMARY: The Department of Defense is publishing this notice to announce a Federal Advisory Committee meeting of the Uniform Formulary Beneficiary Advisory Panel (hereafter referred to as the Panel).

DATES: Thursday, July 31, 2014, from 9:00 a.m. to 1:00 p.m.

ADDRESSES: Naval Heritage Center Theater, 701 Pennsylvania Avenue NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Col. J. Michael Spilker, DFO, Uniform Formulary Beneficiary Advisory Panel, 7700 Arlington Boulevard, Suite 5101, Falls Church, VA 22042–5101. Telephone: (703) 681–2890. Fax: (703) 681–1940. Email Address: *Baprequests@dha.mil*.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (Title 5 United States Code (U.S.C.) Appendix, as amended) and the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended).

Purpose of Meeting: The Panel will review and comment on recommendations made to the Director of Defense Health Agency, by the Pharmacy and Therapeutics Committee, regarding the Uniform Formulary.

Meeting Agenda

1. Sign-In
2. Welcome and Opening Remarks
3. Public Citizen Comments
4. Scheduled Therapeutic Class Reviews (Comments will follow each agenda item)
   a. Osteoporosis Agents
   b. Nasal Allergy Agents
   c. Pulmonary-1 Agents
   d. Designated Newly Approved Drugs in Already-Reviewed Classes
   e. Pertinent Utilization Management Issues
5. Panel Discussions and Vote

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended, and 41 Code of Federal Regulations (CFR) 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is limited and will be provided only to the first 220 people signing-in. All persons must sign-in legibly.

Administrative Work Meeting: Prior to the public meeting, the Panel will conduct an Administrative Work Meeting from 7:00 a.m. to 9:00 a.m. to discuss administrative matters of the Panel. The Administrative Work Meeting will be held at the Naval Heritage Center, 701 Pennsylvania Avenue NW., Washington, DC 20004. Pursuant to 41 CFR 102–3.160, the Administrative Work Meeting will be closed to the public.

Written Statements: Pursuant to 41 CFR 102–3.140, the public or interested organizations may submit written statements to the membership of the Panel at any time or in response to the stated agenda of a planned meeting. Written statements should be submitted to the Panel's Designated Federal Officer (DFO). The DFO's contact information can be obtained from the General Services Administration's Federal Advisory Committee Act Database at *http://facadatabase.gov/*.

Written statements that do not pertain to the scheduled meeting of the Panel may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at a planned meeting, then these statements must be submitted no later than 5 business days prior to the meeting in question. The DFO will review all submitted written statements and provide copies to all the committee members.

Public Comments: In addition to written statements, the Panel will set aside 1 hour for individuals or interested groups to address the Panel. To ensure consideration of their comments, individuals and interested groups should submit written statements as outlined in this notice; but if they still want to address the Panel, then they will be afforded the opportunity to register to address the Panel. The Panel's DFO will have a ''Sign-Up Roster'' available at the Panel meeting for registration on a first-come, first-serve basis. Those wishing to address the Panel will be given no more than 5 minutes to present their comments, and at the end of the 1 hour time period, no further public comments will be accepted. Anyone who signs-up to address the Panel, but is unable to do so due to the time limitation, may submit their comments in writing; however, they must understand that their written comments may not be reviewed prior to the Panel's deliberation.

To ensure timeliness of comments for the official record, the Panel encourages that individuals and interested groups consider submitting written statements instead of addressing the Panel.

Dated: July 9, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2014–16407 Filed 7–11–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID USA–2014–0027]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to amend two Systems of Records.

SUMMARY: The Department of the Army proposes to amend two systems of records notices, A0027–10cDAJA, Witness Appearance Files and A0027–60b DAJA, Patent, Copyright, and Data License Proffers, Infringement Claims, and Litigation Files, in its inventory of record systems subject to the Privacy Act of 1974, as amended. These systems locate and provide witnesses to U.S. attorneys conducting trials on behalf of the Department of the Army; and maintain evidence and record of claims and litigation involving Department of the Army concerning patents, trademarks, copyrights, and data; to maintain evidence and record of Department of the Army attempts to use copyrighted material and to receive the copyright owner's permission for such use; to maintain record and evidence of patent license offers received and investigations and reports pursuant thereto; and to maintain record and evidence of investigations of proposed legislation or bills for private relief.

DATES: Comments will be accepted on or before August 13, 2014. This proposed action will be effective on the day following the end of the comment period unless comments are received which result in a contrary determination.

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

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

* Mail: Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Leroy Jones, Jr., Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22315–3827 or by phone at 703–428–6185.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy and Civil Liberties Office Web site at *http://dpclo.defense.gov/*.

The proposed changes to the record systems being amended are set forth in this notice. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: July 9, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0027–10cDAJA

SYSTEM NAME:

Witness Appearance Files (February 1, 1996, 61 FR 3680)

CHANGES:

Change System ID to read ''A0027–10c DAJA''.

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Office of the Judge Advocate General, U.S. Army Litigation Division, 9275 Gunston Road, Building 1450, Fort Belvoir, VA 22060–5546.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Present and former military personnel and government civilian employees requested to appear as witnesses before civil courts, administrative tribunals, and regulatory bodies.''

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''5 U.S.C. 301, Departmental Regulations; and AR 27–10, Military Justice.''

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with ''In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may also be disclosed to law students participating in a volunteer legal support program approved by the Judge Advocate General of the Army.

The DoD Blanket Routine Uses set forth at the beginning of the Army's compilation of systems of records notices may apply to this system.''

* * * * *

STORAGE:

Delete entry and replace with ''Electronic storage media and paper records.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Office of the Judge Advocate General, Department of the Army, 9275 Gunston Road, Building 1450, Fort Belvoir, VA 22060–5546.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Chief, U.S. Army Litigation Division, 9275 Gunston Road, Building 1450, Fort Belvoir, VA 22060–5546.

Individual should provide his/her full name, current address and telephone number, and any other personal identifying data that will assist in locating the record.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the Chief, U.S. Army Litigation Division, 9275 Gunston Road, Building 1450, Fort Belvoir, VA 22060–5546.

Individual should provide his/her full name, current address and telephone number, and any other personal identifying data that will assist in locating the record.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.''

* * * * *

A0027–60b DAJA

SYSTEM NAME:

Patent, Copyright, and Data License Proffers, Infringement Claims, and Litigation Files (October 1, 2008, 73 FR 57084)

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Office of the Judge Advocate General, Department of the Army, Intellectual Property Office, Regulatory Law and Intellectual Property Division, 9275 Gunston Road, Building 1450, Fort Belvoir, VA 22060–5546.

Segments of this system may exist at the Office, Chief of Engineers, Headquarters, U.S. Army Materiel Command, and/or its major subordinate field commands.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''The Judge Advocate General, Headquarters, Department of the Army, 9275 Gunston Road, Building 1450, Fort Belvoir, VA 22060–5546.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Judge Advocate General, Headquarters, Department of the Army, 1777 North Kent Street, Arlington, VA 22209–2194.

Individual should provide the full name, current address and telephone number, case number that appeared on documentation, any other information that will assist in locating pertinent records, and signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).'

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).' ''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to The Judge Advocate General, Headquarters, Department of the Army, 9275 Gunston Road, Building 1450, Fort Belvoir, VA 22060–5546.

Individual should provide the full name, current address, telephone number, and case number that appeared on documentation, any other information that will assist in locating pertinent records, and signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).'

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).' ''

* * * * *

[FR Doc. 2014–16393 Filed 7–11–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Application for New Awards; CSP Grants for National Leadership Activities

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Notice.

Overview Information: CSP Grants for National Leadership Activities Notice inviting applications for new awards for fiscal year (FY) 2015.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.282N.

DATES:

Applications Available: July 14, 2014.

Date of Pre-Application Webinar: July 22, 2014, 1:00 p.m. to 3:00 p.m., Washington, DC time.

Deadline for Transmittal of Applications: September 12, 2014.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the CSP is to increase national understanding of the charter school model by—

(1) Providing financial assistance for the planning, program design, and initial implementation of charter schools;

(2) Evaluating the effects of charter schools, including the effects on students, student academic achievement, staff, and parents;

(3) Expanding the number of high-quality charter schools available to students across the Nation; and

(4) Encouraging the States to provide support to charter schools for facilities financing in an amount that is more commensurate with the amount the States have typically provided for non-chartered public schools.

The purpose of the CSP Grants for National Leadership Activities competition is to support efforts by eligible entities to improve the quality of charter schools by providing technical assistance and other types of support on issues of national significance and scope.

Priorities: This notice includes two absolute priorities, two competitive preference priorities, and one invitational priority. The absolute, competitive preference, and invitational priorities are from the notice of final priorities, requirements, and definitions for this program published elsewhere in this issue of the **Federal Register**.

Absolute Priorities: For FY 2015 and any subsequent year in which we make awards based on the list of unfunded applicants from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet one of these two absolute priorities.

Note: Under the CSP Grants for National Leadership Activities competition, each of the two absolute priorities constitutes its own funding category. The Secretary intends to award grants under each absolute priority for which applications of sufficient quality are submitted.

An applicant for a CSP Grants for National Leadership Activities grant must choose one of the absolute priorities and cannot submit an application under multiple absolute priorities; an applicant must clearly indicate in its application the priority under which it is applying.

The absolute priorities are:

Absolute Priority 1—Improving Efficiency through Economies of Scale.

This priority is for projects of national significance and scope that promote shared systems for acquiring goods or services to achieve efficiencies in the use of time, staff, money, services for special populations, or other resources for the purpose of creating, supporting, and sustaining high-quality charter schools (as defined in this notice).

An applicant addressing this priority must apply as part of an existing or proposed partnership or consortium that includes two or more high-quality charter schools, as defined in this notice, and must include detailed descriptions (including supporting documentation) of the following:

(1) The proposed project activities of the partnership or consortium and how and to what extent the activities will achieve efficiencies in the use of time, staff, money, services for special populations, or other resources related to operating charter schools;

(2) The members or proposed members of the partnership or consortium, how the composition of this partnership or consortium contributes to achieving efficiencies, and the specific activities each member or proposed member will implement. Applicants must demonstrate that members of the existing or proposed partnership or consortium are not affiliated exclusively with a common network (e.g., a charter management organization);

(3) How the proposed project activities will help create charter schools that demonstrate the capacity to become high-quality charter schools, support new charter schools to become high-quality charter schools, and sustain charter schools that are high-quality;

(4) How information about the proposed project activities will be disseminated primarily to charter schools as the chief stakeholder group, and secondarily to other stakeholders, such as charter school support organizations, LEAs, and authorized public chartering agencies, as appropriate, at the charter school national level (as defined in this notice);

(5) How the dissemination strategy will include assembling a community of practice (as defined in this notice) for the stakeholder group(s) served; and

(6) The national significance of the proposed project.

Absolute Priority 2—Improving Accountability.

This priority is for projects of national significance and scope that are designed to improve authorized public chartering agencies' capacity to conduct rigorous application reviews; monitor and oversee charter schools using multiple sources of data, including disaggregated student data, and measurable performance goals; close underperforming schools; replicate and expand high-performing schools; maintain a portfolio of high-quality charter schools; and evaluate and disseminate information on the performance of charter schools.

Applicants addressing this priority must provide detailed descriptions (including supporting documentation) of the following:

(1) How the proposed project will improve at the regional level (as defined in this notice) or the national level (as defined in this notice), authorized public chartering agencies' capacity to:

i. Approve only applications that demonstrate capacity to create and sustain high-quality charter schools (as defined in this notice) and meet the standards of a rigorous application process and review;

ii. Monitor and oversee charter schools through measurable performance goals and multiple sources of regularly collected academic and operational performance data (using financial data, disaggregated student discipline data, and disaggregated student performance data, including metrics to assess educational equity for students with disabilities, English learners, and other students in need of specialized services);

iii. Identify schools eligible for renewal and those that should be closed, through clear renewal and revocation criteria; and

iv. Evaluate authorizer and portfolio performance and disseminate information on that performance;

(2) The applicant's prior success in improving, at the regional level (as defined in this notice) or the national level (as defined in this notice), authorized public chartering agencies' capacity to:

i. Approve only applications that demonstrate the capacity to create and

sustain high-quality charter schools (as defined in this notice) and meet the standards of a rigorous application process and review;

ii. Monitor and oversee charter schools through measurable performance goals and multiple sources of regularly collected academic and operational performance data (using financial data, disaggregated student discipline data, and disaggregated student performance data, including metrics to assess educational equity for students with disabilities, English learners, and other students in need of specialized services);

iii. Identify schools eligible for renewal and those that should be closed, through clear renewal and revocation criteria; and

iv. Evaluate authorizer and portfolio performance and disseminate information on that performance;

(3) How dissemination activities focus on authorized public chartering agencies as the primary stakeholder group, and secondarily on other stakeholders, such as charter school support organizations or charter schools, as appropriate, at the charter school national level (as defined in this notice);

(4) How the dissemination strategy will include assembling a community of practice (as defined in this notice) for the stakeholder group(s) served; and

(5) The national significance of the proposed project.

Competitive Preference Priorities: For FY 2015 and any subsequent year in which we make awards based on the list of unfunded applicants from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we will award up to an additional five points to an application that addresses *Competitive Preference Priority 1* and up to an additional five points to an application that addresses *Competitive Preference Priority 2,* depending on how well the application addresses each of the priorities. The maximum total competitive preference points an application can receive for this competition is 10.

Note: In order to receive preference under these competitive preference priorities, the applicant must identify the priority or priorities that it is addressing and provide documentation supporting that the identified competitive preference priority or priorities are met.

These priorities are:

Competitive Preference Priority 1—Students with Disabilities. (Up to 5 points)

This priority is for projects of national significance and scope that are designed to increase equitable access to charter schools for students with disabilities and increase charter schools' enrollment of students with disabilities, as well as improve achievement (including student achievement and student growth) and attainment (including high school graduation rates and college enrollment rates) for students with disabilities in charter schools, through one or more of the following activities:

(1) Developing strategies and tools to increase equitable access to charter schools for students with disabilities and increase charter schools' capacity to recruit, enroll, and serve students with disabilities, and improve student achievement, including student growth, and attainment (e.g., high school graduation rates, college enrollment rates) for students with disabilities.

(2) Disseminating promising practices for increasing equitable access to charter schools for students with disabilities; increasing charter schools' capacity to recruit, enroll, and serve students with disabilities; and improving student achievement, including student growth, and attainment (e.g., high school graduation rates, college enrollment rates) for students with disabilities.

(3) Promoting collaborative activities between charter schools, non-chartered public schools, and key special education stakeholders designed to improve student achievement, including student growth, and attainment (e.g., high school graduation rates, college enrollment rates) for students with disabilities.

Competitive Preference Priority 2—English Learners. (Up to 5 points)

This priority is for projects of national significance and scope that are designed to increase equitable access to charter schools for English learners and increase charter schools' enrollment of English learners, as well as improve academic achievement (including student achievement and student growth) and attainment (including English proficiency, high school graduation rates, and college enrollment rates) for English learners, through one or more of the following activities:

(1) Developing strategies and tools to increase equitable access to charter schools for English learners; increase charter schools' capacity to recruit, enroll, and serve English learners; and improve student achievement, including student growth and English proficiency, and attainment (e.g., high school graduation rates, college enrollment rates) for English learners.

(2) Disseminating promising practices for increasing equitable access to charter schools for English learners; increasing charter schools' capacity to recruit, enroll, and serve English learners; and improving student achievement, including student growth and English proficiency, and attainment (e.g., high school graduation rates, college enrollment rates) for English learners.

(3) Promoting collaborative activities between charter schools, non-chartered public schools, and key English learner stakeholders designed to improve student achievement, including student growth and English proficiency, and attainment (e.g., high school graduation rates, college enrollment rates) for English learners.

Invitational Priority: For FY 2015 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an invitational priority. Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority any preference over other applications.

Invitational Priority—Personalized Technology-Enabled Learning.

This priority is for projects of national significance and scope that are designed to improve achievement and attainment outcomes for high-need students (as defined in this notice) through the development and implementation in charter schools of technology-enabled instructional models, tools, and supports that personalize learning.

Application Requirements:

The following requirement, which is from the notice of final priorities, requirements, and definitions, for this program, published elsewhere in this issue of the **Federal Register**, applies to the competition announced in this notice.

Requirement: An applicant for a CSP Grants for National Leadership Activities grant must provide a logic model (as defined in this notice) supporting its project.

Definitions: The following definitions are from the notice of final priorities, requirements, definitions, and selection criteria for this program published elsewhere in this issue of the **Federal Register**, from the notice of final supplemental priorities and definitions for discretionary grant programs published in the **Federal Register** on December 15, 2010 (75 FR 78486) and corrected on May 12, 2011 (76 FR 27637), and from 34 CFR 77.1.

Ambitious means promoting continued, meaningful improvement for program participants or for other individuals or entities affected by the grant, or representing a significant advancement in the field of education research, practices, or methodologies. When used to describe a performance target, whether a performance target is

ambitious depends upon the context of the relevant performance measure and the baseline (as defined in this notice) for that measure (as defined in 34 CFR 77.1(c)).

Baseline means the starting point from which performance is measured and targets are set (as defined in 34 CFR 77.1(c)).

Charter school national level means, with respect to an applicant's dissemination strategy, that the strategy covers a wide variety of charter schools, authorized public chartering agencies, charter support organizations, and other stakeholder groups within multiple States across the country, including rural and urban areas.

Community of practice means a group of stakeholders that interacts regularly to solve a persistent problem or to improve practice in an area that is important to them and the success of the grant project.

Evidence of promise means there is empirical evidence to support the theoretical linkage(s) between at least one critical component and at least one relevant outcome presented in the logic model for the proposed process, product, strategy, or practice.

Specifically, evidence of promise means the conditions in paragraphs (i) and (ii) of this section are met:

(i) There is at least one study that is a—

(A) Correlational study with statistical controls for selection bias;

(B) Quasi-experimental study that meets the What Works Clearinghouse Evidence Standards with reservations;[1] or

(C) Randomized controlled trial that meets the What Work Clearinghouse Evidence Standards with or without reservations.[2]

(ii) The study referenced in paragraph (i) found a statistically significant or substantively important (defined as a difference of 0.25 standard deviations or larger), favorable association between at least one critical component and one relevant outcome presented in the logic model for the proposed process, product, strategy, or practice (as defined in 34 CFR 77.1(c)).

Graduation rate means a four-year adjusted cohort graduation rate consistent with 34 CFR 200.19(b)(1) and may also include an extended-year adjusted cohort graduation rate consistent with 34 CFR 200.19(b)(1)(v) if the State in which the proposed project is implemented has been approved by the Secretary to use such a rate under Title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA).

High-need students means children and students at risk of educational failure, such as children and students who are living in poverty, who are English Learners, who are far below grade level or who are not on track to becoming college- or career-ready by graduation, who have left school or college before receiving, respectively, a regular high school diploma or a college degree or certificate, who are at risk of not graduating with a diploma on time, who are homeless, who are in foster care, who are pregnant or parenting teenagers, who have been incarcerated, who are new immigrants, who are migrant, or who have disabilities.

High-quality charter school means—

(a) A school that shows evidence of strong academic results for the past three years (or over the life of the school, if the school has been open for fewer than three years), based on the following factors:

(1) Increased student academic achievement and attainment (including, if applicable, high school graduation rates and college and other postsecondary enrollment rates) for all students, including, as applicable, educationally disadvantaged students served by the charter school;

(2) Either:

(i) Demonstrated success in closing historic achievement gaps for the subgroups of students described in section 1111(b)(2)(C)(v)(II)of the ESEA (20 U.S.C. 6311) at the charter school; or

(ii) No significant achievement gaps between any of the subgroups of students described in section 1111 (b)(2)(C)(v)(II) of the ESEA (20 U.S.C. 6311) at the charter school and significant gains in student academic achievement for all populations of students served by the charter school;

(3) Results (including, if applicable and available, performance on statewide tests, annual student attendance and retention rates, high school graduation rates, college and other postsecondary attendance rates, and college and other postsecondary persistence rates) for low-income and other educationally disadvantaged students served by the charter school that are above the average academic achievement results for such students in the State;

(4) Positive results on a performance framework established by the State or authorized public chartering agency for purposes of evaluating charter school quality; and

(5) No significant compliance issues (as defined in this notice), particularly in the areas of student safety, financial management, and equitable and nondiscriminatory treatment for students; or

(b) A high-quality charter school as defined by the State, provided that the State's definition is at least as rigorous as paragraph (a).

Logic model (also referred to as theory of action) means a well-specified conceptual framework that identifies key components of the proposed process, product, strategy, or practice (i.e., the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the relationships among the key components and outcomes, theoretically and operationally (as defined in 34 CFR 77.1(c)).

National level describes the level of scope or effectiveness of a process, product, strategy, or practice that is able to be effective in a wide variety of communities, including rural and urban areas, as well as with different groups (e.g., economically disadvantaged, racial and ethnic groups, migrant populations, individuals with disabilities, English learners, and individuals of each gender) (as defined in 34 CFR 77.1(c)).

Performance measure means any quantitative indicator, statistic, or metric used to gauge program or project performance (as defined in 34 CFR 77.1(c)).

Performance target means a level of performance that an applicant would seek to meet during the course of a project or as a result of a project (as defined in 34 CFR 77.1(c)).

Quasi-experimental design study means a study using a design that attempts to approximate an experimental design by identifying a comparison group that is similar to the treatment group in important respects. These studies, depending on design and implementation, can meet What Works Clearinghouse Evidence Standards with reservations[3] (they cannot meet What Works Clearinghouse Evidence Standards without reservations) (as defined in 34 CFR 77.1(c)).

Randomized controlled trial means a study that employs random assignment of, for example, students, teachers, classrooms, schools, or districts to receive the intervention being evaluated

[1] What Works Clearinghouse Procedures and Standards Handbook (Version 2.1, September 2011), which can be currently found at the following link: *http://ies.ed.gov/ncee/wwc/DocumentSum.aspx?sid=19.*

[2] What Works Clearinghouse Procedures and Standards Handbook (Version 2.1, September 2011), which can be currently found at the following link: *http://ies.ed.gov/ncee/wwc/DocumentSum.aspx?sid=19.*

[3] What Works Clearinghouse Procedures and Standards Handbook (Version 2.1, September 2011), which can be currently found at the following link: *http://ies.ed.gov/ncee/wwc/DocumentSum.aspx?sid=19.*

(the treatment group) or not to receive the intervention (the control group). The estimated effectiveness of the intervention is the difference between the average outcome for the treatment group and for the control group. These studies, depending on design and implementation, can meet What Works Clearinghouse Evidence Standards without reservations (as defined in 34 CFR 77.1(c)).[4]

Relevant outcome means the student outcome(s) (or the ultimate outcome if not related to students) the proposed process, product, strategy, or practice is designed to improve; consistent with the specific goals of a program (as defined in 34 CFR 77.1(c)).

Regional level describes the level of scope or effectiveness of a process, product, strategy, or practice that is able to serve a variety of communities within a State or multiple States, including rural and urban areas, as well as with different groups (e.g., economically disadvantaged, racial and ethnic groups, migrant populations, individuals with disabilities, English learners, and individuals of each gender). For an LEA-based project, to be considered a regional-level project, a process, product, strategy, or practice must serve students in more than one LEA, unless the process, product, strategy, or practice is implemented in a State in which the State educational agency is the sole educational agency for all schools (as defined in 34 CFR 77.1(c)).

Significant compliance issue means a violation that did, will, or could (if not addressed or if it represents a pattern of repeated misconduct or material non-compliance) lead to the revocation of a school's charter.

Strong theory means a rationale for the proposed process, product, strategy, or practice that includes a logic model (as defined in 34 CFR 77.1(c)).

Student achievement means—

(a) For tested grades and subjects—

(1) A student's score on the State's assessments under the ESEA; and, as appropriate,

(2) Other measures of student learning, such as those described in paragraph (b) of this definition, provided they are rigorous and comparable across schools.

(b) For non-tested grades and subjects: Alternative measures of student learning and performance, such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessments; and other measures of student achievement that are rigorous and comparable across schools.

Student growth means the change in achievement data for an individual student between two or more points in time. Growth may also include other measures that are rigorous and comparable across classrooms.

Program Authority: 20 U.S.C. 7221–7221j.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 76, 77, 79, 80, 81, 82, 84, 86, 97, 98, and 99. (b) The Education Department debarment and suspension regulations in 2 CFR part 3485. (c) The notice of final priorities, requirements, definitions, and selection criteria for this program published elsewhere in this issue of the **Federal Register**. (d) The notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486) and corrected on May 12, 2011 (76 FR 27637).

Note 1: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note 2: The regulations in 34 CFR part 86 apply only to institutions of higher education.

Note 3: The regulations in 34 CFR part 99 apply only to an educational agency or institution.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $4,000,000.

The actual level of funding, if any, depends on final congressional action. However, we are inviting applications now to allow enough time to complete the grant process early in FY 2015, if Congress appropriates funds for this program. Contingent on the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applicants from this competition.

Estimated Range of Awards: $500,000–800,000 per year.

Estimated Average Size of Awards: $650,000 per year.

Estimated Number of Awards: 5–8.

Note: The Department is not bound by any estimates in this notice. The estimated range, average size, and number of awards are based on a single 12-month budget period. However, the Department may choose to fund more than 12 months of a project using FY 2015 funds.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* Eligible applicants include (1) State educational agencies (SEAs) in States with a State statute specifically authorizing the establishment of charter schools; (2) authorized public chartering agencies; (3) public and private nonprofit organizations with a mission that explicitly includes operating, supporting, or managing charter schools; and (4) public and private nonprofit organizations in partnership with an SEA, authorized public chartering agency, or a public or private nonprofit organization with a mission that explicitly includes supporting charter schools. Eligible applicants may apply as a partnership or consortium and, if so applying, must comply with the requirements for group applications set forth in 34 CFR 75.127–75.129.

Eligible applicants that are charter schools may not have any significant compliance issues (as defined in this notice), including in the areas of student safety, financial management, civil rights, and statutory or regulatory compliance. In addition, to the extent that eligible applicants that are partnerships or consortia include charter schools, the lead applicant, each charter school operated or managed by the lead applicant and all partnership or consortium members, including, in the case of a charter management organization applicant (CMO), all charter schools managed by the CMO, must meet the definition of high-quality charter school (as defined in this notice).

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* Brian Martin, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W224, Washington, DC 20202–5970. Telephone: (202) 205–9085 or by email: *brian.martin@ed.gov*.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the program contact person listed in this section.

2.a. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in

[4] What Works Clearinghouse Procedures and Standards Handbook (Version 2.1, September 2011), which can be currently found at the following link: *http://ies.ed.gov/ncee/wwc/DocumentSum.aspx?sid=19*.

the application package for this competition. Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit the application narrative [Part III] to no more than 60 pages, using the following standards:

- A ''page'' is 8.5″ x 11″ , on one side only, with 1'' margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section [Part III].

b. *Submission of Proprietary Information:*

Given the types of projects that may be proposed in applications for the CSP Grants for National Leadership Activities competition, an application may include business information that the applicant considers proprietary. The Department's regulations define ''business information'' in 34 CFR 5.11.

Because we plan to make successful applications available to the public, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you feel is exempt from disclosure under Exemption 4 of the Freedom of Information Act. In the appropriate Appendix section of your application, under ''Other Attachments Form,'' please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Submission Dates and Times:*

Applications Available: July 14, 2014.

Date of Pre-Application Meeting: The Department will hold a pre-application meeting via Webinar for prospective applicants on July 22, 2014, from 1:00 p.m. to 3:00 p.m., Washington, DC, time. Individuals interested in attending this meeting are encouraged to pre-register by emailing their name, organization, and contact information with the subject heading ''PRE-APPLICATION MEETING'' to *CharterSchools@ed.gov*. There is no registration fee for attending this meeting.

For further information about the pre-application meeting, contact Brian Martin, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W224, Washington, DC 20202–5970. Telephone: (202) 205–9085 or by email: *brian.martin@ed.gov*.

Deadline for Transmittal of Applications: September 12, 2014.

Applications for grants under this competition must be submitted electronically using the Grants.gov apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: October 27, 2014.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM) (formerly the Central Contractor Registry (CCR)), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one to two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow two to five weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data entered into the SAM database by an entity. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

Note: Once your SAM registration is active, you will need to allow 24 to 48 hours for the information to be available in Grants.gov and before you can submit an application through Grants.gov.

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at *www.SAM.gov*. To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a SAM.gov Tip Sheet, which you can find at: *http://www2.ed.gov/fund/grant/apply/sam-faqs.html*.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an

Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/web/grants/register.html*.

7. *Other Submission Requirements.* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the CSP Grants for National Leadership Activities competition, CFDA number 84.282N must be submitted electronically using the Governmentwide Grants.gov Apply site at www.Grants.gov. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement*.

You may access the electronic grant application for the CSP Grants for National Leadership Activities competition at *www.Grants.gov*. You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.282, not 84.282N).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page. In addition, for specific guidance and procedures for submitting an application through Grants.gov, please refer to the Grants.gov Web site at: *www.grants.gov/web/grants/applicants/apply-for-grants*.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a .PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable .PDF or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. This notification indicates receipt by Grants.gov only, not receipt by the Department. Grants.gov will also notify you automatically by email if your application met all the Grants.gov validation requirements or if there were any errors. You will be given an opportunity to correct any errors and resubmit, but you must still meet the deadline for submission of applications.

Once your application is successfully validated by Grants.gov, the Department will retrieve your application from Grants.gov and send you an email with a unique PR/Award number for your application.

These emails do not mean that your application is without any disqualifying errors. It is your responsibility to ensure that your submitted application has met all of the Department's requirements, including submitting only PDF documents, as prescribed in this notice and in the application instructions.

- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that the problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the

application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system;

and

- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Brian Martin, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W224, Washington, DC 20202–5970. FAX: (202) 205–9085.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education,
Application Control Center,
Attention: CFDA Number 84.282N,
LBJ Basement Level 1,
400 Maryland Avenue SW.,
Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education,
Application Control Center,
Attention: CFDA Number 84.282N,
550 12th Street SW.,
Room 7039, Potomac Center Plaza,
Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria.* The selection criteria for this program are from 34 CFR 75.210. The maximum possible score for addressing all of the criteria in this section is 100 points. The maximum possible score for addressing each criterion is indicated in parentheses following the criterion.

In evaluating an application, the Secretary considers the following criteria:

(a) *Significance.* (34 CFR 75.210 (b)) (35 points)

(1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers the following factors—

(i) The national significance of the proposed project.

(ii) The extent to which the results of the proposed project are to be disseminated in ways that will enable others to use the information or strategies.

(iii) The potential contribution of the proposed project to increased knowledge or understanding of educational problems, issues, or effective strategies.

(b) *Quality of the project design.* (34 CFR 75.210 (c)) (30 points)

(1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors—

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(ii) The extent to which the proposed project is supported by strong theory (as defined in 34 CFR 77.1(c)).

(iii) The extent to which the proposed project represents an exceptional approach to the priority or priorities established for the competition.

Note: The Secretary encourages the applicant to discuss how its proposed project addresses the absolute priority to which the applicant has responded.

(iv) The likelihood that the services to be provided by the proposed project will lead to improvements in the achievement of students as measured against rigorous academic standards.

(c) *Quality of project personnel.* (34 CFR 75.210 (e)) (10 points)

(1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the

applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers—

(i) The qualifications, including relevant training and experience, of the project director or principal investigator.

(ii) The qualifications, including relevant training and experience, of key project personnel.

(d) *Quality of the management plan.* (34 CFR 75.210 (g)) (15 points)

(1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors—

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project.

(e) *Quality of the project evaluation.* (34 CFR 75.210 (h)) (10 points)

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors—

(i) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(ii) The extent to which the methods of evaluation will, if well-implemented, produce evidence of promise (as defined in 34 CFR 77.1(c)).

(iii) The extent to which the methods of evaluation will provide valid and reliable performance data on relevant outcomes.

Note: The Secretary encourages the applicant to describe how evaluation activities will contribute to research and the knowledge base in the field regarding the project's focus area.

2. *Review and Selection Process:*

Note: The Secretary may separately consider for funding applications meeting Absolute Priority 1 and those meeting Absolute Priority 2.

We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html*.

4. *Performance Measures:* (a) Program Performance Measures. The goal of the CSP is to increase national understanding of the charter school model by providing financial assistance for the planning, program design, and initial implementation of charter schools; evaluating the effects of charter schools, including the effects on students, student academic achievement, staff, and parents; expanding the number of high-quality charter schools available to students across the Nation; and encouraging the States to provide support to charter schools for facilities financing in an amount that is more commensurate with the amount the States have typically provided for non-chartered public schools.

The Secretary has two performance indicators to measure progress towards this goal: (1) The number of charter schools in operation around the Nation, and (2) the percentage of fourth- and eighth-grade charter school students who are achieving at or above the proficient level on State assessments in mathematics and reading/language arts. Additionally, the Secretary has established the following measure to examine the efficiency of the CSP: Federal cost per student in implementing a successful school (defined as a school in operation for three or more consecutive years).

All grantees will be expected, as applicable, to submit an annual performance report documenting their contribution in assisting the Department in meeting these performance measures.

(b) Project-Specific Performance Measures. Applicants must propose project-specific performance measures and performance targets consistent with the objectives of the project. Applications must provide the following information as required under 34 CFR 75.110(b)-(c):

(1) Performance measures. How each proposed performance measure would

accurately measure the performance of the project and how the proposed performance measure would be consistent with the performance measures established for the program funding the competition.

(2) Baseline data. (i) Why each proposed baseline is valid; or (ii) if the applicant has determined that there are no established baseline data for a particular performance measure, an explanation of why there is no established baseline and of how and when, during the project period, the applicant would establish a valid baseline for the performance measure.

(3) Performance targets. Why each proposed performance target is *ambitious* yet achievable compared to the baseline for the performance measure and when, during the project period, the applicant would meet the performance target(s).

Note: The Secretary expects the applicant to consider measures and targets tied to their grant activities. The measures and targets should be sufficient to gauge the progress throughout the grant period, and show results by the end of the grant period. For technical assistance in developing effective performance measures, applicants are encouraged to review information provided by the Department's Regional Educational Laboratories (RELs). The Department's Regional Educational Laboratories (RELs) seek to build the capacity of States and school districts to incorporate data and research into education decision making. Each REL provides research support and technical assistance to its region but makes learning opportunities available to educators everywhere. For example, the REL Northeast and Islands has created the following resource on logic models: *http://relpacific.mcrel.org/ELM.html*.

(c) Data Collection and Reporting. The applicant must also describe in the application: (1) the data collection and reporting methods the applicant would use and why those methods are likely to yield reliable, valid, and meaningful performance data, and (2) the applicant's capacity to collect and report reliable, valid, and meaningful performance data, as evidenced by high-quality data collection, analysis, and reporting in other projects or research.

Note: If the applicant does not have experience with collection and reporting of performance data through other projects or research, it should provide other evidence of its capacity to successfully carry out data collection and reporting for its proposed project.

All grantees must submit an annual performance report with information that is responsive to these performance measures.

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made ''substantial progress toward meeting the objectives in its approved application.'' This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Brian Martin, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W224, Washington, DC 20202–5970. Telephone: (202) 205–9085 or by email: *brian.martin@ed.gov*.

If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys*. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: July 9, 2014.

Nadya Chinoy Dabby,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. 2014–16456 Filed 7–11–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Quadrennial Energy Review: Notice of Public Meeting

AGENCY: Office of Energy Policy and Systems Analysis, Secretariat, Quadrennial Energy Review Task Force, Department of Energy.

ACTION: Notice of public meeting.

SUMMARY: At the direction of the President, the U.S. Department of Energy (DOE or Department), as the Secretariat for the Quadrennial Energy Review Task Force (QER Task Force) will convene a public meeting to discuss and receive comments on issues related to the Quadrennial Energy Review.

DATES: The seventh public meeting will be held on August 8, 2014, beginning at 8:30 a.m. Central Time. Written comments are welcome, especially following the public meeting, and should be submitted within 60 days of the meeting.

ADDRESSES: The seventh meeting will be held at the University of Illinois-Chicago, Student Center East, Illinois B Room, 750 South Halstead Street, Chicago, Illinois 60607.

You may submit written comments to: *QERComments@hq.doe.gov* or by U.S. mail to the Office of Energy Policy and Systems Analysis, EPSA–60, QER Meeting Comments, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0121.

For the seventh public meeting, please title your comment ''Quadrennial Energy Review: Comment on the Public Meeting Rail, Barge, and Truck Transportation.''

FOR FURTHER INFORMATION CONTACT: Ms. Adonica Renee Pickett, EPSA–90, U.S. Department of Energy, Office of Energy Policy and Systems Analysis, 1000 Independence Avenue SW., Washington, DC 20585–0121. *Telephone:* (202) 586–9168 *Email: Adonica.Pickett@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: On January 9, 2014, President Obama issued a *Presidential Memorandum–Establishing a Quadrennial Energy Review.* To accomplish this review, the Presidential Memorandum establishes a Quadrennial Energy Review Task Force to be co-chaired by the Director of the

Office of Science and Technology Policy, and the Director of the Domestic Policy Council. Under the Presidential Memorandum, the Secretary of Energy shall provide support to the Task Force, including support for coordination activities related to the preparation of the Quadrennial Energy Review Report, policy analysis and modeling, and stakeholder engagement.

The DOE, as the Secretariat for the Quadrennial Energy Review Task Force, will hold a series of public meetings to discuss and receive comments on issues related to the Quadrennial Energy Review.

The initial focus for the Quadrennial Energy Review will be our Nation's infrastructure for transporting, transmitting, storing and delivering energy. Our current infrastructure is increasingly challenged by transformations in energy supply, markets, and patterns of end use; issues of aging and capacity; impacts of climate change; and cyber and physical threats. Any vulnerability in this infrastructure may be exacerbated by the increasing interdependencies of energy systems with water, telecommunications, transportation, and emergency response systems. The first Quadrennial Energy Review Report will serve as a roadmap to help address these challenges.

The Department of Energy has a broad role in energy policy development and the largest role in implementing the Federal Government's energy research and development portfolio. Many other executive departments and agencies also play key roles in developing and implementing policies governing energy resources and consumption, as well as associated environmental impacts. In addition, non-Federal actors are crucial contributors to energy policies. Because most energy and related infrastructure is owned by private entities, investment by and engagement of the private sector is necessary to develop and implement effective policies. State and local policies; the views of nongovernmental, environmental, faith-based, labor, and other social organizations; and contributions from the academic and non-profit sectors are also critical to the development and implementation of effective energy policies.

An interagency Quadrennial Energy Review Task Force, which includes members from all relevant executive departments and agencies (agencies), will develop an integrated review of energy policy that integrates all of these perspectives. It will build on the foundation provided in the Administration's *Blueprint for a Secure Energy Future* of March 30, 2011, and *Climate Action Plan* released on June 25, 2013. The Task Force will offer recommendations on what additional actions it believes would be appropriate. These may include recommendations on additional executive or legislative actions to address the energy challenges and opportunities facing the Nation.

August 8, 2014 Public Meeting: Rail, Barge, and Truck Transportation. On August 8, 2014, the DOE will hold a public meeting in Chicago, Illinois. The August 8, 2014 public meeting will feature facilitated panel discussions, followed by an open microphone session. Persons desiring to speak during the open microphone session at the public meeting should come prepared to speak for no more than 5 minutes and will be accommodated on a first-come, first-served basis, according to the order in which they register to speak on a sign-in sheet available at the meeting location, on the morning of the meeting.

In advance of the meeting, DOE anticipates making publicly available a briefing memorandum providing useful background information regarding the topics under discussion at the meeting. DOE will post this memorandum on its Web site: *http://energy.gov*.

Submitting comments via email. Submitting comments by email to the QER email address will require you to provide your name and contact information in the transmittal email. Your contact information will be viewable to DOE staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). Your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to the QER email address (*QERcomments@hq.doe.gov*) information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted to the QER email address cannot be claimed as CBI. Comments received through the email address will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section, below.

If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No telefacsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English, and are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery/courier two well-marked copies: One copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination. Confidential information should be submitted to the Confidential QER email address: *QERConfidential@hq.doe.gov*.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to

the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest. It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

Issued in Washington, DC, on July 9, 2014.

Michele Torrusio,

QER Secretariat, QER Interagency Task Force, U.S. Department of Energy.

[FR Doc. 2014–16396 Filed 7–11–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[CP14–510–000]

Dominion Transmission, Inc.; Notice of Application for Abandonment and Amendment of Certificates

Take notice that on June 30, 2014, Dominion Transmission, Inc. (DTI), 120 Tredigar Street, Richmond, Virginia, filed with the Federal Energy Regulatory Commission an application under Section 7(c) of the Natural Gas Act (NGA) to amend its existing North Summit Storage Pool Base Gas Lease in order to replace in two phases 10.3 MMDth of leased base gas with base gas made available as a result of conversions of base gas capacity to working gas capacity at other DTI storage pools, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Any questions regarding this Application should be directed to Machelle F. Grim, Dominion Resource Services, Inc., 701 East Cary Street, Richmond, VA 23219, telephone no. (804) 771–3805, facsimile no. (804) 771–4804 and email: *Machelle.F.Grim@dom.com.*

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*www.ferc.gov*) under the ''e-Filing'' link. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Comment Date: 5:00 p.m. Eastern Daylight Savings Time on July 28, 2014.

Dated: July 7, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–16343 Filed 7–11–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP14–1089–000.

Applicants: Enable Gas Transmission, LLC.

Description: Negotiated Rate Filing—July 2014 LER 1010222 Att A to be effective 7/3/2014.

Filed Date: 7/3/14.

Accession Number: 20140703–5052.

Comments Due: 5 p.m. ET 7/15/14.

Docket Numbers: RP14–1090–000.

Applicants: Cimarron River Pipeline, LLC.
Description: Noncontiguous Filing to be effective 7/5/2014.
Filed Date: 7/3/14.
Accession Number: 20140703–5085.
Comments Due: 5 p.m. ET 7/15/14.
Docket Numbers: RP14–1091–000.
Applicants: East Tennessee Natural Gas, LLC.
Description: 2014 Range-Atmos Releases to be effective 7/1/2014.
Filed Date: 7/3/14.
Accession Number: 20140703–5098.
Comments Due: 5 p.m. ET 7/15/14.
Docket Numbers: RP14–1092–000.
Applicants: Columbia Gulf Transmission, LLC.
Description: ELEOP Retainage Update to be effective 2/1/2012.
Filed Date: 7/3/14.
Accession Number: 20140703–5126.
Comments Due: 5 p.m. ET 7/15/14.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated July 7, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–16379 Filed 7–11–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP14–1086–000.
Applicants: Wyoming Interstate Company, L.L.C.
Description: Request for Limited Waiver of Wyoming Interstate Company, L.L.C.
Filed Date: 6/30/14.
Accession Number: 20140630–5363.
Comments Due: 5 p.m. ET 7/10/14.
Docket Numbers: RP14–1087–000.
Applicants: WTG Hugoton, LP.
Description: Annual Fuel Retention Percentage Filing 2014–2015 to be effective 8/1/2014.
Filed Date: 7/2/14.
Accession Number: 20140702–5050.
Comments Due: 5 p.m. ET 7/14/14.
Docket Numbers: RP14–1088–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: Non-Conforming Agreements Filing (TGS) to be effective 8/1/2014.
Filed Date: 7/2/14.
Accession Number: 20140702–5065.
Comments Due: 5 p.m. ET 7/14/14.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 3, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–16380 Filed 7–11–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1944–002; ER10–2051–003; ER10–2042–015; ER10–2043–003; ER10–2029–005; ER10–2041–003; ER10–2040–003; ER10–2039–003; ER10–1938–010; ER10–2036–004; ER13–1670–004; ER10–1934–009; ER10–1893–009; ER10–1889–002; ER10–1895–002; ER10–1870–002; ER10–1862–009; ER10–1858–002; ER13–1401–001; ER10–2044–003.
Applicants: Bethpage Energy Center 3, LLC, Calpine Bethlehem, LLC, Calpine Energy Services, L.P., Calpine Mid-Atlantic Generation, LLC, Calpine Mid-Atlantic Marketing, LLC, Calpine Mid Merit, LLC, Calpine New Jersey Generation, LLC, Calpine Newark, LLC, Calpine Power America—CA, LLC, Calpine Vineland Solar, LLC, CES Marketing V, LLC, CES Marketing IX, LLC, CES Marketing X, LLC, CPN Bethpage 3rd Turbine, Inc., KIAC Partners, Nissequogue Cogen Partners, Power Contract Financing, L.L.C., TBG Cogen Partners, Westbrook Energy Center, LLC, Zion Energy LLC.
Description: Updated Market Power Analysis for the Northeast Region of the Calpine Corporation subsidiaries.
Filed Date: 6/30/14.
Accession Number: 20140630–5391.
Comments Due: 5 p.m. ET 8/29/14.
Docket Numbers: ER10–2265–002; ER10–2783–009; ER10–2784–009; ER14–1865–003; ER14–1818–002; ER10–2337–004; ER10–2795–009; ER10–2798–009; ER10–2339–004; ER10–2338–004; ER10–2340–004; ER10–2799–009; ER10–2801–009; ER11–2062–011; ER10–2346–003; ER10–2812–008; ER10–1291–012; ER10–2843–007; ER11–2508–010; ER11–2863–006; ER11–4307–011; ER10–2846–009; ER12–261–010; ER10–3223–003; ER10–2875–009; ER10–2353–003; ER10–2878–009; ER10–2355–004; ER10–2879–009; ER10–2880–009; ER10–2888–011; ER13–1745–004; ER13–1788–004; ER13–1789–004; ER10–2896–009; ER10–2913–009; ER10–2914–011; ER13–1799–004; ER13–1801–004; ER13–1802–004; ER10–2916–009; ER10–2915–009; ER13–1965–005; ER10–2969–009; ER11–4351–004; ER11–4308–011; ER11–2805–010; ER10–2947–009.
Applicants: NRG Power Marketing LLC, Arthur Kill Power LLC, Astoria Gas Turbine Power LLC, BETM Solutions LLC, Boston Energy Trading and Marketing LLC, CL Power Sales Eight, L.L.C., Conemaugh Power LLC, Connecticut Jet Power LLC, CP Power Sales Seventeen, L.L.C., CP Power Sales Nineteen, L.L.C., CP Power Sales Twenty, L.L.C., Devon Power LLC, Dunkirk Power LLC, Energy Plus Holdings LLC, Forward WindPower LLc, GenConn Devon LLC, GenConn Energy LLC, GenConn Middletown LLC, GenOn Energy Management, LLC, GenOn Mid-Atlantic, LLC, Green Mountain Energy Company, Independence Energy Group LLC, Indian River Power LLC, Keystone Power LLC, Lookout Windpower, LLC,

Middletown Power LLC, Midwest Generation LLC, Montville Power LLC, NEO Freehold-Gen LLC, Norwalk Power LLC, NRG Bowline LLC, NRG Chalk Point LLC, NRG Energy Center Dover LLC, NRG New Jersey Energy Sales LLC, NRG Potomac River LLC, NRG Power Midwest LP, NRG Wholesale Generation LP, Oswego Harbor Power LLC, Pinnacle Wind, LLC, RRI Energy Services, LLC, NRG Canal LLC, Vienna Power LLC, NRG REMA LLC, NRG Rockford LLC, NRG Rockford II LLC, NRG Energy Center Paxton LLC, Reliant Energy Northeast LLC, Huntley Power LLC.

Description: Updated Market Power Analysis of the NRG Northeast MBR Sellers.

Filed Date: 6/30/14.

Accession Number: 20140630–5390.

Comments Due: 5 p.m. ET 8/29/14.

Docket Numbers: ER13–338–004.

Applicants: Shiloh IV Lessee, LLC.

Description: Notice of Non-Material Change in Status of Shiloh IV Lessee, LLC.

Filed Date: 7/7/14.

Accession Number: 20140707–5095.

Comments Due: 5 p.m. ET 7/28/14.

Docket Numbers: ER13–2290–002.

Applicants: AEP Texas Central Company.

Description: TCC–TNC-Texas New Mexico Power Company ERCOT TSA Compliance to be effective 8/8/2013.

Filed Date: 7/7/14.

Accession Number: 20140707–5070.

Comments Due: 5 p.m. ET 7/28/14.

Docket Numbers: ER14–1964–001.

Applicants: BIF II Safe Harbor Holdings, LLC.

Description: Volume No. 1, 1.0.1 to be effective 5/15/2014.

Filed Date: 7/3/14.

Accession Number: 20140703–5127.

Comments Due: 5 p.m. ET 7/24/14.

Docket Numbers: ER14–2362–000.

Applicants: Dominion Energy Kewaunee, Inc.

Description: Cancellation of DEKI Tariff and Tariff ID to be effective 7/4/2014.

Filed Date: 7/3/14.

Accession Number: 20140703–5096.

Comments Due: 5 p.m. ET 7/24/14.

Docket Numbers: ER14–2364–000.

Applicants: EAM Nelson Holding, LLC.

Description: EAM Nelson Holding, LLC, Reactive Power Rate Schedule to be effective 9/1/2014.

Filed Date: 7/3/14.

Accession Number: 20140703–5139.

Comments Due: 5 p.m. ET 7/24/14.

Docket Numbers: ER14–2365–000.

Applicants: Entergy Power, LLC.

Description: Entergy Power, LLC, Reactive Power Revenue Requirement to be effective 9/1/2014.

Filed Date: 7/3/14.

Accession Number: 20140703–5140.

Comments Due: 5 p.m. ET 7/24/14.

Docket Numbers: ER14–2366–000.

Applicants: PJM Interconnection, L.L.C.

Description: Service Agreement No. 3630; Queue No. Y3–036 to be effective 6/6/2014.

Filed Date: 7/7/14.

Accession Number: 20140707–5052.

Comments Due: 5 p.m. ET 7/28/14.

Docket Numbers: ER14–2367–000.

Applicants: PJM Interconnection, L.L.C.

Description: Revisions to MISO–PJM JOA Att 5 re Emergency Energy Provisions to be effective 7/8/2014.

Filed Date: 7/7/14.

Accession Number: 20140707–5077.

Comments Due: 5 p.m. ET 7/28/14.

Docket Numbers: ER14–2368–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 2014–07–07_MISO–PJM JOA Attachment 5 Amendment Jt Filing to be effective 7/8/2014.

Filed Date: 7/7/14.

Accession Number: 20140707–5122.

Comments Due: 5 p.m. ET 7/28/14.

Docket Numbers: ER14–2369–000.

Applicants: Wabash Valley Power Association, Inc.

Description: Wabash Valley Power Association, Inc. submits tariff filing per 35.13(a)(2)(iii: Amendments to Rate Schedules—Corn Belt to be effective 9/7/2014.

Filed Date: 7/7/14.

Accession Number: 20140707–5123.

Comments Due: 5 p.m. ET 7/28/14.

Docket Numbers: ER14–2370–000.

Applicants: Wabash Valley Power Association, Inc.

Description: Wabash Valley Power Association, Inc. submits tariff filing per 35.13(a)(2)(iii: Amendments to Rate Schedules—White County REMC to be effective 9/7/2014.

Filed Date: 7/7/14.

Accession Number: 20140707–5124.

Comments Due: 5 p.m. ET 7/28/14.

Docket Numbers: ER14–2371–000.

Applicants: Cottonwood Energy Company LP.

Description: Cottonwood Energy Company LP submits tariff filing per 35.15: Notice of Cancellation to be effective 8/30/2010.

Filed Date: 7/7/14.

Accession Number: 20140707–5138.

Comments Due: 5 p.m. ET 7/28/14.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 7, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–16412 Filed 7–11–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1325–002; ER12–1946–002; ER11–2080–002; ER10–1333–002; ER12–1958–002; ER10–1335–002.

Applicants: CinCap V LLC, Duke Energy Beckjord, LLC, Duke Energy Commercial Asset Management,, Duke Energy Commercial Enterprises, Inc., Duke Energy Piketon, LLC, Duke Energy Retail Sales, LLC.

Description: Triennial Market Power Analysis Update for the Southeast Region of Duke Energy Corporation MBR Sellers.

Filed Date: 6/30/14.

Accession Number: 20140630–5381.

Comments Due: 5 p.m. ET 8/29/14.

Docket Numbers: ER10–1511–005; ER10–2231–004; ER10–1714–005; ER10–2011–007.

Applicants: Louisville Gas & Electric Company, Kentucky Utilities Company, LG&E Energy Marketing Inc., PPL EnergyPlus, LLC.

Description: Triennial Market Power Update of the PPL Southeast Companies.

Filed Date: 6/30/14.

Accession Number: 20140630–5370.
Comments Due: 5 p.m. ET 8/29/14.

Docket Numbers: ER10–1556–006.
Applicants: Longview Power.
Description: Triennial Market Power Analysis of Longview Power, LLC.
Filed Date: 6/30/14.
Accession Number: 20140630–5372.
Comments Due: 5 p.m. ET 8/29/14.

Docket Numbers: ER10–1838–006; ER10–1915–006; ER13–752–005; ER10–1857–006; ER10–1899–006; ER10–1902–006; ER10–1903–006; ER10–1932–006; ER10–1935–006; ER10–1852–009; ER10–1963–006; ER14–1630–003; ER10–1967–006; ER10–1968–006; ER11–4462–010; ER10–1971–017; ER10–1973–006; ER10–1951–007; ER10–1975–015; ER10–1974–015; ER10–1986–006; ER10–1990–006; ER10–1993–006.
Applicants: Backbone Mountain Windpower LLC, Bayswater Peaking Facility, LLC, Energy Storage Holdings, LLC, FPL Energy Cape, LLC, FPL Energy Illinois Wind, LLC, FPL Energy Marcus Hook, L.P., FPL Energy MH50, L.P., FPL Energy Wyman, LLC, FPL Energy Wyman IV, LLC, Florida Power & Light Company, Jamaica Bay Peaking Facility, LLC, Manuta Creek Solar, LLC, Meyersdale Windpower LLC, Mill Run Windpower, LLC, NEPM II, LLC, NextEra Power Marketing, LLC, NextEra Energy Seabrook, LLC, NextEra Energy Services Massachusetts, LLC, North Jersey Energy Associates, A Limited Partnership, Northeast Energy Associates, A Limited Partnership, Pennsylvania Windfarms, Inc., Somerset Windpower, LLC, Waymart Wind Farm, L.P.
Description: Northeast Region Triennial Market Power Update of the NextEra Companies.
Filed Date: 6/30/14.
Accession Number: 20140630–5375.
Comments Due: 5 p.m. ET 8/29/14.

Docket Numbers: ER10–1852–008; ER10–1971–016; ER11–4462–009.
Applicants: Florida Power & Light Company.
Description: NextEra Companies' Triennial Market Power Update for the Southeast Region.
Filed Date: 6/30/14.
Accession Number: 20140630–5373.
Comments Due: 5 p.m. ET 8/29/14.

Docket Numbers: ER10–1945–003; ER10–1942–010; ER10–2042–014; ER10–1938–009; ER13–1670–003; ER10–1934–008; ER10–1893–008; ER10–1892–003; ER10–1886–003; ER10–1872–003; ER10–1871–003; ER13–1406–001; ER10–1862–008; ER10–1859–003.
Applicants: Auburndale Peaker Energy Center, LLC, Calpine Construction Finance Co., L.P., Calpine Energy Services, L.P., Calpine Power America—CA, LLC,CES Marketing IX, LLC,CES Marketing V, LLC,CES Marketing X, LLC, Columbia Energy LLC, Decatur Energy Center, LLC,MOBILE ENERGY LLC, Morgan Energy Center, LLC, Osprey Energy Center, LLC, Power Contract Financing, L.L.C., Santa Rosa Energy Center, LLC, Auburndale Peaker Energy Center, L.L.C.
Description: Notification of Change in Status of the Calpine Southeast MBR Sellers.
Filed Date: 6/30/14.
Accession Number: 20140630–5383.
Comments Due: 5 p.m. ET 8/29/14.

Docket Numbers: ER10–2585–004; ER14–1569–001; ER10–2619–004; ER10–2616–006; ER11–4400–003; ER14–833–002; ER10–2617–004; ER10–2613–004.
Applicants: Casco Bay Energy Company, LLC, Dynegy Energy Services, LLC, Dynegy Kendall Energy, LLC, Dynegy Marketing and Trade, LLC, Illinois Power Marketing Company, Ontelaunee Power Operating Company, LLC, Sithe/Independence Power Partners, L.P., Dynegy Power Marketing, Inc. & Dynegy Ma.
Description: Updated Market Power Analysis of the Dynegy Northeast MBR Sellers.
Filed Date: 6/30/14.
Accession Number: 20140630–5378.
Comments Due: 5 p.m. ET 8/29/14.

Docket Numbers: ER10–2794–016; ER10–2849–015; ER11–2028–016; ER12–1825–014; ER13–1680–002; ER11–3642–014.
Applicants: EDF Trading North America, LLC, EDF Industrial Power Services (NY), LLC, EDF Industrial Power Services (OH), LLC, EDF Industrial Power Services (CA), LLC, Tanner Street Generation, LLC, EDF Industrial Power Services (IL), LLC.
Description: Updated Market Power Analysis for the Northeast Region of EDF Trading North America, LLC, *et al.*
Filed Date: 6/30/14.
Accession Number: 20140630–5374.
Comments Due: 5 p.m. ET 8/29/14.

Docket Numbers: ER10–2848–005; ER11–1939–007; ER11–2754–007; ER12–999–005; ER12–1002–005; ER12–1005–005; ER12–1006–005; ER12–1007–006.
Applicants: AP Holdings, LLC,AP Gas & Electric (IL), LLC,AP Gas & Electric (MD), LLC,AP Gas & Electric (NJ), LLC,AP Gas & Electric (NY), LLC,AP Gas & Electric (OH), LLC,AP Gas & Electric (PA), LLC,AP Gas & Electric (TX), LLC.
Description: Updated Market Power Analysis for the Northeast Region of AP Holdings Sellers.
Filed Date: 6/30/14.
Accession Number: 20140630–5382.
Comments Due: 5 p.m. ET 8/29/14.

Docket Numbers: ER10–2985–015; ER10–3049–016; ER10–3051–016.
Applicants: Champion Energy Marketing LLC, Champion Energy Services, LLC, Champion Energy, LLC.
Description: Updated Market Power Analysis for the Northeast Region of Champion Energy Marketing LLC, *et al.*
Filed Date: 6/30/14.
Accession Number: 20140630–5379.
Comments Due: 5 p.m. ET 8/29/14.

Docket Numbers: ER11–2292–010; ER11–3942–009; ER11–2293–010; ER12–2447–008.
Applicants: Brookfield Energy Marketing Inc., Brookfield Energy Marketing LP, Brookfield Renewable Energy Marketing US, Brookfield Smoky Mountain Hydropower LLC.
Description: Updated Market Power Analysis for the Southeast Region of the Brookfield Companies.
Filed Date: 6/30/14.
Accession Number: 20140630–5388.
Comments Due: 5 p.m. ET 8/29/14.

Docket Numbers: ER11–4027–004; ER11–4028–004.
Applicants: James River Genco, LLC, Portsmouth Genco, LLC.
Description: Updated Market Power Analysis for the Northeast Region of James River Genco, LLC, *et al.*
Filed Date: 6/30/14.
Accession Number: 20140630–5376.
Comments Due: 5 p.m. ET 8/29/14.

Docket Numbers: ER12–540–006; ER12–539–006; ER11–2534–005.
Applicants: APDC, Inc., Atlantic Power Energy Services (US) LLC, Morris Cogeneration, LLC.
Description: Triennial Market Power Report for the Northeast Region of APDC, Inc., *et al.*
Filed Date: 6/30/14.
Accession Number: 20140630–5380.
Comments Due: 5 p.m. ET 8/29/14.

Docket Numbers: ER12–1725–005.
Applicants: Red Oak Power, LLC.
Description: Updated Market Power Analysis for the Northeast Region of Red Oak Power, LLC.
Filed Date: 6/30/14.
Accession Number: 20140630–5377.
Comments Due: 5 p.m. ET 8/29/14.

Docket Numbers: ER12–2068–005; ER10–2460–006; ER10–2461–006; ER12–682–007; ER10–2463–006; ER11–2201–010; ER10–2464–003; ER13–1585–003; ER13–17–004; ER12–1311–006; ER10–2466–007; ER11–4029–006.
Applicants: Blue Sky East, LLC, Canandaigua Power Partners, LLC,

Canandaigua Power Partners II, LLC, Erie Wind, LLC, Evergreen Wind Power, LLC, Evergreen Wind Power III, LLC, First Wind Energy Marketing, LLC, Longfellow Wind, LLC, Niagara Wind Power, LLC, Stetson Holdings, LLC, Stetson Wind II, LLC, Vermont Wind, LLC.

Description: Third Supplement to December 31, 2013 Market Power Update for the Northeast Region and Notice of Change in Status of Blue Sky East, LLC, *et al.*

Filed Date: 6/27/14.

Accession Number: 20140627–5227.

Comments Due: 5 p.m. ET 7/18/14.

Docket Numbers: ER13–2102–002; ER11–3620–006; ER12–1432–004; ER11–2882–007; ER12–1435–004; ER12–1431–004; ER12–1434–004.

Applicants: Lyonsdale Biomass, LLC, ReEnergy Ashland LLC, ReEnergy Black River LLC, ReEnergy Fort Fairfield LLC, ReEnergy Livermore Falls LLC, ReEnergy Sterling CT Limited Partnership, ReEnergy Stratton LLC, ReEnergy Black River Generation, LLC.

Description: Triennial Market Power Report of the ReEnergy MBR Sellers.

Filed Date: 6/30/14.

Accession Number: 20140630–5384.

Comments Due: 5 p.m. ET 8/29/14.

Docket Numbers: ER14–1653–001.

Applicants: Southwest Power Pool, Inc.

Description: Integrated Marketplace Filing Deficiency Response to be effective 3/1/2014.

Filed Date: 7/2/14.

Accession Number: 20140702–5002.

Comments Due: 5 p.m. ET 7/23/14.

Docket Numbers: ER14–2045–001.

Applicants: Duke Energy Florida, Inc., Duke Energy Progress, Inc., Duke Energy Carolinas, LLC.

Description: Amended OATT Attachment C–1 Amendment to be effective 6/1/2014.

Filed Date: 7/2/14.

Accession Number: 20140702–5026.

Comments Due: 5 p.m. ET 7/23/14.

Docket Numbers: ER14–2185–001.

Applicants: EFS Parlin Holdings, LLC.

Description: Amendment to Revision of MBR Tariff to be effective 7/2/2014.

Filed Date: 7/1/14.

Accession Number: 20140701–5216.

Comments Due: 5 p.m. ET 7/22/14.

Docket Numbers: ER14–2350–000.

Applicants: The United Illuminating Company.

Description: UI CLP Pootatuck Engineering Agreement to be effective 7/2/2014.

Filed Date: 7/2/14.

Accession Number: 20140702–5048.

Comments Due: 5 p.m. ET 7/23/14.

Docket Numbers: ER14–2351–000.

Applicants: Massachusetts Electric Company.

Description: 2014 Rate Update Filing for Massachusetts Electric Borderline Sales Agreement to be effective 8/1/2013.

Filed Date: 7/2/14.

Accession Number: 20140702–5063.

Comments Due: 5 p.m. ET 7/23/14.

Docket Numbers: ER14–2352–000.

Applicants: PJM Interconnection, L.L.C.

Description: Service Agreement No. 3884; Queue No. X4–039 to be effective 6/6/2014.

Filed Date: 7/2/14.

Accession Number: 20140702–5068.

Comments Due: 5 p.m. ET 7/23/14.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 2, 2014..

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–16377 Filed 7–11–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC14–110–000.

Applicants: Consumers Energy Company, AlphaGen Power LLC.

Description: Joint Application for Order Authorizing Acquisition and Dispostion of Jurisdictional Facilities Under Section 203 of the Federal Power Act of Consumers Energy Company, *et al.*

Filed Date: 7/1/14.

Accession Number: 20140701–5254.

Comments Due: 5 p.m. ET 7/22/14.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1093–003; ER10–1097–003.

Applicants: Delaware City Refining Company LLC.

Description: Triennial Market Power Analysis of Delaware City Refining Company LLC and PBF Power Marketing LLC.

Filed Date: 7/1/14.

Accession Number: 20140701–5256.

Comments Due: 5 p.m. ET 9/2/14.

Docket Numbers: ER11–1850–005; ER11–1847–005; ER11–1846–005; ER14–1360–001; ER11–2598–008; ER14–1359–001; ER12–1153–005; ER12–1152–005; ER13–1192–002; ER11–3623–002.

Applicants: Direct Energy Business, LLC, Direct Energy Marketing Inc., Direct Energy Services, LLC, Energetix DE, LLC, Gateway Energy Services Corporation, NYSEG Solutions, LLC, Bounce Energy NY, LLC, Bounce Energy PA, LLC, Direct Energy Business Marketing, LLC, Hess Small Business Services LLC.

Description: Northeast Region Triennial Report of the Direct Energy Sellers under ER11–1850, *et al.*

Filed Date: 7/1/14.

Accession Number: 20140701–5247.

Comments Due: 5 p.m. ET 9/2/14.

Docket Numbers: ER11–3876–010; ER10–2611–008.

Applicants: Cordova Energy Company LLC, Saranac Power Partners, L.P.

Description: Triennial Market Power Analysis Update in the Northeast Region of Cordova Energy Company LLC and Saranac Power Partners, L.P.

Filed Date: 6/30/14.

Accession Number: 20140630–5389.

Comments Due: 5 p.m. ET 8/29/14.

Docket Numbers: ER14–1775–002.

Applicants: SEP II, LLC.

Description: SEP II, LLC Market Based Rate Tariff Second Supplement to be effective 9/23/2014.

Filed Date: 7/3/14.

Accession Number: 20140703–5060.

Comments Due: 5 p.m. ET 7/24/14.

Docket Numbers: ER14–1864–001.

Applicants: Virginia Electric and Power Company

Description: Compliance Filing—Corrected .rft Tariff Record to May 2, 2014 Filing to be effective 5/3/2014.

Filed Date: 7/3/14.

Accession Number: 20140703–5000.

Comments Due: 5 p.m. ET 7/24/14.

Docket Numbers: ER14–2220–001.

Applicants: PJM Interconnection, L.L.C.

Description: Errata to Resubmit 2nd Rev Svd Agrmnts Nos. 2199, 2200, 2201,

2202 & SA No. 3873 to be effective 5/19/2014.

Filed Date: 7/3/14.

Accession Number: 20140703–5001.

Comments Due: 5 p.m. ET 7/24/14.

Docket Numbers: ER14–2353–000.

Applicants: Ohio Power Company, AEP Ohio Transmission Company, Inc., PJM Interconnection, L.L.C.

Description: AEP submits 42nd Revised Service Agreement No. 1336 to be effective 6/2/2014.

Filed Date: 7/2/14.

Accession Number: 20140702–5139.

Comments Due: 5 p.m. ET 7/23/14.

Docket Numbers: ER14–2354–000.

Applicants: Eagle Point Power Generation LLC.

Description: Revised Market-Based Rate Tariff to be effective 9/1/2014.

Filed Date: 7/2/14.

Accession Number: 20140702–5164.

Comments Due: 5 p.m. ET 7/23/14.

Docket Numbers: ER14–2355–000.

Applicants: The United Illuminating Company.

Description: UI CLP Pootatuck Engineering Agreement to be effective 7/2/2014.

Filed Date: 7/2/14.

Accession Number: 20140702–5176.

Comments Due: 5 p.m. ET 7/23/14.

Docket Numbers: ER14–2356–000.

Applicants: Duke Energy Carolinas, LLC.

Description: DEC–DEP As-Available Capacity Agreement to be effective 9/2/2014.

Filed Date: 7/3/14.

Accession Number: 20140703–5031.

Comments Due: 5 p.m. ET 7/24/14.

Docket Numbers: ER14–2357–000.

Applicants: Duke Energy Progress, Inc.

Description: As-Available Capacity Agreement Concurrence to be effective 9/2/2014.

Filed Date: 7/3/14.

Accession Number: 20140703–5032.

Comments Due: 5 p.m. ET 7/24/14.

Docket Numbers: ER14–2358–000.

Applicants: PJM Interconnection, L.L.C.

Description: Revisions to the OATT and OA due to PJM's Address Change to be effective 9/2/2014.

Filed Date: 7/3/14.

Accession Number: 20140703–5056.

Comments Due: 5 p.m. ET 7/24/14.

Docket Numbers: ER14–2359–000.

Applicants: PJM Interconnection, L.L.C.

Description: Revisions to the JOAs due to PJM's Address Change to be effective 9/2/2014.

Filed Date: 7/3/14.

Accession Number: 20140703–5057.

Comments Due: 5 p.m. ET 7/24/14.

Docket Numbers: ER14–2360–000.

Applicants: Dominion Energy Marketing, Inc.

Description: Compliance Filing—Cancel DEKI from Single MBR Tariff to be effective 7/4/2014.

Filed Date: 7/3/14.

Accession Number: 20140703–5073.

Comments Due: 5 p.m. ET 7/24/14.

Docket Numbers: ER14–2361–000.

Applicants: Sunwave Gas & Power New York, Inc.

Description: Sunwave GP NY MBR Filing to be effective 10/1/2014.

Filed Date: 7/3/14.

Accession Number: 20140703–5086.

Comments Due: 5 p.m. ET 7/24/14.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES14–45–000.

Applicants: Northern Pass Transmission LLC.

Description: Application for Authority to Issue Debt Securities of Northern Pass Transmission LLC.

Filed Date: 7/2/14.

Accession Number: 20140702–5202.

Comments Due: 5 p.m. ET 7/23/14.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 3, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–16378 Filed 7–11–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14338–001]

Commission of Public Works of the City of Spartanburg, South Carolina; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent To File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 14338–001.

c. *Date Filed:* May 27, 2014.

d. *Submitted By:* Commission of Public Works of the City of Spartanburg, South Carolina (Spartanburg Water System).

e. *Name of Project:* Blalock Hydroelectric Project.

f. *Location:* At the existing Lake Blalock Dam on the Pacolet River, in Spartanburg County, South Carolina. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Ken Tuck, Spartanburg Water System, 200 Commerce Street, P.O. Box 251, Spartanburg, South Carolina 29304; (864) 580–5642; email—*ktuck@sws-sssd.org.*

i. *FERC Contact:* Rachel McNamara at (202) 502–8340; or email at *rachel.mcnamara@ferc.gov.*

j. Spartanburg Water System filed its request to use the Traditional Licensing Process on May 27, 2013. Spartanburg Water System provided public notice of its request on May 25, 2013. In a letter dated July 7, 2014, the Director of the Division of Hydropower Licensing approved Spartanburg Water System's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402; and NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920. We are also initiating consultation with the South Carolina State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Spartanburg Water System as the Commission's non-federal representative for carrying out informal consultation pursuant to section 7 of the Endangered Species Act and section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act; and consultation pursuant to section 106 of the National Historic Preservation Act.

m. Spartanburg Water System filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). A copy is also available for inspection and reproduction at the address in paragraph h.

o. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: July 7, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–16347 Filed 7–11–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14215–001]

Commission of Public Works of the City of Spartanburg, South Carolina; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 14215–001.

c. *Date Filed:* May 27, 2014.

d. *Submitted By:* Commission of Public Works of the City of Spartanburg, South Carolina (Spartanburg Water System).

e. *Name of Project:* Fingerville Hydroelectric Project.

f. *Location:* At the existing Fingerville Dam on the North Pacolet River, in Spartanburg County, South Carolina. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Ken Tuck, Spartanburg Water System, 200 Commerce Street, P.O. Box 251, Spartanburg, South Carolina 29304; (864) 580–5642; email—*ktuck@sws-sssd.org.*

i. *FERC Contact:* Rachel McNamara at (202) 502–8340; or email at *rachel.mcnamara@ferc.gov.*

j. Spartanburg Water System filed its request to use the Traditional Licensing Process on May 27, 2013. Spartanburg Water System provided public notice of its request on May 25, 2013. In a letter dated July 7, 2014, the Director of the Division of Hydropower Licensing approved Spartanburg Water System's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402; and NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920. We are also initiating consultation with the South Carolina State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Spartanburg Water System as the Commission's non-federal representative for carrying out informal consultation pursuant to section 7 of the Endangered Species Act and section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act; and consultation pursuant to section 106 of the National Historic Preservation Act.

m. Spartanburg Water System filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). A copy is also available for inspection and reproduction at the address in paragraph h.

o. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: July 7, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–16344 Filed 7–11–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14361–001]

Commission of Public Works of the City of Spartanburg, South Carolina; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 14361–001.

c. *Date Filed:* May 27, 2014.

d. *Submitted By:* Commission of Public Works of the City of Spartanburg, South Carolina (Spartanburg Water System).

e. *Name of Project:* Bowen Hydroelectric Project.

f. *Location:* At the existing Lake Bowen Dam on the South Pacolet River, in Spartanburg County, South Carolina. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Ken Tuck, Spartanburg Water System, 200 Commerce Street, P.O. Box 251, Spartanburg, South Carolina 29304; (864) 580–5642; *email—ktuck@sws-sssd.org.*

i. *FERC Contact:* Rachel McNamara at (202) 502–8340; or email at *rachel.mcnamara@ferc.gov.*

j. Spartanburg Water System filed its request to use the Traditional Licensing Process on May 27, 2013. Spartanburg Water System provided public notice of its request on May 25, 2013. In a letter dated July 7, 2014, the Director of the

Division of Hydropower Licensing approved Spartanburg Water System's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402; and NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920. We are also initiating consultation with the South Carolina State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Spartanburg Water System as the Commission's non-federal representative for carrying out informal consultation pursuant to section 7 of the Endangered Species Act and section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act; and consultation pursuant to section 106 of the National Historic Preservation Act.

m. Spartanburg Water System filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). A copy is also available for inspection and reproduction at the address in paragraph h.

o. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: July 7, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–16348 Filed 7–11–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CD14–21–000]

Roaring Springs Ranch; Notice of Preliminary Determination of a Qualifying Conduit Hydropower Facility and Soliciting Comments and Motions To Intervene

On June 23, 2014, Roaring Springs Ranch filed a notice of intent to construct a qualifying conduit hydropower facility, pursuant to section 30 of the Federal Power Act, as amended by section 4 of the Hydropower Regulatory Efficiency Act of 2013 (HREA). The Three Mile Hydropower Project would utilize a newly constructed agricultural water distribution system at the Roaring Springs Ranch in Harney County, Oregon.

Applicant Contact: Darryl Anderson, Anderson Engineering & Surveying, Inc., 17681 Highway 395, Lakeview, OR 97630, Phone No. (541) 947–4407.

FERC Contact: Christopher Chaney, Phone No. (202) 502–6778, email: *christopher.chaney@ferc.gov.*

Qualifying Conduit Hydropower Facility Description: The proposed project would consist of: (1) A new 12-foot-wide by 12-foot-long powerhouse; (2) one proposed 10.5-kilowatt turbine/generating unit; and (3) appurtenant facilities.

A qualifying conduit hydropower facility is one that is determined or deemed to meet all of the criteria shown in the table below.

TABLE 1—CRITERIA FOR QUALIFYING CONDUIT HYDROPOWER FACILITY

Statutory provision	Description	Satisfies (Y/N)
FPA 30(a)(3)(A), as amended by HREA	The conduit the facility uses is a tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.	Y
FPA 30(a)(3)(C)(i), as amended by HREA	The facility is constructed, operated, or maintained for the generation of electric power and uses for such generation only the hydroelectric potential of a non-federally owned conduit.	Y
FPA 30(a)(3)(C)(ii), as amended by HREA	The facility has an installed capacity that does not exceed 5 megawatts	Y
FPA 30(a)(3)(C)(iii), as amended by HREA	On or before August 9, 2013, the facility is not licensed, or exempted from the licensing requirements of Part I of the FPA.	Y

Preliminary Determination: Based upon the above criteria, Commission staff preliminarily determines that the proposal satisfies the requirements for a qualifying conduit hydropower facility not required to be licensed or exempted from licensing.

Comments and Motions to Intervene: Deadline for filing comments contesting whether the facility meets the qualifying criteria is 45 days from the issuance date of this notice.

Deadline for filing motions to intervene is 30 days from the issuance date of this notice.

Anyone may submit comments or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210 and 385.214. Any motions to intervene must be received on or before the specified deadline date for the particular proceeding.

Filing and Service of Responsive Documents: All filings must (1) bear in all capital letters the ''COMMENTS CONTESTING QUALIFICATION FOR A CONDUIT HYDROPOWER FACILITY'' or ''MOTION TO INTERVENE,'' as applicable; (2) state in the heading the name of the applicant and the project number of the application to which the

filing responds; (3) state the name, address, and telephone number of the person filing; and (4) otherwise comply with the requirements of sections 385.2001 through 385.2005 of the Commission's regulations.[1] All comments contesting Commission staff's preliminary determination that the facility meets the qualifying criteria must set forth their evidentiary basis.

The Commission strongly encourages electronic filing. Please file motions to intervene and comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Locations of Notice of Intent: Copies of the notice of intent can be obtained directly from the applicant or such copies can be viewed and reproduced at the Commission in its Public Reference Room, Room 2A, 888 First Street NE., Washington, DC 20426. The filing may also be viewed on the Web at *http://www.ferc.gov/docs-filing/elibrary.asp* using the ''eLibrary'' link. Enter the docket number (e.g., CD14–21) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659.

Dated: July 7, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–16346 Filed 7–11–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CD14–22–000]

Roaring Springs Ranch; Notice of Preliminary Determination of a Qualifying Conduit Hydropower Facility and Soliciting Comments and Motions To Intervene

On June 23, 2014, Roaring Springs Ranch filed a notice of intent to construct a qualifying conduit hydropower facility, pursuant to section 30 of the Federal Power Act, as amended by section 4 of the Hydropower Regulatory Efficiency Act of 2013 (HREA). The Roaring Springs Headquarters Hydropower Project would utilize a newly constructed agricultural water distribution system at the Roaring Springs Ranch in Harney County, Oregon.

Applicant Contact: Darryl Anderson, Anderson Engineering & Surveying, Inc., 17681 Highway 395, Lakeview, OR 97630, Phone No. (541) 947–4407.

FERC Contact: Christopher Chaney, Phone No. (202) 502–6778, email: *christopher.chaney@ferc.gov.*

Qualifying Conduit Hydropower Facility Description: The proposed project would consist of: (1) A new 14-foot-wide by 17-foot-long powerhouse; (2) one proposed 37-kilowatt turbine/generating unit; and (3) appurtenant facilities.

A qualifying conduit hydropower facility is one that is determined or deemed to meet all of the criteria shown in the table below.

TABLE 1—CRITERIA FOR QUALIFYING CONDUIT HYDROPOWER FACILITY

Statutory provision	Description	Satisfies (Y/N)
FPA 30(a)(3)(A), as amended by HREA	The conduit the facility uses is a tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.	Y
FPA 30(a)(3)(C)(i), as amended by HREA	The facility is constructed, operated, or maintained for the generation of electric power and uses for such generation only the hydroelectric potential of a non-federally owned conduit.	Y
FPA 30(a)(3)(C)(ii), as amended by HREA	The facility has an installed capacity that does not exceed 5 megawatts	Y
FPA 30(a)(3)(C)(iii), as amended by HREA	On or before August 9, 2013, the facility is not licensed, or exempted from the licensing requirements of Part I of the FPA.	Y

Preliminary Determination: Based upon the above criteria, Commission staff preliminarily determines that the proposal satisfies the requirements for a qualifying conduit hydropower facility not required to be licensed or exempted from licensing.

Comments and Motions to Intervene: Deadline for filing comments contesting whether the facility meets the qualifying criteria is 45 days from the issuance date of this notice.

Deadline for filing motions to intervene is 30 days from the issuance date of this notice.

Anyone may submit comments or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210 and 385.214. Any motions to intervene must be received on or before the specified deadline date for the particular proceeding.

Filing and Service of Responsive Documents: All filings must (1) bear in all capital letters the ''COMMENTS CONTESTING QUALIFICATION FOR A CONDUIT HYDROPOWER FACILITY'' or ''MOTION TO INTERVENE,'' as applicable; (2) state in the heading the name of the applicant and the project number of the application to which the filing responds; (3) state the name, address, and telephone number of the person filing; and (4) otherwise comply with the requirements of sections 385.2001 through 385.2005 of the Commission's regulations.[1] All

[1] 18 CFR 385.2001–2005 (2013).

[1] 18 CFR 385.2001–2005 (2013).

comments contesting Commission staff's preliminary determination that the facility meets the qualifying criteria must set forth their evidentiary basis.

The Commission strongly encourages electronic filing. Please file motions to intervene and comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Locations of Notice of Intent: Copies of the notice of intent can be obtained directly from the applicant or such copies can be viewed and reproduced at the Commission in its Public Reference Room, Room 2A, 888 First Street NE., Washington, DC 20426. The filing may also be viewed on the web at *http://www.ferc.gov/docs-filing/elibrary.asp* using the ''eLibrary'' link. Enter the docket number (e.g., CD14–22) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659.

Dated: July 7, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–16341 Filed 7–11–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Exempt:

Docket No.	File date	Presenter or Requester
1. CP13–113–000	6–16–14	Hon. John P. Sarbanes.
2. CP13–499–000	6–17–04	Hon. Chris Gibson.
3. CP13–492–000	6–17–14	Commission Staff.[1]
4. P–349–173	6–19–14	Commission Staff.[2]
5. CP12–509–000 CP12–29–000	6–19–14	Commission Staff.[3]
6. CP12–509–000	6–25–14	Members of Congress.[4]
7. CP12–509–000	6–25–14	Hon. John Cornyn.
8. ER14–1409–000	6–25–14	Hon. Joseph P. Kennedy III.
9. CP14–123–000	7–2–14	Commission Staff.[5]
10. CP13–483–000 CP13–490–000	7–3–14	Commission Staff.[6]

[1] Notes from the June 10–11, 2014 Endangered Species Act consultation meetings in Portland, Oregon.

[2] Summary of May 27, 2014 teleconference/Web meeting with Alabama Power Company.

[3] Summary of June 3, 2014 meeting with Freeport LNG.

[4] Randy K. Weber, Gene Green, Michael McCaul, Sam Johnson, Kay Granger, Filemon Vela, Steve Stockman, Ralph Hall, Blake Farenthold, Sheila Jackson Lee, Marc A. Veasey, Joe Barton, Jon Carter, Roger Williams, Al Green, Jeb Hensarling, Kenny Marchant, Ted Poe, Pete Olson, Bill Flores, Ruben Hinojosa, Pete Gallego, Kevin Brady, Mike Conaway, John Culberson, Henry Cuellar

[5] Email dated July 1, 2014 from Crystal Hoyt, Reality Specialist for BLM Rock Spring Field Office.

[6] Notes from July 2, 2014 bi-weekly telephone conference with federal cooperating agencies regarding production of environmental impact statement.

Dated: July 7, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–16345 Filed 7–11–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP14–506–000]

Saltville Gas Storage Company, LLC; Notice of Request Under Blanket Authorization

Take notice that on June 25, 2014, Saltville Gas Storage Company, LLC (Saltville), 5400 Westheimer Court, Houston, Texas 77056–5310, filed in Docket No. CP14–506–000, a prior notice request pursuant to sections 157.205 and 157.216 of the Commission's regulations under the Natural Gas Act (NGA). Saltville seeks authorization to abandon one injection/withdrawal well and related facilities in its Early Grove natural gas storage facility, located in Washington County, Virginia. Saltville proposes to perform these activities under its blanket certificate issued in Docket No. CP04–15–000 [107 FERC ¶ 61,267 (2004)], all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The filing may be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding this application should be directed to Lisa A. Connolly, General Manager, Rates and Certificates, Saltville Gas Storage Company, LLC, P.O. Box 1642, Houston, Texas, 77251–1642, or by calling (713) 627–4102 (telephone) or (713) 627–5947 (fax) *laconnolly@spectraenergy.com.*

Any person or the Commission's Staff may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to Section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*www.ferc.gov*) under the ''e-Filing'' link. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Dated: July 7, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–16342 Filed 7–11–14; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–OAR–2010–1016; FRL–9913–65–OAR]

Proposed Information Collection Request; Comment Request; The National Refrigerant Recycling and Emissions Reduction Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR) for ''The National Refrigerant Recycling and Emissions Reduction Program'' (EPA ICR No. 1626.12, OMB Control No. 2060–0256) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through November 30, 2014. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before September 12, 2014.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2010–1016 online using www.regulations.gov (our preferred method), by email to *a-and-r-docket@epa.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Robert Burchard, Stratospheric Protection Division, Office of Atmospheric Programs (6205J), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington,

DC 20460; telephone number (202) 343–9126; fax number: (202) 343–2338; email address: *burchard.robert@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at www.regulations.gov or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: EPA developed regulations under the Clean Air Act Amendments of 1990 (CAA) regarding the use and disposal of class I and class II ozone-depleting substances used as refrigerants during the service, maintenance, repair, or disposal of refrigeration and air-conditioning equipment. Section 608(c) of the CAA states that it is unlawful for any person in the course of maintaining, servicing, repairing, or disposing of refrigeration or air-conditioning equipment to knowingly vent or otherwise knowingly release or dispose of class I or class II substance used as a refrigerant in the equipment in a manner which permits the substance to enter the environment.

In 1993, EPA promulgated regulations under section 608 of the CAA for the recycling of ozone-depleting refrigerants recovered during servicing and disposal of air-conditioning and refrigeration equipment. These regulations were published on May 14, 1993 (58 FR 28660) and codified in *40 CFR part 82,* subpart F (§ 82.150 *et seq.*).

The regulations require persons servicing refrigeration and air-conditioning equipment to observe service practices that reduce emissions of ozone depleting refrigerants. The regulations also establish certification programs for technicians, recycling and recovery equipment, and off-site refrigerant reclaimers. In addition, EPA requires that ozone depleting refrigerants contained ''in bulk'' in appliances be removed prior to disposal of the appliances, and that all refrigeration and air-conditioning equipment (except for small appliances and room air conditioners) be provided with a servicing aperture that facilitates recovery of the refrigerant. Moreover, the Agency requires that substantial refrigerant leaks in equipment be repaired when discovered. These regulations significantly reduce emissions of ozone depleting refrigerants and therefore aid efforts to minimize damage to the ozone layer.

To facilitate compliance with section 608, EPA requires reporting and record keeping for technicians; technician certification programs; equipment testing organizations; refrigerant wholesalers and purchasers; refrigerant reclaimers; refrigeration and air-conditioning equipment owners; and other establishments that perform refrigerant removal, service, or disposal. The recordkeeping requirements and submission of reports to EPA occur on an annual, biannual, one-time or occasional basis depending on the nature of the reporting entity and the length of time the entity has been in service. Specific reporting and recordkeeping requirements were published in 58 FR 28660 and codified under *40 CFR part 82,* subpart F (*i.e.,*§ 82.166). These reporting and recordkeeping requirements help EPA evaluate the effectiveness of refrigerant regulations and reduce emissions of ozone-depleting substances.

Form Numbers: None

Respondents/affected entities: Entities potentially affected are those that recover, recycle, reclaim, sell or distribute in interstate commerce ozone-depleting refrigerants that contain chlorofluorocarbons (CFCs) or hydrochlorofluorocarbons (HCFCs); those that service, maintain, repair, or dispose of appliances containing CFC or HCFC refrigerants; and those that own or operate appliances containing more than 50 pounds of CFC or HCFC refrigerants.

Respondent's obligation to respond: Mandatory

Estimated number of respondents: 883,680.

Frequency of response: Primarily annually, with the exception of technician testing organizations that are required to report biannually.

Total estimated burden: 320,537

T*otal estimated cost:* $14,202,991

Changes in Estimates: There is a slight increase in the average annual burden hours currently identified in the OMB Inventory of Approved ICR Burdens.

Dated: June 23, 2014.

Drusilla Hufford,

Director, Stratospheric Protection Division.

[FR Doc. 2014–16479 Filed 7–11–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9913–67–OEI]

Cross-Media Electronic Reporting: Authorized Program Revision Approval, State of Colorado

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the Environmental Protection Agency (EPA's) approval of the State of Colorado's request to revise its National Primary Drinking Water Regulations Implementation EPA-authorized program to allow electronic reporting.

DATES: EPA's approval is effective August 13, 2014 for the State of Colorado's National Primary Drinking Water Regulations Implementation program, if no timely request for a public hearing is received and accepted by the Agency.

FOR FURTHER INFORMATION CONTACT: Karen Seeh, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, (202) 566–1175, *seeh.karen@epa.gov.*

SUPPLEMENTARY INFORMATION: On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as part 3 of title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic

documents are as legally dependable as their paper counterparts. Subpart D of CROMERR requires that state, tribal or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those programs and obtain EPA approval. Subpart D provides standards for such approvals based on consideration of the electronic document receiving systems that the state, tribe, or local government will use to implement the electronic reporting. Additionally, § 3.1000(b) through (e) of 40 CFR part 3, subpart D provides special procedures for program revisions and modifications to allow electronic reporting, to be used at the option of the state, tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the subpart D procedures must show that the state, tribe or local government has sufficient legal authority to implement the electronic reporting components of the programs covered by the application and will use electronic document receiving systems that meet the applicable subpart D requirements.

On January 23, 2014, the Colorado Department of Public Health and Environment (CDPHE) submitted an application titled ''Colorado Drinking Water System'' for revision of its EPA-authorized Part 142 program under title 40 CFR. EPA reviewed CDPHE's request to revise its EPA-authorized program and, based on this review, EPA determined that the application met the standards for approval of authorized program revision set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this notice of EPA's decision to approve Colorado's request to revise its Part 142—National Primary Drinking Water Regulations Implementation program to allow electronic reporting under 40 CFR part 141 is being published in the **Federal Register**.

CDPHE was notified of EPA's determination to approve its application with respect to the authorized program listed above.

Also, in today's notice, EPA is informing interested persons that they may request a public hearing on EPA's action to approve the State of Colorado's request to revise its authorized public water system program under 40 CFR part 142, in accordance with 40 CFR 3.1000(f). Requests for a hearing must be submitted to EPA within 30 days of publication of today's **Federal Register** notice. Such requests should include the following information:

(1) The name, address and telephone number of the individual, organization or other entity requesting a hearing;

(2) A brief statement of the requesting person's interest in EPA's determination, a brief explanation as to why EPA should hold a hearing, and any other information that the requesting person wants EPA to consider when determining whether to grant the request;

(3) The signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

In the event a hearing is requested and granted, EPA will provide notice of the hearing in the **Federal Register** not less than 15 days prior to the scheduled hearing date. Frivolous or insubstantial requests for hearing may be denied by EPA. Following such a public hearing, EPA will review the record of the hearing and issue an order either affirming today's determination or rescinding such determination. If no timely request for a hearing is received and granted, EPA's approval of the State of Colorado's request to revise its part 142—National Primary Drinking Water Regulations Implementation program to allow electronic reporting will become effective 30 days after today's notice is published, pursuant to CROMERR section 3.1000(f)(4).

Dated: July 2, 2014.

Matthew Leopard,

Acting Director, Office of Information Collection.

[FR Doc. 2014–16480 Filed 7–11–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9913–66–OEI]

Cross-Media Electronic Reporting: Authorized Program Revision Approval, Commonwealth of Kentucky

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the Environmental Protection Agency (EPA's) approval of the Commonwealth of Kentucky's request to revise/modify certain of its EPA-authorized programs to allow electronic reporting.

DATES: EPA's approval is effective August 13, 2014 for the Commonwealth of Kentucky's National Primary Drinking Water Regulations Implementation program, if no timely request for a public hearing is received and accepted by the Agency, and on July 14, 2014 for the Commonwealth of Kentucky's other authorized programs addressed by this notice.

FOR FURTHER INFORMATION CONTACT: Karen Seeh, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, (202) 566–1175, *seeh.karen@epa.gov.*

SUPPLEMENTARY INFORMATION: On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as part 3 of title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart D of CROMERR requires that states, tribes or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs apply to EPA for revisions or modifications of those programs and obtain EPA approval. Subpart D provides standards for such approvals based on consideration of the electronic document receiving systems that the state, tribe, or local government will use to implement the electronic reporting. Additionally, § 3.1000(b) through (e) of 40 CFR part 3, subpart D provides special procedures for program revisions and modifications to allow electronic reporting, to be used at the option of the state, tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the subpart D procedures must show that the state, tribe or local government has sufficient legal authority to implement the electronic reporting components of the programs covered by the application and will use electronic document receiving systems that meet the applicable subpart D requirements.

On January 14, 2010, the Kentucky Department for Environmental Protection (KY DEP) submitted an application under 40 CFR part 3, subpart D, for revisions/modifications of its EPA-authorized programs listed below to allow specified electronic reporting. The application, titled ''Electronic Reporting System,'' was subsequently amended on December 20, 2010, and again on May 17, 2012. Based on EPA's review of KY DEP's application, EPA determined that it met the 40 CFR part 3, subpart D standards

for approval of authorized program revisions/modifications. In accordance with 40 CFR 3.1000(d), EPA is publishing this notice of the Agency's approval of Kentucky's request to allow electronic reporting as specified in its application by revising/modifying its EPA-authorized programs under the following parts of title 40 of the CFR:

Part 52—Approval and Promulgation of Implementation Plans,

Part 60—Standards of Performance for New Stationary Sources,

Part 61—National Emission Standards for Hazardous Air Pollutants,

Part 63—National Emission Standards for Hazardous Air Pollutants for Source Categories,

Part 65—Consolidated Federal Air Rule,

Part 68—Chemical Accident Prevention Provisions,

Part 70—State Operating Permit Programs,

Part 71—Federal Operating Permit Programs,

Part 72—Permits Regulation,

Part 74—Sulfur Dioxide OPT–INS,

Part 75—Continuous Emission Monitoring,

Part 79—Registration of Fuels and Fuel Additives,

Part 80—Regulation of Fuels and Fuel Additives,

Part 82—Protection of Stratospheric Ozone,

Part 86—Control of Emissions from New and IN–USE Highway Vehicles and Engines,

Part 89—Control of Emissions from New and IN–USE Nonroad Compression-Ignition Engines,

Part 90—Control of Emissions from Nonroad Spark-Ignition Engines at or Below 19 Kilowatts,

Part 91—Control of Emissions from Marine Spark-Ignition Engines,

Part 92—Control of Air Pollution from Locomotives and Locomotive Engines,

Part 94—Control of Emissions from Marine Compression-Ignition Engines,

Part 123—National Pollutant Discharge Elimination System (NPDES) State Program Requirements,

Part 142—National Primary Drinking Water Regulations,

Part 147—State Underground Injection Control Programs,

Part 272—Approved State Hazardous Waste Management Programs,

Part 281—Approval of State Underground Storage Tank Programs,

Part 403—General Pretreatment Regulations for Existing and New Sources of Pollution, and

Part 503—Standards for the Use or Disposal of Sewage Sludge.

KY DEP was notified of EPA's determination to approve its application with respect to the authorized programs listed above.

Also, in today's notice, EPA is informing interested persons that they may request a public hearing on EPA's action to approve the Commonwealth of Kentucky's request to revise its authorized public water system program under 40 CFR part 142, in accordance with 40 CFR 3.1000(f). Requests for a hearing must be submitted to EPA within 30 days of publication of today's **Federal Register** notice. Such requests should include the following information:

(1) The name, address and telephone number of the individual, organization or other entity requesting a hearing;

(2) A brief statement of the requesting person's interest in EPA's determination, a brief explanation as to why EPA should hold a hearing, and any other information that the requesting person wants EPA to consider when determining whether to grant the request;

(3) The signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

In the event a hearing is requested and granted, EPA will provide notice of the hearing in the **Federal Register** not less than 15 days prior to the scheduled hearing date. Frivolous or insubstantial requests for a hearing may be denied by EPA. Following such a public hearing, EPA will review the record of the hearing and issue an order either affirming today's determination or rescinding such determination. If no timely request for a hearing is received and granted, EPA's approval of the Commonwealth of Kentucky's request to revise its part 142 National Primary Drinking Water Regulations Implementation program to allow electronic reporting will become effective 30 days after today's notice is published, pursuant to CROMERR section 3.1000(f)(4).

Dated: July 2, 2014.

Matthew Leopard,

Acting Director, Office of Information Collection.

[FR Doc. 2014–16410 Filed 7–11–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before September 12, 2014. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Numbers: 3060–0386.

Title: Special Temporary Authorization (STA) Requests;

Notifications and Informal Filings; Sections 1.5, 73.1615, 73.1635, 73.1740 and 73.3598; CDBS Informal Forms; Section 74.788; Low Power Television, TV Translator and Class A Television Digital Transition Notifications; FCC Form 337.

Form Numbers: FCC Form 337.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit entities; Not for profit institutions; State, local or Tribal government.

Number of Respondents/Responses: 6,509 respondents; 6,509 responses.

Estimated Hours per Response: 0.5–4 hours.

Frequency of Response: On occasion reporting requirement; One time reporting requirement.

Total Annual Burden: 5,325 hours.

Total Annual Cost: $2,126,510.

Obligation To Respond: Required to obtain benefits. The statutory authority for this information collection is contained in sections 1, 4(i) and (j), 7, 154(i), 301, 302, 303, 307, 308, 309, 312, 316, 318, 319, 324, 325, 336 and 337 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Act Assessment: No impact(s).

Needs and Uses: The FCC Form 337, Application for Extension of Time to Construct a Digital Television Broadcast Station, is used by all low power television, TV translator and Class A television digital permittees to apply for extension of time within which to construct their digital facility. This form must be filed at least sixty, but not more than ninety, days prior to the applicable construction deadline. Applicants who file this form based on financial hardships must retain documentation fully detailing and supporting their financial representations as well as any steps taken to overcome the circumstances preventing construction.

Federal Communications Commission.

Sheryl D. Todd,

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

[FR Doc. 2014–16271 Filed 7–11–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communication Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before August 13, 2014. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov*; and to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov*. Include in the comments the OMB control number as shown in the ''Supplementary Information'' section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0508.

Title: Parts 1 and 22 Reporting and Recordkeeping Requirements.

Form No.: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit entities, Individuals or households and State, local or Tribal Government.

Number of Respondents and Responses: 16,013 respondents and 16,013 responses.

Estimated Time per Response: 15 minutes–10 hours.

Frequency of Response: Recordkeeping requirement; On occasion, quarterly and semi-annually reporting requirements.

Total Annual Burden: 5,794 hours.

Total Annual Cost: $19,816,500.

Privacy Act Impact Assessment: Yes.

Needs and Uses: Part 22 contains the technical and legal requirements for radio stations operating in the Public Mobile Services. The information collected is used to determine on a case-by-case basis, whether or not to grant licenses authorizing construction and operation of wireless telecommunications facilities to common carriers. Further, this information is used to develop statistics about the demand for various wireless licenses and/or the licensing process itself, and occasionally for rule enforcement purposes.

Federal Communications Commission.

Sheryl D. Todd,

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

[FR Doc. 2014–16272 Filed 7–11–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before September 12, 2014. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1070.

Title: Allocation and Service Rules for the 71–76 GHz, 81–86 GHz, and 92–95 GHz Bands.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; not-for-profit institutions; and State, local, or Tribal Government.

Number of Respondents: 504 respondents; 3,000 responses.

Estimated Time per Response: 1.5 to 9 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement, and third-party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151, 154(i), 303(f) and (r), 309, 316, and 332 of the Communications Act of 1934, as amended.

Total Annual Burden: 9,000 hours.

Total Annual Cost: $910,000.

Privacy Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality. The Commission has not granted assurances of confidentially to those parties submitting the information. In those cases where a respondent believes information requires confidentiality, the respondent can request confidential treatment and the Commission will afford such confidentiality for 20 days, after which the information will be available to the public.

Needs and Uses: The Commission is seeking an extension of this information collection in order to obtain the full three year approval from OMB. There are no program changes to the reporting, recordkeeping and/or third-party disclosure requirements but we are revising estimates based on experience and the possible addition of a fourth database manager. The recordkeeping, reporting, and third party disclosure requirements will be used by the Commission to verify licensee compliance with the Commission rules and regulations, and to ensure that licensees continue to fulfill their statutory responsibilities in accordance with the Communications Act of 1934. The Commission's rules promote the private sector development and use of 71–76 GHz, 81–86 GHz, and 92–95 GHz bands (70/80/90 GHz bands). Such information has been used in the past and will continue to be used to minimize interference, verify that applicants are legally and technically qualified to hold license, and to determine compliance with Commission rules.

Federal Communications Commission.

Sheryl D. Todd,

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

[FR Doc. 2014–16273 Filed 7–11–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of the Termination of the Receivership of 10390, First Choice Bank, Geneva, IL

Notice is hereby given that the Federal Deposit Insurance Corporation (''FDIC'') as Receiver for First Choice Bank, Geneva, IL (''the Receiver'') intends to terminate its receivership for said institution. The FDIC was appointed receiver of First Choice Bank on August 19, 2011. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to:

Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 32.1, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated: July 9, 2014.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2014–16376 Filed 7–11–14; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission

DATE AND TIME: Thursday July 10, 2014, 15 minutes after the conclusion of the open meeting.

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting will be closed to the public.

Federal Register Notice of Previous Announcement—79 FR 38537

CHANGE IN THE MEETING: This meeting will begin at 10:00 a.m. rather than 15

minutes after the conclusion of the open meeting.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shelley E. Garr,

Deputy Secretary of the Commission.

[FR Doc. 2014–16514 Filed 7–10–14; 11:15 am]

BILLING CODE 6715–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

AGENCY: Federal Election Commission.

Federal Register Citation of Previous Announcement—79 FR 38537 (July 8, 2014)

DATE AND TIME: Thursday, July 10, 2014 At 10:00 a.m..

PLACE: 999 E Street NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

CHANGES IN THE MEETING: The meeting has been canceled.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Shawn Woodhead Werth, Secretary and Clerk, at (202) 694–1040, at least 72 hours prior to the meeting date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shawn Woodhead Werth,

Secretary and Clerk of the Commission.

[FR Doc. 2014–16525 Filed 7–10–14; 11:15 am]

BILLING CODE 6715–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

The Commission gives notice that the following applicants have filed an application for an Ocean Transportation Intermediary (OTI) license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF) pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. 40101). Notice is also given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a licensee.

Interested persons may contact the Office of Ocean Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at (202) 523–5843 or by email at *OTI@fmc.gov.*

AG International Cargo Corp (NVO & OFF), 5055 NW 74 Ave, Miami, FL 33166. Officer: Maria C. Reyes, President (QI), Maily C. Reyes, Vice President, Application Type: New NVO and OFF License.

Agunsa Logistics & Distribution (Los Angeles), Inc., 8200 NW 41st Street, Ste 305, Miami, FL 33166. Officer: Eduardo Cabello, CEO (QI), Application Type: Name Change to AGUNSA USA, INC.

Baggio USA, INC. (NVO & OFF), 150 SC 2nd Avenue, Miami, FL 33131. Officers: Marco Maraschin, Assistant Secretary (QI), Paolo M. Baggio, President, Application Type: New NVO and OFF License.

Carex Shipping, LLC dba International Shipping Services, LLC and Accord Overseas (NVO), 3651 Lindell Road, D398, Las Vegas, NV 89103, Officers: Michael Sekirin, President (QI). Application Type: Add Trade Name Accord Overseas.

Caribtrans Logistics, LLC dba Caribtrans dba Sola Ocean Transport dba ABC International (NVO & OFF), 5 East 11th Street, Riviera Beach, FL 33404, Officers: William Munoz, Vice President (QI), Richard Murrell, President. Application Type: QI Change.

Combi Maritime Corporation (NVO), 709 Hindry Avenue, Inglewood, CA 90301, Officers: Andrew Schadegg, President (QI), Mark A. DiBlasi, Chairman. Application Type: QI Change.

qHub Logistics Corporation (NVO & OFF), 8801 Fallbrook Drive, Houston, TX 77064, Officers: John Hsi, Vice President (QI), James J. Huang, CEO. Application Type: QI Change.

The Camelot Company dba Purple Star Line (NVO & OFF), 9865 West Leland Avenue, Schiller Park, IL 60176, Officers: Thomas C. Case, President (QI), Sharon L. Case, Secretary. Application Type: QI Change.

Unitrans International Corporation (OFF), 709 Hindry Avenue, Inglewood, CA 90301, Officers: Andrew Schadegg, President, Mark A. DiBlasi, Chairman, Application Type: QI Change.

By the Commission.

Dated: July 8, 2014.

Karen V. Gregory,

Secretary.

[FR Doc. 2014–16394 Filed 7–11–14; 8:45 am]

BILLING CODE

GENERAL SERVICES ADMINISTRATION

[Notice–WW1–2014–03; Docket No. 2014–0003; Sequence No. 3]

World War One Centennial Commission; Notification of Upcoming Public Advisory Meeting

AGENCY: World War One Centennial Commission, GSA.

ACTION: Meeting Notice.

SUMMARY: Notice of this meeting is being provided according to the requirements of the Federal Advisory Committee Act, 5 U.S.C. App. 10(2). This notice provides the schedule and agenda for the July 27, 2014 meeting of the World War One Centennial Commission (the Commission). The meeting is open to the public.

DATES: *Effective:* July 14, 2014.

Meeting Date and Location: The meeting will be held on Sunday, July 27, 2014 starting at 8:30 a.m. Central Daylight Time (CDT), and ending no later than 10:30 a.m. Central Daylight Time (CDT). The meeting will be held at the National World War 1 Museum at Liberty Memorial, 100 W. 26th Street, Kansas City, MO 64108.

The meeting will also be made available telephonically. Persons wishing to listen to the proceedings may dial 712–432–1001 and enter access code 474845614#. Note this is not a toll-free number.

Matters To Be Considered

Agenda for July 27, 2014 Meeting

• Introductions and plans for today's meeting—Designated Federal Official (DFO).

• Welcome to Commissioner Seefried—DFO.

* Old Business:

Education Report—Commissioner O'Connell.

Program Report—Commissioner Fountain.

International Report—Commissioner Hester.

State Report—Commissioner Moe.

Fund Raising Report—Commissioner Valenzuela.

* New Business:

Election of Chairperson and Vice Chairperson—DFO. 30-minute public comment period for individuals pre-registered per instructions below. Each individual will be able to speak for no more than 5 minutes. Other business as may appropriately be brought by the Commissioners.

* Closing comments—Chairman.

Procedures for Public Participation

Contact Daniel S. Dayton at 202–380–0725 to register to comment during the meeting's 30-minute public comment period. Registered speakers/organizations will be allowed 5 minutes and will need to provide written copies of their presentations. Requests to comment at the meeting must be received by 5:00 p.m. Eastern Daylight Time, July 23, 2014. Written comments may be provided to Mr. Dayton at *daniel.dayton@worldwar1centennial.org* until 5:00 p.m. Eastern Daylight Time, July 23, 2014.

FOR FURTHER INFORMATION CONTACT: Daniel S. Dayton, Designated Federal Officer, c/o The Foundation for the Commemoration of the World Wars, 701 Pennsylvania Avenue NW., #123, Washington, DC 20004–2608, 202–380–0725 (note: this is not a toll-free number).

Written Comments may be submitted to the Commission and will be made part of the permanent record of the Commission. Comments must be received by 5:00 p.m. Eastern Daylight Time (EDT), July 23, 2014 and may be addressed to Mr. Dayton at *daniel.dayton@worldwar1centennial.org.*

SUPPLEMENTARY INFORMATION:

Background

The World War One Centennial Commission was established by Public Law 112–272, as a commission to ensure a suitable observance of the centennial of World War 1, to provide for the designation of memorials to the service of members of the United States Armed Forces in World War 1, and for other purpose. Under this authority, the Committee will plan, develop, and execute programs, projects, and activities to commemorate the centennial of World War 1, encourage private organizations and State and local governments to organize and participate in activities commemorating the centennial of World War 1, facilitate and coordinate activities throughout the States relating to the centennial of World War 1, serve as a clearinghouse for the collection and dissemination of information about events and plans for the centennial of World War 1, and develop recommendations for Congress and the President for commemorating the centennial of World War 1.

Dated: July 7, 2014.

Daniel Dayton,

Designated Federal Officer, World War 1 Commission.

[FR Doc. 2014–16323 Filed 7–11–14; 8:45 am]

BILLING CODE 6820–95–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0920]

Agency Information Collection Activities; Proposed Collection; Comment Request; Health and Diet Survey, as Used by the Food and Drug Administration

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice invites comments on the Health and Diet Survey as used by FDA to gauge and to track consumer attitudes, awareness, knowledge, and behavior regarding various topics related to health, nutrition, physical activity, and product labeling.

DATES: Submit either electronic or written comments on the collection of information by September 12, 2014.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, we are publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, we invite comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Health and Diet Survey as Used by the Food and Drug Administration (OMB Control Number 0910–0545—Revision)

We are seeking OMB approval to revise the Health and Diet Survey, which is a voluntary consumer survey intended to gauge and to track consumer attitudes, awareness, knowledge, and behavior regarding various topics related to health, nutrition, physical activity, and product labeling. Currently this collection is approved as a traditional collection, however, the Agency wishes to employ future collections under the generic collection process. The authority for FDA to collect the information derives from FDA's Commissioner of Food and Drugs authority provided in section 903(d)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 393(d)(2)).

We will use the Health and Diet Survey findings to test and refine our ideas, but will generally conduct further research before making important decisions such as adopting new policies and allocating or redirecting significant resources to support these policies.

This survey has been repeated approximately every 3 to 5 years over the course of the past 3 decades for the purpose of tracking changes and trends in public opinions and consumer behavior, with some new questions added or omitted or partially modified

in each iteration in response to emerging and current events or issues. In the next 3 years, we plan to field the survey 2 to 3 times. We will use the information from the Health and Diet Survey to evaluate and develop strategies and programs to encourage and help consumers adopt healthy diets and lifestyles. The information will also help FDA evaluate and track consumer awareness and behavior as outcome measures of their achievement in improving public health.

Description of Respondents: The respondents are adults, age 18 and older, drawn from the 50 States and the District of Columbia. Participation will be voluntary.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Cognitive interview screener	100	1	100	0.083 (5 minutes)	8
Cognitive interview	18	1	18	1	18
Pretest screener	2,000	1	2,000	0.033 (2 minutes)	66
Pretest	200	1	200	0.25 (15 minutes)	50
Survey screener	30,000	1	30,000	0.033 (2 minutes)	990
Survey	3,000	1	3,000	0.25 (15 minutes)	750
Total					1,882

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

We base our estimate of the number of respondents and the average burden per response on our experience with previous Health and Diet Surveys. We will use a cognitive interview screener with 100 individuals to recruit prospective interview participants. We estimate that it will take a screener respondent approximately 5 minutes (0.083 hours) to complete the cognitive interview screener, for a total of 8 hours, rounded down from 8.3 hours. We will conduct cognitive interviews with 18 participants. We estimate that it will take a participant approximately 1 hour to complete the interview, for a total of 18 hours. Prior to the administration of the Health and Diet Survey, the Agency plans to conduct a pretest to identify and resolve potential survey administration problems. We will use a pretest screener with 2,000 individuals; we estimate that it will take a respondent approximately 2 minutes (0.033 hours) to complete the pretest screener, for a total of 66 hours. The pretest will be conducted with 200 participants; we estimate that it will take a participant 15 minutes (0.25 hours) to complete the pretest, for a total of 50 hours. We will use a survey screener to select an eligible adult respondent in each household reached by landline telephone numbers to participate in the survey. A total of 30,000 individuals in the 50 states and the District of Columbia will be screened by telephone. We estimate that it will take a respondent 2 minutes (0.033 hours) to complete the screening, for a total of 990 hours. We estimate that 3,000 eligible adults will participate in the survey, each taking 15 minutes (0.25 hours), for a total of 750 hours. Thus, the total estimated burden is 1,882 hours.

We are requesting this burden for unplanned surveys so as not to restrict our ability to gather information on consumer attitudes, awareness, knowledge, and behavior regarding various topics related to health, nutrition, physical activity, and product labeling. This ability will help the Agency identify and respond to emerging issues in a more timely manner.

Dated: July 8, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–16384 Filed 7–11–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0001]

Joint Meeting of the Bone, Reproductive and Urologic Drugs Advisory Committee and the Drug Safety and Risk Management Advisory Committee

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 Committees: Bone, Reproductive and Urologic Drugs Advisory Committee and the Drug Safety and Risk Management Advisory Committee.

General Function of the Committees: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 17, 2014, from 8 a.m. to 5 p.m.

Location: College Park Marriott Hotel and Conference Center, 3501 University Blvd., Hyattsville, MD 20783. The hotel's telephone number is 301–985–7300.

Contact Person: Kalyani Bhatt, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8533, *BRUDAC@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: The committees will discuss the appropriate indicated population for testosterone replacement therapy and the potential for adverse cardiovascular outcomes associated with this use.

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 September 3, 2014. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before August 25, 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 August 26, 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 Kalyani Bhatt 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: July 8, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–16358 Filed 7–11–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0001]

Dermatologic and Ophthalmic Drugs Advisory Committee 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: Dermatologic and Ophthalmic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on October 20, 2014, from 8 a.m. to 5 p.m.

Location: FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/default.htm;* under the heading ''Resources for You,'' click on ''Public Meetings at the FDA White Oak Campus.'' Please note that visitors to the White Oak Campus must enter through Building 1.

Contact Person: Moon Hee V. Choi, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2147, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8533, *DODAC@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: The committee will discuss biologics license application (BLA) 125504, secukinumab, a human monoclonal antibody, submitted by Novartis, proposed for the treatment of moderate to severe plaque psoriasis in adult patients who are candidates for systemic therapy or phototherapy.

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 October 3, 2014. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before September 25, 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 September 26, 2014.

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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 Moon Hee V. Choi 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: July 8, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–16359 Filed 7–11–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Clarifications Regarding the Ryan White HIV/AIDS Program and Reconciliation of Advanced Premium Tax Credits Under the Affordable Care Act; Request for Comment

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Request for Public Comment on Reconciliation of Advanced Premium Tax Credits (APTC or premium tax credit) under the Affordable Care Act and the Ryan White HIV/AIDS Program (RWHAP).

SUMMARY: HRSA's HIV/AIDS Bureau (HAB) recently released HAB Policy Clarification Notice 14–01, which requires RWHAP grantees and subgrantees that use program funds to purchase health insurance in the Marketplace to establish appropriate mechanisms to vigorously pursue any excess premium tax credit a client receives from the Internal Revenue Service (IRS) upon submission of the client's tax return. HRSA now seeks public comment on the operational feasibility for RWHAP grantees and subgrantees to implement a complementary policy that would allow RWHAP grantees and subgrantees to use RWHAP funds to pay the IRS any additional income tax liability a client may owe to the IRS solely based on reconciliation of the premium tax credit. In addition to general comments about the feasibility of implementing such a policy, HRSA would like feedback on the following issues related to this policy:

- Could this proposed policy be easily implemented by a grantee?
- What challenges would grantees and subgrantees face in implementing this proposed policy?
- Will grantees be able to conduct fiscal monitoring of this proposed policy? If so, what level of effort would be required?

DATES: Submit comments no later than August 13, 2014.

ADDRESSES: Comments should be submitted to *RyanWhiteComments@hrsa.gov* by August 13, 2014.

FOR FURTHER INFORMATION CONTACT: Theresa Jumento using the email above or by telephone at (301) 443–5807.

SUPPLEMENTARY INFORMATION: Many RWHAP clients with incomes between 100–400 percent of the federal poverty level (FPL) who do not have minimum essential coverage may be eligible for an APTC to offset the cost of purchasing a qualified health plan through the Marketplace. The amount of the premium tax credit is based on the individual's income, family size, and the cost of the second-lowest cost silver plan available to them in the Marketplace. If an individual qualifies for a premium tax credit, the individual may choose to have some or all of the estimated premium tax credit paid in advance directly to the insurance company to lower the individual's monthly premium or can wait to get all of the premium tax credit when the individual files a tax return at the end of the year.

Taxpayers will reconcile the APTC when they file their tax returns. Individuals will subtract the total of any APTC they receive during the year from the amount of the premium tax credit calculated on their tax return (*i.e.,* ''actual premium tax credit''). If an individual received APTC that exceeds the actual premium tax credit for which the individual is eligible, the individual will owe that amount back to the IRS.

It is important for RWHAP grantees and subgrantees to convey to clients the importance of reporting accurate income information on their Marketplace application and reporting to the Marketplace any income changes as these changes occur throughout the year. Other changes in circumstances that can affect the amount of an individual's premium tax credit, that should be reported as they occur, include: Marriage, divorce, birth or adoption of a child, other changes to household composition, and gaining or losing eligibility for government-sponsored or employer-sponsored health care coverage. Notifying the Marketplace about changes in circumstances will decrease the likelihood of a significant difference between the APTC payments and the actual premium tax credit. For example, if an individual winds up making more money than estimated on the Marketplace application, the individual could have to pay back some or all of the premium tax credit on their next tax return.

It is possible that, despite RWHAP grantees' and subgrantees' best efforts to encourage clients to report changes in circumstances to the Marketplace during the year, a RWHAP client's actual premium tax credit is less than the APTC resulting in the client owing the difference to the IRS. HRSA is considering allowing RWHAP grantees and subgrantees to use RWHAP funds to pay the IRS any additional income tax liability a client may owe to the IRS solely based on reconciliation of the premium tax credit.

Should such a policy be implemented, grantees and subgrantees would be responsible for establishing and maintaining policies and procedures for coordinating such payments to the IRS since RWHAP grantees and subgrantees are prohibited from making any direct payments to clients. HRSA seeks comment from the public regarding this proposed policy, particularly on whether this policy could be easily implemented by the grantees and subgrantees and what challenges grantees and subgrantees might face in implementing such a policy.

Dated: July 3, 2014.

Mary K. Wakefield,

Administrator.

[FR Doc. 2014–16406 Filed 7–11–14; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; A Generic Submission for Theory Development and Validation (NCI)

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), National Institutes of Health (NIH), will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the

following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

To Submit Comments and For Further Information: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Rebecca A. Ferrer, Division of Cancer Control and Population Sciences, 9609 Medical Center Dr., Room 3E114, Bethesda, MD 20892 or call non-toll-free number 240–276–6914 or Email your request, including your address to: *ferrerra@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

DATES: *Comment Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Proposed Collection: A Generic Submission for Theory Development and Validation (NCI), Revision, 0925–0645, National Cancer Institute (NCI), National Institutes of Health (NIH).

Need and Use of Information Collection: The National Cancer Institute is requesting terms of clearance and approval for this revised generic clearance to conduct formative research related to behavioral science theory development and validation for the next three years. Formative research in the area of theory development and validation would provide the basis for developing effective cancer prevention and control strategies, allow for a better understanding of theoretical constructs that influence decisions and actions related to cancer, and ultimately contribute to reducing the U.S. cancer burden. Sub-studies proposed under this generic clearance would involve methodological testing and a standard set of research approaches, including surveys (Internet, phone, and paper-and-pencil) and focus groups. Respondents would include individuals in the general public, recruited through established online panels or Internet/newspaper advertisements. Development of each study or survey would involve consulting with NCI scientists as well as experts from the behavioral science research community.

There are no costs to respondents other than their time. The total estimated burden is 6,500 hours.

ESTIMATED BURDEN HOURS FOR THREE YEARS

Type of respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
General Public	2,000	1	15/60	500
Physicians	6,000	1	30/60	3,000
Health Professionals	1,000	1	1	1,000
And Researchers	1,000	1	2	2,000

Dated: July 8, 2014.

Karla Bailey,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2014–16447 Filed 7–11–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Draft Report on Carcinogens Monograph on Trichloroethylene; Amended Notice

SUMMARY: The notice amends the **Federal Register** notice, 79 FR 33203, published June 10, 2014, announcing availability of documents, request for comments, and notice of meeting to peer review the Draft Report on Carcinogens (RoC) Monograph on Trichloroethylene (TCE). The deadline for written public comment submissions has been extended to August 4, 2014. All other information in the original notice has not changed. Information about the meeting and registration is available at *http://ntp.niehs.nih.gov/go/38853.*

DATES: *Written Public Comments Submissions:* Deadline is August 4, 2014.

Dated: July 7, 2014.

John R. Bucher,

Associate Director, National Toxicology Program.

[FR Doc. 2014–16449 Filed 7–11–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Scientific Advisory Committee on Alternative Toxicological Methods; Announcement of Meeting; Request for Comments

SUMMARY: This notice announces a meeting of the Scientific Advisory Committee on Alternative Toxicological Methods (SACATM). SACATM advises the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM), the National Toxicology Program (NTP) Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM), and the Director of the National Institute of Environmental Health Sciences (NIEHS) and NTP regarding statutorily mandated duties of ICCVAM and activities of NICEATM. The meeting is open to the public. Registration is requested for both public attendance and oral comment and required to access the webcast. Information about the meeting and registration is available at *http://ntp.niehs.nih.gov/go/32822.*

DATES: *Meeting:* September 16, 2014, beginning at 8:30 a.m. Eastern Daylight Time and continuing until adjournment at approximately 5:00 p.m.

Written Public Comments Submissions: Deadline is September 2, 2014. Registration for Meeting and Oral Comments: Requested by September 9, 2014. Registration to View Webcast: Deadline is September 16, 2014. Registration to view the meeting via the webcast is required.

ADDRESSES: *Meeting Location:* Rodbell Auditorium, Rall Building, NIEHS, 111

T.W. Alexander Drive, Research Triangle Park, NC 27709.

Meeting Web page: The preliminary agenda, registration, and other meeting materials are at *http://ntp.niehs.nih.gov/go/32822.*

Webcast: The meeting will be webcast; the URL will be provided to those who register for viewing.

FOR FURTHER INFORMATION CONTACT: Dr. Lori White, Designated Federal Officer for SACATM, Office of Liaison, Policy and Review, Division of NTP, NIEHS, P.O. Box 12233, K2–03, Research Triangle Park, NC 27709. Phone: 919–541–9834, fax: (301) 480–3272, email: *whiteld@niehs.nih.gov.* Hand Deliver/Courier address: 530 Davis Drive, Room K2136, Morrisville, NC 27560.

SUPPLEMENTARY INFORMATION:

Preliminary Agenda and Other Meeting Information: A preliminary agenda, roster of SACATM members, background materials, public comments, and any additional information, when available, will be posted on the SACATM meeting Web site (*http://ntp.niehs.nih.gov/go/32822*) or is available upon request from the Designated Federal Officer. Following the meeting, summary minutes will be prepared and available on the SACATM Web site or upon request.

Meeting and Registration: This meeting is open to the public with time scheduled for oral public comments. The public may attend the meeting at NIEHS, where attendance is limited only by the space available, or view the webcast. Registration is required to view the webcast; the URL for the webcast will be provided in the email confirming registration. Individuals who plan to attend and/or provide comments are encouraged to register at *http://ntp.niehs.nih.gov/go/32822* by September 9, 2014, to facilitate planning for the meeting. Individuals interested in the meeting are encouraged to access this Web site to stay abreast of the most current information regarding the meeting. Visitor and security information for those attending in person is available at niehs.nih.gov/about/visiting/index.cfm. Individuals with disabilities who need accommodation to participate in this event should contact Ms. Robbin Guy at phone: (919) 541–4363 or email: *guyr2@niehs.nih.gov.* TTY users should contact the Federal TTY Relay Service at 800–877–8339. Requests should be made at least five business days in advance of the event.

Request for Comments: Both written and oral public input on the agenda topics is invited. Written comments received in response to this notice will be posted on the meeting Web site and persons submitting them will be identified by their name and affiliation and/or sponsoring organization, if applicable. Persons submitting written comments should include their name, affiliation (if applicable), and sponsoring organization (if any) with the document. Time is allotted during the meeting for presentation of oral comments and each organization (sponsoring organization or affiliation) is allowed one time slot per topic. At least 7 minutes will be allotted for each speaker, and if time permits, may be extended up to 10 minutes at the discretion of the chair. Registration for oral comments will also be available on-site, although time allowed for presentation by on-site registrants may be less than for registered speakers and will be determined by the number of persons who register at the meeting. In addition to in-person oral comments at the meeting, public comments can be presented by teleconference line. There will be 50 lines for this call; availability will be on a first-come, first-served basis. The lines will be open from 8:30 a.m. until approximately 5:00 p.m., although public comments will be received only during the formal public comment periods, which will be indicated on the preliminary agenda. The access number for the teleconference line will be provided to registrants by email prior to the meeting.

Persons wishing to present oral comments are encouraged to register using the SACATM meeting registration form (*http://ntp.niehs.nih.gov/go/32822*), indicate the topic(s) on which they plan to comment, and, if possible, send a copy of their statement to *whiteld@niehs.nih.gov* by September 9, to enable review by SACATM, NICEATM, ICCVAM, and NIEHS/NTP staff prior to the meeting. Written statements can supplement and may expand the oral presentation. If registering on-site and reading from written text, please bring 30 copies of the statement for distribution and to supplement the record.

Background Information on ICCVAM, NICEATM, and SACATM: ICCVAM is an interagency committee composed of representatives from 15 Federal regulatory and research agencies that require, use, generate, or disseminate toxicological and safety testing information. ICCVAM conducts technical evaluations of new, revised, and alternative safety testing methods with regulatory applicability and promotes the scientific validation and regulatory acceptance of toxicological and safety-testing methods that more accurately assess the safety and hazards of chemicals and products and that reduce, refine (decrease or eliminate pain and distress), or replace animal use. The ICCVAM Authorization Act of 2000 (42 U.S.C. 285*l*–3) established ICCVAM as a permanent interagency committee of the NIEHS under NICEATM.

NICEATM administers ICCVAM, provides scientific and operational support for ICCVAM-related activities, and conducts independent validation studies to assess the usefulness and limitations of new, revised, and alternative test methods and strategies. NICEATM and ICCVAM work collaboratively to evaluate new and improved test methods and strategies applicable to the needs of U.S. Federal agencies. NICEATM and ICCVAM welcome the public nomination of new, revised, and alternative test methods and strategies for validation studies and technical evaluations. Additional information about ICCVAM and NICEATM can be found at *http://ntp.niehs.nih.gov/go/iccvam* and *http://ntp.niehs.nih.gov/go/niceatm.*

SACATM was established in response to the ICCVAM Authorization Act [Section 285*l*–3(d)] and is composed of scientists from the public and private sectors. SACATM advises ICCVAM, NICEATM, and the Director of the NIEHS and NTP regarding statutorily mandated duties of ICCVAM and activities of NICEATM. SACATM provides advice on priorities and activities related to the development, validation, scientific review, regulatory acceptance, implementation, and national and international harmonization of new, revised, and alternative toxicological test methods. Additional information about SACATM, including the charter, roster, and records of past meetings, can be found at *http://ntp.niehs.nih.gov/go/167.*

Dated: July 7, 2014.

John R. Bucher,

Associate Director, National Toxicology Program.

[FR Doc. 2014–16452 Filed 7–11–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning

opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Common Data Platform (CDP)—NEW

The Common Data Platform (CDP) includes new instruments for the Substance Abuse and Mental Health Services Administration (SAMHSA). The CDP will replace separate data collection instruments used for reporting Government Performance and Results Act of 1993 (GPRA) measures: the TRansformation ACcountability (TRAC) Reporting System (OMB No. 0930–0285) used by the Center for Mental Health Services (CMHS); the Prevention Management Reporting and Training System (PMRTS—OMB No. 0930–0279) used by the Center for Substance Abuse Prevention (CSAP); and the Services Accountability and Improvement System (SAIS—OMB No. 0930–0208) used by the Center for Substance Abuse Treatment (CSAT).

The CDP will also include an Infrastructure, Prevention, and Mental Health Promotion (IPP) Form and elements approved by consensus of offices and Centers within SAMHSA as well as the Department of Health and Human Services (HHS).

Approval of this information collection will allow SAMHSA to continue to meet Government Performance and Results Modernization Act of 2010 (GPRAMA) reporting requirements and analyses of the data will help SAMHSA determine whether progress is being made in achieving its mission. The primary purpose of this data collection system is to promote the use of common data elements among SAMHSA grantees and contractors. The common elements were recommended by consensus among SAMHSA Centers and Offices. Analyses of these data will allow SAMHSA to quantify effects and accomplishments of its discretionary grant programs which are consistent with the OMB-approved GPRA measures and address goals and objectives outlined in the Office of National Drug Control Policy's Performance Measures of Effectiveness and the SAMHSA Strategic Initiatives.

The CDP will be a real-time, performance management system that captures information on substance abuse treatment and prevention and mental health services delivered in the United States. A wide range of client and program information will be captured through CDP for approximately 3,000 grants (2,224 for CMHS; 642 for CSAT; 122 for CSAP; and 33 for HIV Continuum of Care). Substance abuse treatment facilities, mental health service providers, and substance abuse prevention programs will submit their data in real-time or on a monthly or a weekly basis to ensure that the CDP is an accurate, up-to-date reflection on the scope of services delivered and characteristics of the clients.

In order to carry out section 1105(a)(29) of GPRA, SAMHSA is required to prepare a performance plan for its major programs of activity. This plan must:

- Establish performance goals to define the level of performance to be achieved by a program activity;
- Express such goals in an objective, quantifiable, and measurable form;
- Briefly describe the operational processes, skills and technology, and the human, capital, information, or other resources required to meet the performance goals;
- Establish performance indicators to be used in measuring or assessing the relevant outputs, service levels, and outcomes of each program activity;
- Provide a basis for comparing actual program results with the established performance goals; and
- Describe the means to be used to verify and validate measured values.

This CDP data collection supports the GPRAMA, which requires overall organization management to improve agency performance and achieve the mission and goals of the agency through the use of strategic and performance planning, measurement, analysis, regular assessment of progress, and use of performance information to improve the results achieved. Specifically, this data collection will allow SAMHSA to have the capacity to report on a consistent set of performance measures across its various grant programs that conduct each of these activities.

SAMHSA's legislative mandate is to increase access to high quality substance abuse and mental health prevention and treatment services and to improve outcomes. Its mission is to reduce the impact of substance abuse and mental illness on America's communities. SAMHSA's vision is to provide leadership and devote its resources—programs, policies, information and data, contracts and grants—toward helping the Nation act on the knowledge that:

- Behavioral health is essential for health;
- Prevention works;
- Treatment is effective; and
- People recover from mental and substance use disorders.

In order to improve the lives of people within communities, SAMHSA has many roles:

- Providing Leadership and Voice by developing policies; convening stakeholders; collaborating with people in recovery and their families, providers, localities, Tribes, Territories, and States; collecting best practices and developing expertise around behavioral health services; advocating for the needs of persons with mental and substance use disorders; and emphasizing the importance of behavioral health in partnership with other agencies, systems, and the public.
- Promoting change through Funding and Service Capacity Development. Supporting States, Territories, and Tribes to build and improve basic and proven practices and system capacity; helping local governments, providers, communities, coalitions, schools, universities, and peer-run and other organizations to innovate and address emerging issues; building capacity across grantees; and strengthening States', Territories', Tribes', and communities' emergency response to disasters.
- Supporting the field with Information/Communications by conducting and sharing information from national surveys and surveillance (e.g., National Survey on Drug Use and Health [NSDUH], Drug Abuse Warning Network [DAWN], Drug and Alcohol Service Information System [DASIS]); vetting and sharing information about evidence-based practices (e.g., National Registry of Evidence-based Programs and Practices [NREPP]); using the Web, print, social media, public appearances, and the press to reach the public, providers (e.g., primary, specialty, guilds, peers), and other stakeholders; and listening to and reflecting the voices of people in recovery and their families.

• Protecting and promoting behavioral health through Regulation and Standard Setting by preventing tobacco sales to minors (Synar Program); administering Federal drug-free workplace and drug-testing programs; overseeing opioid treatment programs and accreditation bodies; informing physicians' office-based opioid treatment prescribing practices; and partnering with other HHS agencies in regulation development and review.

• Improving Practice (i.e., community-based, primary care, and specialty care) by holding State, Territorial, and Tribal policy academies; providing technical assistance to States, Territories, Tribes, communities, grantees, providers, practitioners, and stakeholders; convening conferences to disseminate practice information and facilitate communication; providing guidance to the field; developing and disseminating evidence-based practices and successful frameworks for service provision; supporting innovation in evaluation and services research; moving innovations and evidence-based approaches to scale; and cooperating with international partners to identify promising approaches to supporting behavioral health.

Each of these roles complements SAMHSA's legislative mandate. All of SAMHSA's programs and activities are geared toward the achievement of its mission, and performance monitoring is a collaborative and cooperative aspect of this process. SAMHSA will strive to coordinate its efforts to further its mission with ongoing performance measurement development activities.

Reports, to be made available on the SAMHSA Web site and by request, will inform staff on the grantees' ability to serve their target populations and meet their client and budget targets. SAMHSA CDP data will also provide grantees with information that can guide modifications to their service array. Approval of this information collection will allow SAMHSA to continue to meet Government Performance and Results Act of 1993 (GPRA) reporting requirements that quantify the effects and accomplishments of its discretionary grant programs which are consistent with OMB guidance.

Based on current funding and planned fiscal year 2015 notice of funding announcements (NOFA), SAMHSA programs will use these measures in fiscal years 2015 through 2017.

CSAP will use the CDP measures for the HIV Minority AIDS Initiative (MAI), Strategic Prevention Framework State Incentive Grants (SPF SIG), and Partnerships for Success (PFS).

CMHS programs that will collect client-level data include: Comprehensive Community Mental Health Services for Children and their Families (CMHI); Healthy Transitions (HT); National Child Traumatic Stress Initiative (NCTSI) Community Treatment Centers; Mental Health Transformation State Incentive Grants (MH SIG); Minority AIDS/HIV Services Collaborative Program; Primary and Behavioral Health Care Integration (PBHCI); Services in Supportive Housing (SSH); Systems of Care (SoC); and Transforming Lives Through Supportive Employment.

CMHS programs that will use the CDP to collect grantee-level IPP indicators include: Advancing Wellness and Resiliency in Education (Project AWARE); Circles of Care; Comprehensive Community Mental Health Services for Children and their Families (CMHI); Garrett Lee Smith Campus Suicide Prevention Program; Garrett Lee Smith State/Tribal Suicide Prevention Program; Healthy Transitions Program; Linking Actions for Unmet Needs in Children's Mental Health (LAUNCH); National Suicide Prevention Lifeline; NCTSI Treatment and Service Centers; NCTSI Community Treatment Centers; NCTSI National Coordinating Center; Mental Health Transformation Grant Program; Minority AIDS/HIV Services Collaborative Program; Minority Fellowship Program; PBHCI; Safe Schools/Healthy Students; Services in Supportive Housing; State Mental Health Data Infrastructure Grants for Quality Improvement; Statewide Consumer Network Grants; Statewide Family Network Grants; Suicide Lifeline Crisis Center Follow Up; Systems of Care; Transforming Lives Through Supported Employment; Native Connections; Now is the Time: Minority Fellowship Program—Youth; Cooperative Agreements to Implement the National Strategy for Suicide Prevention, Historically Black Colleges and Universities Center for Excellence in Behavioral Health; and Statewide Peer Networks for Recovery and Resilience.

CSAT programs that will use the CDP include: Assertive Adolescent and Family Treatment (AAFT); Access to Recovery 3 (ATR3); Adult Treatment Court Collaboratives (ATCC); Enhancing Adult Drug Court Services, Coordination and Treatment (EADCS); Offender Reentry Program (ORP); Treatment Drug Court (TDC); Office of Juvenile Justice and Delinquency Prevention—Juvenile Drug Courts (OJJDP–JDC); Teen Court Program (TCP); HIV/AIDS Outreach Program; Targeted Capacity Expansion Program for Substance Abuse Treatment and HIV/AIDS Services (TCE–HIV); Addictions Treatment for the Homeless (AT–HM); Cooperative Agreements to Benefit Homeless Individuals (CABHI); Cooperative Agreements to Benefit Homeless Individuals—States (CABHI—States); Recovery-Oriented Systems of Care (ROSC); Targeted Capacity Expansion—Peer to Peer (TCE–PTP); Pregnant and Postpartum Women (PPW); Screening, Brief Intervention and Referral to Treatment (SBIRT); Targeted Capacity Expansion (TCE); Targeted Capacity Expansion—Health Information Technology (TCE–HIT); Targeted Capacity Expansion Technology Assisted Care (TCE–TAC); Addiction Technology Transfer Centers (ATTC); International Addiction Technology Transfer Centers (I–ATTC); State Adolescent Treatment Enhancement and Dissemination (SAT–ED); Grants to Expand Substance Abuse Treatment Capacity in Adult Tribal Healing to Wellness Courts and Juvenile Drug Courts; and Grants for the Benefit of Homeless Individuals—Services in Supportive Housing (GBHI).

SAMHSA will also use the CDP to collect client-level and IPP information from the HIV Continuum of Care program, which is funded by CSAP, CMHS, and CSAT.

SAMHSA uses performance measures to report on the performance of its discretionary services grant programs. The performance measures are used by individuals at three different levels: The SAMHSA administrator and staff, the Center administrators and government project officers, and grantees.

SAMHSA and its Centers will use the data for annual reporting required by GPRA, for grantee performance monitoring, for SAMHSA reports and presentations, and for analyses comparing baseline with discharge and follow-up data. GPRA requires that SAMHSA's report for each fiscal year include actual results of performance monitoring. The information collected through the CDP will allow SAMHSA to report on the results of these performance outcomes. Reporting will be consistent with specific SAMHSA performance domains to assess the accountability and performance of its discretionary grant programs.

ESTIMATES OF ANNUALIZED HOUR BURDEN—COMMON DATA PLATFORM CLIENT OUTCOME MEASURES FOR DISCRETIONARY PROGRAMS

SAMHSA Program title	Number of respondents	Responses per respondent	Total number of responses	Burden hours per response	Total burden hours
HIV Continuum of Care (CSAP, CMHS, CSAT funding)—specific Form	200	2	400	0.67	268
Client-Level Services Forms					
CSAP:					
HIV—Minority AIDS Initiative (MAI)	18,041	4	72,164	0.38	27,422
SPF SIG/Community Level	122	4	488	0.38	185
SPF SIG/Program Level	510	4	2,040	0.38	775
PFS/Community Level	550	4	2,200	0.38	836
PFS/Program Level	111	4	444	0.38	169
CMHS:					
Comprehensive Community Mental Health Services for Children and their Families Program (CMHI)	3,431	2	6,862	0.45	3,088
HIV Continuum of Care (CoC)	1,500	2	3,000	0.45	1,350
Healthy Transitions (HT)	1,600	2	3,200	0.45	1,440
NCTSI Community Treatment Centers (NCTSI)	1,856	1	1,856	0.45	835
Mental Health Transformation State Incentive Grant (MH SIG)	2,975	1	2,975	0.45	1,339
Minority AIDS/HIV Services Collaborative Program	2,844	2	5,688	0.45	2,560
Primary and Behavioral Health Care Integration (PBHCI)	14,000	2	28,000	0.50	14,000
Services in Supportive Housing (SSH)	4,975	2	9,950	0.45	4,478
Systems of Care (SoC)	1,164	1	1,164	0.45	524
Transforming Lives Through Supported Employment	1,500	2	3,000	0.45	1,350
CSAT:					
Assertive Adolescent and Family Treatment (AAFT)	303	3	909	0.47	427
Access to Recovery 3 (ATR3)	239,186	1	239,186	0.47	112,417
Adult Treatment Court Collaboratives (ATCC)	1,078	3	3,234	0.47	1,520
Enhancing Adult Drug Court Services, Coordination, and Treatment (EADCS CT)	4,664	3	13,992	0.47	6,576
Offender Reentry Program (ORP)	1,843	3	5,529	0.47	2,599
Treatment Drug Court (TDC)	5,996	3	17,988	0.47	8,454
Office of Juvenile Justice and Delinquency Prevention—Juvenile Drug Courts (OJJDP–JDC)	392	3	1,176	0.47	553
Teen Court Program (TCP)	5,996	3	17,988	0.47	8,454
HIV/AIDS Outreach Program (HIV-Outreach)	4,352	3	13,056	0.47	6,136
Targeted Capacity Expansion Program for Substance Abuse Treatment and HIV/AIDS Services (TCE–HIV)	4,885	3	14,655	0.47	6,888
Addictions Treatment for Homeless (AT–HM)	10,636	3	31,908	0.47	14,997
Cooperative Agreements to Benefit Homeless Individuals (CABHI)	2,702	3	8,106	0.47	3,810
Cooperative Agreements to Benefit Homeless Individuals—States (CABHI-States)	142	3	426	0.47	200
Recovery-Oriented Systems of Care (ROSC)	846	3	2,538	0.47	1,193
Targeted Capacity Expansion—Peer to Peer (TCE–PTP)	827	3	2,481	0.47	1,166
Pregnant and Postpartum Women (PPW)	1,719	3	5,157	0.47	2,424
Screening Brief Intervention Referral and Treatment* (SBIRT)	59,419	3	178,257	0.47	83,781
Targeted Capacity Expansion—Health Information Technology (TCE–HIT)	5,295	3	15,885	0.47	7,466
Targeted Capacity Expansion Technology Assisted Care (TCE–TAC)	346	3	1,038	0.47	488
Addiction Technology Transfer Centers (ATTC)	32,676	3	98,028	0.47	46,073
International Addiction Technology Transfer Centers (I–ATTC)	1,789	3	5,367	0.47	2,522
State Adolescent Treatment Enhancement and Dissemination (SAT–ED)	925	3	2,775	0.47	1,304
Grants to Expand Substance Abuse Treatment Capacity In Adult Tribal Healing to Wellness Courts and Juvenile Drug Courts	240	3	720	0.47	338
Grants for the Benefit of Homeless Individuals—Services in Supportive Housing (GBHI)	1,960	3	5,880	0.47	2,764
Total Services—Client Level Instruments	443,596	.....	829,710	.....	383,169
Infrastructure, Prevention, and Mental Health Promotion (IPP) Form:					

ESTIMATES OF ANNUALIZED HOUR BURDEN—COMMON DATA PLATFORM CLIENT OUTCOME MEASURES FOR DISCRETIONARY PROGRAMS—Continued

SAMHSA Program title	Number of respondents	Responses per respondent	Total number of responses	Burden hours per response	Total burden hours
Project AWARE	120	4	480	2	960
Circles of Care	11	4	44	2	88
Comprehensive Community Mental Health Services for Children and their Families Program (CMHI)	69	4	276	2	552
Garrett Lee Smith Campus Suicide Prevention Grant Program	123	4	492	2	984
HIV Continuum of Care	33	4	132	2	264
Garrett Lee Smith State/Tribal Suicide Prevention Grant Program	102	4	408	2	816
Healthy Transitions (HT)	16	4	64	2	128
Historically Black Colleges and Universities Center for Excellence in Behavioral Health	1	4	4	2	8
Linking Actions for Unmet Needs in Children's Mental Health (LAUNCH)	54	4	216	2	432
National Suicide Prevention Lifeline	2	4	8	2	16
NCTSI Treatment & Service Centers	32	4	128	2	256
NCTSI Community Treatment Centers	81	4	324	2	648
NCTSI National Coordinating Center	2	4	8	2	16
Mental Health Transformation Grant	30	4	120	2	240
Minority AIDS/HIV Services Collaborative Program	17	4	68	2	136
Minority Fellowship Program	9	4	36	2	72
Primary and Behavioral Health Care Integration	70	4	280	2	560
Safe Schools/Healthy Students Initiative	7	4	28	2	56
Services in Supportive Housing	5	4	20	2	40
State Mental Health Data Infrastructure Grants for Quality Improvement	2	4	8	2	16
Statewide Consumer Network Grants	42	4	168	2	336
Statewide Family Network Grants	53	4	212	2	424
Suicide Lifeline Crisis Center FUP Grants	27	4	108	2	216
Systems of Care	31	4	124	2	248
Transforming Lives Through Supported Employment	6	4	24	2	48
Native Connections	20	4	80	2	160
Now Is the Time: Minority Fellowship Program—Youth	5	4	20	2	40
Cooperative Agreements to Implement the National Strategy for Suicide Prevention	4	4	16	2	32
Statewide Peer Networks for Recovery and Resiliency	8	4	32	2	64
TOTAL IPP	982	.....	3,928	.....	7,856
TOTAL SAMHSA	444,578	.....	833,638	.....	389,895

Notes:
1. Screening, Brief Intervention, Treatment and Referral (SBIRT) grant program: The estimated number of respondents is 10% of the total respondents, 742,740.
2. Numbers may not add to the totals due to rounding.

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 2–1057, One Choke Cherry Road, Rockville, MD 20857 *OR* email her a copy at *summer.king@samhsa.hhs.gov.* Written comments should be received by September 12, 2014.

Summer King,

Statistician.

[FR Doc. 2014–16337 Filed 7–11–14; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Treatment; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given that the Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Treatment (CSAT) National Advisory Council will meet July 24, 2014, 2:00–3:30 p.m. in a closed teleconference meeting.

The meeting will include discussions and evaluations of grant applications reviewed by SAMHSA's Initial Review Groups, and involve an examination of confidential financial and business information as well as personal information concerning the applicants. Therefore, the meeting will be closed to the public as determined by the SAMHSA Administrator, in accordance with Title 5 U.S.C. 552b(c)(4) and (6) and (c)(9)(B) and 5 U.S.C. App. 2, Section 10(d).

Meeting information and a roster of Council members may be obtained by accessing the SAMHSA Committee Web site at *http://beta.samhsa.gov/about-us/advisory-councils/csat-national-advisory-council* or by contacting the CSAT National Advisory Council

Designated Federal Officer, Ms. Cynthia Graham (see contact information below).

Committee Name: SAMHSA's Center for Substance Abuse Treatment National Advisory Council.

Date/Time/Type: July 24, 2014, 2:00–3:30 p.m. CLOSED.

Place: SAMHSA Building, 1 Choke Cherry Road, Rockville, Maryland 20857.

Contact: Cynthia Graham, M.S., Designated Federal Officer, SAMHSA CSAT National Advisory Council, 1 Choke Cherry Road, Room 5–1035, Rockville, Maryland 20857, Telephone: (240) 276–1692, Fax: (240) 276–1690, Email: *cynthia.graham@samhsa.hhs.gov*.

Cathy J. Friedman,

Public Health Analyst, SAMHSA.

[FR Doc. 2014–16280 Filed 7–11–14; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2014–0002; Internal Agency Docket No. FEMA–B–1422]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Title 44, Part 65 of the Code of Federal Regulations (44 CFR part 65). The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will become effective on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Deputy Associate Administrator for Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Massachusetts: Middlesex.	Town of Holliston (13–01–2122P).	The Honorable Jay Leary, Chairman, Town of Holliston Board of Selectmen, 703 Washington Street, Holliston, MA 01746.	Town Hall, 703 Washington Street, Holliston, MA 01746.	*http://www.msc.fema.gov/lomc*	September 17, 2014.	250195
New Mexico: Taos	Unincorporated Areas of Taos County (14–06–0477P).	The Honorable Gabriel J. Romero, Chairman, Taos County Commission, 105 Albright Street, Suite A, Taos, NM 87571.	Taos County Administrative Complex, 105 Albright Street, Suite H, Taos, NM 87571.	*http://www.msc.fema.gov/lomc*	August 22, 2014	350078

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
New York:						
Rockland	Town of Ramapo (13–02–1859P).	The Honorable Christopher P. St. Lawrence, Supervisor, Town of Ramapo, 237 Route 59, Suffern, NY 10901.	Town of Ramapo Department of Public Works, 16 Pioneer Avenue, Tallman, NY 10982.	*http://www.msc.fema.gov/lomc*	October 16, 2014	365340
Rockland	Village of Hillburn (13–02–1859P).	The Honorable Craig M. Flanagan, Jr., Mayor, Village of Hillburn, 31 Mountain Avenue, Hillburn, NY 10931.	Village Hall, 31 Mountain Avenue, Hillburn, NY 10931.	*http://www.msc.fema.gov/lomc*	October 16, 2014	360683
Oklahoma:						
Canadian	City of Oklahoma City (12–06–2730P).	The Honorable Mick Cornett, Mayor, City of Oklahoma City, 200 North Walker Avenue, 3rd Floor, Oklahoma City, OK 73102.	420 West Main Street, Suite 700, Oklahoma City, OK 73102.	*http://www.msc.fema.gov/lomc*	August 18, 2014	405378
Garvin	City of Pauls Valley (13–06–3636P).	The Honorable Gary Alfred, Mayor, City of Pauls Valley, P.O. Box 778, Pauls Valley, OK 73075.	City Hall, 100 West Paul Avenue, Pauls Valley, OK 73075.	*http://www.msc.fema.gov/lomc*	August 29, 2014	400246
Texas:						
Bexar	City of San Antonio (13–06–3484P).	The Honorable Julián Castro, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Department of Public Works, Storm Water Engineering, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78204.	*http://www.msc.fema.gov/lomc*	August 25, 2014	480045
Dallas	City of Garland (13–06–4174P).	The Honorable Douglas Athas, Mayor, City of Garland, 200 North 5th Street, Garland, TX 75040.	800 Main Street, Garland, TX 75040.	*http://www.msc.fema.gov/lomc*	September 5, 2014.	485471
Dallas	City of Sachse (13–06–4174P).	The Honorable Mike Felix, Mayor, City of Sachse, 3815 Sachse Road, Building B, Sachse, TX 75048.	3815 Sachse Road, Building B, Sachse, TX 75048.	*http://www.msc.fema.gov/lomc*	September 5, 2014.	480186
Denton	City of Celina (13–06–4215P).	The Honorable Sean Terry, Mayor, City of Celina, 142 North Ohio Street, Celina, TX 75009.	City Hall, 142 North Ohio Street, Celina, TX 75009.	*http://www.msc.fema.gov/lomc*	September 2, 2014.	480133
Denton	City of Denton (13–06–3803P).	The Honorable Mark A. Burroughs, Mayor, City of Denton, 215 East McKinney Street, Denton, TX 76201.	901–A Texas Street, Denton, TX 76209.	*http://www.msc.fema.gov/lomc*	July 28, 2014	480194
Denton	City of Denton (14–06–0807P).	The Honorable Mark A. Burroughs, Mayor, City of Denton, 215 East McKinney Street, Denton, TX 76201.	901–A Texas Street, Denton, TX 76209.	*http://www.msc.fema.gov/lomc*	September 22, 2014.	480194
Denton	City of Frisco (13–06–3033P).	The Honorable Maher Maso, Mayor, City of Frisco, 6101 Frisco Square Boulevard, Frisco, TX 75034.	City Hall, 6101 Frisco Square Boulevard, Frisco, TX 75034.	*http://www.msc.fema.gov/lomc*	August 18, 2014	480134
Denton	City of Frisco (14–06–0032P).	The Honorable Maher Maso, Mayor, City of Frisco, 6101 Frisco Square Boulevard, Frisco, TX 75034.	City Hall, 6101 Frisco Square Boulevard, Frisco, TX 75034.	*http://www.msc.fema.gov/lomc*	August 25, 2014	480134
Denton	Unincorporated Areas of Denton County (13–06–3803P).	The Honorable Mary Horn, Denton County Judge, 110 West Hickory Street, 2nd Floor, Denton, TX 76201.	Denton County Government Center, 1505 East McKinney Street, Suite 175, Denton, TX 76209.	*http://www.msc.fema.gov/lomc*	July 28, 2014	480774
Denton	Unincorporated Areas of Denton County (13–06–4215P).	The Honorable Mary Horn, Denton County Judge, 110 West Hickory Street, 2nd Floor, Denton, TX 76201.	Denton County Government Center, 1505 East McKinney Street, Suite 175, Denton, TX 76209.	*http://www.msc.fema.gov/lomc*	September 2, 2014.	480774
Denton	Unincorporated Areas of Denton County (14–06–0807P).	The Honorable Mary Horn, Denton County Judge, 110 West Hickory Street, 2nd Floor, Denton, TX 76201.	Denton County Government Center, 1505 East McKinney Street, Suite 175, Denton, TX 76209.	*http://www.msc.fema.gov/lomc*	September 22, 2014.	480774

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Guadalupe	City of Cibolo (13–06–4035P).	The Honorable Lisa M. Jackson, Mayor, City of Cibolo, 200 South Main Street, Cibolo, TX 78108.	200 South Main Street, Cibolo, TX 78108.	*http://www.msc.fema.gov/lomc*	September 3, 2014.	480267
Guadalupe	Unincorporated Areas of Guadalupe County (13–06–4035P).	The Honorable Larry Jones, Guadalupe County Judge, 211 West Court Street, Seguin, TX 78155.	Guadalupe County, 2605 North Guadalupe Street, Seguin, TX 78155.	*http://www.msc.fema.gov/lomc*	September 3, 2014.	480266
Harris	City of Houston (13–06–2759P).	The Honorable Annise D. Parker, Mayor, City of Houston, P.O. Box 1562, Houston, TX 77251.	Public Works and Engineering Department, 611 Walker Street, Houston, TX 77002.	*http://www.msc.fema.gov/lomc*	September 15, 2014.	480296
Harris	Unincorporated Areas of Harris County (13–06–2759P).	The Honorable Ed M. Emmett Harris, County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	Harris County, 10555 Northwest Freeway, Houston, TX 77092.	*http://www.msc.fema.gov/lomc*	September 15, 2014.	480287
Harris	Unincorporated Areas of Harris County (13–06–4636P).	The Honorable Ed M. Emmett Harris, County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	Harris County, 10555 Northwest Freeway, Houston, TX 77092.	*http://www.msc.fema.gov/lomc*	August 21, 2014	480287
Harris	Unincorporated Areas of Harris County (14–06–1079P).	The Honorable Ed M. Emmett Harris, County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	Harris County, 10555 Northwest Freeway, Houston, TX 77092.	*http://www.msc.fema.gov/lomc*	September 15, 2014.	480287
Montgomery ...	City of Conroe (13–06–3145P).	The Honorable Webb K. Melder, Mayor, City of Conroe, P.O. Box 3066, Conroe, TX 77305.	City Hall, 505 West Davis Street, Conroe, TX 77301.	*http://www.msc.fema.gov/lomc*	August 21, 2014	480484
Terrell	Unincorporated Areas of Terrell County (13–06–3003P).	The Honorable Santiago Flores, Terrell County Judge, 105 East Hackberry Street, Sanderson, TX 79848.	Terrell County Courthouse, County Clerk's Office, 105 East Hackberry Street, Sanderson, TX 79848.	*http://www.msc.fema.gov/lomc*	September 26, 2014.	480619

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: June 17, 2014.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2014–16319 Filed 7–11–14; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4175–DR; Docket ID FEMA–2014–0003]

Mississippi; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for State of Mississippi (FEMA–4175–DR), dated May 12, 2014, and related determinations.

DATES: Effective Date: June 27, 2014.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Terry L. Quarles, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Mark H. Landry as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2014–16321 Filed 7–11–14; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Issuance of Final Determination Concerning Certain Carbon Dioxide Sampling Line Products

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection (''CBP'') has issued a final determination concerning the country of origin of certain carbon dioxide sampling line products known as ''FilterLine'' and ''CapnoLine.'' Based upon the facts presented, CBP has concluded that Israel is the country of

origin for purposes of U.S. Government procurement.

DATES: The final determination was issued on July 8, 2014. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within August 13, 2014.

FOR FURTHER INFORMATION CONTACT: Grace A. Kim, Valuation and Special Programs Branch, Regulations and Rulings, Office of International Trade (202) 325–7941.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on July 8, 2014 pursuant to subpart B of Part 177, U.S. Customs and Border Protection Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of certain carbon dioxide sampling line products known as ''FilterLine'' and ''CapnoLine,'' which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, HQ H248851, was issued under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18). In the final determination, CBP concluded that, based upon the facts presented, the assembly operations performed in China, using Israeli components, do not substantially transform the sampling line components. Therefore, the country of origin is Israel for purposes of U.S. Government procurement.

Section 177.29, CBP Regulations (19 CFR 177.29), provides that a notice of final determination shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Dated: July 8, 2014.

Sandra L. Bell,

Executive Director, Regulations and Rulings, Office of International Trade.

Attachment

HQ H248851

July 8, 2014

OT:RR:CTF:VS H248851 GaK

CATEGORY: Origin

Michelle L. Butler
Hyman, Phelps & McNamara, P.C.
700 13th Street NW., Suite 1200
Washington, DC 20005.

RE: U.S. Government Procurement; Country of Origin of FilterLine Set and CapnoLine; Substantial Transformation

Dear Ms. Butler:

This is in response to your letter, dated November 6, 2013, requesting a final determination on behalf of Oridion Medical 1987 Ltd. (''Oridion''), pursuant to subpart B of part 177 of the U.S. Customs and Border Protection (''CBP'') Regulations (19 CFR part 177). Under these regulations, which implement Title III of the Trade Agreements Act of 1979 (''TAA''), as amended (19 U.S.C. § 2511 et seq.), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain ''Buy American'' restrictions in U.S. law or practice for products offered for sale to the U.S. Government. Your letter was forwarded to this office by the National Commodity Specialist Division on December 12, 2013. By letters dated February 19, May 15, and May 28, 2014, additional explanation was provided for our consideration in connection with the request for a final determination.

This final determination concerns the country of origin of Oridion's carbon dioxide sampling lines, specifically the FilterLine Set Adult/Pediatric (''FilterLine'') and the Smart CapnoLine H Plus O_2 (''CapnoLine''). We note that as a foreign manufacturer of the products at issue, Oridion is a party-at-interest within the meaning of 19 CFR § 177.22(d)(1) and is entitled to request this final determination. Photographs were submitted with your request.

FACTS

The products at issue are referred to as carbon dioxide (''CO_2'') sampling lines: medical devices designed to carry a patient's breath to a monitor. Each sampling line includes tubing, a means of connecting to the patient, referred to as the patient interface, and a means of connection to a monitor.

These sampling lines are classified into two product families: (1) The Filterline set sampling lines for intubated patients, designed to connect to ventilator tubing carrying oxygenated air from a ventilator to a patient through an airway adaptor, and (2) the Capnoline sets for non-intubated patients, which provide a nasal or oral/nasal ''interface'' for the patient.

FilterLine

The components of the FilterLine include:

(1) CO_2 tube (manufactured in Israel and cut to length in China),

(2) Universal Airway Adapter (manufactured in China), and

(3) Quick Seal Connector (itself assembled in China using an Israeli origin Quick Seal Filter Housing, Chinese origin Hollofiber and an end connector called the Quick Seal LD Orange Golden).

The Hollofiber is a fiber membrane filter that prevents liquids, particles, or bacteria from reaching the monitor which can contaminate the breath sample. The Hollofiber is placed inside the Quick Seal Filter Housing, which is connected to the Quick Seal LD Orange Golden. The Universal Airway Adapter is connected to the CO_2 tube and the Quick Seal Connector is adhered to the other end of the CO_2 tube.

The CO_2 tube delivers the patient's breath to the monitor, which you claim is the essential function of the finished product. The tube is of a patented design. In order to prevent blockage from mucus and blood, the tube must be able to handle moisture in a very precise manner. In addition, the tube's diameter cannot be too narrow, which would increase the likelihood of blockage, or too wide, which would create a delay in measurements. The FilterLine is assembled in China. It is then sent to Israel for quality control, final inspections, and packaging.

CapnoLine

The Components of the CapnoLine Include

(1) CO_2 tube (manufactured in Israel and cut to length in China),

(2) Cannula, which is connected to the patient (manufactured in Israel),

(3) Quick Seal Connector (itself assembled in China using an Israeli origin Quick Seal Filter Housing, Chinese origin Hollofiber and an end connector called the Quick Seal LD Yellow Golden),

(4) O_2 tube (manufactured in Israel and cut to length in Israel),

(5) Miscellaneous tubing (manufactured in Israel),

(6) Nafion dryer, used to reduce the humidity of the breath (manufactured in the U.S.),

(9) connector/slides to hold the O_2 and CO_2 tubing in place (manufactured in China).

In China, the cannula is connected to the Nafion dryer on the right side and to the tubing on the left side. The other end of the Nafion dryer is attached to

the CO_2 tube. The CO_2 tube and the miscellaneous tubing from the Cannula are held together with a connector/slide and connected to the O_2 tube. Then, the Quick Seal Connector, is attached to the end of the CO_2 tube.

As with the FilterLine, the CO_2 tube and in this case the O_2 tube deliver the patient's breath to the monitor, which you claim is the essential function of the finished product. The finished CapnoLine is sent to Israel for quality control and packaging.

LAW AND ANALYSIS:

Pursuant to Subpart B of Part 177, 19 CFR § 177.21 et seq., which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511 et seq.), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain ''Buy American'' restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

Under the rule of origin set forth under 19 U.S.C. § 2518(4)(B):

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also 19 CFR § 177.22(a).

In order to determine whether a substantial transformation occurs when components of various origins are assembled into completed products, CBP considers the totality of the circumstances and makes such determinations on a case-by-case basis. The country of origin of the item's components, extent of the processing that occurs within a country, and whether such processing renders a product with a new name, character, and use are primary considerations in such cases. No one factor is decisive, the key issue is the extent of operations performed and whether the parts lose their identity and become an integral part of the new article. *Belcrest Linens* v. *United States,* 573 F.Supp. 1149 (Ct. Int'l Trade 1983), *aff'd,* 741 F.2d 1368 (Fed. Cir. 1984). Assembly operations that are minimal or simple, as opposed to complex or meaningful, will generally not result in a substantial transformation. *See* C.S.D. 80–111, C.S.D. 85–25, C.S.D. 89–110, C.S.D. 89–118, C.S.D. 90–51, and C.S.D. 90–97. Additionally factors such as the resources expended on product design and development, extent and nature of post-assembly inspection and testing procedures, and the degree of skill required during the actual manufacturing process may be relevant when determining whether a substantial transformation has occurred.

In HQ 560613, dated October 28, 1997, CBP held that U.S.-origin components were not substantially transformed in Ireland when made into a pregnancy test kit. The test kit was made from the following U.S. components: top and bottom housing, paper, antibody, wick, laminate, and nitrocellulose. In addition, a splash guard from Ireland and rayon from Germany was used. The critical components of the pregnancy test kit were found to be the three U.S.-origin antibodies. CBP recognized that the U.S.-origin components imparted the essential character of the pregnancy test kit and that the simple assembly of placing the antibodies onto the rayon membrane, and subsequent assembly of the strips into a plastic housing did not result in a substantial transformation.

FilterLine

You believe that the country of origin of the FilterLine is Israel because it is the country in which the CO_2 tube was manufactured. We agree that the CO_2 tube performs the essential function of the finished product, which is the delivery of breath for monitoring the CO_2 level in a patient's breath. The assembly process in China consists of cutting to length and attaching the CO_2 tube with four other components from Israel and China. Under the described assembly process, the CO_2 tube is attached to other components that facilitate its function and it does not lose its individual identity. Consistent with HQ 560613, we find that the Israel-origin CO_2 tube is not substantially transformed by the cutting to length and assembly operations performed in China to produce the FilterLine. We conclude, based upon these specific facts, that the country of origin of the FilterLine for purposes of U.S. Government procurement is Israel.

CapnoLine

You believe that the country of origin of the CapnoLine is Israel because it is the country in which the CO_2 tube and O_2 tube were manufactured. As with the FilterLine, the CO_2 tube and O_2 tubes in the CapnoLine perform the essential function, which is the delivery of breath for monitoring the CO_2 level in a patient's breath while delivering O_2 to the patient. The assembly process in China consists of cutting to length and connecting the CO_2 tube to several different components from Israel, U.S. and China by inserting components and adhering them with a solvent. The CO_2 tube is not physically altered, aside from being cut to length. Based on the information before us, and consistent with HQ 560613, we find that the Israel-origin CO_2 tube and the O_2 tube impart the essential character of the CapnoLine and is not substantially transformed by the assembly operations performed in China. We note that the Cannula and Quick Seal Filter Housing are also of Israeli origin. Therefore, based upon these specific facts, the country of origin of the CapnoLine for purposes of U.S. Government procurement is Israel.

HOLDING

The FilterLine and the CapnoLine are not substantially transformed when they are assembled in China with Israeli and U.S. components. As a result, the country of origin of Oridion's sampling lines, specifically the FilterLine and the CapnoLine, for purposes of U.S. Government procurement is Israel.

Notice of this final determination will be given in the **Federal Register**, as required by 19 CFR § 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 CFR § 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 CFR § 177.30, any party-at-interest may, within 30 days of publication of the **Federal Register** Notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

Sandra L. Bell,
Executive Director,
Regulations and Rulings, Office of International Trade.

[FR Doc. 2014–16424 Filed 7–11–14; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5752–N–56]

30-Day Notice of Proposed Information Collection: Record of Employee Interview

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the

Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* August 13, 2014.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. 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: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. 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 Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on May 5, 2014.

A. Overview of Information Collection

Title of Information Collection: Record of Employee Interview.

OMB Approval Number: 2501–0009.

Type of Request: Extension without change of a currently approved collection.

Form Number: HUD–11.

Description of the need for the information and proposed use: The information is used by HUD and agencies administering HUD programs to collect information from laborers and mechanics employed on projects subjected to the Federal Labor Standards provisions. The information collected is compared to information submitted by the respective employer on certified payroll reports. The comparison tests the accuracy of the employer's payroll data and may disclose violations. Generally, these activities are geared to the respondent's benefit that is to determine whether the respondent was underpaid and to ensure the payment of wage restitution to the respondent.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Estimated number of burden hours is 5,000. Estimated number of respondents is 20,000, the estimated number of responses is 20,000, the frequency of response is on occasion, and the burden hour per response is 25.

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: July 8, 2014.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2014–16425 Filed 7–11–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[Docket No. ONRR–2012–0003 DS63600000 DR2PS0000.PX8000 145D0102R2]

Notice of Request for Tribal Nominees for the U.S. Extractive Industries Transparency Initiative (USEITI) Advisory Committee

AGENCY: Policy, Management and Budget, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Interior (Interior) is seeking nominations for individuals to be considered as Committee members and/or alternates to serve on the U.S. Extractive Industries Transparency Initiative (USEITI) Advisory Committee (Committee). This notice solicits nominees representing Tribal governments and individual Indian mineral owners to fill two vacancies in the Government sector. Nominations should include a resume providing relevant contact information and an adequate description of the nominee's qualifications, including information that would enable the Department of the Interior to make an informed decision regarding meeting the membership requirements of the Committee. Nominees are encouraged to include supporting letters from constituencies, associations, Tribal Councils, or other organizations that indicate support for the nominee.

DATES: Submit nominations to the Committee by August 31, 2014.

ADDRESSES: You may submit nominations to the Committee by any of the following methods.

- Mail or hand-carry nominations to Ms. Rosita Compton Christian; Department of the Interior; 1849 C Street NW., MS 4211, Washington, DC 20240.
- Email nominations to *USEITI@ios.doi.gov.*

FOR FURTHER INFORMATION CONTACT: Rosita Christian at (202) 208–0272 or (202) 513–0597; fax (202) 513–0682; email *Rosita.ComptonChristian@onrr.gov* or *useiti@ios.doi.gov;* or via mail at the Department of the Interior; 1849 C Street NW., MS 4211, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: Interior established the Committee on July 26, 2012, in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App. 2), and with the concurrence of the General Services Administration. The Committee serves as the USEITI Multi-Stakeholder Group (MSG) and provides advice to the Secretary of the Interior (Secretary) on the design and implementation of the initiative. Specifically, the Committee:

- Serves as the MSG to oversee the U.S. implementation of the Extractive Industries Transparency Initiative (EITI), a global standard for governments to publicly disclose revenues received from oil, gas, and mining assets belonging to the government, with parallel public disclosure by companies of payments to the government (e.g. royalties, rents, bonuses, taxes, or other payments).
- Develops and recommends to the Secretary a fully-costed work plan, containing measurable targets and a timetable for implementation and incorporating an assessement of

capacity contraints. This plan will be developed in consultation with key EITI stakeholders and published upon completion.

• Provides opportunities for collaboration and consultation among stakeholders.

• Advises the Secretary and posts for consideration by other stakeholders proposals for conducting long-term oversight and other activities necessary to achieve EITI and compliant status.

The Committee consists of representatives from three stakeholder sectors. However, there currently are no committee members representing Tribal governments or individual Indian mineral owners. The sectors are:

1. Industry, including non-Federal representatives from the extractive industry, including oil, gas, and mining companies and industry-related trade associations.

2. Civil society, including organizations with an interest in extractive industries, transparency, and government oversight; members of the public; and public and/or private investors.

3. Government, including Federal, State, local, and Tribal governments, and individual Indian mineral owners.

Please note, the purpose of this notice is to fill the Tribal or individual Indian mineral owner positions on the government sector of the Committee because these unique perspectives are currently not represented. In addition to honoring the EITI principle of self-selection within the stakeholder sector, the following criteria will be considered in making final selections:

(1) Understanding of and commitment to the EITI process

(2) Ability to collaborate and operate in a multi-stakeholder setting

(3) Access to and support from a relevant stakeholder constituency

(4) Basic understanding of the extractive industry and/or revenue collection, or willingness to be educated on such matters

Individuals who are currently Federally registered lobbyists are ineligible to serve on any FACA and non-FACA boards, committees, or councils.

The Committee will meet quarterly or at the request of the Designated Federal Officer. Non-Federal members of the Committee will serve without compensation. However, we may pay the travel and per diem expenses of Committee members, if appropriate, under the Federal Travel Regulations.

To learn more about USEITI please visit the official Web site at *www.doi.gov/eiti.*

Dated: June 23, 2014.

Amy Holley,

Chief of Staff—Policy, Management and Budget, Department of the Interior.

[FR Doc. 2014–16336 Filed 7–11–14; 8:45 am]

BILLING CODE 4310–T2–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–MB–2014–N141; FXES11120100000–145–FF01M01000]

Proposed Information Collection; Monitoring Recovered Species After Delisting–American Peregrine Falcon

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (U.S. Fish and Wildlife Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This IC is scheduled to expire on September 30, 2014. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: To ensure that we are able to consider your comments on this IC, we must receive them by September 12, 2014.

ADDRESSES: Send your comments on the IC to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 2042–PDM, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); or *hope_grey@fws.gov* (email). Please include ''1018–0101'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Hope Grey at *hope_grey@fws.gov* (email) or 703–358–2482 (telephone).

SUPPLEMENTARY INFORMATION:

I. Abstract

This information collection implements requirements of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) (ESA). There are no corresponding Service regulations for the ESA post–delisting monitoring requirement. This IC also implements the Migratory Bird Treaty Act (16 U.S.C. 704) and Service regulations in chapter I, subchapter B of title 50 of the Code of Federal Regulations (CFR).

The American peregrine falcon was removed from the List of Endangered and Threatened Wildlife on August 25, 1999 (64 FR 46542). Section 4(g) of the ESA requires that all species that are recovered and removed from the List of Endangered and Threatened Wildlife (delisted) be monitored in cooperation with the States for a period of not less than 5 years. The purpose of this requirement is to detect any failure of a recovered species to sustain itself without the protections of the ESA. We work with relevant State agencies and other species experts to develop appropriate plans and procedures for systematically monitoring recovered wildlife and plants.

The American peregrine falcon has a large geographic distribution that includes a substantial amount of non-Federal land. Although the ESA requires that monitoring of recovered species be conducted for not less than 5 years, the life history of American peregrine falcons is such that it is appropriate to monitor this species for a longer period of time in order to meaningfully evaluate whether or not the recovered species continues to maintain its recovered status. The Monitoring Plan for the American Peregrine Falcon is available on our Web site at *http://www.fws.gov/endangered/esa-library/pdf/Peregrineplan2003.pdf.* Formal collection of monitoring data commenced in 2003 and will continue through 2015.

We will use the information supplied on FWS Forms 3–2307, 3–2308, and 3–2309 to review the status of the American peregrine falcon in the United States and determine if it remains recovered and, therefore, does not require the protections of the ESA:

(1) FWS Form 3–2307 (Peregrine Falcon Monitoring Form) addresses the reporting requirements to record observations on the nesting pair, and the numbers of eggs and young during each nest visit. Each territory will be visited at least two times.

(2) FWS Form 3–2308 (Peregrine Falcon Egg Contaminants Data Sheet) addresses the reporting requirements to record data on eggs collected opportunistically during a nest visit.

(3) FWS Form 3–2309 (Peregrine Falcon Feather Contaminants Data Sheet) addresses the reporting requirements to record data on feathers collected opportunistically during a nest visit. Once collected, the eggs and feathers are archived in a deep freeze for analysis at a later time.

II. Data

OMB Control Number: 1018–0101.

Title: Monitoring Recovered Species After Delisting–American Peregrine Falcon.

Service Form Number(s): 3–2307, 3–2308, and 3–2309.

Type of Request: Extension of currently approved collection.

Description of Respondents: Professional biologists employed by State agencies and other organizations, and volunteers that have been involved in past peregrine falcon conservation efforts.

Respondent's Obligation: Voluntary.

Frequency of Collection: On occasion. Monitoring is conducted every 3 years. For eggs and feathers, 15 to 20 of each are collected over a period of no more than 5 years.

Activity	Number of respondents	Number of responses	Completion time per response (hours)	Total annual burden hours
FWS Form 3–2307	71	639	2.5	1,598
FWS Form 3–2308	8	8	2.5	20
FWS Form 3–2309	8	8	2.5	20
Totals	87	655		1,638

Estimated Nonhour Cost Burden: We estimate the total nonhour burden cost to be $156.00 for expenses incurred when contaminants samples must be shipped to designated labs for analysis and storage.

III. Comments

We invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: July 9, 2014.

Tina A. Campbell,

Chief, Division of Policy and Directives Management, U.S. Fish and Wildlife Service.

[FR Doc. 2014–16388 Filed 7–11–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2014–N135;FXES11130100000–145–FF01E00000]

Endangered Species; Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications for recovery permits to conduct activities with the purpose of enhancing the survival of endangered species. The Endangered Species Act of 1973, as amended (Act), prohibits certain activities with endangered species unless a Federal permit allows such activity. The Act also requires that we invite public comment before issuing such permits.

DATES: To ensure consideration, please send your written comments by August 13, 2014.

ADDRESSES: Program Manager for Restoration and Endangered Species Classification, Ecological Services, U.S. Fish and Wildlife Service, Pacific Regional Office, 911 NE 11th Avenue, Portland, OR 97232–4181. Please refer to the permit number for the application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Colleen Henson, Fish and Wildlife Biologist, at the above address or by telephone (503–231–6131) or fax (503–231–6243).

SUPPLEMENTARY INFORMATION:

Background

The Act (16 U.S.C. 1531 *et seq.*) prohibits certain activities with respect to endangered and threatened species unless a Federal permit allows such activity. Along with our implementing regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17, the Act provides for certain permits, and requires that we invite public comment before issuing these permits for endangered species.

A permit granted by us under section 10(a)(1)(A) of the Act authorizes the permittee to conduct activities (including take or interstate commerce) with respect to U.S. endangered or threatened species for scientific purposes or enhancement of propagation or survival. Our regulations implementing section 10(a)(1)(A) of the Act for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Applications Available for Review and Comment

We invite local, State, and Federal agencies, and the public to comment on the following applications. Please refer to the appropriate permit number for the application when submitting comments.

Documents and other information submitted with these applications are available for review by request from the Program Manager for Restoration and Endangered Species Classification at the address listed in the **ADDRESSES** section of this notice, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552).

Permit Number: TE–060179

Applicant: Zoological Society of San Diego, San Diego, California.

The applicant requests a permit renewal, with amendments, to take (collect eggs, chicks, and adults; and band and radio-tag) the 'akikiki

(*Oreomystis bairdi*) and the 'akeke'e (*Loxops caeruleirostris*) in conjunction with captive propagation and release in the State of Hawaii for the purpose of enhancing the species' survival.

Permit Number: TE–38768B

Applicant: Micronesian Environmental Services, Saipan, Commonwealth of the Northern Mariana Islands.

The applicant requests a new permit to take (survey and map distribution) Mariana common moorhen (*Gallinula chloropus guami*), Mariana crow (*Corvus kubaryi*), Micronesian megapode (*Megapodius laperouse*), and nightingale reed-warbler (*Acrocephalus luscinia*) in conjunction with studies in the Northern Mariana Islands archipelago for the purpose of enhancing the species' survival.

Public Availability of Comments

All comments and materials we receive in response to this request will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*).

Dated: June 27, 2014.

Richard R. Hannan,

Acting Regional Director, Pacific Region, U.S. Fish and Wildlife Service.

[FR Doc. 2014–16385 Filed 7–11–14; 8:45 am]

BILLING CODE 4310–55–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–921]

Certain Marine Sonar Imaging Devices, Including Downscan and Sidescan Devices, Products Containing the Same, and Components Thereof; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on June 9, 2014, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Navico, Inc. of Tulsa, Oklahoma and Navico Holding AS of Egersund, Norway. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain marine sonar imaging devices, including downscan and sidescan devices, products containing the same, and components thereof by reason of infringement of certain claims of U.S. Patent No. 8,305,840 (''the '840 patent''), U.S. Patent No. 8,300,499 (''the '499 patent''), and U.S. Patent No. 8,605,550 (''the '550 patent''). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *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.*

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2014).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on July 7, 2014, ORDERED THAT—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain marine sonar imaging devices, including downscan and sidescan devices, products containing the same, and components thereof by reason of infringement of one or more of claims 1–20, 22–27, 29–46, 49–59, 61–63, 66, 68–73 of the '840 patent, 1, 2, 4–7, 16, 19–21, 23–25, 27–30, 39, 42–44, 46–49, 58, 62–66, and 69–81 of the '499 patent, and claims 1–5, 7, 12–15, 17, 19–25, 32–36, 38–42, 44–45, 47–52, and 57 of the '550 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

Navico, Inc., 4500 South 129th East Avenue, Suite 200, Tulsa, Oklahoma 74134.

Navico Holding AS, Nyåskaiveien 2, 4370 Egersund, Norway.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Garmin International, Inc., 1200 East 121st Street, Olathe, Kansas 66062.

Garmin North America, Inc., 1200 East 121st Street, Olathe, Kansas 66062.

Garmin USA, Inc., 1200 East 121st Street, Olathe, Kansas 66062.

Garmin (Asia) Corporation, No. 68, Zhangshu 2nd Road, Xizhi District, New Taipei City 221, Taiwan.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of

investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

Issued: July 9, 2014.

By order of the Commission.

Jennifer D. Rohrbach,

Supervisory Attorney.

[FR Doc. 2014–16400 Filed 7–11–14; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. Nos. 701–TA–454 and 731–TA–1144 (Review)]

Welded Stainless Steel Pressure Pipe From China

Determination

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the countervailing duty order and antidumping duty order on welded stainless steel pressure pipe from China would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on February 3, 2014 (79 FR 6222, February 3, 2014) and determined on May 29, 2014 that it would conduct expedited reviews (79 FR 30877, May 29, 2014).

The Commission completed and filed its determinations in these reviews on July 7, 2014. The views of the Commission are contained in USITC Publication 4478 (July 2014), entitled *Welded Stainless Steel Pressure Pipe from China: Investigation Nos. 701–TA–454 and 731–TA–1144 (Review).*

Issued: July 9, 2014.

By order of the Commission.

Jennifer D. Rohrbach,

Supervisory Attorney.

[FR Doc. 2014–16403 Filed 7–11–14; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

DEPARTMENT OF JUSTICE

[OMB Number 1110–0015]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Currently Approved Collection (1–699 and 1–700)

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: 60-day notice.

SUMMARY: The Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division, 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 is published to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and will be accepted for 60 days until September 12, 2014.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Mrs. Amy C. Blasher, Unit Chief, Federal Bureau of Investigation, Criminal Justice Information Services (CJIS) Division, Module E–3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306; telephone 304–625–4830, facsimile, 304 625–3566.

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 Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

1. *Type of Information Collection:* Revision of a currently approved collection.

2. *The Title of the Form/Collection:* Quarterly Hate Crime Report and Hate Crime Incident Report.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form numbers are 1–699 and 1–700. The applicable component within the Department of Justice, the Federal Bureau of Investigation, Criminal Justice Information Services Division.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public who are asked to voluntarily respond is city, county, state, tribal, and federal U.S. law enforcement agencies. Under Title 28, U.S. Code, Section 534, this information collection requests hate crime data from respondents in order for the FBI UCR Program to serve as the national clearinghouse for the collection and dissemination of hate crime data and to publish these statistics annually in ''Hate Crime Statistics''. This provides for the national UCR Program a record of each hate crime incident including the offense classification and its respective bias motivation, the number and type of victims, the location of the incident, the number of suspected offenders, the suspected offender's race, and whether the victims and offenders are under 18 or over the age of 18.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There is a potential of 18,290 law enforcement agency respondents; 11,357 for the Summary Reporting System (SRS) and 6,933 for the National Incident-Based Reporting System (NIBRS). NIBRS burden hours are collected on the NIBRS Information

Collection Request. Calculated estimates for an SRS respondent to respond indicate 7 minutes per quarter. The total annual burden hour per respondent is 28 minutes. Total Annual Hour Burden: 7 minutes × 4 quarters = 28 minutes.

6. *An estimate of the total public burden (in hours) associated with the collection:* There are approximately 5,300 hours, annual burden, associated with this information collection.

11,357 respondents × 4 responses/year = 45,428 total annual responses.

45,428 × 7 minutes/60 minutes = 5,300 total annual hour burden.

(This burden estimate does not include the 6,933 NIBRS agencies; the NIBRS burden hours are captured in the NIBRS Information Collection Request.)

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., 3E.405, Washington, DC 20530.

Dated: July 9, 2014.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2014–16383 Filed 7–11–14; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Modification of Amended Consent Decree Under The Clean Air Act

On July 8, 2014, the Department of Justice lodged a proposed Third Amended Consent Decree with the United States District Court for the Eastern District of Wisconsin in the lawsuit entitled *United States and Michigan Department of Environmental Quality, Plaintiffs, and Clean Wisconsin, Sierra Club, and Citizens' Utility Board, Intervenors,* v. *Wisconsin Electric Power Company,* Civil Action No. 03-c-0371.

Generally, the proposed modifications to the Decree are designed: (1) To accommodate the voluntary decision of the Defendant, Wisconsin Electric Power Company (''WE Energies,'' ''WE'' or ''Defendant''), to convert all four coal-fired boilers at the Valley Generating Station (''Valley Station''), located in Milwaukee, Wisconsin, from coal to natural gas; and (2) to simplify the process of terminating the Third Amended Decree after December 31, 2015. The coal-to-natural-gas conversion will provide significant emission reductions at the Valley Station, and the termination-related changes will provide greater finality for the Defendant while also ensuring that the Decree's provisions remain enforceable in the future through federally enforceable state operating permits.

The publication of this notice opens a period for public comment on Proposed Third Amended Consent Decree. Comments should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States et al.* v. *Wisconsin Electric Power Company,* D.J. Ref. No. 90–5–2–1–07493. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Joint Stipulation to Modify Section XXI of the Amended Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the Proposed Third Amended Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $21.75 (25 cents per page reproduction cost) payable to the United States Treasury.

Thomas P. Carroll,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2014–16334 Filed 7–11–14; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Registration: Meridian Medical Technologies

ACTION: Notice of registration.

SUMMARY: Meridian Medical Technologies applied to be registered as an importer of a certain basic class of narcotic controlled substance. The DEA grants Meridian Medical Technologies registration as an importer of this controlled substance.

SUPPLEMENTARY INFORMATION: By notice dated April 21, 2014, and published in the **Federal Register** on April 28, 2014, 79 FR 23374, Meridian Medical Technologies, 2555 Hermelin Drive, St. Louis, Missouri 63144, applied to be registered as an importer of a certain basic class of controlled substance. No comments or objections were submitted for this notice.

The Drug Enforcement Administration (DEA) has considered the factors in 21 U.S.C. 823, 952(a) and 958(a) and determined that the registration of Meridian Medical Technologies to import the basic class of controlled substance is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. The DEA investigated the company's maintenance of effective controls against diversion by inspecting and testing the company's physical security systems, verifying the company's compliance with state and local laws, and reviewing the company's background and history.

Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above-named company is granted registration as an importer of morphine (9300), a basic class of narcotic controlled substance listed in schedule II.

The company manufactures a product containing morphine in the United States. The company exports this product to customers around the world. The company has been asked to ensure that its product, which is sold to European customers, meets the standards established by the European Pharmacopeia, administered by the Directorate for the Quality of Medicines (EDQM). In order to ensure that its product will meet European specifications, the company seeks to import morphine supplied by EDQM for use as reference standards.

This is the sole purpose for which the company will be authorized by the DEA to import morphine.

Dated: July 7, 2014.

Joseph T. Rannazzisi,

Deputy Assistant Administrator.

[FR Doc. 2014–16318 Filed 7–11–14; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Bulk Manufacturer of Controlled Substances Application: Research Triangle Institute

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.33(a) on or before September 12, 2014.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, and dispensers of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control (''Deputy Assistant Administrator'') pursuant to section 7(g) of 28 CFR part 0, subpart R, Appendix.

In accordance with 21 CFR 1301.33(a), this is notice that on April 4, 2014, Research Triangle Institute, Kenneth S. Rehder, Ph.D., Hermann Building East Institute Drive, P.O. Box 12194, Research Triangle Park, North Carolina 27709, applied to be registered as a bulk manufacturer of the following basic classes controlled substances:

Controlled substance	Schedule
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Cocaine (9041)	II

The company will manufacture marihuana and cocaine derivatives for use by their customers in analytical kits, reagents, and reference standards as directed by the National Institute on Drug Abuse.

Dated: July 2, 2014.

Joseph T. Rannazzisi,

Deputy Assistant Administrator.

[FR Doc. 2014–16317 Filed 7–11–14; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Petition for Classifying Labor Surplus Areas

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) titled, ''Petition for Classifying Labor Surplus Areas,'' 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 August 13, 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=201405-1205-001* (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 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–ETA, 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: Under Executive Orders 12073 and 10582, the DOL issues an annual list of Labor Surplus Areas (LSA) used by Federal and State entities in a number of actions such as procurement and property transfer. The annual LSA list is updated during the year, based upon petitions submitted to the DOL by State Workforce Agencies requesting additional areas for LSA certification. This information collection is specified by regulations 20 CFR part 654.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1205–0207.

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 July 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 March 27, 2014 (79 FR 17183).

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 thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0207. 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–ETA.

Title of Collection: Petition for Classifying Labor Surplus Areas.

OMB Control Number: 1205–0207.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 3.

Total Estimated Number of Responses: 3.

Total Estimated Annual Time Burden: 9 hours.

Total Estimated Annual Other Costs Burden: $0.

Dated: July 8, 2014.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2014–16397 Filed 7–11–14; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2007–0039]

Intertek Testing Services NA, Inc.: Application for Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the application of Intertek Testing Services NA, Inc., for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7, and presents the Agency's preliminary finding to grant the application.

DATES: Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before July 29, 2014.

ADDRESSES: Submit comments by any of the following methods:

1. *Electronically:* Submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for making electronic submissions.

2. *Facsimile:* If submissions, including attachments, are not longer than 10 pages, commenters may fax them to the OSHA Docket Office at (202) 693–1648.

3. *Regular or express mail, hand delivery, or messenger (courier) service:* Submit comments, requests, and any attachments to the OSHA Docket Office, Docket No. OSHA–2007–0039, Technical Data Center, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–2625, Washington, DC 20210; telephone: (202) 693–2350 (TTY number: (877) 889–5627). Note that security procedures may result in significant delays in receiving comments and other written materials by regular mail. Contact the OSHA Docket Office for information about security procedures concerning delivery of materials by express mail, hand delivery, or messenger service. The hours of operation for the OSHA Docket Office are 8:15 a.m.–4:45 p.m., e.t.

4. *Instructions:* All submissions must include the Agency name and the OSHA docket number (OSHA–2007–0039). OSHA places comments and other materials, including any personal information, in the public docket without revision, and these materials will be available online at *http://www.regulations.gov.* Therefore, the Agency cautions commenters about submitting statements they do not want made available to the public, or submitting comments that contain personal information (either about themselves or others) such as Social Security numbers, birth dates, and medical data.

5. *Docket:* To read or download submissions or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions.

6. *Extension of comment period:* Submit requests for an extension of the comment period on or before July 29, 2014 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3655, Washington, DC 20210, or by fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3647, Washington, DC 20210; telephone: (202) 693–1999; email: *Meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. David W. Johnson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3655, Washington, DC 20210; phone: (202) 693–2110 or email: *johnson.david.w@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Notice of the Application for Expansion

The Occupational Safety and Health Administration is providing notice that Intertek Testing Services NA, Inc. (ITSNA), is applying for expansion of its current recognition as an NRTL. ITSNA requests the addition of two test standards to its NRTL scope of recognition.

OSHA recognition of an NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition. Each NRTL's scope of recognition includes the type of products the NRTL may test, with each type specified by its applicable test standard; and the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The Agency processes applications by an NRTL for initial recognition, and for an expansion or renewal of this recognition, following requirements in

Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding. In the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational Web page for each NRTL, including ITSNA, which details the NRTL's scope of recognition. These pages are available from the OSHA Web site at *http://www.osha.gov/dts/otpca/nrtl/index.html*.

ITSNA currently has 14 facilities (sites) recognized by OSHA for product testing and certification, with its headquarters located at: Intertek Testing Services NA, Inc., 545 East Algonquin Road, Suite F, Arlington Heights, Illinois 60005. A complete list of ITSNA's scope of recognition is available at *http://www.osha.gov/dts/otpca/nrtl/its.html*.

II. General Background on the Application

ITSNA submitted an application, dated February 10, 2014 (Exhibit 1), to expand its recognition to include multiple additional test standards. OSHA staff performed a comparability analysis and reviewed other pertinent information. OSHA did not perform any on-site reviews in relation to this application.

Table 1 below lists the appropriate test standards found in ITSNA's application for expansion for testing and certification of products under the NRTL Program.

TABLE 1—PROPOSED LIST OF APPROPRIATE TEST STANDARDS FOR INCLUSION IN ITSNA'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
ANSI/AAMI ES60601–1: 2005/(R)2012	Medical electrical equipment, Part 1: General requirements for basic safety and essential performance (with amendments).
UL 1004–1	Rotating Electrical Machines—General Requirements.

III. Preliminary Finding on the Application

ITSNA submitted an acceptable application for expansion of its scope of recognition. OSHA's review of the application file and comparability analysis indicate that ITSNA can meet the requirements prescribed by 29 CFR 1910.7 for expanding its recognition to include the addition of these two test standards for NRTL testing and certification. This preliminary finding does not constitute an interim or temporary approval of ITSNA's application.

OSHA welcomes public comment as to whether ITSNA meets the requirements of 29 CFR 1910.7 for expansion of its recognition as an NRTL. Comments should consist of pertinent written documents and exhibits. Commenters needing more time to comment must submit a request in writing, stating the reasons for the request. Commenters must submit the written request for an extension by the due date for comments. OSHA will limit any extension to 10 days unless the requester justifies a longer period. OSHA may deny a request for an extension if it is not adequately justified. To obtain or review copies of the publicly available information in ITSNA's application, including pertinent documents (e.g., exhibits) and all submitted comments, contact the Docket Office, Room N–2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address; these materials also are available online at *http://www.regulations.gov* under Docket No. OSHA–2007–0039.

OSHA staff will review all comments to the docket submitted in a timely manner and, after addressing the issues raised by these comments, will recommend to the Assistant Secretary for Occupational Safety and Health whether to grant ITSNA's application for expansion of its scope of recognition. The Assistant Secretary will make the final decision on granting the application. In making this decision, the Assistant Secretary may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7. OSHA will publish a public notice of this final decision in the **Federal Register**.

IV. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, DC 20210, authorized the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on July 9, 2014.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2014–16427 Filed 7–11–14; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2009–0025]

Underwriters Laboratories, Inc.: Grant of Renewal of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the Occupational Safety and Health Administration's final decision granting renewal of recognition of Underwriters Laboratories, Inc., as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

DATES: The renewal of recognition becomes effective on July 14, 2014.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3647, Washington, DC 20210; telephone: (202) 693–1999; email: *Meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. David Johnson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3655, Washington, DC 20210;

telephone: (202) 693–2110; email: *johnson.david.w@dol.gov.* OSHA's Web page includes information about the NRTL Program (see *http://www.osha.gov/dts/otpca/nrtl/index.html*).

SUPPLEMENTARY INFORMATION:

I. Background

OSHA recognition of an NRTL signifies that the organization meets the requirements specified by 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition, and is not a delegation or grant of government authority. As a result of recognition, employers may use products properly approved by the NRTL to meet OSHA standards that require testing and certification. OSHA maintains an informational Web site for each NRTL at *http://www.osha.gov/dts/otpca/nrtl/index.html* that details its scope of recognition available.

OSHA processes applications submitted by an NRTL for renewal of recognition following requirements in Appendix A to 29 CFR 1910.7. OSHA conducts renewals in accordance with the procedures in 29 CFR 1910.7, App. A II.C. In accordance with these procedures, NRTLs submit a renewal request to OSHA between nine months and one year before the expiration date of its current recognition. A renewal request includes a request for renewal and any additional information demonstrating its continued compliance with the terms of its recognition and 29 CFR 1910.7. If OSHA has not conducted an on-site assessment of the NRTL headquarters and any key sites within the past 18 to 24 months, it will schedule the necessary on-site assessment prior to the expiration date of the NRTL's recognition. Upon review of the submitted material and, as necessary, the successful completion of the on-site assessment, OSHA announces its preliminary decision to grant or deny renewal in the **Federal Register** and solicits comments from the public. OSHA then publishes a final **Federal Register** notice responding to any comments and renewing the NRTL's recognition for a period of five years, or denying the renewal of recognition.

Underwriters Laboratories, Inc. (UL), initially received OSHA recognition as an NRTL on June 13, 1988 (see 60 FR 33852, June 29, 1995). The most recent renewal for UL was on May 8, 2002, for a five-year period expiring on May 8, 2007. UL submitted a timely request for renewal, dated July 27, 2006 (see Ex. OSHA–2009–0025–0006), and retained its recognition pending OSHA's final decision in this renewal process. The current addresses of the UL facilities recognized by OSHA and included as part of the renewal request are:

(1) UL Northbrook, 333 Pfingsten Road, Northbrook, Illinois 60062;

(2) UL International Netherlands B.V., Delta 1A, Business Park IJsseloord 2, Arnhem, Netherlands 6825 ML;

(3) UL International Italia S.r.l., Via Archimede, 42, Agrate Brianza, Italy 20041;

(4) UL International Services, Ltd. Taiwan, 1st Floor, 260 Da-Yeh Road, Pei Tou District, Taipei City, Taiwan 112;

(5) UL Japan, 4383–326 Asam-cho, Ise-shi, Japan 516–0021;

(6) UL San Jose, 455 Trimble Road, San Jose, California 95131;

(7) UL Melville, 1285 Walt Whitman Road, Mellville, New York 11747;

(8) UL International Germany GmbH, Admiral-Rosendahl-Strasse 9, 23, Neu-Isenburg 63263;

(9) UL Canada, 7 Underwriters Road, Toronto, Ontario, Canada MiR 3A9;

(10) UL Research Triangle Park, 12 Laboratory Drive, P.O. Box 13995, Research Triangle Park, North Carolina 27709;

(11) UL International Denmark A/S, Borupvang 5A, Ballerup, Denmark DK–2750;

(12) UL International UK Ltd., Wonersh House; The Guildway; Old Portsmouth Road, Guilford, Surrey, United Kingdom, GU3 1LR;

(13) UL International Limited Hong Kong, 18th Floor, Delta House, 3 On Yiu Street, Shatin, Hong Kong;

(14) UL Camas, 2600 NW., Lake Road, Camas, Washington 98607; and

(15) UL Korea, 33rd Floor Gangnam Finance Center, 737 Yeoksam-dong Gangnam-gu, Seoul, Korea 135–984.

OSHA evaluated UL's application for renewal and made a preliminary determination that UL can continue to meet the requirements prescribed by 29 CFR 1910.7 for recognition. OSHA conducted audits of UL's headquarters, UL Northbrook on September 10–11, 2013, and on April 4–7, 2011. OSHA staff also performed audits of the: UL International Services, Ltd. Taiwan site on November 6–7, 2008; UL Melville site on October 20–22, 2008; UL International Germany GmbH on June 22–23, 2009; UL Research Triangle Park site on February 14–15, 2013; of the UL International Denmark A/S site on June 22–23, 2008, and on April 22–23, 2013; UL International UK Ltd. site on April 18–19, 2011; and UL International Limited Hong Kong site on November 3–4, 2008. OSHA found non-conformances with the requirements of 29 CFR 1910.7. UL addressed these issues sufficiently to meet the applicable NRTL requirements. Accordingly, OSHA determined that it did not need to conduct an on-site review of UL's facilities for this request for renewal, based on its evaluation of UL's application and all other available information.

OSHA published the preliminary notice announcing UL's renewal request in the **Federal Register** on February 25, 2014 (79 FR 10568). The Agency requested comments by March 12, 2014, but received no comments in response to this notice. OSHA now is proceeding with this final notice to grant UL's request for renewal of recognition.

To obtain or review copies of all public documents pertaining to the UL's application, go to *www.regulations.gov* or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–2625, Washington, DC 20210. Docket No. OSHA–2009–0025 contains all materials in the record concerning UL's recognition.

II. Final Decision and Order

Pursuant to the authority granted under 29 CFR 1910.7, OSHA hereby gives notice of the renewal of recognition of UL as an NRTL. OSHA NRTL Program staff reviewed the renewal request for UL and other pertinent information. Based on this review of the renewal request for UL and other pertinent information, OSHA finds that UL meets the requirements of 29 CFR 1910.7 for renewal of its recognition, subject to the specified limitation and conditions. OSHA limits the renewal of UL's recognition to include the terms and conditions of UL's scope of recognition. The scope of recognition for UL is available in the **Federal Register** notice dated June 29, 1995 (60 FR 33852), or on OSHA's Web site at *http://www.osha.gov/dts/otpca/nrtl/ul.html.*

Conditions

In addition to those conditions already required by 29 CFR 1910.7, UL also must abide by the following conditions of recognition:

1. UL must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in its operations as an NRTL, and provide details of the change(s);

2. UL must meet all the terms of its recognition and comply with all OSHA policies pertaining to this recognition; and

3. UL must continue to meet the requirements for recognition, including all previously published conditions on

UL's scope of recognition, in all areas for which it has recognition.

III. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, DC 20210, authorized the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on July 9, 2014.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2014–16434 Filed 7–11–14; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2006–0028]

MET Laboratories, Inc.: Grant of Renewal of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the Occupational Safety and Health Administration's final decision granting renewal of recognition of MET Laboratories, Inc., as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

DATES: The renewal of recognition becomes effective on July 14, 2014.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3647, Washington, DC 20210; telephone: (202) 693–1999; email: *Meilinger.francis2@dol.gov*.

General and technical information: Contact Mr. David Johnson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3655, Washington, DC 20210; telephone: (202) 693–2110; email: *johnson.david.w@dol.gov*. OSHA's Web page includes information about the NRTL Program (see *http://www.osha.gov/dts/otpca/nrtl/index.html*).

SUPPLEMENTARY INFORMATION:

I. Background

OSHA recognition of an NRTL signifies that the organization meets the requirements specified by 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition, and is not a delegation or grant of government authority. As a result of recognition, employers may use products properly approved by the NRTL to meet OSHA standards that require testing and certification. OSHA maintains an informational Web site for each NRTL at *http://www.osha.gov/dts/otpca/nrtl/index.html* that details its scope of recognition available.

OSHA processes applications submitted by an NRTL for renewal of recognition following requirements in Appendix A to 29 CFR 1910.7. OSHA conducts renewals in accordance with the procedures in 29 CFR 1910.7, App. A II.C. In accordance with these procedures, NRTLs submit a renewal request to OSHA between nine months and one year before the expiration date of its current recognition. A renewal request includes a request for renewal and any additional information demonstrating its continued compliance with the terms of its recognition and 29 CFR 1910.7. If OSHA has not conducted an on-site assessment of the NRTL headquarters and any key sites within the past 18 to 24 months, it will schedule the necessary on-site assessment prior to the expiration date of the NRTL's recognition. Upon review of the submitted material and, as necessary, the successful completion of the on-site assessment, OSHA announces its preliminary decision to grant or deny renewal in the **Federal Register** and solicits comments from the public. OSHA then publishes a final **Federal Register** notice responding to any comments and renewing the NRTL's recognition for a period of five years, or denying the renewal of recognition.

MET Laboratories, Inc. (MET), initially received OSHA recognition as an NRTL on May 16, 1989 (54 FR 21136). The most recent renewal for MET was on May 23, 2002, for a five-year period expiring on May 23, 2007. MET submitted a timely request for renewal, dated June 06, 2006 (see Ex. OSHA–2006–0028–0011), and retained its recognition pending OSHA's final decision in this renewal process. The current address of the MET facility recognized by OSHA and included as part of the renewal request is MET Laboratories, Inc., 914 West Patapsco Avenue, Baltimore, Maryland 21230.

OSHA evaluated MET's application for renewal and made a preliminary determination that MET can continue to meet the requirements prescribed by 29 CFR 1910.7 for recognition. OSHA conducted an audit of MET on September 26–28, 2012, and found non-conformances with the requirements of 29 CFR 1910.7. MET addressed these issues sufficiently to meet the applicable NRTL requirements. Accordingly, OSHA determined that it did not need to conduct an on-site review of MET's facilities for this request for renewal based on its evaluation of MET's application and all other available information.

OSHA published the preliminary notice announcing MET's renewal request in the **Federal Register** on February 25, 2014 (79 FR 10566). The Agency requested comments by March 12, 2014, but received no comments in response to this notice. OSHA now is proceeding with this final notice to grant MET's request for renewal of recognition.

To obtain or review copies of all public documents pertaining to the MET's application, go to *www.regulations.gov* or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–2625, Washington, DC 20210. Docket No. OSHA–2006–0028 contains all materials in the record concerning MET's recognition.

II. Final Decision and Order

Pursuant to the authority granted under 29 CFR 1910.7, OSHA hereby gives notice of the renewal of recognition of MET as an NRTL. OSHA NRTL Program staff reviewed the renewal request for MET and other pertinent information. Based on this review of the renewal request for MET and other pertinent information, OSHA finds that MET meets the requirements of 29 CFR 1910.7 for renewal of its recognition, subject to the specified limitation and conditions. OSHA limits the renewal of MET's recognition to include the terms and conditions of MET's scope of recognition. The scope of recognition for MET is available in the **Federal Register** notice dated May 16, 1989 (54 FR 21136), or on OSHA's Web site at *http://www.osha.gov/dts/otpca/nrtl/met.html*.

Conditions

In addition to those conditions already required by 29 CFR 1910.7, MET also must abide by the following conditions of recognition:

1. MET must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in its operations as an NRTL, and provide details of the change(s);

2. MET must meet all the terms of its recognition and comply with all OSHA policies pertaining to this recognition; and

3. MET must continue to meet the requirements for recognition, including all previously published conditions on MET's scope of recognition, in all areas for which it has recognition.

III. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, DC 20210, authorized the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on July 9, 2014.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2014–16432 Filed 7–11–14; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2007–0041]

FM Global Approvals LLC: Grant of Renewal of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the Occupational Safety and Health Administration's final decision granting renewal of recognition of FM Global Approvals LLC, as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

DATES: The renewal of recognition becomes effective on July 14, 2014.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3647, Washington, DC 20210; telephone: (202) 693–1999; email: *Meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. David Johnson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3655, Washington, DC 20210; telephone: (202) 693–2110; email: *johnson.david.w@dol.gov.* OSHA's Web page includes information about the NRTL Program (see *http://www.osha.gov/dts/otpca/nrtl/index.html*).

SUPPLEMENTARY INFORMATION:

I. Background

OSHA recognition of an NRTL signifies that the organization meets the requirements specified by 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition, and is not a delegation or grant of government authority. As a result of recognition, employers may use products properly approved by the NRTL to meet OSHA standards that require testing and certification. OSHA maintains an informational Web site for each NRTL at *http://www.osha.gov/dts/otpca/nrtl/index.html* that details its scope of recognition.

OSHA processes applications submitted by an NRTL for renewal of recognition following requirements in Appendix A to 29 CFR 1910.7. OSHA conducts renewals in accordance with the procedures in 29 CFR 1910.7, App. A II.C. In accordance with these procedures, NRTLs submit a renewal request to OSHA between nine months and one year before the expiration date of its current recognition. A renewal request includes a request for renewal and any additional information demonstrating its continued compliance with the terms of its recognition and 29 CFR 1910.7. If OSHA has not conducted an on-site assessment of the NRTL headquarters and any key sites within the past 18 to 24 months, it will schedule the necessary on-site assessment prior to the expiration date of the NRTL's recognition. Upon review of the submitted material and, as necessary, the successful completion of the on-site assessment, OSHA announces its preliminary decision to grant or deny renewal in the **Federal Register** and solicits comments from the public. OSHA then publishes a final **Federal Register** notice responding to any comments and renewing the NRTL's recognition for a period of five years, or denying the renewal of recognition.

FM Global Approvals LLC (FM) initially received OSHA recognition as an NRTL on June 13, 1988 (see 60 FR 16167, March 29, 1995). The most recent renewal for FM was on September 12, 2001, for a five-year period expiring on September 12, 2006. FM submitted a timely request for renewal, dated November 29, 2005 (see Ex. OSHA–2007–0041–0006), and retained its recognition pending OSHA's final decision in this renewal process. The current addresses of FM facilities recognized by OSHA and included as part of the renewal request are:

1. FM Norwood, 1151 Boston-Providence Turnpike, Norwood, Massachusetts 02062; and

2. FM West Gloucester, 743 Reynolds Road, West Gloucester, Rhode Island 02814.

OSHA evaluated FM's application for renewal and made a preliminary determination that FM can continue to meet the requirements prescribed by 29 CFR 1910.7 for recognition. OSHA conducted audits of FM's facilities on October 24–26, 2012, August 17–19, 2009, and August 5–6, 2008. OSHA found non-conformances with the requirements of 29 CFR 1910.7. FM addressed these issues sufficiently to meet the applicable NRTL requirements. Accordingly, OSHA determined that it did not need to conduct an on-site review of FM's facilities for this request for renewal, based on its evaluation of FM's application and all other available information.

OSHA published the preliminary notice announcing FM's renewal request in the **Federal Register** on February 24, 2014 (79 FR 10192). The Agency requested comments by March 11, 2014, but received no comments in response to this notice. OSHA now is proceeding with this final notice to grant FM's request for renewal of recognition.

To obtain or review copies of all public documents pertaining to the FM's application, go to *www.regulations.gov* or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–2625, Washington, DC 20210. Docket No. OSHA–2007–0041 contains all materials in the record concerning FM's recognition.

II. Final Decision and Order

Pursuant to the authority granted under 29 CFR 1910.7, OSHA hereby gives notice of the renewal of recognition of FM as an NRTL. OSHA NRTL Program staff reviewed the renewal request for FM and other pertinent information. Based on this review of the renewal request for FM and other pertinent information, OSHA finds that FM meets the requirements of 29 CFR 1910.7 for renewal of its

recognition, subject to the specified limitation and conditions. OSHA limits the renewal of FM's recognition to include the terms and conditions of FM's scope of recognition. The scope of recognition for FM is available in the **Federal Register** notice dated March 29 1995 (60 FR 16167), or on OSHA's Web site at *http://www.osha.gov/dts/otpca/nrtl/fm.html.*

Conditions

In addition to those conditions already required by 29 CFR 1910.7, FM also must abide by the following conditions of recognition:

1. FM must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in its operations as an NRTL, and provide details of the change(s);
2. FM must meet all the terms of its recognition and comply with all OSHA policies pertaining to this recognition; and
3. FM must continue to meet the requirements for recognition, including all previously published conditions on FM's scope of recognition, in all areas for which it has recognition.

III. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, DC 20210, authorized the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2014–16430 Filed 7–11–14; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2006–0048]

NSF International: Grant of Renewal of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the Occupational Safety and Health Administration's final decision granting renewal of recognition of NSF International as a Nationally Recognized Testing Laboratory (NRTL).

DATES: The renewal of recognition becomes effective on July 14, 2014.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3647, Washington, DC 20210; telephone: (202) 693–1999; email: *Meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. David Johnson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3655, Washington, DC 20210; telephone: (202) 693–2110; email: *johnson.david.w@dol.gov.* OSHA's Web page includes information about the NRTL Program (see *http://www.osha.gov/dts/otpca/nrtl/index.html*).

SUPPLEMENTARY INFORMATION:

I. Background

OSHA recognition of an NRTL signifies that the organization meets the requirements specified by 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition, and is not a delegation or grant of government authority. As a result of recognition, employers may use products properly approved by the NRTL to meet OSHA standards that require testing and certification. OSHA maintains an informational Web page for each NRTL that details its scope of recognition. These pages are available from the Agency's Web site at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

OSHA processes applications submitted by an NRTL for renewal of recognition following requirements in Appendix A to 29 CFR 1910.7. OSHA conducts renewals in accordance with the procedures in 29 CFR 1910.7, App. A, section II.C. In accordance with these procedures, NRTLs submit a renewal request to OSHA between nine months and one year before the expiration date of its current recognition. A renewal request includes an application for renewal and any additional information demonstrating its continued compliance with the terms of its recognition and 29 CFR 1910.7. If OSHA has not conducted an on-site assessment of the NRTL headquarters and any key sites within the past 18 to 24 months, it will schedule the necessary on-site assessments prior to the expiration date of the NRTL's recognition. Upon review of the submitted material and, as necessary, the successful completion of the on-site assessment, OSHA announces its preliminary decision to grant or deny renewal in the **Federal Register** and solicits comments from the public. OSHA then publishes a final **Federal Register** notice responding to any comments and renewing the NRTL's recognition for a period of five years, or denying the renewal of recognition.

NSF International (NSF) initially received OSHA recognition as an NRTL on December 10, 1998 (63 FR 68309). The most recent renewal for NSF was on August 30, 2005, for a five-year period expiring on August 30, 2010. NSF submitted a timely request for renewal, dated November 16, 2009 (see Exhibit OSHA–2006–0048–0010), and retained its recognition pending OSHA's final decision in this renewal process. The current address of the NSF facility recognized by OSHA and included as part of the renewal request is NSF International, 789 Dixboro Road, Ann Arbor, Michigan 48105.

OSHA evaluated NSF's application for renewal and made a preliminary determination that NSF can continue to meet the requirements prescribed by 29 CFR 1910.7 for recognition. OSHA conducted an on-site audit of NSF's facilities on January 29, 2014, and found non-conformances with the requirements of 29 CFR 1910.7. NSF addressed these issues sufficiently to meet the applicable NRTL requirements. Accordingly, OSHA determined that it did not need to conduct an on-site review of NSF's facilities for this request for renewal based on its evaluation of NSF's application, the audit, and all other available information.

OSHA published the preliminary notice announcing NSF's renewal request in the **Federal Register** on April 22, 2014 (79 FR 22547). The Agency requested comments by May 7, 2014, but received no comments in response to this notice. OSHA now is proceeding with this final notice to grant NSF's request for renewal of recognition.

To obtain or review copies of the publicly available information in NSF's application, including pertinent documents (e.g., exhibits) and all submitted comments, contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–2625, Washington, DC 20210. These materials are also available online at *http://www.regulations.gov* under Docket No. OSHA–2006–0048.

II. Final Decision and Order

Pursuant to the authority granted under 29 CFR 1910.7, OSHA hereby gives notice of the renewal of recognition of NSF as an NRTL. OSHA NRTL Program staff reviewed the renewal request for NSF and other pertinent information provided by NSF. Based on this review of the renewal request for NSF and other available information, OSHA finds that NSF meets the requirements of 29 CFR 1910.7 for renewal of its recognition, subject to the specified limitation and conditions. OSHA limits the renewal of NSF's recognition to include the terms and conditions of NSF's scope of recognition. The scope of recognition for NSF is available in the **Federal Register** notice dated December 10, 1998 (63 FR 68309), or on OSHA's Web site at *http://www.osha.gov/dts/otpca/nrtl/nsf.html.*

Conditions

In addition to those conditions already required by 29 CFR 1910.7, NSF also must abide by the following conditions of recognition:

1. NSF must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in its operations as an NRTL, and provide details of the change(s);

2. NSF must meet all the terms of its recognition and comply with all OSHA policies pertaining to this recognition; and

3. NSF must continue to meet the requirements for recognition, including all previously published conditions on NSF's scope of recognition, in all areas for which it has recognition.

III. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, DC 20210, authorized the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on July 9, 2014.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2014–16431 Filed 7–11–14; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2006–0040]

SGS North America, Inc.: Grant of Renewal of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the Occupational Safety and Health Administration's final decision granting renewal of recognition of SGS North America, Inc., as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

DATES: The renewal of recognition becomes effective on July 14, 2014.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3647, Washington, DC 20210; telephone: (202) 693–1999; email: *Meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. David Johnson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3655, Washington, DC 20210; telephone: (202) 693–2110; email: *johnson.david.w@dol.gov.* OSHA's Web page includes information about the NRTL Program (see *http://www.osha.gov/dts/otpca/nrtl/index.html*).

SUPPLEMENTARY INFORMATION:

I. Background

OSHA recognition of an NRTL signifies that the organization meets the requirements specified by 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition, and is not a delegation or grant of government authority. As a result of recognition, employers may use products properly approved by the NRTL to meet OSHA standards that require testing and certification. OSHA maintains an informational Web site for each NRTL at *http://www.osha.gov/dts/otpca/nrtl/index.html* that details its scope of recognition.

OSHA processes applications submitted by an NRTL for renewal of recognition following requirements in Appendix A to 29 CFR 1910.7. OSHA conducts renewals in accordance with the procedures in 29 CFR 1910.7, App. A II.C. In accordance with these procedures, NRTLs submit a renewal request to OSHA between nine months and one year before the expiration date of its current recognition. A renewal request includes a request for renewal and any additional information demonstrating its continued compliance with the terms of its recognition and 29 CFR 1910.7. If OSHA has not conducted an on-site assessment of the NRTL headquarters and any key sites within the past 18 to 24 months, it will schedule the necessary on-site assessment prior to the expiration date of the NRTL's recognition. Upon review of the submitted material and, as necessary, the successful completion of the on-site assessment, OSHA announces its preliminary decision to grant or deny renewal in the **Federal Register** and solicits comments from the public. OSHA then publishes a final **Federal Register** notice responding to any comments and renewing the NRTL's recognition for a period of five years, or denying the renewal of recognition.

SGS North America, Inc. (SGS), initially received OSHA recognition as an NRTL on March 23, 1993 (58 FR 15509). The most recent renewal for SGS was on August 28, 1998, for a five-year period expiring on August 28, 2003. SGS submitted a timely request for renewal, dated October 2, 2002 (see Ex. OSHA–2006–0040–0008), and retained its recognition pending OSHA's final decision in this renewal process. The current address of the SGS facility recognized by OSHA and included as part of the renewal request is SGS North America, Inc., 620 Old Peachtree Road, Suwanee, Georgia 30024.

OSHA evaluated SGS's application for renewal and made a preliminary determination that SGS can continue to meet the requirements prescribed by 29 CFR 1910.7 for recognition. OSHA conducted an audit of SGS on November 14–16, 2012, and found non-conformances with the requirements of 29 CFR 1910.7. SGS addressed these issues sufficiently to meet the applicable NRTL requirements. Accordingly, OSHA determined that it did not need to conduct an on-site review of SGS's facilities for this request for renewal based on its evaluation of SGS's application and all other available information.

OSHA published the preliminary notice announcing SGS's renewal request in the **Federal Register** on

February 25, 2014 (79 FR 10569). The Agency requested comments by March 12, 2014, but received no comments in response to this notice. OSHA now is proceeding with this final notice to grant SGS's request for renewal of recognition.

To obtain or review copies of all public documents pertaining to the SGS's application, go to *www.regulations.gov* or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–2625, Washington, DC 20210. Docket No. OSHA–2006–0040 contains all materials in the record concerning SGS's recognition.

II. Final Decision and Order

Pursuant to the authority granted under 29 CFR 1910.7, OSHA hereby gives notice of the renewal of recognition of SGS as an NRTL. OSHA NRTL Program staff reviewed the renewal request for SGS and other pertinent information. Based on this review of the renewal request for SGS and other pertinent information, OSHA finds that SGS meets the requirements of 29 CFR 1910.7 for renewal of its recognition, subject to the specified limitation and conditions. OSHA limits the renewal of SGS's recognition to include the terms and conditions of SGS's scope of recognition. The scope of recognition for SGS is available in the **Federal Register** notice dated March 23, 1993 (58 FR 15509), on OSHA's Web site at *http://www.osha.gov/dts/otpca/nrtl/sgs.html.*

Conditions

In addition to those conditions already required by 29 CFR 1910.7, SGS also must abide by the following conditions of recognition:

1. SGS must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in its operations as an NRTL, and provide details of the change(s);
2. SGS must meet all the terms of its recognition and comply with all OSHA policies pertaining to this recognition; and
3. SGS must continue to meet the requirements for recognition, including all previously published conditions on SGS's scope of recognition, in all areas for which it has recognition.

III. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, DC 20210, authorized the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on July 9, 2014.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2014–16433 Filed 7–11–14; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2007–0039]

Intertek Testing Services NA, Inc.: Grant of Renewal of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the Occupational Safety and Health Administration's final decision granting renewal of recognition of Intertek Testing Services NA, Inc., as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

DATES: The renewal of recognition becomes effective on July 14, 2014.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3647, Washington, DC 20210; telephone: (202) 693–1999; email: *Meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. David Johnson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3655, Washington, DC 20210; telephone: (202) 693–2110; email: *johnson.david.w@dol.gov.* OSHA's Web page includes information about the NRTL Program (see *http://www.osha.gov/dts/otpca/nrtl/index.html*).

SUPPLEMENTARY INFORMATION:

I. Background

OSHA recognition of an NRTL signifies that the organization meets the requirements specified by 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition, and is not a delegation or grant of government authority. As a result of recognition, employers may use products properly approved by the NRTL to meet OSHA standards that require testing and certification. OSHA maintains an informational Web site for each NRTL at *http://www.osha.gov/dts/otpca/nrtl/index.html* that details its scope of recognition.

OSHA processes applications submitted by an NRTL for renewal of recognition following requirements in Appendix A to 29 CFR 1910.7. OSHA conducts renewals in accordance with the procedures in 29 CFR 1910.7, App. A II.C. In accordance with these procedures, NRTLs submit a renewal request to OSHA between nine months and one year before the expiration date of its current recognition. A renewal request includes a request for renewal and any additional information demonstrating its continued compliance with the terms of its recognition and 29 CFR 1910.7. If OSHA has not conducted an on-site assessment of the NRTL headquarters and any key sites within the past 18 to 24 months, it will schedule the necessary on-site assessment prior to the expiration date of the NRTL's recognition. Upon review of the submitted material and, as necessary, the successful completion of the on-site assessment, OSHA announces its preliminary decision to grant or deny renewal in the **Federal Register** and solicits comments from the public. OSHA then publishes a final **Federal Register** notice responding to any comments and renewing the NRTL's recognition for a period of five years, or denying the renewal of recognition.

Intertek Testing Services NA, Inc. (ITSNA), initially received OSHA recognition as an NRTL on September 13, 1989 (54 FR 37845). The most recent renewal for ITSNA was on May 29, 2001, for a five-year period expiring on May 29, 2006. ITSNA submitted a timely request for renewal, dated August 25, 2005 (see Ex. OSHA–2007–0039–0015), and retained its recognition pending OSHA's final decision in this renewal process. The current addresses of ITSNA facilities recognized by OSHA and included as part of the renewal request are:

1. ITSNA Cortland, 3933 U.S. Route 11, Cortland, New York 13045;
2. ITSNA Atlanta, 1950 Evergreen Boulevard, Duluth, Georgia 30096;
3. ITSNA Boxborough, 70 Codman Hill Road, Boxborough, Massachusetts 01719;

4. ITSNA Lexington, 731 Enterprise Drive, Lexington, Kentucky 40510;
5. ITSNA San Francisco, 1365 Adams Court, Menlo Park, California 94025;
6. ITSNA Los Angeles, 25791 Commercentre Drive, Lake Forest, California 92630;
7. ITSNA Minneapolis, 7250 Hudson Boulevard, Suite 100, Oakdale, Minnesota 55128;
8. ITSNA Madison, 8431 Murphy Drive, Middleton, Wisconsin 53562;
9. ITSNA SEMKO, Box 1103, S–164 #22, Kista, Stockholm, Sweden;
10. ITSNA Chicago, 545 East Algonquin Road, Suite F, Arlington Heights, Illinois 60005;
11. ITSNA Hong Kong, 2/F., Garment Centre, 576 Castle Peak Road, Kowloon, Hong Kong;
12. ITSNA Vancouver, 1500 Brigantine Drive, Coquitlam, British Columbia, Canada V3K 7C1;
13. ITSNA Fairfield, 41 Plymouth Street, Fairfield, New Jersey 07004; and
14. ITSNA Dallas, 1809 10th Street, Suite 400, Plano, Texas 75074.

OSHA evaluated ITSNA's application for renewal and made a preliminary determination that ITSNA can continue to meet the requirements prescribed by 29 CFR 1910.7 for recognition. OSHA conducted audits of the: ITSNA Cortland site on August 25–27, 2009 and June 18–19, 2008; ITSNA Atlanta site on March 12–13, 2008; ITSNA Boxborough site on March 21–22, 2013; ITSNA San Francisco site on April 23–24, 2012; ITSNA Hong Kong site on August 19–21, 2013; ITSNA Vancouver site on October 16–17, 2008; and ITSNA Dallas site on March 1–2, 2013. OSHA found non-conformances with the requirements of 29 CFR 1910.7. ITSNA addressed these issues sufficiently to meet the applicable NRTL requirements. Accordingly, OSHA determined that it did not need to conduct an on-site review of ITSNA's facilities for this request for renewal based on its evaluation of ITSNA's application and all other available information.

OSHA published the preliminary notice announcing ITSNA's renewal request in the **Federal Register** on February 24, 2014 (79 FR 10196). The Agency requested comments by March 11, 2014, but received no comments in response to this notice. OSHA now is proceeding with this final notice to grant ITSNA's request for renewal of recognition.

To obtain or review copies of all public documents pertaining to the ITSNA's application, go to *www.regulations.gov* or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–2625, Washington, DC 20210. Docket No. OSHA–2007–0039 contains all materials in the record concerning ITSNA's recognition.

II. Final Decision and Order

Pursuant to the authority granted under 29 CFR 1910.7, OSHA hereby gives notice of the renewal of recognition of ITSNA as an NRTL. OSHA NRTL Program staff reviewed the renewal request for ITSNA and other pertinent information. Based on this review of the renewal request for ITSNA and other pertinent information, OSHA finds that ITSNA meets the requirements of 29 CFR 1910.7 for renewal of its recognition, subject to the specified limitation and conditions. OSHA limits the renewal of ITSNA's recognition to include the terms and conditions of ITSNA's scope of recognition. The scope of recognition for ITSNA is available in the **Federal Register** notice dated September 13, 1989 (54 FR 37845), or on OSHA's Web site at *http://www.osha.gov/dts/otpca/nrtl/its.html.*

Conditions

In addition to those conditions already required by 29 CFR 1910.7, ITSNA also must abide by the following conditions of recognition:

1. ITSNA must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in its operations as an NRTL, and provide details of the change(s);

2. ITSNA must meet all the terms of its recognition and comply with all OSHA policies pertaining to this recognition; and

3. ITSNA must continue to meet the requirements for recognition, including all previously published conditions on ITSNA's scope of recognition, in all areas for which it has recognition.

III. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, DC 20210, authorized the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on July 9, 2014.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2014–16428 Filed 7–11–14; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2012–0015]

Modification of the Uniform Chimney Variance To Include Industrial Access, Inc., and Marietta Silos LLC

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces its final decision to modify the uniform chimney variance granted to Kiewit Power Constructors Co. and other employers by adding Industrial Access, Inc., and Marietta Silos LLC (Industrial Access and Marietta Silos) to the list of employers covered by the conditions specified in that variance.

DATES: This modification to the uniform chimney variance is effective on July 14, 2014.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3647, Washington, DC 20210; telephone: (202) 693–1999; email: *Meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. David Johnson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3655, Washington, DC 20210; telephone: (202) 693–2110; email: *johnson.david.w@dol.gov.* OSHA's Web page includes information about the Variance Program (see *http://www.osha.gov/dts/otpca/variances/index.html*).

SUPPLEMENTARY INFORMATION: *Copies of this **Federal Register** notice.* Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This **Federal Register** notice, as well as news releases and other relevant information, also are available at OSHA's Web page at *http://www.osha.gov.*

I. Background

Between 1973 and 2010, OSHA granted to a number of chimney-construction companies permanent variances from the provisions of the OSHA standards that regulate boatswains' chairs and hoist towers,

specifically, paragraph (o)(3) of 29 CFR 1926.452 and paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of 29 CFR 1926.552.[1] On October 2, 2013, the Agency granted a permanent multi-state uniform chimney variance to 15 construction employers (Kiewit *et al;* 78 FR 60900). The uniform chimney variance: (1) Clarified, improved, and updated the technology and safeguards included in the conditions of the variance by citing the most recent consensus standards and best practices; (2) broadened and standardized the scope of the uniform chimney variance to apply to chimney-related construction, including work on chimneys, chimney linings, stacks, silos, towers, and similar structures, built using jump-form and slip-form methods of construction, regardless of the structural configuration, and that involve the use of temporary personnel-hoist systems; (3) provided consistent and safe variance conditions across the employers applying for, and granted, the uniform chimney variance; and (4) superseded and replaced the chimney-related construction variances granted between 1973 and 2010.

II. Notice of Applications

On December 6, 2013, Industrial Access, Inc., and on February 7, 2014, Marietta Silos LLC, submitted their respective applications for a permanent variance under Section 6(d) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655) and 29 CFR 1905.11 (''Variances and other relief under section 6(d)'') (see Exhibits. OSHA–2012–0015–0023 and 0024). The applicants construct, renovate, repair, maintain, inspect, and demolish tall chimneys and similar structures made of concrete, brick, and steel. This work, which occurs throughout the United States, requires the applicants to transport employees and construction tools and materials to and from elevated worksites located inside and outside these structures. The applicants' names and addresses are as follows:

Industrial Access, Inc., 1155 McFarland 400 Drive, Alpharetta, GA 30004.

Marietta Silos LLC, 2417 Waterford Road, Marietta, OH 45750.

The applicants were seeking a permanent variance from 29 CFR 1926.452(o)(3), which regulates the tackle used to rig a boatswains' chair, as well as from paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of 29 CFR 1926.552, which regulate hoist towers. These paragraphs specify the following requirements:

- (o)(3)—Requirements for the tackle used to rig a boatswains' chair;
- (c)(1)—Construction requirements for hoist towers outside a structure;
- (c)(2)—Construction requirements for hoist towers inside a structure;
- (c)(3)—Anchoring a hoist tower to a structure;
- (c)(4)—Hoistway doors or gates;
- (c)(8)—Electrically interlocking entrance doors or gates to the hoistway and cars;
- (c)(13)—Emergency stop switch located in the car;
- (c)(14)(i)—Using a minimum of two wire ropes for drum hoisting; and
- (c)(16)—Material and component requirements for construction of personnel hoists.

Instead of complying with these requirements, the applicants proposed to use the alternative conditions specified by OSHA for these requirements in the uniform chimney variance. The applicants contended that including them under the conditions of the uniform chimney variance would provide their employees with a place of employment that is at least as safe and healthful as these employees would receive under the existing provisions.

As is the case with the uniform chimney variance, the places of employment affected by the variance applications are the present and future projects where the applicants construct chimneys and chimney-related structures using jump-form and slip-form construction[2] techniques and procedures, regardless of structural configuration when such construction involves the use of temporary personnel hoist systems. The applicants' projects are in states under federal authority, as well as states that have safety and health plans approved by OSHA under Section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) and 29 CFR part 1952 (''Approved State Plans for Enforcement of State Standards''). The affected states cover private-sector employers and have standards identical to the standards that are the subject of these applications, and these states agree to the terms of the variance. (For further information, see the discussion of State-plan coverage for the uniform chimney variance at 78 FR 60900, 60901.)

The variance permits the applicants to operate temporary hoist systems in the manner prescribed by the uniform chimney variance. According to the conditions of the uniform chimney variance, the applicants can use these temporary hoist systems to raise and lower workers to and from elevated worksites. Examples of elevated worksites where temporary hoist systems can operate include: Chimneys, chimney linings, stacks, silos, and chimney-related structures such as towers and similar structures constructed using jump-form and slip-form construction techniques and procedures regardless of the structural configuration of the structure (such as tapered or straight barreled of any diameter).

On April 18, 2014, OSHA published a **Federal Register** notice (79 FR 21956) in which it announced the proposed modification of the uniform chimney variance granted to Kiewit Power Constructors Co. and other employers to include Industrial Access, Inc., and Marietta Silos LLC and requested comments. OSHA received no comments or request for a hearing on the proposed modification of the uniform chimney variance. Therefore, with this action, OSHA is modifying the uniform chimney variance to include Industrial Access, Inc., and Marietta Silos LLC. Therefore, the applicants must comply with conditions that are consistent with the conditions used by the other employers listed in the uniform chimney variance when operating temporary hoist systems in the construction of chimney-related structures.

III. Specific Conditions of the Variance Applications

As mentioned previously in this notice, OSHA granted a number of permanent variances since 1973 from the tackle requirements for boatswains' chairs in 29 CFR 1926.452(o)(3) and the requirements for hoist towers specified by paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of 29 CFR 1926.552. In view of the OSHA's history, knowledge, and experience with the variances granted for chimney-related construction, OSHA finds that the variance applications submitted by Industrial Access and Marietta Silos are consistent with the uniform chimney variance previously granted to other employers in the construction industry. Therefore, OSHA determined that the alternative conditions specified by the applications protect the applicants' workers at least as effectively as the

[1] See 38 FR 8545 (April 3, 1973), 44 FR 51352 (August 31, 1979), 50 FR 20145 (May 14, 1985), 50 FR 40627 (October 4, 1985), 52 FR 22552 (June 12, 1987), 68 FR 52961 (September 8, 2003), 70 FR 72659 (December 6, 2005), 71 FR 10557 (March 1, 2006), 72 FR 6002 (February 8, 2007), 74 FR 34789 (July 17, 2009), 74 FR 41742 (August 18, 2009), and 75 FR 22424 (April 28, 2010).

[2] Throughout this notice, OSHA uses the terms ''jump-form construction'' and ''slip-form construction'' instead of ''jump-form formwork construction'' and ''slip-form formwork construction,'' respectively.

requirements of 29 CFR 1926.452(o)(3) and paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of 29 CFR 1926.552.

IV. Final Decision and Order

Pursuant to the provisions of 29 CFR 1905.13 (''Modification, revocation, and renewal of rules or orders''), on April 18, 2014, OSHA notified the public in a **Federal Register** notice (79 FR 21956) that Industrial Access and Marietta Silos proposed to modify the uniform chimney variance granted previously by OSHA to Kiewit Power Constructors Co. and other employers (see 78 FR 60900). Therefore, with this notice, OSHA is adding the applicants to the list of employers granted authority by the Agency to apply the conditions specified in the uniform chimney variance when operating temporary hoist systems in the construction of chimney-related structures (see 78 FR 60900). Section VI (''Order'') of the uniform chimney variance provides the alternate conditions with which Industrial Access and Marietta Silos must comply as part of OSHA's grant of the modified uniform chimney variance.

V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, DC 20210, authorized the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to 29 U.S.C. 655, Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR part 1905.

Signed at Washington, DC, on July 9, 2014.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2014–16429 Filed 7–11–14; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (14–052)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, 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 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: Consideration will be given to all comments received within 30 days from the date of this publication.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 7th Street NW., Washington, DC 20503, Attention: Desk Officer for NASA.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Frances Teel, NASA PRA Clearance Officer, NASA Headquarters, 300 E Street SW., Mail Code JF0000, Washington, DC 20546 or *frances.c.teel@nasa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

This information collection is associated with recordkeeping and reporting activities that are necessary to ensure proper accounting of Federal funds and property provided under NASA cooperative agreements with commercial firms.

II. Method of Collection

Electronic funds transfer is used for payment under Treasury guidance. In addition, NASA encourages the use of computer technology and is participating in Federal efforts to extend the use of information technology to more Government processes via the Internet. Specifically, progress has been made in the area of property reporting, most of it being done electronically.

III. Data

Title: Cooperative Agreements with Commercial Firms.

OMB Number: 2700–0092.

Type of review: Reinstatement of a Previously Approved Information Collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 50.

Estimated Total Annual Burden Hours: 1,218.

Estimated Total Annual Cost: $40,072.00.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Frances Teel,

NASA PRA Clearance Officer.

[FR Doc. 2014–16389 Filed 7–11–14; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (14–070)]

NASA Advisory Council; Human Exploration and Operations Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 92, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Human Exploration and Operations Committee of the NASA Advisory Council (NAC). This Committee reports to the NAC.

DATES: Monday, July 28, 2014, 9:30 a.m. to 5:00 p.m.; and Tuesday, July 29, 2014, 9:00 a.m. to 11:30 a.m., Local Time.

ADDRESSES: NASA Langley Research Center, 5 Langley Boulevard, Building 2101, Room 305, Hampton, VA 23681.

FOR FURTHER INFORMATION CONTACT: Dr. Bette Siegel, Human Exploration and Operations Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–2245, or *bette.siegel@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. This meeting is also available telephonically and by WebEx. Any interested person may call the USA toll free conference call number 1–844–467–6272 or toll number 1–720–259–6462, pass code 844408, to participate in this meeting by telephone. The WebEx link is *https://nasa.webex.com/,* the meeting number

is 391 017 307, and the password is HEO–072814.

The agenda for the meeting includes the following topics:

—Joint Session with NAC Science Committee
—Status of Space Launch System
—Status of Human Exploration Operations
—Status of Commercial Crew
—Status of International Space Station

Attendees will be requested to sign a register and to comply with NASA Langley Research Center security requirements, including the presentation of a valid picture ID before receiving access to NASA Langley Research Center. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 working days prior to the meeting: Full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); passport information (number, country, telephone); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee. To expedite admittance, attendees with U.S. citizenship and Permanent Residents (green card holders) can provide identifying information 3 working days in advance by contacting Ms. Cheryl Cleghorn at *cheryl.w.cleghorn@nasa.gov* or 757–864–2497. It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2014–16296 Filed 7–11–14; 8:45 am]

BILLING CODE 7510–13–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 six meetings 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):

Literature (application review): This meeting will be closed.

Dates: August 6, 2014. 3:00 p.m. to 5:00 p.m.

Literature (application review): This meeting will be closed.

Dates: August 7, 2014. 3:00 p.m. to 5:00 p.m.

Visual Arts (application review): This meeting will be closed.

Dates: August 7, 2014. 2:30 p.m. to 5:00 p.m.

Visual Arts (application review): This meeting will be closed.

Dates: August 8, 2014. 11:30 p.m. to 2:00 p.m.

Visual Arts (application review): This meeting will be closed.

Dates: August 8, 2014. 2:30 p.m. to 5:00 p.m.

Arts Education (application review): This meeting will be closed.

Dates: August 8, 2014. 12:45 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: July 9, 2014.

Kathy Plowitz-Worden,

Panel Coordinator, National Endowment for the Arts.

[FR Doc. 2014–16375 Filed 7–11–14; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB Review; Comment Request.

SUMMARY: The National Science Foundation has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. This is the second notice for public comment; the first was published in the **Federal Register** at 79 FR 19931 and no substantial comments were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. The full submission may be found at: *http://www.reginfo.gov/public/do/PRAMain.*

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 of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

DATES: Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission may be obtained by calling 703–292–7556. NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

ADDRESSES: Comments should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725 17th Street NW., Room 10235, Washington, DC 20503, and to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 1265, Arlington, VA 22230, or by email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

For Additional Information or Comments: Contact Suzanne Plimpton, the NSF Reports Clearance Officer, phone (703) 292–7556, or send email to *splimpto@nsf.gov.*

SUPPLEMENTARY INFORMATION: *Title of Collection:* Evaluation of National Science Foundation's Partnerships for International Research and Education Program.

OMB Control Number: 3145–NEW.

Abstract. This is a request that the Office of Management and Budget (OMB) approve, under the Paperwork Reduction Act of 1995, a three year clearance for Abt Associates Inc. to conduct data collection efforts for an outcome evaluation of the National Science Foundation's Partnerships for International Research and Education (PIRE) Program. The PIRE program offers researchers an opportunity to forge collaborative relationships with foreign scientists and engineers and provides educational and professional development opportunities for U.S.-based postdoctoral fellows, graduate and undergraduate students to acquire on-site research experience at an international laboratory, institution or research site, whether university-, industry- or government-based. The PIRE program funds projects across a broad array of scientific and engineering disciplines in an effort to catalyze long-term, sustainable international partnerships for collaborative research. Across its first four award cohorts in 2005, 2007, 2010 and 2012, PIRE has made a total of 59 awards. PIRE grant awards range from $2.5 million to $5 million and typically last five years. These projects range from relatively small, bi-national consortia (e.g., two U.S. and two non-U.S. institutions in one foreign country) to large, multi-national, multi-institutional awards (e.g., a dozen U.S. institutions and 11 non-U.S. institutions representing eight foreign nations). Many are multi-disciplinary, combining, for example, the expertise of econometricians with researchers in fluid dynamics; and, notably, many feature partnerships between academic and industrial or non-profit institutions. Collectively, these 59 PIRE projects have provided research and educational opportunities for more than 100 postdoctoral fellows, more than 625 graduate students and approximately 600 undergraduates. More than 600 U.S.-based and over 400 foreign-based faculty and researchers at university and non-academic institutions have participated in one or more PIRE-funded collaborations.

To assess the program's outcomes, NSF plans to collect data to explore the number and quality of publications produced by PIRE projects and participants, the international experiences of participants, their educational and career outcomes, the extent to which program participants establish and maintain collaborations with foreign researchers, and what effect the PIRE program has on policies and practices at U.S. and foreign institutions. The primary methods of data collection will include analyses of NSF program records and bibliometric data, and web-based surveys of principal investigators, postdoctoral and student participants, foreign senior investigators, and administrative officials at U.S. institutions.

Expected Respondents. Include PIRE principal and co-principal investigators; postdoctoral, graduate student and undergraduate PIRE participants; foreign senior investigators (individuals with whom PIRE principal investigators have formed partnerships); administrative officials within international affairs and/or study abroad offices at U.S. institutions of the lead PIRE principal investigators; and principal or co-principal investigators, postdoctoral and graduate student participants in NSF-funded projects other than PIRE, selected for similarity to PIRE based on award year, amount, and duration, research fields, and degree of emphasis on international collaboration.

Use of the Information. The purpose of these studies is to provide NSF with outcome data on the PIRE program. These data will be used for internal program management and for reporting to stakeholders within and outside of NSF.

Burden on the Public. NSF estimates 3,102 survey responses collected one time at an average of 26 minutes per response for a total of 1,417 hours.

Consult With Other Agencies and the Public

NSF has not consulted with other agencies. However, the contractor conducting the evaluation has gathered information from an external working group of subject matter experts on the study design and data collection plan.

Dated: July 9, 2014.

Suzanne Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2014–16399 Filed 7–11–14; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2014–0135]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of pending NRC action to submit an information collection request to the Office of Management of Budget (OMB) and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment about our intention to request the OMB's approval for renewal of an existing information collection that is summarized below. We are required to publish this notice in the **Federal Register** under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 48 CFR 20, U.S. Nuclear Regulatory Commission Acquisition Regulation (NRCAR).
2. *Current OMB approval number:* 3150–0169.
3. *How often the collection is required:* On occasion; one time.
4. *Who is required or asked to report:* NRC contractors and potential contractors.
5. *The number of annual respondents:* 2,473 respondents.
6. *The number of hours needed annually to complete the requirement or request:* 20,095 (18,750 reporting plus 1,345 recordkeeping).
7. *Abstract:* The mandatory requirements of the NRCAR implement and supplement the Government-wide Federal Acquisition Regulation (FAR), and ensure that the regulations governing the procurement of goods and services within the NRC satisfy the particular needs of the agency. Because of differing statutory authorities among Federal agencies, the FAR authorizes agencies to issue regulations to implement FAR policies and procedures internally to satisfy the specific need of the agency.

Submit, by September 12, 2014, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the burden estimate accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

The public may examine and have copied for a fee, publicly-available documents, including the draft supporting statement, at the NRC's Public Document Room, Room O1–F21, 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 submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. Comments submitted should reference Docket No. NRC–2014–0135. You may submit your comments by any of the following methods: Electronic comments go to *http://www.regulations.gov* and search for Docket No. RC–2014–0135. Mail comments to Acting NRC Clearance Officer, Kristen Benney (T–5 F50), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Questions about the information collection requirements may be directed to the Acting NRC Clearance Officer, Kristen Benney, (T5 F50), U.S. Nuclear Regulatory Commission, Washington, DC 2055–0001; telephone: 301–415–6355, or by email to *INFOCOLLECTS.Resource@NRC.GOV*.

Dated at Rockville, Maryland, this 8th day of July, 2014.

For the Nuclear Regulatory Commission.

Kristen Benney,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. 2014–16357 Filed 7–11–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2014–0166]

Design Response Spectra for Seismic Design of Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing Revision 2 to Regulatory Guide (RG) 1.60, ''Design Response Spectra for Seismic Design of Nuclear Power Plants.'' The NRC is issuing this revision without a public-comment period because there are only minor modifications with no substantive changes in the staff regulatory positions. This guide describes an approach that the NRC staff considers acceptable for defining response spectra for the seismic design of nuclear power plants.

ADDRESSES: Please refer to Docket ID NRC–2014–0166 when contacting the NRC about the availability of information regarding this document. You may obtain 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–2014–0166. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may obtain 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.* Revision 2 of RG 1.60 is available in ADAMS under Accession No. ML13210A432.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

FOR FURTHER INFORMATION CONTACT: Sarah Tabatabai, Office of New Reactors, telephone: 301–415–1381, email: *Sarah.Tabatabai@nrc.gov*; or Edward O'Donnell, Office of Nuclear Regulatory Research, telephone: 301–251–7455, email: *Edward.ODonnell@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is issuing a revision to an existing guide in the NRC's ''Regulatory Guide'' series. Regulatory guides were developed to describe and make available to the public information methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses. The NRC typically seeks public comment on a draft version of a regulatory guide by announcing its availability for comment in the **Federal Register**. However, as explained in section III F of the Handbook for NRC Management Directive 6.6, ''Regulatory Guides,'' (ADAMS Accession No. ML110330475) the NRC may directly issue a final regulatory guide without a draft version or public comment period if the changes to the regulatory guide are non-substantive.

The NRC is issuing Revision 2 of RG 1.60 directly as a final regulatory guide because the changes between Revision 1 and Revision 2 are non-substantive. The main reason for this revision was to update the reference materials, along with adding the ADAMS accession numbers, for the key technical basis documents in the reference section to facilitate public access to those documents.

II. Backfitting and Issue Finality

Issuance of this final regulatory guide does not constitute backfitting as defined in 10 CFR 50.109 (the Backfit Rule) and is not otherwise inconsistent with the issue finality provisions in 10 CFR part 52. The changes in Revision 2 of RG 1.60 are limited to editorial changes to improve clarity, to update references, and to facilitate public access to key technical basis documents. These changes do not fall within the kinds of agency actions that constitute backfitting or are subject to limitations in the issue finality provisions of part 52. Accordingly, the NRC did not address the Backfit Rule or issue finality provisions of part 52.

III. Congressional Review Act

This action is not a rule as defined in the Congressional Review Act (5 U.S.C. 801–808).

IV. Submitting Suggestions for Improvement of Regulatory Guides

Revision 2 of RG 1.60 is being issued without public comment. However, you may at any time submit suggestions to the NRC for improvement of existing regulatory guides or for the development of new regulatory guides to address new issues. Suggestions can be submitted by the form available online at *http://www.nrc.gov/reading-*

rm/doc-collections/reg-guides/contactus.html. Suggestions will be considered in future updates and enhancements of the regulatory guide.

Dated at Rockville, Maryland, this 8th day of July, 2014.

For the Nuclear Regulatory Commission.

Harriet Karagiannis,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2014–16297 Filed 7–11–14; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF SPECIAL COUNSEL

Agency Information Collection Activities, Request for Comment

AGENCY: Office of Special Counsel.

ACTION: First notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the U.S. Office of Special Counsel (OSC), plans to request approval from the Office of Management and Budget (OMB) for use of an expanded version of an approved information collection consisting of an electronic customer survey form. OSC is required by law to conduct an annual survey of those who seek its assistance. The information collection is used to carry out that mandate. However, the additional questions for the survey cover a category of complaint, whistleblower disclosures, whose inclusion in the survey is not statutorily required, but rather is being done voluntarily by our agency. The 6 specific questions to be added are: ''Did the agency against which you filed the disclosure inform you about your right to make whistleblower disclosures, and the channels for making such disclosures?'' ''Did you obtain the action that you wanted from OSC?'' ''What reason did OSC give for closing your disclosure matter?'' (Check all that apply.)'' ''Did you agree with the reason OSC gave for closing your disclosure matter?'' ''If you answered ''no'' to the question in number 4 above, could you please elaborate? [below which is a free field text box].'' ''How would you rate the service provided by OSC in each of the following areas?'' The current OMB approval for this collection of information [without the new questions for the Disclosure Unit] does not expire until 10/31/2015.

Current and former Federal employees, employee representatives, other Federal agencies, state and local government employees, and the general public are invited to comment on this information collection. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of OSC functions, including whether the information will have practical utility; (b) the accuracy of OSC's estimate of the burden of the proposed collections 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.

DATES: Comments should be received by August 16, 2014.

FOR FURTHER INFORMATION CONTACT: Karl Kammann, Director of Finance, at 1730 M St. NW., Suite 300, Washington, DC 20036, or by facsimile at (202) 254–3711.

SUPPLEMENTARY INFORMATION: OSC is an independent agency responsible for, among other things, (1) investigation of allegations of prohibited personnel practices defined by law at *5 U.S.C. 2302*(b), protection of whistleblowers, and certain other illegal employment practices under titles 5 and 38 of the U.S. Code, affecting current or former Federal employees or applicants for employment, and covered state and local government employees; and (2) the interpretation and enforcement of Hatch Act provisions on political activity in chapters 15 and 73 of title 5 of the U.S. Code, and implementing regulations concerning the controlling of paperwork burdens on the public, found at 5 CFR part 1320.

Title of Collection: Office of Special Counsel (OSC) Annual Survey; OMB Control Number 3255–0003.

OSC is required to conduct an annual survey of individuals who seek its assistance. Section 13 of 103 (1994), codified at *5 U.S.C. 1212* note, states, in part: ''[T]he survey shall—(1) Determine if the individual seeking assistance was fully apprised of their rights; (2) determine whether the individual was successful either at the Office of Special Counsel or the Merit Systems Protection Board; and (3) determine if the individual, whether successful or not, was satisfied with the treatment received from the Office of Special Counsel.'' The same section also provides that survey results are to be published in OSC's annual report to Congress. Copies of prior years' annual reports are available on OSC's Web site, at *http://www.osc.gov/RR_AnnualReportsToCongress.htm* or by calling OSC at (202) 254–3600.

The survey form for the collection of information is available for review by calling OSC at (202) 254–3600.

Affected Public: Current and former Federal employees, applicants for Federal employment, state and local government employees, and their representatives, and the general public.

Respondent's Obligation: Voluntary.

Estimated Annual Number of Survey Form Respondents: 415.

Frequency of Survey Form Use: Annual.

Estimated Average Amount of Time for a Person to Respond to Survey: 12 minutes.

Estimated Annual Survey Burden: 141 hours.

This survey form is used to survey current and former Federal employees and applicants for Federal employment who have submitted allegations of possible prohibited personnel practices or other prohibited activity for investigation and possible prosecution by OSC, and whose matter has been closed or otherwise resolved during the prior fiscal year, on their experience at OSC. Specifically, the survey asks questions relating to whether the respondent was: (1) Apprised of his or her rights; (2) successful at the OSC or at the Merit Systems Protection Board; and (3) satisfied with the treatment received at the OSC.

Dated: July 8, 2014.

Carolyn N. Lerner,

Special Counsel.

[FR Doc. 2014–16411 Filed 7–11–14; 8:45 am]

BILLING CODE P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72556; File No. SR–ICC–2014–08]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Related to ICC's Authority To Use Guaranty Fund and House Initial Margin as an Internal Liquidity Resource

July 8, 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 June 24, 2014, ICE Clear Credit LLC (''ICC'') 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 primarily by ICC.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed rule change is to formalize ICC's Liquidity Risk Management Framework and to clarify ICC's authority to use, and to provide details as to how ICC would use, Guaranty Fund and House Initial Margin as an internal liquidity resource.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC 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. ICC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of these statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

ICC proposes to formalize a comprehensive Liquidity Risk Management Framework, including its comprehensive liquidity monitoring program, that describes ICC's liquidity resources as well as the methodology for testing the sufficiency of these resources. In addition, ICC proposes changes to ICC Clearing Rules 402 and 802 to clarify ICC's authority to use, and provide details as to how ICC would use, Guaranty Fund and House Initial Margin as an internal liquidity resource.

ICC's Liquidity Risk Management Framework includes a discussion of all resources available to ICC and the order ICC would use these resources if necessary. Additionally, the Liquidity Risk Management Framework contains details about ICC's comprehensive liquidity testing.

Under the Liquidity Risk Management Framework, ICC will use all available resources to meet its liquidity needs when managing one or more Clearing Participant defaults. The liquidity waterfall defines the order, to the extent practicable, that ICC would use its available liquidity resources (''ALR'') to meet its currency-specific cash payment obligations. ALR consist of the available deposits currently in cash of the required denomination, and the cash equivalent of the available deposits in collateral types that ICC can convert to cash, in the required currency of denomination, rapidly enough to meet the relevant, currency-specific payout deadlines. The liquidity waterfall classifies ALR on any given day into four levels. Level One includes the House Initial Margin and Guaranty Fund cash deposits of the defaulting Clearing Participant. Level Two includes Guaranty Fund cash deposits of: (i) ICC; and (ii) non-defaulting Clearing Participants. Level Three includes House Initial Margin cash deposits of the non-defaulting Clearing Participants. Level Four includes ICC's committed credit facility to access additional cash, and contemplates the establishment of other committed facilities to convert U.S. Treasuries to USD cash. The Liquidity Risk Management Framework also describes the methodology used by ICC to estimate its minimum day-of-default ALR based on its liquidity risk management model.

ICC's Liquidity Risk Management Framework includes two kinds of testing: A historical analysis based on back testing considerations, and a forward-looking analysis based on stress testing. In the historical analysis based on back testing considerations, ICC uses the currency-specific historical profit/loss associated with cleared portfolios to explore the level of liquid resources required under historical market conditions. In the forward-looking analysis based on stress testing, ICC explores the required level of liquidity resources in forward-looking market conditions by applying a number of liquidity stress scenarios to determine the currency-specific hypothetical profits or losses for each Clearing Participant.

ICC's Liquidity Risk Management Framework provides for the governance of ICC's liquidity testing, specifically the performance frequency of various testing and the subsequent analysis and reporting of the results. The Liquidity Risk Management Framework details the required governance for amending the liquidity program as well as the procedure for additional risk measures to be taken, as necessary, based upon testing results.

Currently, under the ICC Rules, ICC has broad authority to use and invest cash, securities, and other property held in the Guaranty Fund or as Initial Margin. In order to provide clarity and transparency in the ICC Rules regarding the use of House Initial Margin and Guaranty Fund assets as a liquidity resource, ICC is proposing to adopt ICC Rules 402(j) and 802(f)(iv).

New Rule 402(j) relates to the use of a Clearing Participant House Initial Margin as a liquidity resource. Rule 402(j) clarifies that ICC may generally, in connection with a Clearing Participant default, use any Clearing Participant's cash, securities or other property (whether or not such Clearing Participant is in default) constituting Initial Margin for its House account from time to time to support liquidity arrangements (including borrowing, repurchase transactions, exchange of Initial Margin for other assets or similar transactions, under which equivalent value is provided for such Initial Margin and such equivalent value will be held as Initial Margin and used or applied by ICC solely for the purposes for which Initial Margin in the House Account may be used) relating to payment obligations of ICC, in a manner consistent with ICC's liquidity policies and applicable law. ICC may, in connection with a Participant default, (i) exchange House Initial Margin held in the form of cash for securities of equivalent value and/or (ii) exchange House Initial Margin held in the form of cash in one currency for cash of equivalent value in a different currency.

New Rule 802(f)(iv) provides additional clarity and transparency regarding ICC's use of Guaranty Fund assets as a liquidity resource. ICC currently has broad rights to use Guaranty Fund assets under Chapter 8 of the ICC Rulebook (specifically Rules 801 & 802). Proposed Rule 802(f)(iv) provides transparency related to the exercise of such authority by the clearing house. Rule 802(f)(iv) will provide clarity and transparency regarding ICC's authority to pledge assets in the guaranty fund to secure loans made to the clearing house, including for purposes of default management or to transfer such assets to counterparties under repurchase transactions or similar transactions on terms and conditions deemed necessary or advisable by ICC (including the collateralization thereof) in its sole discretion. Under Rule 802(f)(iv), the proceeds of such borrowings could be used for the same purposes for which guaranty fund assets are authorized to be used under current ICC Rules. Proposed Rule 802(f)(iv) provides that ICC may in connection with a Clearing Participant default (A) exchange cash held in the Guaranty Fund for securities of equivalent value and/or (B) exchange cash in one currency for cash of equivalent value in a different currency, in each case on such terms (including, if applicable, the relevant duration of

any such exchange) as ICC may determine in accordance with its liquidity policies and procedures.

Section 17A(b)(3)(F) of the Act [3] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, and to the extent applicable, derivative agreements, contracts and transactions and to comply with the provisions of the Act and the rules and regulations thereunder. ICC believes that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC, in particular, to Section 17(A)(b)(3)(F),[4] because ICC believes that the proposed rule changes will assure the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions. ICC's Liquidity Risk Management Framework describes ICC's liquidity resources as well as the methodology for testing the sufficiency of these resources. The proposed changes to the ICC Rules clarify ICC's authority to use, and provide details as to how ICC would use, Guaranty Fund and House Initial Margin as an internal liquidity resource. ICC believes the proposed revisions provide clarity and transparency in the ICC Rules, consistent with the ICC Liquidity Risk Management Framework regarding the use of House Initial Margin and Guaranty Fund assets as a liquidity resource. ICC believes clarity and transparency in its Rules is of value to the market in order to provide a comprehensive understanding of ICC's available liquidity resources and default management procedures related to liquidity. In addition, if needed, the available liquidity will allow ICC to meet is liquidity needs when managing one or more Clearing Participant defaults. As such, the proposed rule changes are designed to promote the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions within the meaning of Section 17A(b)(3)(F) [5] of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

ICC does not believe the proposed rule changes would have any impact, or impose any burden, on competition. The clarification of ICC's authority to use Guaranty Fund and House Initial Margin as an internal liquidity resource applies uniformly across all market participants. Therefore, ICC does not believe the proposed rule changes impose any burden on competition that is inappropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove 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 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–ICC–2014–08 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–ICC–2014–08. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's Web site at *https://www.theice.com/notices/Notices.shtml?regulatoryFilings.*

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–ICC–2014–08 and should be submitted on or before August 4, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–16365 Filed 7–11–14; 8:45 am]

BILLING CODE 8011–01–P

[3] 15 U.S.C. 78q–1(b)(3)(F).

[4] *Id.*

[5] *Id.*

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72561; File No. SR–MIAX–2014–35]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

July 8, 2014.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 25, 2014, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend its Fee Schedule. The text of the proposed rule change is available on the Exchange's Web site at *http://www.miaxoptions.com/filter/wotitle/rule_filing,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to reduce several testing and certification fees and System connectivity fees for non-Members. Specifically, the Exchange proposes to: (i) Reduce the non-Member API testing and certification fee; (ii) reduce the non-Member networking and certification fees; (iii) eliminate the fees for non-Members to test and certify additional connections; and (iv) reduce the non-Member networking connectivity fee.

API Testing and Certification

The Exchange assesses a one-time Application Programming Interface (''API'') testing and certification fee on non-Members. Specifically, the Exchange assesses a one-time API Testing and Certification fee of $5,000.00 on third party vendors [3] and Service Bureaus [4] whose software interfaces with MIAX software. The API makes it possible for third party vendors' and Service Bureaus' software to communicate with MIAX software applications, and is subject to testing with, and certification by, the Exchange. The Exchange originally established a higher fee for non-Members to reflect the greater amount of time spent by Exchange employees testing and certifying non-Members.[5] Up to that point, it had been the Exchange's experience that Member testing takes less time than non-Member testing because Members have more experience testing these systems with exchanges; generally fewer questions and issues arise during the testing and certification process.[6] Also, because third party vendors and Service Bureaus are redistributing data and reselling services to other Members and market participants the number and types of scenarios that need to be tested are more numerous and complex than those tested and certified for a single Member.[7] Although the cost to the Exchange to provide this service to non-Members remains higher than for Members, the Exchange proposes to reduce the API testing and certification fee to $1,000, the same price as EEMs in order to incent more non-Members to use the service.[8]

Non-Member Network Testing and Certification Fee

The Exchange assesses a one-time Network Testing and Certification fee on Service Bureaus and Extranet Providers.[9] Specifically, the Exchange assesses a one-time Service Bureaus and Extranet Providers fee of $2,000.00 for the initial one Gigabit connection and $1,000 for each additional one Gigabit connection and $6,000.00 for the initial ten Gigabit connection and $4,000.00 for each additional ten Gigabit connection. The non-Member Network Testing and Certification fees represent installation and support costs incurred by the Exchange as it works with each non-Member to make sure there are appropriate electronic connections with the Exchange. The Exchange originally established a higher fee for non-Members to reflect the greater amount of time spent by the Exchange employees testing and certifying non-Members.[10] Up to that point, it had been the Exchange's experience that Member network connectivity testing takes less time than non-Member network connectivity testing because Members have more experience testing these systems with exchanges; generally fewer questions and issues arise during the testing and certification process.[11] In addition, non-Members are charged a discounted Network Testing and Certification Fee for additional connections because each connection will be used by different customers of the non-Member Service Bureaus and Extranet Providers and will need to be individually tested requiring more Exchange resources for testing and certification. Although the cost to the Exchange to provide this service to non-Members remains higher than for Members, the Exchange proposes to reduce the Network Testing and Certification Fee to $1,000.00 per Member [sic] for a one Gigabit connection, and $4,000.00 per Member [sic] for a ten Gigabit connection in order to incent more non-Members to use the service.[12] In addition, the Exchange proposes not to charge non-Members a Testing and Certification Fee for any additional connections they obtain. This will align the pricing of these services for non-Members with the current charges for Members.

Non-Member Network Connectivity Fees

The Exchange assesses fees to Service Bureaus, and Extranet Providers for electronic connections [13] between those entities and the Exchange. The Connectivity fees are based upon the amount of bandwidth that will be used by the Service Bureau, or Extranet Provider. Specifically, the Exchange

[3] Third party vendors are subscribers of MIAX's market and other data feeds, which they in turn use for redistribution purposes. Third party vendors do not provide connectivity and therefore are not subject to Network testing and certification.

[4] A Service Bureau is a technology provider that offers and supplies technology and technology services to a trading firm that does not have its own proprietary system. The technology and technology services supplied by Service Bureaus includes both software applications and connectivity, thus Service Bureaus are subject to both API testing and certification and Network testing and certification.

[5] *See* Securities Exchange Act Release No. 68645 (January 14, 2013), 78 FR 4175 (January 18, 2013) (SR–MIAX–2012–05).

[6] *Id.*

[7] *Id.*

[8] Notwithstanding the proposal reducing the fees for providing this service to non-Members despite the higher cost, the Exchange represents that it will continue to have adequate resources to fund its regulatory program and fulfill its responsibilities as a self-regulatory organization while the reduced fees are in effect.

[9] An Extranet Provider is a technology provider that connects with MIAX systems and in turn provides such connectivity to MIAX participants that do not connect directly with MIAX. Extranet Providers do not provide software interfaces with MIAX software applications, thus Extranet Providers are not subject to API testing and certification.

[10] *Id.*

[11] *Id.*

[12] Notwithstanding the proposal reducing the fees for providing this service to non-Members despite the higher cost, the Exchange represents that it will continue to have adequate resources to fund its regulatory program and fulfill its responsibilities as a self-regulatory organization while the reduced fees are in effect.

[13] For purposes of this proposed rule change, the terms ''connectivity'' and ''connections'' refer to the physical connections between Member and non-Member electronic networks and the MIAX systems.

assesses a monthly non-Member Network Connectivity fee to Service Bureaus and Extranet Providers of $2,000.00 for a one Gigabit connection, and $10,000.00 for a ten Gigabit connection. The Exchange originally established a higher fee to Service Bureaus and Extranet Providers than to Members to reflect the fact that Service Bureaus and Extranet Providers serve as conduits to MIAX Members and non-Members that do not have their own proprietary systems or do not directly connect to MIAX. The Service Bureaus and Extranet Providers recover the cost of the MIAX Network Connectivity fee from their customers, resulting in a lower overall fee to Members and non-Members using the services of such third party providers. Although the cost to the Exchange to provide this service to non-Members remains higher than for Members, the Exchange proposes to lower the monthly non-Member Network Connectivity fee for Service Bureaus and Extranet Providers to $1,000.00 for a one Gigabit connection, and $5,000.00 for a ten Gigabit connection, the level as currently charged to Members in order to incent more non-Members to use the service.[14]

The Exchange proposes to implement the new fee beginning July 1, 2014.

2. Statutory Basis

The Exchange believes that its proposal to amend its fee schedule is consistent with Section 6(b) of the Act [15] in general, and furthers the objectives of Section 6(b)(4) of the Act [16] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The Exchange believes the proposed fees are a reasonable allocation of its costs and expenses among its Members and other persons using its facilities since it is recovering the costs associated with providing such infrastructure testing and certification services, and with offering access through the network connections and access and services through the Ports, responding to customer requests, configuring MIAX systems, programming API user specifications and administering the various services connectivity services. Access to the Exchange is provided on fair and non-discriminatory terms. The proposed fees are reasonable since they are in the range of similar fees charged by another exchange. The Exchange believes the proposed fees are equitable and not unfairly discriminatory because the new fee levels result in a more reasonable and equitable allocation of fees amongst non-Members and Members for similar services.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposal will allow the Exchange to reduce non-Member fees to align them with similar fees charged to Member and thus should promote competition amongst these participants for these types of services. The proposal also reduces fees in a manner that should improve competition with another competing exchange by changing its rate to the same level. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow. The Exchange believes that the proposal reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[17] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml);*

or

- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2014–35 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2014–35. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2014–35 and should be submitted on or before August 4, 2014. For the Commission, by the Division of Trading

[14] Notwithstanding the proposal reducing the fees for providing this service to non-Members despite the higher cost, the Exchange represents that it will continue to have adequate resources to fund its regulatory program and fulfill its responsibilities as a self-regulatory organization while the reduced fees are in effect.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(4).

[17] 15 U.S.C. 78s(b)(3)(A)(ii).

and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–16369 Filed 7–11–14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72560; File No. SR–NYSEARCA–2014–72]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Fees for NYSE ArcaBook

July 8, 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 June 24, 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, 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 the fees for NYSE ArcaBook, which will be operative on July 1, 2014. 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.

[18] 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.

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 the fees for NYSE ArcaBook, which will be operative on July 1, 2014.

NYSE ArcaBook is a real-time market data product that is a compilation of all limit orders resident in the NYSE Arca limit order book. The Exchange charges the following monthly display fees for NYSE ArcaBook:[4]

Access Fee	$2,000.
Redistribution Fee	$1,500.
Subscriber Fees	Professional: $40. Non-professional: $10. Non-professional Fee Cap: $20,000.

The cap applies to any broker-dealer for non-professional subscribers that maintain brokerage accounts with the broker-dealer.[5] The Exchange proposes to establish tiered non-professional user fees, which would remain at the current rate of $10 per user for up to 1,500 non-professional users, and then decrease to $6 per user for the next 1,500 non-professional users and then decrease to $3 per user for all non-professional users above that level, with the non-professional fee cap for broker-dealers set at $40,000. Most vendors with non-professional users will pay the same fees as they do today, while a small number of vendors with larger numbers of non-professional users will pay more than they do today.

The Exchange believes that the proposed rule change is consistent with the market-based approach of the Securities and Exchange Commission (''Commission''). The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010), upheld reliance by the Commission upon the existence of competitive market mechanisms to set reasonable and equitably allocated fees for proprietary market data:

> In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.'

Id. at 535 (quoting H.R. Rep. No. 94–229 at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 323). The court agreed with the Commission's conclusion that ''Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.' ''[6]

As explained below in the Exchange's Statement on Burden on Competition, the Exchange believes that there is substantial evidence of competition in the marketplace for proprietary market data and that the Commission can rely upon such evidence in concluding that the fees proposed in this filing are the product of competition and therefore satisfy the relevant statutory standards.[7] In addition, the existence of alternatives to NYSE ArcaBook, including real-time consolidated data, free delayed consolidated data, and proprietary data from other sources, as described below, further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect such alternatives.

As the *NetCoalition* decision noted, the Commission is not required to undertake a cost-of-service or ratemaking approach.[8] The Exchange believes that, even if it were possible as a matter of economic theory, cost-based pricing for non-core market data would be so complicated that it could not be done practically.[9]

[4] *See* Securities Exchange Act Release No. 71483 (February 5, 2014), 79 FR 8217 (February 11, 2014) (SR–NYSEArca–2014–12).

[5] *See* Securities Exchange Act Release No. 54597 (October 12, 2006), 71 FR 62029 (October 20, 2006) (SR–NYSEArca–2006–21).

[6] *NetCoalition,* 615 F.3d at 535.

[7] Section 916 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the ''Dodd-Frank Act'') amended paragraph (A) of Section 19(b)(3) of the Act, 15 U.S.C. 78s(b)(3), to make clear that all exchange fees for market data may be filed by exchanges on an immediately effective basis.

[8] *NetCoalition,* 615 F.3d at 536.

[9] The Exchange believes that cost-based pricing would be impractical because it would create enormous administrative burdens for all parties, including the Commission, to cost-regulate a large number of participants and standardize and analyze extraordinary amounts of information, accounts, and reports. In addition, and as described below, it is impossible to regulate market data prices in isolation from prices charged by markets for other services that are joint products. Cost-based rate regulation would also lead to litigation and may distort incentives, including those to minimize costs and to innovate, leading to further waste. Under cost-based pricing, the Commission would be burdened with determining a fair rate of return, and the industry could experience frequent rate increases based on escalating expense levels. Even in industries historically subject to utility regulation, cost-based ratemaking has been discredited. As such, the Exchange believes that cost-based ratemaking would be inappropriate for proprietary market data and inconsistent with Congress's direction that the Commission use its authority to foster the development of the national

Continued

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[10] in general, and Sections 6(b)(4) and 6(b)(5) of the Act,[11] in particular, in that it provides an equitable allocation of reasonable fees among its members, issuers, and other persons using its facilities and is not designed to permit unfair discrimination among customers, issuers, brokers, or dealers. The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act [12] in that it is consistent with (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets; and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,[13] which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory.

The Exchange believes that the increase in the non-professional fee cap is reasonable because until this year, the Exchange had not raised NYSE ArcaBook fees since they were proposed more than seven years ago in 2006, and the total non-professional user fee for all issues has remained the same since that time.[14] The Exchange has enhanced NYSE ArcaBook through delivery upgrades, and the message traffic has increased threefold. The Exchange believes that the new fees are fair and reasonable in light of increased quote message traffic and the Exchange's ongoing effort to improve the delivery technology for market data.

In addition, the Exchange believes that the proposed fees and cap are reasonable because they are less than the fees applicable to similar products offered by The NASDAQ Stock Market (''NASDAQ''). Under NASDAQ Rule 7023, NASDAQ offers (i) Level 2, which is the best-priced displayed orders or quotes from each NASDAQ member for NASDAQ-listed issues, for $9 per month per non-professional user; (ii) TotalView, which covers all displayed orders and quotes from all NASDAQ members for NASDAQ-listed issues for $14 per month per non-professional user (which includes Level 2); and (iii) OpenView, which covers all displayed orders and quotes from all NASDAQ members for issues listed on other exchanges for $1 per month per non-professional user. Together these fees total $15 per month per non-professional subscriber to cover all issues. NASDAQ's monthly fee cap for broker-dealers to provide NASDAQ products to their non-professional customers is $25,000, but it does not apply to Level 2 fees. In comparison, NYSE ArcaBook covers securities listed on NYSE Arca as well as other exchanges in a single product for $10 or less per month per non-professional subscriber and no fees are excluded from the proposed cap; as such, the Exchange's proposed fees will be less than NASDAQ's fees for its three products.

The Exchange further believes that the proposed subscriber fees are equitable and not unfairly discriminatory because the fee structure of differentiated professional and non-professional fees has long been used by the Exchange for other products, by other exchanges for their products, and by the CTA and CQ Plans in order to make data more broadly available to retail customers.[15] Continuing to offer NYSE ArcaBook to non-professional users with the same data available to professional users results in greater equity among data recipients.

The tiered structure with decreasing fees as the number of non-professional subscribers increases is equitable and not unfairly discriminatory because it is similar to the four-tier structure used for professional subscribers by the CTA and CQ for Network A data.[16] Most of the broker-dealers that purchase NYSE ArcaBook have fewer than 1,500 non-professional users and would be unaffected by the change in fees, and only a small number of broker-dealers that have a large number of non-professional users will pay more as a result of the proposed cap.

The Exchange notes that it recently increased its access and professional fees for NYSE ArcaBook, which also had been unchanged since 2006,[17] and that it is equitable to apply an increase to the cap for non-professional users as well because they also benefit from the Exchange's ongoing effort to improve the delivery technology for market data. The Exchange believes that maintaining the cap at the increased level is equitable and not unfairly discriminatory because broker-dealers will continue to get the benefit of an enterprise cap and can continue to receive a substantial discount to what the cost would be without a cap. The Exchange believes that it has structured the proposed change in a manner that minimizes its impact on most broker-dealers; those that would pay more would have the largest number of customers over which to spread the cost. The Exchange believes that its proposal will continue to encourage the availability of the data to a broad spectrum of non-professional users.

The Exchange also notes that the use of NYSE ArcaBook is entirely optional. Firms have alternative market data products from which to choose. Moreover, the Exchange is not required to make these proprietary data products available or to offer any specific pricing alternatives to any customers.

For these reasons, the Exchange believes that the proposed fees are reasonable, equitable, and not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[18] 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. An exchange's ability to price its proprietary data feed products is constrained by (1) the inherent contestability of the market for proprietary data and actual competition for the sale of such data, (2) the joint product nature of exchange platforms, and (3) the existence of alternatives to proprietary data.

The Existence of Actual Competition. The market for proprietary data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with

market system, and that market forces will continue to provide appropriate pricing discipline. *See* Appendix C to NYSE's comments to the Commission's 2000 Concept Release on the Regulation of Market Information Fees and Revenues, which can be found on the Commission's Web site at *http://www.sec.gov/rules/concept/s72899/buck1.htm.*

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4), (5).

[12] 15 U.S.C. 78k–1.

[13] *See* 17 CFR 242.603.

[14] *See supra* notes 4 and 5.

[15] *See, e.g.,* Securities Exchange Act Release No. 20002, File No. S7–433 (July 22, 1983) (establishing non-professional fees for CTA data); NASDAQ Rules 7023(b), 7047.

[16] Those monthly fees are $50 for 1–2 devices, $30 for 3–999 devices, $25 for 1,000–9,999 devices, and $20 for 10,000 or more devices. *See* CTA Network A Rate Schedule, *available at http://www.nyxdata.com/nysedata/default.aspx?tabid=518.*

[17] *See supra* note 5.

[18] 15 U.S.C. 78f(b)(8).

each other for listings and order flow and sales of market data itself, providing virtually limitless opportunities for entrepreneurs who wish to compete in any or all of those areas, including producing and distributing their own market data. Proprietary data products are produced and distributed by each individual exchange, as well as other entities, in a vigorously competitive market.

Competitive markets for listings, order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products and therefore constrain markets from overpricing proprietary market data. The U.S. Department of Justice also has acknowledged the aggressive competition among exchanges, including for the sale of proprietary market data itself. In 2011, Assistant Attorney General Christine Varney stated that exchanges ''compete head to head to offer real-time equity data products. These data products include the best bid and offer of every exchange and information on each equity trade, including the last sale.'' [19]

It is common for broker-dealers to further exploit this recognized competitive constraint by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market. As a 2010 Commission Concept Release noted, the ''current market structure can be described as dispersed and complex'' with ''trading volume . . . dispersed among many highly automated trading centers that compete for order flow in the same stocks'' and ''trading centers offer[ing] a wide range of services that are designed to attract different types of market participants with varying trading needs.'' [20] More recently, SEC Chair White has noted that competition for order flow in exchange-listed equities is ''intense'' and divided among many trading venues, including exchanges, more than 40 alternative trading systems, and more than 250 broker-dealers.[21]

In addition, in the case of products that are distributed through market data vendors, the market data vendors themselves provide additional price discipline for proprietary data products because they control the primary means of access to certain end users. These vendors impose price discipline based upon their business models. The Exchange believes that broker-dealers will not elect to make NYSE ArcaBook available to their non-professional customers unless the broker-dealers believe that such an offering will help them attract or retain customers. All of these operate as constraints on pricing proprietary data products.

Joint Product Nature of Exchange Platform. Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade executions are a paradigmatic example of joint products with joint costs. The decision whether and on which platform to post an order will depend on the attributes of the platforms where the order can be posted, including the execution fees, data quality, and price and distribution of their data products. Without a platform for posting quotations and executing transactions, market data would not exist.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, an exchange's broker-dealer customers view the costs of transaction executions and market data as a unified cost of doing business with the exchange.

Other market participants have noted that the liquidity provided by the order book, trade execution, core market data, and non-core market data are joint products of a joint platform and have common costs.[22] The Exchange also notes that the economics literature confirms that there is no way to allocate common costs between joint products that would shed any light on competitive or efficient pricing.[23]

Analyzing the cost of market data product production and distribution in isolation from the cost of all of the inputs supporting the creation of market data and market data products will inevitably underestimate the cost of the data and data products. Thus, because it is impossible to obtain the data inputs to create market data products without a fast, technologically robust, and well-regulated execution system, system costs and regulatory costs affect the price of both obtaining the market data itself and creating and distributing market data products. It would be equally misleading, however, to attribute all of an exchange's costs to the market data portion of an exchange's joint products. Rather, all of an exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

The level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including 12 equities self-regulatory organization (''SRO'') markets, as well as internalizing broker-dealers (''BDs'') and various forms of alternative trading

[19] Press Release, U.S. Department of Justice, Assistant Attorney General Christine Varney Holds Conference Call Regarding NASDAQ OMX Group Inc. and IntercontinentalExchange Inc. Abandoning Their Bid for NYSE Euronext (May 16, 2011), *available at http://www.justice.gov/iso/opa/atr/speeches/2011/at-speech-110516.html.*

[20] Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (Jan. 14, 2010), 75 FR 3594 (Jan. 21, 2010) (File No. S7–02–10).

[21] Mary Jo White, Enhancing Our Equity Market Structure, Sandler O'Neill & Partners, L.P. Global Exchange and Brokerage Conference, (June 5, 2014) (available on the Commission Web site), citing Tuttle, Laura, 2014, ''OTC Trading: Description of Non-ATS OTC Trading in National Market System Stocks,'' at 7–8.

[22] *See* Securities Exchange Act Release No. 62887 (Sept. 10, 2010), 75 FR 57092, 57095 (Sept. 17, 2010) (SR–Phlx–2010–121); Securities Exchange Act Release No. 62907 (Sept. 14, 2010), 75 FR 57314, 57317 (Sept. 20, 2010) (SR–NASDAQ–2010–110); and Securities Exchange Act Release No. 62908 (Sept. 14, 2010), 75 FR 57321, 57324 (Sept. 20, 2010) (SR–NASDAQ–2010–111) (''all of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.''); *see also* Securities Exchange Act Release Nos. 71217 (Dec. 31, 2013), 79 FR 875, 877 (Jan. 7, 2014) (SR–NASDAQ–2013–162) and 70945 (Nov. 26, 2013), 78 FR 72740, 72741 (Dec. 3, 2013) (SR–NASDAQ–2013–142) (''Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade execution are a paradigmatic example of joint products with joint costs.'').

[23] *See generally* Mark Hirschey, Fundamentals of Managerial Economics, at 600 (2009) (''It is important to note, however, that although it is possible to determine the separate marginal costs of goods produced in variable proportions, it is impossible to determine their individual average costs. This is because common costs are expenses necessary for manufacture of a joint product. Common costs of production—raw material and equipment costs, management expenses, and other overhead—cannot be allocated to each individual by-product on any economically sound basis. . . . Any allocation of common costs is wrong and arbitrary.''). This is not new economic theory. *See, e.g.,* F.W. Taussig, ''A Contribution to the Theory of Railway Rates,'' Quarterly Journal of Economics V(4) 438, 465 (July 1891) (''Yet, surely, the division is purely arbitrary. These items of cost, in fact, are jointly incurred for both sorts of traffic; and I cannot share the hope entertained by the statistician of the Commission, Professor Henry C. Adams, that we shall ever reach a mode of apportionment that will lead to trustworthy results.'').

systems (''ATSs''), including dark pools and electronic communication networks (''ECNs''). Competition among trading platforms can be expected to constrain the aggregate return that each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. For example, some platforms may choose to pay rebates to attract orders, charge relatively low prices for market data products (or provide market data products free of charge), and charge relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower rebates (or no rebates) to attract orders, setting relatively high prices for market data products, or setting relatively low prices for accessing posted liquidity. In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering.

Existence of Alternatives. The large number of SROs, BDs, and ATSs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, ATS, and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including but not limited to the Exchange, NYSE, NYSE MKT, NASDAQ OMX, BATS, and Direct Edge.

The fact that proprietary data from ATSs, BDs, and vendors can bypass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products. Second, because a single order or transaction report can appear in an SRO proprietary product, a non-SRO proprietary product, or both, the amount of data available via proprietary products is greater in size than the actual number of orders and transaction reports that exist in the marketplace. Because market data users can thus find suitable substitutes for most proprietary market data products, such as the NASDAQ products described herein, a market that overprices its market data products stands a high risk that users may substitute another source of market data information for its own.

Those competitive pressures imposed by available alternatives are evident in the Exchange's proposed pricing. As noted above, the proposed fees for NYSE ArcaBook are less than the fees charged by NASDAQ for non-professional use of its depth-of-book products.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid and inexpensive. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TrackECN, BATS, and Direct Edge. Today, BATS and Direct Edge provide certain market data at no charge on their Web sites in order to attract more order flow, and use revenue rebates from resulting additional executions to maintain low execution charges for their users.[24]

Further, data products are valuable to certain end users only insofar as they provide information that end users expect will assist them or their customers. The Exchange believes that only broker-dealers that expect to derive a reasonable benefit from offering NYSE ArcaBook to their non-professional customers will choose to pay the attendant monthly fees.

In establishing the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users. The existence of alternatives to the Exchange's products, including proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if its cost to purchase is not justified by the returns any particular vendor or subscriber would achieve through the purchase.

[24] This is simply a securities market-specific example of the well-established principle that in certain circumstances more sales at lower margins can be more profitable than fewer sales at higher margins; this example is additional evidence that market data is an inherent part of a market's joint platform.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[25] of the Act and subparagraph (f)(2) of Rule 19b–4[26] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

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. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[27] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEARCA–2014–72 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–2014–72. 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

[25] 15 U.S.C. 78s(b)(3)(A).

[26] 17 CFR 240.19b–4(f)(2).

[27] 15 U.S.C. 78s(b)(2)(B).

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 will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* 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–2014–72 and should be submitted on or before August 4, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–16368 Filed 7–11–14; 8:45 am]

BILLING CODE 8011–01–P

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72551; File No. SR–ICEEU–2014–06]

Self-Regulatory Organizations; ICE Clear Europe Limited; Order Approving Proposed Rule Change Regarding Investment Losses and Non-Default Losses

July 8, 2014.

I. Introduction

On May 30, 2014, ICE Clear Europe Limited (''ICE Clear Europe'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–ICEEU–2014–06 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] The proposed rule change was published for comment in the **Federal Register** on June 6, 2014.[3] The Commission received no comment letters regarding the proposed change. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Description

ICE Clear Europe is proposing to update its Rules to address certain investment losses on margin and guaranty fund contributions provided by clearing members (as defined more fully below, ''Investment Losses'') as well as other losses to the clearing house arising other than from a clearing member default (as defined more fully below, ''Non-Default Losses''), including losses from general business risk and operational risk. According to ICE Clear Europe, the change to its Rules would (i) require ICE Clear Europe to apply a specified amount of its own assets to cover non-default losses and investment losses (''Loss Assets'') and (ii) require clearing members in all product categories to make contributions (referred to as ''Collateral Offset Obligations'') to cover Investment Losses (but not other Non-Default Losses) that exceed the available clearing house Loss Assets. ICE Clear Europe has also stated that the proposed change would also limit its liability for losses arising from a failure of a bank or similar custodian.

United Kingdom law requires ICE Clear Europe to have rules addressing the allocation of non-default losses that threaten the clearing house's solvency and to have plans to maintain continuity of services if such continuity is threatened as a result of such losses. Plans to address losses from general business risk are also an element of the CPSS–IOSCO Principles for Financial Market Infrastructures.[4]

According to ICE Clear Europe, Part 1 of its Rules has been provisionally revised to include new definitions for ''Investment Losses'' and ''Non-Default Losses,'' which form the basis of the new loss allocation provisions. ICE Clear Europe has proposed creating a new definition of ''Investment Losses'' to mean losses incurred or suffered by the clearing house arising in connection with the default of the issuer of any instrument and/or counterparty to any repurchase or reverse repurchase contract or similar transaction in respect of investment or reinvestment by the clearing house of margin (other than variation margin) or guaranty fund contributions other than a loss resulting from the clearing house's failure to follow its own investment policies or a loss resulting from custodial losses. ICE Clear Europe has stated that Investment Losses will be allocated separately from losses arising from a default. ICE Clear Europe has also stated that an investment loss relating to margin or guaranty fund contributions provided by a defaulting clearing member will be included in the calculation of Investment Losses, and that the amount of Investment Losses will thus not be reduced by any amounts ICE Clear Europe may use from its default resources under Parts 9 and 11 of its Rules (including guaranty fund contributions or assessments) to address losses from a default.

ICE Clear Europe has also proposed to add a definition of ''Non-Default Losses'' to mean losses suffered by the clearing house (other than Investment Losses) arising in connection with any event other than an event of default and which threaten the solvency of the clearing house. In addition, ICE Clear Europe has proposed a new definition for ''Collateral Offset Obligations,'' which refers to obligations of a clearing member arising pursuant to new Rule 919, as discussed below, to make payments to the clearing house in respect of Investment Losses, which offset obligations of the clearing house to pay the clearing member or return assets in respect of margin provided to the clearing house by the clearing member. ICE Clear Europe has stated that it has also proposed to add new definitions for ''Custodian'' (which is used in new Rule 919), and ''Loss Assets,'' meaning assets of the clearing house itself that are intended to be applied to Investment Losses and Non-Default Losses under Rule 919 as described below.

ICE Clear Europe also proposes changes in Rules 111 and 905 to conform and clarify the description of various types of losses or liabilities that may be borne by the clearing house, through addition of references to ''claims'' and ''shortfalls,'' in order to provide for consistent use of language throughout its Rules where other references are made to losses.

ICE Clear Europe has stated that the proposed change would also adopt new Rule 919, which includes the allocation

[3] Securities Exchange Act Release No. 34–72297 (June 2, 2014), 79 FR 32792 (June 6, 2014) (SR–ICEEU–2014–06).

[4] ICE Clear Europe has also noted that the Commodity Futures Trading Commission has adopted a similar requirement for systemically important derivatives clearing organizations and ''subpart C'' derivatives clearing organizations in CFTC Rule 39.33(b)(2), and that the Commission has proposed a similar requirement for certain ''covered clearing agencies'' in proposed Rule 17Ad–22(e)(15). *See* Standards for Covered Clearing Agencies, Proposed rule, Securities Exchange Act Release No. 34–71699 (Mar. 12, 2014), 79 FR 29507 (May 22, 2014).

rules for Investment Losses and Non-Default Losses and procedures for applying Collateral Offset Obligations. ICE Clear Europe has also stated that pursuant to proposed Rule 919(b), Non-Default Losses will be satisfied by applying the available Loss Assets designated by the clearing house and then other available capital or assets of the clearing house, whereas Investment Losses will first be satisfied by applying the available Loss Assets provided by the clearing house, and thereafter by Collateral Offset Obligations as discussed herein. ICE Clear Europe has stated that proposed Rule 919(p) would provide that the amount of Loss Assets provided by ICE Clear Europe will initially be USD 90 million and subject to adjustment by the clearing house by circular from time to time. ICE Clear Europe has also stated that it will not have an obligation to replenish the amount of Loss Assets, if applied to Non-Default Losses or Investment Losses under the proposed change.

According to ICE Clear Europe, pursuant to proposed Rule 919(c), if there is an Investment Loss in an amount greater than the then-available Loss Assets, all clearing members will be required to indemnify the clearing house and pay Collateral Offset Obligations to the clearing house in accordance with Rule 919(d). ICE Clear Europe has stated that it will publish a circular including certain required details of any Investment Loss and the amount of Collateral Offset Obligations due, determined in accordance with the terms of proposed Rule 919(d), based on the proportion of a clearing member's aggregate initial margin and guaranty fund contributions (for all product categories) to the aggregate initial margin and guaranty fund contributions of all clearing members (for all product categories) (in any case other than margin and contributions of defaulting clearing members that are applied or included in the net sum calculation under the Rules as a result of the default). ICE Clear Europe has also stated that pursuant to proposed Rule 919(e), the Collateral Offset Obligation of a clearing member shall not exceed the total of all initial margin and guaranty fund contributions (across all accounts and product categories) that it has deposited with the clearing house at the time of the event giving rise to the Investment Loss and that to the extent the Investment Losses exceed the amount of available Loss Assets and the capped Collateral Offset Obligations of clearing members, clearing members would not have further obligations to make payments to the clearing house in respect thereof.

ICE Clear Europe has stated that Collateral Offset Obligations are due at the time specified by the clearing house, under proposed Rule 919(f), and will be payable in accordance with the procedures for collection of margin under Rule 302 and its Finance Procedures. Furthermore, ICE Clear Europe has stated that Collateral Offset Obligations may, at the election of the clearing house, be offset against the obligation of the clearing house to return initial margin or guaranty fund contributions, and will be collected pursuant to a call for margin from a proprietary account of the clearing member. ICE Clear Europe has also stated that in the case of a defaulting clearing member, the clearing house may include the Collateral Offset Obligation in any net sum (to reduce any net sum otherwise payable to the defaulting clearing member) or offset it against any other obligation of the clearing house to return any remaining margin or guaranty fund contributions after application in respect of the default. ICE Clear Europe has also stated that collection of the Collateral Offset Obligation from the proprietary account of a clearing member is not intended to preclude a clearing member from passing the cost of the Collateral Offset Obligation to its customer(s), to the extent the obligation relates to customer account margin or otherwise to a customer and to the extent permitted by applicable law.

According to ICE Clear Europe, if the clearing house subsequently recovers amounts in respect of an Investment Loss, proposed Rule 919(h) provides for allocating the recovery to clearing members on a pro rata basis in proportion to their Collateral Offset Obligations satisfied (after repaying the clearing house for any of its own assets applied in excess of the Loss Assets or any other persons for their assets applied).

ICE Clear Europe has stated that pursuant to proposed Rule 919(i), the obligation of a clearing member to make Collateral Offset Obligations is separate from, and does not reduce, its obligation to provide margin and to make guaranty fund contributions or guaranty fund assessment contributions under the existing rules and pursuant to proposed Rule 919(j), if the clearing house calls for Collateral Offset Obligations in excess of that actually required, it will credit the excess to the relevant clearing members' proprietary accounts, from which it may be withdrawn in accordance with the usual procedure for withdrawal of excess margin under Part 3 of the Rules.

ICE Clear Europe has stated that proposed Rule 919(k) provides that the obligation to provide Collateral Offset Obligations under Rule 919 applies independently from the powers of assessment following clearing member defaults in other parts of the Rules and clarifies that the limits on assessment in Rules 917 and 918 for the F&O and FX product categories do not affect the liability of clearing members for Collateral Offset Obligations. ICE Clear Europe has also stated that proposed Rule 919(l) clarifies that the exercise of rights under Rule 919 does not constitute a Clearing House Event (i.e., a payment default or insolvency of the clearing house). ICE Clear Europe has also stated that proposed Rule 919(m) provides for payments of Collateral Offset Obligations to be made in accordance with the general procedures for payments under Part 3 of the Rules and the Finance Procedures, subject to the clearing house's setoff and netting rights under the Rules.

ICE Clear Europe has stated that under proposed Rule 919(n), the clearing house is not required to pursue any litigation or other action against any person in respect of unpaid amounts (including those representing an Investment Loss or Non-Default Loss). Furthermore, ICE Clear Europe has stated that, as discussed above, to the extent the clearing house recovers amounts in respect of an Investment Loss, proposed Rule 919(h) provides for allocating such recovery to clearing members that have paid Collateral Offset Obligations. ICE Clear Europe has also stated that proposed Rule 919(o) allows the clearing house to make currency conversions in making determinations under Rule 919.

ICE Clear Europe has stated that pursuant to proposed Rule 919(q), it must notify clearing members of the amount of Loss Assets used from time to time. ICE Clear Europe is not required to replenish the amount of Loss Assets if used, although it may elect to do so. ICE Clear Europe has also stated that proposed Rule 919(q) provides that the clearing house may replenish any regulatory capital as required to bring it in compliance with applicable laws at any time, including following an Investment Loss or other Non-Default Loss, and no such recapitalization will result in a reduction of any obligation of any clearing member to pay Collateral Offset Obligations, or the size of any Investment Loss. ICE Clear Europe has also stated that the replenishment of required regulatory capital does not in

itself require, or result in, a replenishment of Loss Assets.

ICE Clear Europe has stated that under proposed Rule 919(r), the clearing house is not liable to any clearing member, customer or any other person for losses arising from a failure of a payment or security services provider, including a Custodian such as a payment or custody bank, securities depository or securities settlement system.

ICE Clear Europe has stated that it has proposed other related changes to Parts 11, 12 and 16 of its Rules. First, ICE Clear Europe has proposed a change to Rule 1103(e) to allow the Loss Assets to be held together with other clearing house contributions to the guaranty fund (without affecting the limitations in the existing rules and Rule 919 on the use of such assets) and that as a result of this change, each clearing house contribution is no longer required to be held in a separate account, although the three clearing house guaranty fund contributions and the Loss Assets are required to be held separately from other clearing house assets. Second, ICE Clear Europe has proposed conforming changes to definitions relating to custodians in Rule 1201.

ICE Clear Europe has proposed new Rule 1606(b) to address certain matters relating to the investment of customer collateral in the form of cash provided by FCM/BD Clearing Members under applicable CFTC regulations. ICE Clear Europe has stated that the revised rule confirms that such cash can only be invested in U.S. treasury securities in accordance with applicable law and further provides that FCM/BD Clearing Members must direct the clearing house whether to so invest such cash or to leave it uninvested (and deems the clearing member to have instructed the clearing house to invest such collateral if it does not provide direction).

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act [5] directs the Commission to approve a proposed rule change of a self-regulatory organization if the Commission finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such self-regulatory organization. Section 17A(b)(3)(F) of the Act [6] requires, among other things, that the rules of a clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative 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.

The Commission finds that the proposed rule change is consistent with Section 17A of the Act [7] and the rules thereunder applicable to ICE Clear Europe. Because the proposed rule change specifies the procedures for allocation and payment of Investment Losses and Non-Default Losses, and provide for pre-funded Loss Assets to address Investment Losses and Non-Default Losses and the ability to call Collateral Offset Obligations from clearing members to address Investment Losses exceeding the Loss Assets, the Commission finds that the proposed rule change will enhance ICE Clear Europe's ability to promptly bear such losses, replenish its financial resources and continue clearing operations following an Investment Loss or Non-Default Loss, thus promoting the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts and transactions and contribute to the safeguarding of securities and funds which are in the custody or control of ICE Clear Europe or for which it is responsible in a manner consistent with the Act and the regulations thereunder applicable to ICE Clear Europe, in particular, Section 17(A)(b)(3)(F).[8]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act [9] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (File No. SR–ICEEU–2014–06) be, and hereby is, approved.[11]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–16361 Filed 7–11–14; 8:45 am]

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[5] 15 U.S.C. 78s(b)(2)(C).

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 15 U.S.C. 78q–1.

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 15 U.S.C. 78q–1.

[10] 15 U.S.C. 78s(b)(2).

[11] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72565; File No. SR–MIAX–2014–31]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule Regarding the MIAX Market Maker Sliding Scale for Transaction Fees

July 8, 2014.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 25, 2014, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend its Fee Schedule.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.miaxoptions.com/filter/wotitle/rule_filing,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 current MIAX Market Maker[3] sliding scale for transaction fees to increase the volume thresholds of each tier.[4]

The sliding scale for MIAX Market Maker transaction fees is based on the substantially similar fees of the Chicago Board Options Exchange, Incorporated (''CBOE'').[5] Specifically, the program reduces a MIAX Market Maker's per contract transaction fee based on the number of contracts the MIAX Market Maker trades in a month, based on the following scale:

Tier	Contracts per month	Transaction fee per contract
1	1–1,000,000	$0.15
2	1,000,001–2,000,000	0.10
3	2,000,001–4,000,000	0.05
4	4,000,001+	0.03

The sliding scale would apply to all MIAX Market Makers for transactions in all products except Mini Options. A MIAX Market Maker's initial $0.15 per contract rate will be reduced if the MIAX Market Maker reaches the volume thresholds set forth in the sliding scale in a month. As a MIAX Market Maker's monthly volume increases, its per contract transaction fee would decrease. Under the sliding scale, the first 1,000,000 contracts traded in a month would be assessed at $0.15 per contract. The next 1,000,000 contracts traded (up to 2,000,000 total contracts traded) would be assessed at $0.10 per contract. The next 2,000,000 contracts traded (up to 4,000,000 total contracts traded) would be assessed at $0.05 per contract. All contracts above 4,000,000 contracts traded in a month would be assessed at $0.03 per contract. The Exchange will aggregate the trading activity of separate MIAX Market Maker firms for the purposes of the sliding scale if there is at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A.[6]

The Exchange believes the proposed sliding scale is objective in that the fee reductions are based solely on reaching stated volume thresholds. The specific volume thresholds of the tiers were set based upon business determinations and an analysis of current volume levels. The specific volume thresholds and rates were set in order to encourage MIAX Market Makers to reach for higher tiers. The Exchange believes that the proposed changes to the tiered fee schedule may incent firms to display their orders on the Exchange and increase the volume of contracts traded here.

As mentioned above, the Exchange notes that the proposed sliding fee scale for MIAX Market Makers structured on contract volume thresholds is based on the substantially similar fees of the CBOE.[7] The Exchange also notes that a number of other exchanges have tiered fee schedules which offer different transaction fee rates depending on the monthly ADV of liquidity providing executions on their facilities.[8]

The proposed changes will become operative on July 1, 2014.

2. Statutory Basis

The Exchange believes that its proposal to amend its fee schedule is consistent with Section 6(b) of the Act[9] in general, and furthers the objectives of Section 6(b)(4) of the Act[10] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The proposed volume based discount fee structure is not discriminatory in that all MIAX Market Makers are eligible to submit (or not submit) liquidity, and may do so at their discretion in the daily volumes they choose during the course of the billing period. All similarly situated MIAX Market Makers are subject to the same fee structure, and access to the Exchange is offered on terms that are not unfairly discriminatory. Volume based discounts have been widely adopted by options and equities markets, and are equitable because they are open to all MIAX Market Makers on an equal basis and provide discounts that are reasonably related to the value of an exchange's market quality associated with higher volumes. The proposed fee levels and volume thresholds are reasonably designed to be comparable to those of other options exchanges employing similar fee programs, and also to attract additional liquidity and order flow to the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow. The

[3] ''MIAX Market Maker'' for purposes of the proposed sliding scale means any MIAX Market Maker including RMM, LMM, PLMM, DLMM, and DPLMM.

[4] *See* Securities Exchange Act Release No. 71704 (March 12, 2014), 79 FR 15183 (March 18, 2014) (SR–MIAX–2014–11).

[5] *See* Securities Exchange Act Release Nos. 55193 (January 30, 2007), 72 FR 5476 (February 6, 2007) (SR–CBOE–2006–111); 57191 (January 24, 2008), 73 FR 5611 (January 30, 2008); 58321 (August 6, 2008), 73 FR 46955 (SR–CBOE–2008–78). *See also* CBOE Fees Schedule, p. 3.

[6] A MIAX Market Maker's monthly contract volume would be determined at the firm affiliated level. *E.g.,* if five MIAX Market Maker individuals are affiliated with member firm ABC as reflected by Exchange records for the entire month, all the volume from those five individual MIAX Market Makers will count towards firm ABC's sliding scale transaction fees for that month. CBOE also aggregates volume of market maker firms with at least 75% common ownership between the firms. *See* Securities Exchange Act Release No. 55193 (January 30, 2007), 72 FR 5476 (February 6, 2007) (SR–CBOE–2006–111). *See also* CBOE Fees Schedule, p. 3.

[7] *See* Securities Exchange Act Release Nos. 55193 (January 30, 2007), 72 FR 5476 (February 6, 2007) (SR–CBOE–2006–111); 58321 (August 6, 2008), 73 FR 46955 (SR–CBOE–2008–78); 71295 (January 14, 2014), 79 FR 3443 (January 21, 2014) (SR–CBOE–2013–129).

[8] *See, e.g.,* International Securities Exchange, LLC, Schedule of Fees, Section VI, C; NASDAQ Options Market, Chapter XV, Section 2.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees in a manner that encourages market participants to provide liquidity and to send order flow to the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–MIAX–2014–31 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2014–31. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2014–31 and should be submitted on or before August 4, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–16371 Filed 7–11–14; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72559; File No. SR–MIAX–2014–36]

Self-Regulatory Organizations: Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

July 8, 2014.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 25, 2014, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend its Fee Schedule. The text of the proposed rule change is available on the Exchange's Web site at *http://www.miaxoptions.com/filter/wotitle/rule_filing*, at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the MIAX Top of Market (''ToM'') fee that is applicable to External Distributors. Specifically, the Exchange proposes to reduce the fee charged to External Distributors of ToM from $5,000 to $1,500 per month.

The Exchange charges monthly fees to Distributors of the ToM market data product that receive a feed of ToM data either directly from MIAX or indirectly through another entity and then distributes it either internally (within that entity) or externally (outside that entity). The monthly Distributor Fee charged depends on whether the Distributor is an ''Internal Distributor''[3] or an ''External Distributor.''[4] The Exchange notes that all Distributors are required to execute a MIAX Distributor Agreement. ToM provides Distributors

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] An Internal Distributor is an organization that subscribes to the Exchange for the use of ToM, and is permitted by agreement with the Exchange to provide ToM data to internal users (*i.e.,* users within their own organization).

[4] An External Distributor is an organization that subscribes to the Exchange for the use of ToM, and is permitted by agreement with the Exchange to provide ToM data to both internal users and to external users (*i.e.,* users outside of their own organization).

with a direct data feed that includes the Exchange's best bid and offer, with aggregate size, and last sale information, based on displayable order and quoting interest on the Exchange. The ToM data feed includes data that is identical to the data sent to the processor for the Options Price Regulatory Authority (''OPRA''). The ToM and OPRA data leave the MIAX system at the same time, as required under Section 5.2(c)(iii)(B) of the Limited Liability Company Agreement of the Options Price Reporting Authority LLC (the ''OPRA Plan''), which prohibits the dissemination of proprietary information on any more timely basis than the same information is furnished to the OPRA System for inclusion in OPRA's consolidated dissemination of options information.[5] In addition to MIAX's best bid and offer, with aggregate size and last sale information, Distributors that subscribe to ToM will also receive: opening imbalance condition information; opening routing information; Expanded Quote Range[6] information, as provided in MIAX Rule 503(f)(5); Post-Halt Notification,[7] as provided in MIAX Rule 504(d), and Liquidity Refresh,[8] condition information, as provided in MIAX Rule 515(c)(2). This additional information (the ''administrative information'') is included in the ToM feed as secondary information. The administrative information is also currently available to non-Market Makers through Administrative Information Subscriber (''AIS'') data feed and MIAX Market Makers via connectivity with the MIAX Express Interface (''MEI''),[9] for which they are assessed connectivity fees.

The Exchange proposes to reduce the fee charged to External Distributors of ToM from $5,000 to $1,500 per month in order to incentivize additional External Distributors to sign up for the data service. The proposed fee is in the range of similar fees found on another exchange; however the fee is slightly lower in order to increase the intermarket competition for this type of data service.[10]

2. Statutory Basis

The Exchange believes that its proposal to amend its fee schedule is consistent with Section 6(b) of the Act[11] in general, and furthers the objectives of Section 6(b)(4) of the Act[12] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The Exchange believes the proposed fees are a reasonable allocation of its costs and expenses among its Members and other persons using its facilities since it is recovering not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. Access to the Exchange is provided on fair and non-discriminatory terms. The proposed fee is reasonable since they are in the range of similar fees charged by another exchange; however, the proposed fee is slightly lower in order to increase the intermarket competition for this type of data service. The Exchange believes the proposed fee is equitable and not unfairly discriminatory because the new fee level results in a more reasonable and equitable allocation of fees amongst External Distributors and Internal Distributors for similar services. Moreover, the decision as to whether or not to subscribe to ToM is entirely optional to all parties. Potential subscribers are not required to purchase the ToM market data feed, and the Exchange is not required to make the ToM market data feed available. Subscribers can discontinue their use at any time and for any reason, including due to their assessment of the reasonableness of fees charged. The allocation of fees among subscribers is fair and reasonable because, if the market deems the proposed fees to be unfair or inequitable, firms can diminish or discontinue their use of this data.

In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data:

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[13]

By removing ''unnecessary regulatory restrictions'' on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold to broker-dealers at all, it follows that the price at which such data is sold should be set by the market as well.

In July, 2010, Congress adopted H.R. 4173, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act''), which amended Section 19 of the Act. Among other things, Section 916 of the Dodd-Frank Act amended paragraph (A) of Section 19(b)(3) of the Act by inserting the phrase ''on any person, whether or not the person is a member of the self-regulatory organization'' after ''due, fee or other charge imposed by the self-regulatory organization.'' As a result, all SRO rule proposals establishing or changing dues, fees or other charges are immediately effective upon filing regardless of whether such dues, fees or other charges are imposed on members of the SRO, non-members, or both. Section 916 further amended paragraph (C) of Section 19(b)(3) of the Act to read, in pertinent part, ''At any time within the 60-day period beginning on the date of filing of such a proposed rule change in accordance with the provisions of paragraph (1) [of Section 19(b)], the Commission summarily may temporarily suspend the change in the rules of the self-regulatory organization made thereby, if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors,

[5] The Exchange previously filed to adopt the ToM market data product, including a detailed description of ToM. *See* Securities Exchange Act Release No. 69007 (February 28, 2013), 78 FR 14617 (March 6, 2013) (SR–MIAX–2013–05).

[6] Where there is an imbalance at the price at which the maximum number of contracts can trade that is also at or within the highest valid width quote bid and lowest valid width quote offer, the System will calculate an Expanded Quote Range (''EQR''). The EQR will be recalculated any time a Route Timer or Imbalance Timer expires if material conditions of the market (imbalance size, ABBO price or size, liquidity price or size, etc.) have changed during the timer. Once calculated, the EQR will represent the limits of the range in which transactions may occur during the opening process. *See* Exchange Rule 503(f)(5).

[7] After the Exchange has determined to end a trading system halt, the System will broadcast to subscribers of the Exchange's data feeds, a Post-Halt Notification. *See* Exchange Rule 504(d).

[8] If a Market Maker quote was all or part of the MIAX Best Bid or Offer (''MBBO'') and the Market Maker's quote was exhausted by the partial execution of the initiating order, the System will pause the market for a time period not to exceed one second to allow additional orders or quotes refreshing the liquidity at the MBBO to be received (''liquidity refresh pause''). *See* Exchange Rule 515(c)(2).

[9] MIAX Express Interface is a connection to MIAX systems that enables Market Makers to submit electronic quotes to MIAX.

[10] *See* NASDAQ OMX PHLX LLC Pricing Schedule, Section IX.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

[13] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

or otherwise in furtherance of the purposes of this title. If the Commission takes such action, the Commission shall institute proceedings under paragraph (2)(B) [of Section 19(b)] to determine whether the proposed rule should be approved or disapproved.''

The Exchange believes that these amendments to Section 19 of the Act reflect Congress's intent to allow the Commission to rely upon the forces of competition to ensure that fees for market data are reasonable and equitably allocated. Although Section 19(b) had formerly authorized immediate effectiveness for a ''due, fee or other charge imposed by the self-regulatory organization,'' the Commission adopted a policy and subsequently a rule stating that fees for data and other products available to persons that are not members of the self-regulatory organization must be approved by the Commission after first being published for comment. At the time, the Commission supported the adoption of the policy and the rule by pointing out that unlike members, whose representation in self-regulatory organization governance was mandated by the Act, non-members should be given the opportunity to comment on fees before being required to pay them, and that the Commission should specifically approve all such fees. The Exchange believes that the amendment to Section 19 reflects Congress's conclusion that the evolution of self-regulatory organization governance and competitive market structure have rendered the Commission's prior policy on non-member fees obsolete. Specifically, many exchanges have evolved from member-owned, not-for-profit corporations into for-profit, investor-owned corporations (or subsidiaries of investor-owned corporations). Accordingly, exchanges no longer have narrow incentives to manage their affairs for the exclusive benefit of their members, but rather have incentives to maximize the appeal of their products to all customers, whether members or non-members, so as to broaden distribution and grow revenues. Moreover, the Exchange believes that the change also reflects an endorsement of the Commission's determinations that reliance on competitive markets is an appropriate means to ensure equitable and reasonable prices. Simply put, the change reflects a presumption that all fee changes should be permitted to take effect immediately, since the level of all fees are constrained by competitive forces. The Exchange therefore believes that the fees for ToM are properly assessed on non-member Distributors.

The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoaliton* v. *SEC,* No. 09–1042 (D.C. Cir. 2010), although reviewing a Commission decision made prior to the effective date of the Dodd-Frank Act, upheld the Commission's reliance upon competitive markets to set reasonable and equitably allocated fees for market data:

> In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.' [14]

The court's conclusions about Congressional intent are therefore reinforced by the Dodd-Frank Act amendments, which create a presumption that exchange fees, including market data fees, may take effect immediately, without prior Commission approval, and that the Commission should take action to suspend a fee change and institute a proceeding to determine whether the fee change should be approved or disapproved only where the Commission has concerns that the change may not be consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Notwithstanding its determination that the Commission may rely upon competition to establish fair and equitably allocated fees for market data, the *NetCoalition* Court found that the Commission had not, in that case, compiled a record that adequately supported its conclusion that the market for the data at issue in the case was competitive. The Exchange believes that a record may readily be established to demonstrate the competitive nature of the market in question.

There is intense competition between trading platforms that provide transaction execution and routing services and proprietary data products. Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade execution are a representative example of joint products with joint costs. The decision whether and on which platform to post an order will depend on the attributes of the platform where the order can be posted, including the execution fees, data quality and price and distribution of its data products. Without the prospect of an order that takes liquidity, seeing and reacting to a posted order on a particular platform, the act of posting an order would accomplish little.

Without trade executions, exchange data products cannot exist. Data products are valuable to many end subscribers only insofar as they provide information that end subscribers expect will assist them or their customers in making trading decisions. The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, an exchange's customers view the costs of transaction executions and of data as a unified cost of doing business with the exchange. A broker-dealer will direct orders to a particular exchange only if the expected revenues from executing trades on the exchange exceed net transaction execution costs and the cost of data that the broker-dealer chooses to buy to support its trading decisions (or those of its customers). The choice of data products is, in turn, a product of the value of the products in making profitable trading decisions. If the cost of the product exceeds its expected value, the broker-dealer will choose not to buy it.

Moreover, as a broker-dealer chooses to direct fewer orders to a particular exchange, the value of the product to the broker-dealer decreases, for two reasons. First, the product will contain less information, because executions of the broker-dealer's orders will not be reflected in it. Second, and perhaps more important, the product will be less valuable to that broker-dealer because it does not provide information about the venue to which it is directing its orders. Data from the competing venue to which the broker-dealer is directing orders will become correspondingly more valuable.

Thus, a super-competitive increase in the fees charged for either transactions or data has the potential to impair

[14] *NetCoaltion,* at 15 (quoting H.R. Rep. No. 94–229, at 92 (1975), as reprinted in 1975 U.S.C.C.A.N. 321, 323).

revenues from both products. ''No one disputes that competition for order flow is 'fierce'.''[15] However, the existence of fierce competition for order flow implies a high degree of price sensitivity on the part of broker-dealers with order flow, since they may readily reduce costs by directing orders toward the lowest-cost trading venues. A broker-dealer that shifted its order flow from one platform to another in response to order execution price differentials would both reduce the value of that platform's market data and reduce its own need to consume data from the disfavored platform. Similarly, if a platform increases its market data fees, the change will affect the overall cost of doing business with the platform, and affected broker-dealers will assess whether they can lower their trading costs by directing orders elsewhere and thereby lessening the need for the more expensive data.

Analyzing the cost of market data distribution in isolation from the cost of all of the inputs supporting the creation of market data will inevitably underestimate the cost of the data. Thus, because it is impossible to create data without a fast, technologically robust, and well-regulated execution system, system costs and regulatory costs affect the price of market data. It would be equally misleading, however, to attribute all of the exchange's costs to the market data portion of an exchange's joint product. Rather, all of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

Competition among trading platforms can be expected to constrain the aggregate return each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. For example, some platforms may choose to pay rebates to attract orders, charge relatively low prices for market information (or provide information free of charge) and charge relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower rebates (or no rebates) to attract orders, setting relatively high prices for market information, and setting relatively low prices for accessing posted liquidity. In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering. This would be akin to strictly regulating the price that an automobile manufacturer can charge for car sound systems despite the existence of a highly competitive market for cars and the availability of aftermarket alternatives to the manufacturer-supplied system.

The market for market data products is competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities, in a vigorously competitive market.

Broker-dealers currently have numerous alternative venues for their order flow, including eleven existing options markets. Each SRO market competes to produce transaction reports via trade executions. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products. The large number of SROs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO is currently permitted to produce proprietary data products, and many in addition to MIAX currently do, including NASDAQ, CBOE, ISE, NYSE Amex, and NYSEArca. Additionally, order routers and market data vendors can facilitate single or multiple broker-dealers' production of proprietary data products. The potential sources of proprietary products are virtually limitless.

Market data vendors provide another form of price discipline for proprietary data products because they control the primary means of access to end subscribers. Vendors impose price restraints based upon their business models. For example, vendors such as Bloomberg and Thomson Reuters that assess a surcharge on data they sell may refuse to offer proprietary products that end subscribers will not purchase in sufficient numbers. Internet portals, such as Google, impose a discipline by providing only data that will enable them to attract ''eyeballs'' that contribute to their advertising revenue. Retail broker-dealers, such as Schwab and Fidelity, offer their customers proprietary data only if it promotes trading and generates sufficient commission revenue. Although the business models may differ, these vendors' pricing discipline is the same: They can simply refuse to purchase any proprietary data product that fails to provide sufficient value. The Exchange and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to market proprietary data products successfully.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid, inexpensive, and profitable. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, BATS Trading and Direct Edge. Regulation NMS, by deregulating the market for proprietary data, has increased the contestability of that market. While broker-dealers have previously published their proprietary data individually, Regulation NMS encourages market data vendors and broker-dealers to produce proprietary products cooperatively in a manner never before possible. Multiple market data vendors already have the capability to aggregate data and disseminate it on a profitable scale, including Bloomberg, and Thomson Reuters.

The Court in *NetCoalition* concluded that the Commission had failed to demonstrate that the market for market data was competitive based on the reasoning of the Commission's *NetCoalition* order because, in the Court's view, the Commission had not adequately demonstrated that the proprietary data at issue in the case is used to attract order flow. The Exchange believes, however, that evidence not then before the court clearly demonstrates that availability of data attracts order flow. Due to competition among platforms, the Exchange intends to improve its platform data offerings on a continuing basis, and to respond promptly to customers' data needs.

The intensity of competition for proprietary information is significant and the Exchange believes that this proposal itself clearly evidences such competition. The Exchange is offering ToM in order to keep pace with changes in the industry and evolving customer needs. It is entirely optional and is geared towards attracting new Member Applicants and customers. MIAX competitors continue to create new market data products and innovative

[15] *NetCoalition* at 24.

pricing in this space. The Exchange expects to see firms challenge its pricing on the basis of the Exchange's explicit fees being higher than the zero-priced fees from other competitors such as BATS. In all cases, the Exchange expects firms to make decisions on how much and what types of data to consume on the basis of the total cost of interacting with MIAX or other exchanges. Of course, the explicit data fees are only one factor in a total platform analysis. Some competitors have lower transactions fees and higher data fees, and others are vice versa. The market for this proprietary information is highly competitive and continually evolves as products develop and change.

The Exchange notes that the ToM market data and fees compete with similar products offered by other markets such as NASDAQ OMX PHLX, LLC (''PHLX'') and the International Stock Exchange LLC (''ISE''). For example, PHLX and ISE offer market data products that are similar to ToM: data feeds that show the top of the market entitled Top of PHLX Options (''TOPO'') and the ISE TOP Quote Feed.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[16] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–MIAX–2014–36 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2014–36. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2014–36 and should be submitted on or before August 4, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–16367 Filed 7–11–14; 8:45 am]

BILLING CODE 8011–01–P

[16] 15 U.S.C. 78s(b)(3)(A)(ii).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72553; File No. SR–ISEGemini–2014–19]

Self-Regulatory Organizations; ISE Gemini, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to the Price Improvement Mechanism

July 8, 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 June 26, 2014, ISE Gemini, LLC (''Exchange'' or ''ISE Gemini'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules regarding the Price Improvement Mechanism (''PIM'').

The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend the Exchange's rules regarding the PIM functionality. The Exchange proposes to make two changes

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

to its PIM rules. The first change is based on a proposal recently submitted by NASDAQ OMX PHLX LLC (''PHLX''), and approved by the Commission,[3] pursuant to which orders of any size may initiate the price improvement auction (''PIXL'') on PHLX at a price which is at or better than the national best bid or offer (''NBBO''), even in instances where PHLX has resting interest on the opposite side and thus not at least one cent better than PHLX's own best bid or offer as required in the past. The second change proposed in this filing relates to how responses are addressed in the PIM. With this proposed change, the manner in which response messages are treated will be similar to how they are treated in the price improvement auctions operated at other exchanges.[4]

The PIM is a process that allows Electronic Access Members (''EAM'') to provide price improvement opportunities for a transaction wherein the Member seeks to execute an agency order as principal or execute an agency order against a solicited order (a ''Crossing Transaction'').[5] A Crossing Transaction is comprised of the order the EAM represents as agent (the ''Agency Order'') and a counter-side order for the full size of the Agency Order (the ''Counter-Side Order''). The Counter-Side Order may represent interest for the Member's own account, or interest the Member has solicited from one or more other parties, or a combination of both.

Currently under Rule 723, a Crossing Transaction must be entered only at a price that is better than the ISE Gemini best bid or offer (''ISE Gemini BBO'') and equal to or better than the national best bid or offer (''NBBO''). Under Supplementary Material .08 to Rule 723, when the ISE Gemini BBO is equal to the NBBO, a Crossing Transaction may be entered where the price of the Crossing Transaction is equal to the ISE Gemini BBO if the Agency Order is on the opposite side of the market from the ISE Gemini BBO. In this case, the Agency Order is automatically executed against the ISE Gemini BBO. If the Agency Order is not fully executed after the ISE Gemini BBO is fully exhausted and is no longer at a price equal to the Crossing Transaction, the PIM is initiated for the balance of the order as provided in Rule 723.

The Exchange now proposes to modify PIM so that Members may enter a Crossing Transaction at a price that is at or better than the NBBO on either side of the Agency Order and better than the limit order or quote on the ISE Gemini order book on the same side of the Agency Order. Members are not required to improve the ISE Gemini BBO on the opposite side of the Agency Order to initiate a PIM. Any resting interest on the ISE Gemini order book on the opposite side of the Agency Order will participate at the end of the auction in accordance with Rule 723(d). With this proposed rule change, PIM will now operate similar to the PIXL functionality at PHLX in terms of the price at which a PIM can be initiated.[6] The proposed change to the start price of a PIM will not impact the current execution priority. However, as discussed in detail below, the Exchange is also proposing to make PIM auctions blind. In addition, the Exchange is proposing that Member orders will no longer yield priority to non-Member orders.[7]

The Exchange believes the proposed rule change will allow a greater number of orders to receive price improvement that might not currently be afforded any price improvement. By auctioning the entire quantity in the PIM, the opportunity for price improvement over the prevailing NBBO is extended to the whole order, rather than only the portion that does not interact with the resting liquidity at the auction price level. As before, Priority Customers will continue to have priority at each price level in accordance with Rule 723(d). At each given price point, ISE Gemini will execute Priority Customer interest in a price/time fashion such that all Priority Customer interest which was resting on the order book is satisfied before any other interest that arrived after the PIM was initiated. After Priority Customer interest at a given price point has been satisfied, remaining contracts will be allocated among all Exchange quotes and orders in accordance with the execution rules set forth in Rule 723(d). Interest, whether resting prior to the commencement of the auction or arriving during the auction process, will continue to be executed in accordance with Rule 723(d).

The Exchange believes using the allocation method that it currently does is a fair distribution because the Counter-Side Order provides significant value to the market. The EAM guarantees the Crossing Transaction price improvement, and is subject to market risk while the order is exposed to other market participants. The EAM may only improve the price where it stopped the agency side, and may not cancel its order once the PIM commences. Other market participants are free to modify or cancel their quotes and orders at any time during the auction. The Exchange believes that the EAM provides an important role in facilitating the price improvement opportunity for market participants.

The following examples illustrate how the proposed rule change would operate:

Example 1

ISE Gemini BBO is 2.48–2.51 (60x30) (10 of the 30 on the offer is a Priority Customer; 20 of the 30 on the offer is a market maker (MM1); all 60 on the bid is a MM). NBBO is 2.48–2.51 (100x100). Under the proposed rule change, an Agency Order to buy may be entered into the PIM at any price between and including 2.49 and 2.51.

Assume a Priority Customer or non-Priority Customer order to buy 100 contracts is submitted into the PIM with a stop price of 2.51. The PIM auction will commence with a notification being sent to market participants. Assume, during the auction, two market makers (MM2 and MM3) respond. MM2 responds to sell 10 contracts at 2.50 and MM3 responds to sell 20 contracts at 2.51. At the end of the auction, the agency side of the order will buy 10 contracts from MM2 at 2.50, leaving 90 to be allocated at the original order limit of 2.51. The allocation process would continue and 10 contracts will be allocated to the Priority Customer on the book at 2.51, leaving 80 contracts to be allocated among the Counter-Side Order at 2.51 and the two market makers offering at 2.51. The remaining 80 contracts will be allocated at a price of 2.51 with 40 contracts (40% of the original order quantity) being allocated to the Counter-Side Order, 20 contracts allocated to MM1 and 20 contracts allocated to MM3.

The Exchange believes the proposed rule change will attract new order flow that might not currently be afforded any price improvement opportunity. Moreover, the Exchange notes that the Boston Options Exchange (''BOX'') currently has rules that allow it to

[3] *See* Securities Exchange Act Release No. 70654 (October 10, 2013), 78 FR 62891 (October 22, 2013) (SR–PHLX–2013–76).

[4] *See* Securities Exchange Act Release No. 72009 (April 23, 2014), 79 FR 24032 (April 29, 2014) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Adopt the MIAX PRIME Price Improvement Mechanism and the MIAX PRIME Solicitation Mechanism) (''MIAX Filing''). *See also* PHLX Rule 1080(n)(ii)(A)(6).

[5] *See* Securities Exchange Act Release Nos. 70050 (July 26, 2013), 78 FR 46622 (August 1, 2013) (Order Granting the Application of Topaz Exchange, LLC for Registration as a National Securities Exchange).

[6] *See* PHLX Rule 1080(n).

[7] Priority Customer interest will continue to be executed first followed by Professional Orders and Member interest. *See* proposed Rule 723(d)(2).

commence its price improvement auction, called the Price Improvement Period (''PIP''), at a price equal to the NBBO.[8] When a PIP is initiated at a price equal to the NBBO, regardless of size, the resting quotes and orders on BOX are considered for allocation at the end of the auction. BOX executes interest that existed on the BOX order book prior to the commencement of a PIP before executing any interest which joined during the auction. This behavior aligns with the BOX standard trade allocation rules as they employ a price/time allocation algorithm.

Similar to BOX, the ISE Gemini proposed rule change will allow orders of any size to initiate an auction at a price which is equal to or better than the NBBO where ISE Gemini may have resting interest. ISE Gemini will execute a Crossing Transaction against any interest, resting prior to the commencement of an auction or interest which arrived during the auction, in accordance with the rules as stated and illustrated with the example above. While this is different than the allocation algorithm that BOX employs, this behavior is consistent with the ISE Gemini PIM rules in place today. This proposal will continue to afford the same price improvement opportunities for Priority Customer and non-Priority Customer Crossing Transactions as is in operation today, but with the ability to initiate such price improving auctions at a price that is equal to the NBBO, and therefore permitting more of such orders to receive price improvement.

Further, as noted above, under Supplementary Material .08 to Rule 723, when the ISE Gemini BBO is equal to the NBBO, a Crossing Transaction may currently be entered where the price of the Crossing Transaction is equal to the ISE Gemini BBO if the Agency Order is on the opposite side of the market from the ISE Gemini BBO. However, with this proposed rule change, if a Crossing Transaction is entered at a price equal to the ISE Gemini BBO on the opposite side of the market, the Agency Order will no longer automatically execute and the Agency Order will trade against any interest, resting prior to the commencement of an auction or interest which arrived during the auction, in accordance with rule 723(d). The Exchange, therefore, proposes to delete Supplementary Material .08 to Rule 723.

The second change proposed in this filing is to modify the PIM functionality so responses sent by Members during a PIM auction are not visible to other auction participants. With this proposed change, responses will be treated in the same way they are treated in price improvement auctions operated by other exchanges.[9]

Currently, upon entry of a Crossing Transaction into the PIM, a broadcast message that includes the series, price and size of the Agency Order, and whether it is to buy or sell, is sent to all Members. Members are then given 500 milliseconds to indicate the size and price at which they want to participate in the execution of the Agency Order (''Improvement Orders''). Improvement Orders may be entered by all Members for their own account or for the account of a Public Customer in one-cent increments at the same price as the Crossing Transaction or at an improved price for the Agency Order, and for any size up to the size of the Agency Order. During the exposure period, Improvement Orders cannot be canceled, but can be modified to (1) increase the size at the same price, or (2) improve the price of the Improvement Order for any size up to the size of the Agency Order. During the exposure period, the aggregate size of the best prices (including the Counter-Side Order, Improvement Orders, and any changes to either) are continually updated and broadcast to all Members.

Because the PIM permits Members to continually receive broadcast messages, the Exchange adopted rules pursuant to which EAMs and Exchange Market Makers are required to yield priority to all non-Member orders [10] which the Commission found to be consistent with the requirements in Section 11(a) of the Act. At the time PIM on ISE Gemini was approved, although the ''effect versus execute'' exemption under Section 11(a) existed and was available to ISE Gemini Members, because of the manner in which the PIM was designed, ISE Gemini Members were not able to comply with that exemption. Instead, the PIM was designed to rely on yielding by Members to non-Member orders to be consistent with Section 11(a) of the Act. The Exchange notes the options markets have evolved and some options exchanges that have adopted a price improvement auction rely now on the ''effect versus execute'' exemption under Section 11(a) and yield execution priority to Priority Customers only. As a competitive response, the Exchange now proposes to delete relevant parts of Rule 723 to modify the PIM functionality so that responses submitted during a PIM auction will no longer be continually updated and broadcast to all Members.[11] Doing so will allow ISE Gemini Members to rely on the ''effect versus execute'' exemption under Section 11(a) of the Act when utilizing the PIM.

Section 11(a) of the Exchange Act prohibits any member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated persons exercises discretion (''covered accounts''), unless an exception applies.[12] Section 11(a)(1) contains a number of exceptions for principal transactions by members and their associated persons. As set forth below, the Exchange believes that with the proposed change, the PIM rules are now consistent with the requirements in Section 11(a) and the rules thereunder.

In this regard, Section 11(a)(1)(A) provides an exception from the prohibitions in Section 11(a) for dealers acting in the capacity of market makers. With respect to Market Makers on the Exchange, the Exchange believes that orders sent by them for covered accounts to the proposed PIM would qualify for this exception from Section 11(a).

In addition to this Market Maker exception, Rule 11a2–2(T) under the Exchange Act, known as the ''effect versus execute'' rule, provides exchange members with an exception from Section 11(a) by permitting them, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute the transactions on the exchange.[13] To comply with the ''effect versus execute'' rule's conditions, a member: (i) Must transmit the order from off the exchange floor; (ii) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution;[14] (iii) may not be affiliated

[8] *See* BOX Rules Chapter V, Section 18(e).

[9] *See supra* note 4.

[10] *See* Securities Exchange Act Release Nos. 70050 (July 26, 2013), 78 FR 46622 (August 1, 2013). In connection with the current proposal to make PIM auctions blind, the Exchange proposes to delete reference to non-Member Professional Orders from its rules.

[11] A number of exchanges currently operate price improvement auctions where responses submitted by a member are blind, i.e., not visible to other auction participants. For example, MIAX Rule 515A(a)(2)(i)(E) notes that ''responses shall not be visible to other Auction participants.'' *See* Securities Exchange Act Release No. 72009 (April 23, 2014), 79 FR 24032 (April 29, 2014). Additionally, PHLX Rule 1080(n)(ii)(A)(6) similarly provides that ''responses will not be visible to Auction participants.'' *See* PHLX Rule 1080(n)(ii)(A)(6).

[12] 15 U.S.C. 78k(a)(1).

[13] 17 CFR 240.11a2–2(T).

[14] The member, however, may participate in clearing and settling the transaction. *See* Securities Exchange Act Release No. 14563 (March 14, 1978), 43 FR 11542 (March 17, 1978).

with the member executing the transaction on the floor through the facilities of the Exchange; and (iv) with respect to an account over which the member has investment discretion, neither the member nor its associated person may retain any compensation in connection with effecting the transaction except as provided in the rule.[15]

The Exchange believes that orders sent by Members for covered accounts to the proposed PIM would qualify for this ''effect versus execute'' exception from Section 11(a), as described below. In this regard, the first condition of Rule 11a2–2(T) is that orders for covered accounts be transmitted from off the exchange floor. The ISE Gemini trading system and the PIM receives all orders electronically through remote terminals or computer-to-computer interfaces. The Exchange represents that orders for covered accounts from Members will be transmitted from a remote location directly to the PIM auction by electronic means. In the context of other automated trading systems, the Commission has found that the off-floor transmission requirement is met if a covered account order is transmitted from a remote location directly to an exchange's floor by electronic means.[16] The second condition of Rule 11a2–2(T) requires that the member not participate in the execution of its order once the order is transmitted to the floor for execution.[17] The Exchange represents that, upon submission to the PIM, an order will be executed automatically pursuant to the rules set forth for the mechanism. In particular, execution of an order sent to the mechanism depends not on the Member entering the order, but rather on what other orders are present and the priority of those orders. Thus, at no time following the submission of an order is a Member able to acquire control or influence over the result or timing of order execution.[18] Rule 11a2–2(T)'s third condition requires that the order be executed by an exchange member who is unaffiliated with the member initiating the order. The Commission has stated that the requirement is satisfied when automated exchange facilities, such as the PIM, are used, as long as the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange.[19] The Exchange represents that the PIM is designed so that no Member has any special or unique trading advantage in the handling of its orders after transmitting its orders to the mechanism. Rule 11a2–2(T)'s fourth condition requires that, in the case of a transaction effected for an account with respect to which the initiating member or an associated person thereof exercises investment discretion, neither the initiating member nor any associated person thereof may retain any compensation in connection with effecting the transaction, unless the person authorized to transact business for the account has expressly provided otherwise by written contract referring to Section 11(a) of the Act and Rule 11a2–2(T) thereunder.[20] The Exchange recognizes that Members relying on Rule 11a2–2(T) for transactions effected through the PIM must comply with this condition of the Rule.

2. Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act'')[21] in general, and furthers the objectives of Section 6(b)(5) of the Act[22] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest by creating positive, beneficial incentives for EAMs to provide price improvement opportunities to market participants. With the proposed change to the start price of a PIM auction, Members will not be required to improve the ISE Gemini BBO on the opposite side of the Agency Order to initiate a PIM. Further, any resting interest on the ISE Gemini order book on the opposite side of the Agency Order will now participate at the end of the auction. As a result, the proposed rule change will remove impediments to and perfect the mechanism for a free and open market and will result in more orders being executed in the PIM, thus providing an increased probability of price improvement for all orders, regardless of their size. With this proposed rule change, market participants would be incentivized to introduce more orders to the PIM for the opportunity to receive price improvement. Furthermore, Priority Customers will continue to have priority at each price level in accordance with ISE Gemini Rule 723(d). While currently non-Member Professional Orders are executed after Priority Customer interest and before Member interest, with this proposal, which in part amends ISE Gemini rules to make PIM a blind auction, all Professional Orders will now be at par with Member interest and will be executed after Priority Customer orders are executed. The Exchange believes it is appropriate to give Professionals Orders the same priority that is given to broker-dealer orders because professional customers and broker-dealers essentially behave the same, i.e., the type of trading professional customers engage in largely resembles that of a broker-dealer. The Exchange believes it is appropriate to treat these market participants at par with one another.

In particular, the Exchange believes that using the same allocation process as

[15] 17 CFR 240.11a2–2(T).

[16] *See, e.g.,* Securities Exchange Act Release Nos. 59154 (December 23, 2008), 73 FR 80468 (December 31, 2008) (SR–BSE–2008–48); 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR–NASDAQ–2007–004 and SR–NASDAQ–2007–080); 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (SR–BSE–2002–15); 15533 (January 29, 1979), 44 FR 6084 (January 31, 1979) (''1979 Release''); 14563 (March 14, 1978), 43 FR 11542 (March 17, 1978) (''1978 Release'').

[17] The description above covers the universe of the types of Members (i.e., Market Makers, EAMs).

[18] The Exchange notes that a Member may cancel or modify the order, or modify the instructions for executing the order, but that such instructions would be transmitted from off the floor of the Exchange. The Commission has stated that the non-participation requirement is satisfied under such circumstances so long as such modifications or cancellations are also transmitted from off the floor. *See* 1978 Release (stating that the ''non-participation requirement does not prevent initiating members from canceling or modifying orders (or the instructions pursuant to which the initiating member wishes to be executed) after the orders have been transmitted to the executing member, provided that any such instructions are also transmitted from off the floor'').

[19] In considering the operation of automated execution systems operated by an exchange, the Commission noted that, while there is not an independent executing exchange member, the execution of an order is automatic once it has been transmitted into the system. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2–2(T). *See* 1979 Release.

[20] *See* 17 CFR 240.11a2–2(T)(a)(2)(iv). In addition, Rule 11a2–2(T)(d) requires a member or associated person authorized by written contract to retain compensation, in connection with effecting transactions for covered accounts over which such member or associated persons thereof exercises investment discretion, to furnish at least annually to the person authorized to transact business for the account a statement setting forth the total amount of compensation retained by the member in connection with effecting transactions for the account during the period covered by the statement which amount must be exclusive of all amounts paid to others during that period for services rendered to effect such transactions. *See also* 1978 Release (stating ''[t]he contractual and disclosure requirements are designed to assure that accounts electing to permit transaction-related compensation do so only after deciding that such arrangements are suitable to their interests'').

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(5).

is used today for Crossing Transactions is fair and equitable because of the value the EAM brings to the marketplace. Specifically, by stopping the Crossing Transaction at or better than the NBBO, the EAM facilitates a process that protects investors and is in the public interest by providing an opportunity for price improvement. The Exchange believes the proposed rule change generally will benefit investors by offering more opportunities for orders to receive price improvement. For these reasons, the Exchange believes that the proposal is fair, reasonable and equitable for all market participants.

The Exchange believes its proposal to amend the manner in which responses in the PIM auction are addressed is consistent with Section 6(b) of the Act. The proposal to make responses in the PIM blind to other auction participants and the corresponding change to the priority rules for the PIM are similar to existing priority rules that distinguish between Priority Customers, Market Makers, and Professional interest in a manner that will help ensure a fair and orderly market by maintaining priority of orders and quotes while still affording the opportunity for price improvement is both reasonable and appropriate.

The Exchange believes the proposed rule change is appropriate in the [sic] price improvement auctions are widely recognized by market participants as invaluable, both as a tool to access liquidity, and a mechanism to help meet their best execution obligations. The proposed rule change will further the ability of market participants to carry out these strategies. Finally, as noted above, the proposed changes are a competitive response to how price improvement auctions on other exchanges currently operate and with this proposal, the Exchange will be on a more equal footing to compete with other exchanges for orders to be executed in the PIM.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange's proposal to amend its rules regarding the start price of a PIM auction will not impose a burden on competition because it will increase the number of orders that may be executed in the PIM and thereby receive price improvement opportunities that were not previously available to them. Further, the Exchange's proposal to make PIM a blind auction will allow ISE Gemini to compete with other options exchanges that already have blind auctions which most options exchanges that operate a price improvement auction do. Finally, the Exchange's proposal to amend the execution priority rules will not be a burden on competition because the proposed change will allow the Exchange to compete with other options exchanges that operate a price improvement auction and whose rules already permit its members to rely on the ''effect versus execute'' exemption when utilizing the price improvement auction of those markets. The changes proposed to Rule 723 will offer opportunities found on other options exchanges and create systems that embolden market participants to seek out price improvement opportunities for customers. Accordingly, the proposed rule change will have no impact on competition other than to strengthen competition among the options exchanges that provide price improvement opportunities.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [23] and subparagraph (f)(6) of Rule 19b–4 thereunder.[24]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–ISEGemini–2014–19 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–ISEGemini–2014–19. 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 ISE. 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–ISEGemini–2014–19 and should be submitted on or before August 4, 2014.

[23] 15 U.S.C. 78s(b)(3)(a)(ii).

[24] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–16362 Filed 7–11–14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72567; File No. SR–MIAX–2014–34]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

July 8, 2014.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 25, 2014, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.miaxoptions.com/filter/wotitle/rule_filing,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[25] 17 CFR 200.30–3(a)(12).

[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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Priority Customer Rebate Program (the ''Program'')[3] to expand the number of option classes that qualify for a $0.20 per contract credit for transactions in MIAX Select Symbols[4].

The Program is based on the substantially similar fees of another competing options exchange.[5] Under the Program, the Exchange credits each Member the per contract amount set forth in the table below resulting from each Priority Customer[6] order transmitted by that Member which is executed on the Exchange in all multiply-listed option classes (excluding mini-options and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in Rule 1400), provided the Member meets certain volume thresholds in a month. For each Priority Customer order transmitted by that Member which is executed electronically on the Exchange in MIAX Select Symbols, MIAX shall credit each member at the separate per contract rate for MIAX Select Symbols. The volume thresholds are calculated based on the customer average daily volume over the course of the month. Volume is recorded for and credits are delivered to the Member Firm that submits the order to the Exchange. The Exchange aggregates the contracts resulting from Priority Customer orders transmitted and executed electronically on the Exchange from affiliated Members for purposes of the thresholds above, provided there is at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A. In the event of a MIAX System outage or other interruption of electronic trading on MIAX, the Exchange adjusts the national customer volume in multiply-listed options for the duration of the outage. A Member may request to receive its credit under the Program as a separate direct payment.

The Exchange proposes modifying the Program to expand the number of option classes that qualify for a $0.20 per contract credit for transactions in MIAX Select Symbols. MIAX Select Symbols currently include options overlying AAL, AAPL, AIG, AMZN, AZN, BP, C, CMCSA, EBAY, EEM, EFA, FB, FCX, FXI, GILD, GLD, INTC, IWM, IYR, JCP, JPM, NFLX, NQ, PCLN, PFE, PG, QQQ, S, SUNE, T, TSLA, VALE, WFC, XLE, XLF, and XOM. The Exchange proposes to modify the MIAX Select Symbols to add AA, CBS, CLF, EWJ, GE, GM, GOOG, GOOGL, HTZ, KO, MO, MRK, NOK, PBR, QCOM, SIRI, SPY, USO, WAG, WMB, WY, XHB, XLP, and XLU. Thus, the Exchange will credit each Member $0.20 per contract resulting from each Priority Customer order transmitted by that Member executed on Exchange in AA, AAL, AAPL, AIG, AMZN, AZN, BP, C, CBS, CLF, CMCSA, EBAY, EEM, EFA, EWJ, FB, FCX, FXI, GE, GILD, GLD, GM, GOOG, GOOGL, HTZ, INTC, IWM, IYR, JCP, JPM, KO, MO, MRK, NFLX, NOK, NQ, PBR, PCLN, PFE, PG, QCOM, QQQ, S, SIRI, SPY, SUNE, T, TSLA, USO, VALE, WAG, WFC, WMB, WY, XHB, XLE, XLF, XLP, XLU, and XOM. The $0.20 per contract credit would be in lieu of the applicable credit that would otherwise apply to the transaction based on the volume thresholds. The Exchange notes that all the other aspects of the Program would continue to apply to the credits (*e.g.,* the aggregation of volume of affiliates, exclusion of contracts that are routed to away exchanges, exclusion of mini-options . . . etc.).[7]

For example, if Member Firm ABC, Inc. (''ABC'') has enough Priority Customer contracts to achieve 0.3% of the national customer volume in multiply-listed option contracts during

[3] *See* Securities Exchange Act Release Nos. 72356 (June 10, 2014), 79 FR 34384 (June 16, 2014) (SR–MIAX–2014–26); 71698 (March 12, 2014), 79 FR 15185 (March 18, 2014) (SR–MIAX–2014–12); 71700 (March 12, 2014), 79 FR 15188 (March 18, 2014) (SR–MIAX–2014–13); 71283 (January 10, 2014), 79 FR 2914 (January 16, 2014) (SR–MIAX–2013–63); 71009 (December 6, 2013), 78 FR 75629 (December 12, 2013) (SR–MIAX–2013–56).

[4] The term ''MIAX Select Symbols'' currently means options overlying AAL, AAPL, AIG, AMZN, AZN, BP, C, CMCSA, EBAY, EEM, EFA, FB, FCX, FXI, GILD, GLD, INTC, IWM, IYR, JCP, JPM, NFLX, NQ, PCLN, PFE, PG, QQQ, S, SUNE, T, TSLA, VALE, WFC, XLE, XLF, and XOM.

[5] *See* Chicago Board Options Exchange, Incorporated (''CBOE'') Fees Schedule, p. 4. *See also* Securities Exchange Act Release Nos. 66054 (December 23, 2011), 76 FR 82332 (December 30, 2011) (SR–CBOE–2011–120); 68887 (February 8, 2013), 78 FR 10647 (February 14, 2013) (SR–CBOE–2013–017).

[6] The term ''Priority Customer'' means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial accounts(s). *See* MIAX Rule 100.

[7] *See* MIAX Options Fee Schedule, p. 3. *See also* Securities Exchange Act Release Nos. 72356 (June 10, 2014), 79 FR 34384 (June 16, 2014) (SR–MIAX–2014–26); 71698 (March 12, 2014), 79 FR 15185 (March 18, 2014) (SR–MIAX–2014–12); 71700 (March 12, 2014), 79 FR 15188 (March 18, 2014) (SR–MIAX–2014–13); 71283 (January 10, 2014), 79 FR 2914 (January 16, 2014) (SR–MIAX–2013–63); 71009 (December 6, 2013), 78 FR 75629 (December 12, 2013) (SR–MIAX–2013–56).

the month of October, ABC will receive a credit of $0.10 for each Priority Customer contract executed in the month of October. However, any qualifying Priority Customer transactions during such month that occurred in AA, AAL, AAPL, AIG, AMZN, AZN, BP, C, CBS, CLF, CMCSA, EBAY, EEM, EFA, EWJ, FB, FCX, FXI, GE, GILD, GLD, GM, GOOG, GOOGL, HTZ, INTC, IWM, IYR, JCP, JPM, KO, MO, MRK, NFLX, NOK, NQ, PBR, PCLN, PFE, PG, QCOM, QQQ, S, SIRI, SPY, SUNE, T, TSLA, USO, VALE, WAG, WFC, WMB, WY, XHB, XLE, XLF, XLP, XLU, and XOM would be credited at the $0.20 per contact rate versus the standard credit of $0.10. Similarly, if Member Firm XYZ, Inc. (''XYZ'') has enough Priority Customer contracts to achieve 2.5% of the national customer volume in multiply-listed option contracts during the month of October, XYZ will receive a credit of $0.18 for each Priority Customer contract executed in the month of October. However, any qualifying Priority Customer transactions during such month that occurred in AA, AAL, AAPL, AIG, AMZN, AZN, BP, C, CBS, CLF, CMCSA, EBAY, EEM, EFA, EWJ, FB, FCX, FXI, GE, GILD, GLD, GM, GOOG, GOOGL, HTZ, INTC, IWM, IYR, JCP, JPM, KO, MO, MRK, NFLX, NOK, NQ, PBR, PCLN, PFE, PG, QCOM, QQQ, S, SIRI, SPY, SUNE, T, TSLA, USO, VALE, WAG, WFC, WMB, WY, XHB, XLE, XLF, XLP, XLU, and XOM would be credited at the $0.20 per contact rate versus the standard credit of $0.18.

The purpose of the amendment to the Program is to further encourage Members to direct greater Priority Customer trade volume to the Exchange in these high volume symbols. Increased Priority Customer volume will provide for greater liquidity, which benefits all market participants on the Exchange. The practice of incentivizing increased retail customer order flow in order to attract professional liquidity providers (Market-Makers) is, and has been, commonly practiced in the options markets. As such, marketing fee programs,[8] and customer posting incentive programs,[9] are based on attracting public customer order flow. The practice of providing additional incentives to increase order flow in high volume symbols is, and has been, commonly practiced in the options markets.[10] The Program similarly intends to attract Priority Customer order flow, which will increase liquidity, thereby providing greater trading opportunities and tighter spreads for other market participants and causing a corresponding increase in order flow from such other market participants in these select symbols. Increasing the number of orders sent to the Exchange will in turn provide tighter and more liquid markets, and therefore attract more business overall.

The credits paid out as part of the program will be drawn from the general revenues of the Exchange.[11] The Exchange calculates volume thresholds on a monthly basis.

The Exchange proposes to implement the new transaction fees beginning July 1, 2014.

2. Statutory Basis

The Exchange believes that its proposal to amend its fee schedule is consistent with Section 6(b) of the Act[12] in general, and furthers the objectives of Section 6(b)(4) of the Act[13] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The Exchange believes that the proposal to modify the Program to expand the number of option classes that qualify for the credit for transactions in MIAX Select Symbols is fair, equitable and not unreasonably discriminatory. The credit for transactions in the select symbols is reasonably designed because it will incent providers of Priority Customer order flow to send that Priority Customer order flow to the Exchange in order to receive a credit in a manner that enables the Exchange to improve its overall competitiveness and strengthen its market quality for all market participants. The proposal to increase the incentives in the high volume select symbols is also reasonably designed to increase the competitiveness of the Exchange with other options exchanges that also offer increased incentives to higher volume symbols. The proposed rebate program is fair and equitable and not unreasonably discriminatory because it will apply equally to all Priority Customer orders in the select symbols. All similarly situated Priority Customer orders in the select symbols are subject to the same rebate schedule, and access to the Exchange is offered on terms that are not unfairly discriminatory. In addition, the Program is equitable and not unfairly discriminatory because, while only Priority Customer order flow qualifies for the Program, an increase in Priority Customer order flow will bring greater volume and liquidity, which benefit all market participants by providing more trading opportunities and tighter spreads.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed change would increase both intermarket and intramarket competition by incenting Members to direct their Priority Customer orders in the select symbols to the Exchange, which will enhance the quality of quoting and increase the volume of contracts traded here in those symbols. To the extent that there is additional competitive burden on non-Priority Customers or trading in non-select symbols, the Exchange believes that this is appropriate because the proposed changes to the rebate program should incent Members to direct additional order flow to the Exchange and thus provide additional liquidity that enhances the quality of its markets and increases the volume of contracts traded here in those symbols. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market liquidity in such select symbols. Enhanced market quality and increased transaction volume that results from the anticipated increase in order flow directed to the Exchange will benefit all market participants and improve competition on the Exchange in such select symbols. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. The Exchange believes that the proposed rule change reflects this competitive environment because it reduces the Exchange's fees in a manner that encourages market participants to

[8] *See* MIAX Fee Schedule, Section 1(b).

[9] *See* NYSE Arca, Inc. Fees Schedule, page 4 (section titled ''Customer Monthly Posting Credit Tiers and Qualifications for Executions in Penny Pilot Issues'').

[10] *See* International Securities Exchange, LLC, Schedule of Fees, p. 6 (providing reduced fee rates for order flow in Select Symbols); NASDAQ OMX PHLX, Pricing Schedule, Section I (providing a rebate for adding liquidity in SPY); NYSE Arca, Inc. Fees Schedule, page 4 (section titled ''Customer Monthly Posting Credit Tiers and Qualifications for Executions in Penny Pilot Issues'').

[11] Despite providing credits under the Program, the Exchange represents that it will continue to have adequate resources to fund its regulatory program and fulfill its responsibilities as a self-regulatory organization while the Program will be in effect.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4).

direct their customer order flow, to provide liquidity, and to attract additional transaction volume to the Exchange. Given the robust competition for volume among options markets, many of which offer the same products, implementing a volume based customer rebate program to attract order flow like the one being proposed in this filing is consistent with the above-mentioned goals of the Act. This is especially true for the smaller options markets, such as MIAX, which is competing for volume with much larger exchanges that dominate the options trading industry. MIAX has a nominal percentage of the average daily trading volume in options, so it is unlikely that the customer rebate program could cause any competitive harm to the options market or to market participants. Rather, the customer rebate program is a modest attempt by a small options market to attract order volume away from larger competitors by adopting an innovative pricing strategy. The Exchange notes that if the rebate program resulted in a modest percentage increase in the average daily trading volume in options executing on MIAX, while such percentage would represent a large volume increase for MIAX, it would represent a minimal reduction in volume of its larger competitors in the industry. The Exchange believes that the proposal will help further competition, because market participants will have yet another additional option in determining where to execute orders and post liquidity if they factor the benefits of a customer rebate program into the determination.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[14] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2014–34 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2014–34. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2014–34 and should be submitted on or before August 4, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–16373 Filed 7–11–14; 8:45 am]

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[14] 15 U.S.C. 78s(b)(3)(A)(ii).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72566; File No. SR–MIAX–2014–32]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

July 8, 2014.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 25, 2014, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend its Fee Schedule.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.miaxoptions.com/filter/wotitle/rule_filing,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to establish a $0.45 transaction fee for executions in standard option contracts and $0.045 transaction fee for Mini Option contracts for non-member broker-dealers on the Exchange.

The current transaction fees for non-member broker-dealers on the Exchange are $0.30 per contract for standard options or $0.03 for Mini Options.[3] In February 2014, the Exchange lowered the transaction fees for non-member broker-dealers from $0.45 per contract for standard options or $0.045 for Mini Options to the current rates.[4] The Exchange lowered the non-member broker-dealer fees in order to enhance the Exchange's competitiveness with other option exchanges and to strengthen its market quality. The Exchange believed that the transaction fees would increase both intermarket and intramarket competition by incenting broker-dealers on other exchanges to direct additional orders to the Exchange to allow the Exchange to compete more effectively with other options exchanges for such transactions. However, after several months experience with the lower transaction fee rate for non-member broker-dealers, the Exchange has noticed a limited impact on the Exchange's competitiveness for non-member broker-dealer transactions. The Exchange now proposes increasing the non-member broker-dealer transaction fees in order to bring the fee rates back in line with the current non-MIAX market maker fee rates and to generate additional revenue. As proposed, both non-member broker-dealers and non-MIAX market makers would be charged $0.45 transaction fee for executions in standard option contracts and $0.045 transaction fee for Mini Option contracts. The proposal will also bring the non-member broker-dealer transaction fee rates back in line with the same fee rate available on other options exchanges.[5]

The Exchange proposes to implement the new transaction fees beginning July 1, 2014.

2. Statutory Basis

The Exchange believes that its proposal to amend its fee schedule is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(4) of the Act[7] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The Exchange believes that the proposal is fair, equitable and not unreasonably discriminatory [sic]. The proposal is reasonable because it results in an increase in non-member broker-dealer transactions fees for all non-member broker-dealers on the Exchange and results in a transaction fee rate that is identical to the similar transaction fees on other competing options exchanges. The proposed fees are fair and equitable and not unreasonably discriminatory [sic] because they will apply equally to all non-member broker-dealers. All non-member broker-dealers will be subject to the same transaction fee, and access to the Exchange is offered on terms that are not unfairly discriminatory. The proposed fees are equitable and not unreasonably discriminatory [sic] because it eliminates the previous disparate treatment in transaction fees between non-member broker-dealers and non-MIAX market makers by increasing the non-member broker-dealer transaction fees to bring the fee rates back in line with the current non-MIAX market maker fee rates.

In addition, the Exchange believes that increasing the non-member broker-dealer transaction fees which results in charging non-member broker-dealers more for transactions than for Members, is a fair and equitable allocation of reasonable fees, and not unreasonably discriminatory [sic]. Charging non-members higher transaction fees is a common practice amongst exchanges because Members are subject to other fees and dues associated with their membership to the Exchange that do not apply to non-members. To the extent that there is additional competitive burden on non-member broker-dealers, the Exchange believes that this is appropriate because the proposal could incent non-member broker-dealers to apply to be Members of the exchange, which is open to all market participants equally on terms that are not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed fee will allow the Exchange to increase revenue while remaining competitive with other exchanges by changing its rate to the same level. The Exchange believes that the proposal should promote competition between non-member broker-dealers and non-MIAX market makers by eliminating the previous disparate treatment in transaction fees between non-member brokers and non-MIAX market makers by increasing the non-member broker-dealer transaction fees to bring the fee rates back in line with the current non-MIAX market maker fee rates. To the extent that there is additional competitive burden on non-member broker dealers, the Exchange believes that this is appropriate because the proposal could incent non-member broker-dealers to apply to be Members of the exchange, which is open to all market participants equally on non-discriminatory terms. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow. The Exchange believes that the proposal reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[8] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

[3] *See* MIAX Options Fee Schedule, Section 1(a)(ii)—Other Market Participant Transaction Fees.

[4] *See* Securities Exchange Act Release No. 71502 (February 6, 2014), 79 FR 8519 (February 12, 2014) (SR–MIAX–2014–06).

[5] *See* Chicago Board Options Exchange, Incorporated, Fees Schedule, p. 1; International Securities Exchange, LLC, Schedule of Fees, p. 6.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2014–32 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2014–32. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2014–32 and should be submitted on or before August 4, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

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[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72555; File No. SR–CBOE–2014–056]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Application Procedures for Trading Permit Holders and Associated Persons of Trading Permit Holders

July 8, 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 July 2, 2014, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 its rule regarding application procedures for Trading Permit Holders and associated persons of Trading Permit Holders. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[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 purpose of this filing is to make certain amendments to Rule 3.9 (Application Procedures and Approval or Disapproval), which rule governs the application process for individuals or organizations which desire to become a Trading Permit Holder (''TPH''), desire to act in one or more of the trading functions set forth in Rules 3.2 and 3.3, is an associated person required to be approved by the Exchange pursuant to Rule 3.6(b), and applications to change the Clearing Trading Permit Holder that guarantees the TPH's Exchange transactions. Specifically, the Exchange seeks to: (i) Correct a typographical error in subparagraph (a) of Rule 3.9; (ii) eliminate subparagraph (b) of Rule 3.9 in its entirety; (iii) amend current subparagraph (i) of Rule 3.9 and, (iiv) [sic] eliminate current Interpretation and Policy. 01 of Rule 3.9 in its entirety.

First, the Exchange seeks to amend subparagraph (a) of Rule 3.9 to correct an inaccurate rule reference. Particularly, Rule 3.9(a) requires, among other things, that an individual or organization that desires to act in one or more of the trading functions set forth in Rule 3.2(b) or Rule 3.3(c) must submit an application to the TPH Department. The Exchange notes that currently Rule 3.3 (Qualifications of TPH Organizations) consists only of subparagraphs (a) and (b) (i.e., Rule 3.3(c) does not exist). The trading functions that an organization may be approved to engage in are enumerated in subparagraph (b) of Rule 3.9, not subparagraph (c). Accordingly, the Exchange seeks to replace the reference to ''Rule 3.3(c)'' with ''Rule 3.3(b)'' to reflect the correct rule reference.

Next the Exchange seeks to eliminate subparagraph (b) of Rule 3.9 in its entirety. Rule 3.9(b) currently provides that the Exchange will establish for any application required under Rule 3.9 a submission deadline of up to 90 days prior to the date that an application will be considered for approval. Additionally, Rule 3.9(b) requires that the submission deadline be published in a regulatory circular and that an application must be submitted to the TPH Department in accordance with the applicable submission deadline in order to be eligible for consideration. The Exchange, in practice, no longer has a submission deadline for applications required under Rule 3.9 and accordingly, there is also no current deadline published in a regulatory

circular. Currently, applications submitted pursuant to Rule 3.9(a) are accepted and considered on a rolling basis. The Exchange believes that the absence of a submission deadline has not and will not disadvantage any applicant. Rather, the absence of strict application deadlines allows the Exchange to process applications as they are submitted instead of delaying the speed with which an application can become effective based upon an arbitrary and unnecessary deadline. The Exchange seeks to conform its rules to reflect its current process and reduce confusion regarding the application and approval process.

The Exchange also seeks to amend current subparagraph (i) of Rule 3.9. Currently, subparagraph (i) provides that upon completion of the application process, the Exchange shall determine whether to approve or disapprove the application, unless there is just cause for delay. The Exchange proposes to specifically provide that upon completion of the application process, the Exchange will determine to approve or disapprove the application within 90 days, unless there is just cause for delay. Explicitly providing a deadline for which the Exchange must act upon a completed application further assures market participants that their applications submitted pursuant to Rule 3.9 will be considered in a timely fashion and acted upon without any arbitrary delay. The Exchange notes however, that this rule change is not intended to limit the Exchange's ability to table consideration of an application in accordance with Rule 3.9 [3] including in order to obtain additional information concerning an applicant or when an applicant is subject to an investigation being conducted by a self-regulatory organization or government agency involving the applicant's fitness to become a TPH.

Lastly, the Exchange seeks to eliminate current Interpretation and Policy .01 of Rule 3.9 from its rules (''Rule 3.9.01). Rule 3.9.01 currently requires that a TPH that submits an application to change the Clearing Trading Permit Holder (''CTPH'') that guarantees the TPH's Exchange transactions must also submit to the TPH Department a financial statement in a form prescribed by the Exchange which sets forth the TPH's assets and liabilities. Rule 3.9.01 also provides that the TPH Department will provide a copy of this financial statement to the new CTPH designated in the application. Historically, TPHs that have submitted an application to change CTPHs have not provided to the TPH Department along with the application a financial statement setting forth their assets and liabilities. The Exchange notes that generally the CTPH designated on an application has already conducted its own financial review of the TPH prior to agreeing to become the new CTPH that guarantees that TPH's Exchange transactions. The Exchange also notes, that as part of the initial application process to become a TPH, an applicant must submit a financial statement to the TPH Department. Additionally, the Exchange notes that it has a continuing ability to request a financial statement from a TPH pursuant to Exchange rules.[4] Requiring that TPHs provide to the Exchange a financial statement for purposes of passing it on to the new CTPH is therefore unnecessary and redundant. Accordingly, the Exchange seeks to eliminate Interpretation and Policy .01 from Rule 3.9 in its entirety. By doing so, the Exchange will confirm [sic] its rules to current practice and reduce confusion among TPHs regarding whether or not a financial statement needs to be provided to the Exchange in conjunction with an application to change a CTPH.

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.[5] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [6] 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) [7] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes amending Rule 3.9(a) to replace an inaccurate rule reference with the correct rule reference will eliminate possible investor confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system.

Additionally, the Exchange believes that the proposed rule change to eliminate the requirement for a submission deadline for applications required under Rule 3.9 reduces the burden on applicants to adhere to an unnecessary and arbitrary strict submission deadline. The Exchange also believes it would be beneficial to market participants to eliminate Rule 3.9(b) as Rule 3.9 would then more accurately reflect the current practices of the Exchange. More specifically, the elimination of Rule 3.9(b) will reduce investor confusion regarding the application and approval process, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system. The Exchange also notes that the proposed rule change does not result in unfair discrimination, as it applies to all individuals and organizations that are required to submit an application pursuant to Rule 3.9.

The Exchange also believes that the proposed rule change to require the Exchange to determine whether to approve or disapprove an application within 90 days of the completion of application process unless there is just cause for delay benefits market participants. Particularly, the proposed change ensures that applications submitted pursuant to Rule 3.9 will be considered in a timely manner and acted upon without any arbitrary delay, which further provides a fair procedure for the consideration of certain applications. The proposed rule change also does not result in unfair discrimination, as it applies to all TPHs that submit an application pursuant to Rule 3.9.

Finally, the Exchange believes it is no longer necessary for TPHs to provide their financial statements in conjunction with an application to change CTPHs because clearing firms now obtain financial information directly from TPHs as part of their due diligence prior to even agreeing to become the new CTPH for that TPH. As the CTPHs already have this information, requiring the financial information from the TPH to pass it along to the CTPH is redundant and unnecessary. Therefore, Rule 3.9.01 should be eliminated. Finally, the Exchange notes that the proposed rule change does not result in

[3] *See e.g.,* current CBOE Rule 3.9(e), Rule 3.9(g), Rule 3.9(h), and Rule 3.9(i).

[4] *See e.g.,* CBOE Rule 3.7(v).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] *Id.*

unfair discrimination, as it applies to all TPHs that submit an application to change a CTPH.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change imposes any burden on intramarket competition because it applies to all Trading Permit Holders. The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition as it is merely attempting to make changes to its rules to eliminate practices that are no longer necessary or relevant. The Exchange notes that, to the extent that the proposed changes make CBOE more attractive for trading, market participants trading on other exchanges are welcome to become TPHs and trade at CBOE if they determine that this proposed rule change has made CBOE more attractive or favorable.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. Sgnificantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [8] and Rule 19b–4(f)(6) [9] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2014–056 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–CBOE–2014–056. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2014–056 and should be submitted on or before August 4, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–16364 Filed 7–11–14; 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).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72564; File No. SR–OCC–2014–09]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change Concerning the Consolidation of the Governance Committee and Nominating Committee Into a Single Committee, Changes to the Nominating Process for Directors, and Increasing the Number of Public Directors on the Options Clearing Corporation's Board of Directors

July 8, 2014.

I. Introduction

On May 13, 2014, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–OCC–2014–09 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder.[2] The proposed rule change was published for comment in the **Federal Register** on May 30, 2014.[3] The Commission received no comment letters. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

OCC is proposing to: (i) Amend its By-Laws and Governance Committee Charter to combine the Nominating Committee (''NC'') and the Governance Committee (''GC'') to establish a single Governance and Nominating Committee (''GNC''), (ii) make changes concerning OCC's nomination process for Directors, and (iii) increase the number of Public Directors on OCC's Board of Directors (''Board'') from three to five. The proposed modifications are based on recommendations from the GC in the course of carrying out its mandate of reviewing the overall corporate governance of OCC and recommending improvements to the structure of OCC's Board. In part, the GC's

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 72242 (May 23, 2014), 79 FR 31166 (May 30, 2014).

recommendations stem from suggestions of an outside consultant that was retained to review and report on OCC's governance structure in relationship to industry governance practices. To conform to these proposed changes, OCC is also proposing to make certain edits to its Stockholders Agreement, Board of Directors Charter, and Fitness Standards for Directors.

Currently, the GC operates pursuant to its own Charter.[4] The NC is not a Board level Committee and does not operate pursuant to a charter; however, provisions in Article III of OCC's By-Laws prescribe certain aspects of the NC's structure and operation. OCC is proposing to apply to the GNC many of the existing provisions of the relevant By-Laws that apply to the NC and GC Charter. Amendments to the existing By-Laws and GC Charter are discussed below.

Certain provisions of Article III of OCC's By-Laws govern the role the NC plays in nominating persons as Member Directors [5] on OCC's Board as well as the composition and structure of the NC itself. The NC is required to endeavor to achieve balanced representation in its Member Director and Non-Director Member nominees, giving due consideration to business activities and geographic distribution.

The NC is composed of seven total members: one Public Director and six Non-Director Members.[6] The Public Director member, who is nominated by the Executive Chairman with the approval of a majority of the Board, generally serves a three year term, unless she ceases to qualify as a Public Director.[7] The six Non-Director Members nominated by the NC and selected by OCC's stockholders are divided into two equal classes of three members, and the classes serve staggered two year terms.[8] By comparison, the GC Charter requires the current GC to have no fewer than five directors and to include at least one Public Director, at least one Exchange Director, and at least one Member Director. It also provides that no Management Directors may serve on the GC.

OCC's Board currently has 19 members consisting of nine Member Directors, five Exchange Directors, three Public Directors, and two Management Directors. Based on recommendations from the GC in the course of review of OCC's overall corporate governance, OCC is proposing certain amendments detailed below to merge OCC's NC and GC into a single GNC, change the nominating process for directions, and increase the number of Public Directors from three to five.

A. Proposed Amendments Common to the By-Laws and Other OCC Governance Documents

Certain of the proposed changes would amend the existing By-Laws as well as other governance documents of OCC. For example, conforming edits would be made throughout the By-Laws and GC Charter to delete NC and GC references and replace them with references to the GNC.

1. GNC Composition

The new GNC would be composed of a minimum of three total members: at least one Public Director, at least one Exchange Director, and at least one Member Director. To reflect this change, OCC would: (i) Eliminate in Section 4 of Article III of the By-Laws the requirement for six Non-Director Members, (ii) add requirements for at least one Member Director and one Exchange Director, and (iii) modify the current requirement for one Public Director to instead require that there must be at least one Public Director. The proposed composition for the GNC mirrors the existing composition specified in the GC Charter. Therefore, no changes are proposed to the current GC Charter other than the elimination of the requirements that the GNC have no fewer than five directors. In its filing with the Commission, OCC stated that that limitation would be eliminated with the goal of providing the Board with greater flexibility to determine the optimal size and composition of the GNC, so long as the composition also facilitates diverse representation by satisfying the proposed requirement for at least one GNC representative from each of the Member Director, Exchange Director, and Public Director categories. The prohibition on Management Directors serving on the GC would continue to apply to the GNC.

2. GNC Member Appointment Process and Term Limits

The members of the GNC would be appointed annually by the Board from among certain Board members recommended by the GNC after consultation with OCC's Executive Chairman. GNC Members would serve at the pleasure of the Board. The GNC's Chairman (''GNC Chair'') would be designated from among the GNC's Public Directors. Provisions implementing these changes would be added to Section 4 of Article III of the By-Laws to entirely supplant the class and term limit structure and nominations process that currently applies to the NC and its Non-Director Members and Public Director, and references to Non-Director Members would be removed from the By-Laws. The GC Charter would also be amended to reflect this structure for GNC nominations and appointments.

3. Number of Public Directors and Member Directors

OCC is proposing to amend its By-Laws to increase the minimum number of Public Directors on its Board from three to five. It is also making certain other changes related to the overall composition of the Board and the classification and term of office of Public Directors. The proposed change in the number of Public Directors from three to five would reconstitute OCC's Board with a total of 21 directors. OCC believes that, as indicated in its initial proposal to add Public Directors to its Board,[9] Public Directors broaden the mix of viewpoints and business expertise that is represented on the Board. Accordingly, OCC believes that the input and expertise of two more Public Directors will further benefit OCC in the administration of its affairs in respect of the markets that it serves, and in the performance of its duties as a systemically important financial market utility.

The proposed changes would remove a provision that, under certain conditions, automatically adjusts the number of Member Directors serving on the Board. OCC's By-Laws currently require that if the aggregate number of Exchange Directors and Public Directors equals at least nine, the total number of

[4] Securities Exchange Act Release Nos. 71030 (Dec. 11, 2013), 78 FR 7612 (Dec. 16, 2013) (SR–OCC–2013–18); 71083 (Dec. 16, 2013), 78 FR 77182 (Dec. 20, 2013) (SR–OCC–2013–807).

[5] Under Article III, Section 2 every Member Director must be either a Clearing Member or a representative of a Clearing Member Organization.

[6] Under Sections 4 and 5 of Article III, a Non-Director Member of the NC must be a representative of a Clearing Member and no person associated with the same Clearing Member Organization as a member of the NC may be nominated by the NC for a position as a Member Director on the Board of Directors or a Non-Director Member of the NC for the ensuing year.

[7] Public Directors may not be affiliated with any national securities exchange or national securities association or any broker or dealer in securities, and OCC's Executive Chairman and President, who are Management Directors. See OCC By-Laws Article III, Section 6A.

[8] This tiered structure eliminated the complete turnover of the members of the NC each year and fostered greater continuity among its elected members. Securities Exchange Act Release No. 29437 (July 12, 1991), 56 FR 33319 (July 19, 1991) (SR–OCC–91–11).

[9] Securities Exchange Act Release No. 30328 (January 31, 1992), 57 FR 4784 (February 7, 1992) (SR–OCC–1992–02).

Member Directors must be automatically adjusted to exceed that number by one.[10] OCC believes that the removal of this provision would provide the Board with greater flexibility to determine its optimal composition. The proposed changes also remove a provision that reduces the number of Member Directors if the number is above nine and exceeds the sum of the number of Exchange Directors and the number of Public Directors by more than one, because the number of Member Directors would be fixed at nine.

OCC is also proposing certain amendments to its Stockholders Agreement, Board of Directors Charter, and Fitness Standards for Directors, Clearing Members, and Others. In each case, conforming changes would be made to recognize the merger of the NC and GC into the GNC as a standing Committee of the Board and reflect the role it would play in OCC's director nomination process. The proposed modifications to the Board Charter and Fitness Standards would reflect the increase in the number of Public Directors serving on the Board from three to five and the removal of the provision that automatically adjusts the number of Member Directors serving on the Board when certain conditions are met. The criteria specified in the Fitness Standards for Directors, Clearing Members, and Others for use in considering individuals nominated to be Member Directors would also be revised for consistency with the criteria proposed to be added to Article III, Section 5 of the By-Laws, discussed below, designed to achieve balanced Board representation.

The Stockholders Agreement also contains proposed amendments to replace the term Chairman with Executive Chairman. This parallels a separate proposed amendment by OCC to implement this change in its By-Laws and Rules, but a consolidated amendment to the Stockholders Agreement is proposed for ease of administration.

B. Proposed Amendments to By-Laws

As explained in more detail below, certain of the proposed changes would require amendments only to OCC's existing By-Laws. One such example is that Sections 2 and 5 of Article III of the By-Laws would be amended to remove prohibitions against representation of the same Clearing Member Organization on the Board and the NC.[11] This prohibition would be eliminated since GNC members will be selected from among the members of the Board under the new approach.

1. Balanced Representation

The NC's responsibility to endeavor to achieve balanced representation among Clearing Members on the Board would be carried over to the GNC. Specifically, the GNC would be required to ensure that (1) not all of the Member Directors are from the members having the largest volume of business with OCC during the prior year and (2) the mix of Member Directors includes members primarily engaged in agency trading on behalf of retail investors.

2. Nomination and Election Process

The Board would appoint members to the GNC from among the Board's members who are recommended by the GNC. This change requires certain proposed modifications to the nomination and election process currently reflected in Article III, Section 5 of the By-Laws. Changes are also proposed that would change the deadlines for nominations of Member Directors by both the GNC and Clearing Members, and OCC would preserve the petition process by which Clearing Members may nominate additional candidates to be Member Directors on the Board. In recognition of the elimination of the concept of Non-Director Members, several provisions in Section 5 of Article III of the By-Laws addressing the ability of stockholders to elect or nominate Non-Director Members of the NC would be deleted. In relevant part, however, these provisions would be retained to the extent they apply to the ability of stockholders under certain conditions to nominate and elect Member Directors of the Board.

3. Public Directors

Proposed changes to Section 6A of Article III of the By-Laws would require the GNC to nominate Public Directors for election by OCC's stockholders and to use OCC's fitness standards in making such nominations. Currently, OCC's Executive Chairman nominates Public Directors with Board approval. Changes are also proposed to help clarify the class structure and term limits of Public Directors that are independent of changes proposed to facilitate the formation of the GNC.[12]

The proposed changes to Article III, Section 6A of the By-Laws would also provide for the classification of the two new Public Directors. One of the new Public Directors will be designated as a Class I Public Director, and the other will be designated as a Class III Public Director. The proposed changes also establish the times at which the successors of the two new Public Directors will be elected. The successor of the new Public Director that is a Class III Public Director will be elected at the 2015 annual meeting of stockholders, and the successor of the new Public Director that is a Class I Public Director will be elected at the 2016 annual meeting.

4. Disqualifications and Filling Vacancies and Newly Created Directorships

The disqualification provisions in Article III, Section 11 of the By-Laws would be revised to reflect that any determination to disqualify a director would be effective and result in a vacancy only if the GNC makes a recommendation for disqualification in addition to an affirmative vote for disqualification by a majority of the whole Board. The By-Laws currently provide that if a Member Director vacancy is filled by the Board, the person filling the vacancy will serve until the next scheduled election for the relevant class of Member Director and a successor is elected. However, if the term for that class of Member Director extends beyond the Board's next annual meeting the vacancy must be filled by a person who is recommended by the Nominating Committee. Proposed changes to these terms in respect of the GNC would require the Board in all cases to appoint a person who is recommended by the GNC. Similarly, Public Director vacancies would be required to be filled by the Board as generally provided for in Section 6A of Article III of the By-Laws, including with regard to candidates being nominated by the GNC using OCC's fitness standards for directors. Provisions concerning filling vacancies with respect to the NC would be deleted, consistent with its elimination in favor of the GNC.

5. Ministerial Changes

The proposed changes to Article III of the By-Laws also include certain ministerial changes. A reference to stockholder exchanges in the

[10] OCC By-Laws Article III, Section 1.

[11] A Clearing Member Organization is a Clearing Member that is a legal entity rather than a natural person.

[12] These changes would specify that, aside from the Class II Public Director who was elected to the Board at the 2011 annual meeting, two other Public Directors were appointed to the Board prior to its 2013 annual meeting, one designated as a Class I Public Director and the other designated as a Class III Public Director. Generally, the three year terms for Public Directors with staggered expiration for each class would be preserved; however, an exception would be added for the initial Class I and III Public Directors.

interpretation and policy to Section 6 would be replaced by the defined term Equity Exchanges, and a reference in Section 14 to notice by telegram would be changed to facsimile to reflect current means of communication.

C. Proposed Amendments to the GC Charter

Certain of the proposed amendments relating to the creation of the GNC would apply only to OCC's existing GC Charter. These amendments are discussed below.

1. GNC Purpose

The statement of purpose in the GC Charter would be revised to reflect the GNC's larger scope of responsibilities. The existing GC purpose of reviewing the overall corporate governance of OCC would be maintained, along with language clarifying that this review would be performed on a regular basis and that recommendations concerning Board improvements should be made when necessary. The GNC Charter would also provide that the GNC assists the Board in identifying, screening, and reviewing individuals qualified to serve as directors and by recommending candidates to the Board for nomination for election at the annual meeting of stockholders or to fill vacancies. The GNC Charter would also specify that the GNC would develop and recommend to the Board, and oversee the implementation of, a Board Code of Conduct.

2. GNC Membership and Organization

The requirement in the GC Charter that the GC hold four meetings annually would be modified to also permit the GNC to call additional meetings as it deems appropriate.[13] The GC Charter requirement for regular reporting to the Board on Committee activities by the GC chair or a designee would be revised in favor of placing the reporting responsibility solely on the GNC Chair and requiring the GNC Chair to make timely reports to the Board on important issues discussed at GNC meetings. Taking into consideration certain pre-established guidelines in the GNC Charter, the GNC Chair would also be given responsibility for determining whether minutes should be recorded at any executive session. Aside from this exception for executive sessions, GNC meeting minutes would be required to be recorded. The GNC Charter would also create a position to be filled by an OCC officer who would assist the GNC and liaise between it and OCC's staff.

3. GNC Authority

As in the case of the existing GC, the GNC would have authority to inquire into any matter relevant to its purpose and responsibilities in the course of carrying out its duties. The GNC Charter would further specify that in connection with any such inquiry the GNC would have access to all books, records, facilities, and personnel of OCC. Unlike the existing GC Charter, the GNC Charter would not provide express authority for the GNC to rely on members of OCC's management for assistance. Instead, this relationship between the GNC and OCC's management would be more specifically addressed through the role of the newly created staff liaison position. Additional revisions to the GC Charter would also establish that the GNC Chair would not have discretion to take unilateral action on behalf of the Committee, even in special circumstances.

4. Board Composition

Without limiting the GNC to particular activities, the GNC Charter would specify certain responsibilities meant to guide the GNC in achieving its purposes, including with respect to its role in the development of the Board's composition. The GNC's Charter would require it to pursue development of a Board comprised of individuals who have a reputation for integrity and represent diverse professional backgrounds as well as a broad spectrum of experience and expertise. The GNC Charter would also prescribe more detailed responsibilities designed to further this goal. For example, the GNC would be required to conduct periodic reviews of the composition of the Board against the goal, including whether the Board reflects the appropriate balance of types of directors, business specialization, technical skills, diversity, and other qualities.[14]

The GNC would be required to recommend policies and procedures to the Board for identifying and reviewing Board nominee candidates, and it would implement and oversee the effectiveness of those policies, including with regard to criteria for Board nominees. Using criteria approved by the Board, the GNC would identify, screen, and review persons it determines are qualified to serve as directors. This process would also extend to incumbent directors concerning any potential re-nomination. In all cases, the GNC would only recommend candidates to the Board for nomination for election after consulting with OCC's Executive Chairman.

In the event that a sitting director offers to resign because of a change in occupation or business association, the GNC would be responsible for reviewing whether continued service is appropriate and making a recommendation of any action, consistent with OCC's By-Laws and Rules, that should be taken by the Board. The GNC would also undertake periodic reviews of term limits for certain directors and recommend changes to these limits where appropriate.

5. Governance Practices

The GNC would have responsibility for reviewing the Board's Charter for consistency with regulatory requirements, transparency of the governance process, and other sound governance practices. Currently, this is a GC function, and certain GC Charter amendments are proposed to help further detail the GNC's review responsibilities. These include a general responsibility to recommend changes, as the GNC deems appropriate, to the Board concerning Committee Charters. This would include the GNC Charter, which the GNC would be required to review annually.[15] In connection with a periodic review of Board Committee structure, the GNC would advise the Board regarding related matters of structure, operations, and charters. Furthermore, and in each case after consultation with OCC's Executive Chairman, the GNC would recommend to the Board for its approval certain directors for Committee service as well as for assignment as Committee chair persons.

The GNC would develop and recommend to the Board the annual process used by the Board and Board Committees for self-evaluation of their role and performance in the governance of OCC. The GNC would also be responsible for coordinating and providing oversight of that process. Corporate governance principles applicable to OCC would be developed by the GNC for recommendation to the Board, and the GNC would review them at least once a year.

[13] This would bring the Governance and Nominating Committee Charter in line with the Charters of OCC's other Board Committees.

[14] The GNC would also review director conflicts of interest and the manner in which any such conflicts are to be monitored and resolved.

[15] As part of the annual review, the GNC would also submit the GNC Charter to the Board for re-approval, including any changes the GNC deems advisable.

6. Other Proposed GC Charter Amendments

The GNC Charter would require the GNC to regularly evaluate its performance and the performance of its individual members and provide results of such assessments to the Board. It would also require an annual report to be prepared by the GNC and delivered to the Board regarding the GNC's activities for the preceding year, and the GNC would be required to include a statement that it carried out all of its GNC Charter responsibilities. In addition to such responsibilities, the GNC would generally be empowered to perform any other duties that it deems necessary or appropriate and consistent with the GNC Charter or as may otherwise be further delegated to it by the Board.

III. Discussion

Section 19(b)(2)(C) of the Act [16] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(C) of the Act requires the rules of a clearing agency to assure fair representation of its shareholders (or members) and participants [17] in the selection of its directors and administration of its affairs.[18]

The Act does not define fair representation or set up particular standards of representation. Instead, it provides that the Commission must determine whether the rules of the clearing agency regarding the manner in which decisions are made give fair voice to participants as well as to shareholders in the selection of directors and the administration of its affairs.[19] The Commission has stated that ''at a minimum, fair representation requires that the entity responsible for nominating individuals for membership on the board of directors should be obligated by by-law or rule to make nominations with a view toward assuring fair representation of the interests of shareholders and a cross-section of the community of participants.'' [20]

The Commission finds that the proposed rule change is consistent with the requirements of the Act, and specifically the requirements in Section 17A(b)(3)(C) that the rules of a clearing agency assure fair representation of its shareholders (or members) and participants [21] in the selection of its directors and administration of its affairs.[22] The GNC would be composed of and selected by OCC's participants and shareholders or their representatives because, along with at least one Public Director, the GNC would be composed of Board members who represent OCC's Clearing Members and equity exchanges.

Furthermore, the GNC would be obligated by OCC's By-Laws and the GNC Charter to make nominations that serve the interests of shareholders and a cross-section of participants because it would be required to nominate candidates with a view toward ensuring: (1) That the Board consists of, among other things, individuals who have a reputation for integrity and represent diverse professional backgrounds and a broad spectrum of experience and expertise; (2) that not all Member Directors of the Board will represent the largest Clearing Member Organizations; and (3) that the mix of Member Directors on the Board will include representatives of Clearing Member Organizations primarily engaged in agency trading on behalf of retail customers or individual investors.

The Commission also finds that the proposed rule change is consistent with Rule 17Ad–22(d)(8), which requires that each ''registered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to have governance arrangements that are clear and transparent to fulfill the public interest requirements of Section 17A of the Act . . . to support the objectives of owners and participants, and to promote the effectiveness of the clearing agency's risk management procedures.'' [23] The proposed rule change requires the GNC to be composed of representatives of at least one Member Director, Exchange Director, and Public Director. We believe this composition of the committee nominating directors is consistent with the requirement to have policies and procedures reasonably designed to support the objectives of both owners and participants.

The proposed rule change requires the GNC to endeavor to develop a Board that represents a broad range of skills and experience. We believe this is consistent with the requirement to have policies and procedures reasonably designed to promote the effectiveness of the clearing agency's risk management procedures. A Board with a broad range of skill and expertise, including in risk management, will be better able to oversee the development, implementation, effectiveness, and potential areas in need of improvement or change of a clearing agency's risk management framework, policies, and procedures.

The Commission also believes that increasing the number of Public Directors from three to five is consistent with both the Act and Rule 17Ad-22(d)(8). The Commission agrees with OCC that the input and expertise of two more Public Directors will further benefit OCC in the administration of its affairs in respect of the markets that it serves, and in the discharge of its obligations as a systemically important financial market utility.

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act [24] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[25] that the proposed rule change (File No. SR–OCC–2014–09) be and hereby is *approved.*[26]

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[27]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–16370 Filed 7–11–14; 8:45 am]

BILLING CODE 8011–01–P

[16] 15 U.S.C. 78s(b)(2)(C).

[17] In relevant part, a clearing agency participant is defined in Section 3(a)(24) of the Act as ''any person who uses a clearing agency to clear or settle securities transactions or to transfer, pledge, lend, or hypothecate securities . . .''

[18] 15 U.S.C. 78q–1(b)(3)(C). The statute further provides that one way of establishing that the representation of participants is fair is by affording them a reasonable opportunity to acquire voting stock of the clearing agency in reasonable proportion to their use.

[19] Securities Exchange Act Release No. 20221 (September 23, 1983), 48 FR 45167, 45172 (October 3, 1983) (Depository Trust Co., et. al.; Order).

[20] Securities Exchange Act Release No. 20221 (September 23, 1983), 48 FR 45167, 45172 (October 3, 1983) (Depository Trust Co., et. al.; Order).

[21] In relevant part, a clearing agency participant is defined in Section 3(a)(24) of the Act as ''any person who uses a clearing agency to clear or settle securities transactions or to transfer, pledge, lend, or hypothecate securities . . .''

[22] 15 U.S.C. 78q–1(b)(3)(C). The statute further provides that one way of establishing that the representation of participants is fair is by affording them a reasonable opportunity to acquire voting stock of the clearing agency in reasonable proportion to their use.

[23] 17 CFR 240.17Ad–22(d)(8).

[24] 15 U.S.C. 78q–1.

[25] 15 U.S.C. 78s(b)(2).

[26] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72558; File No. SR–ISEGemini–2014–21]

Self-Regulatory Organizations; ISE Gemini, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees

July 8, 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 July 1, 2014, ISE Gemini, LLC (the ''Exchange'' or ''ISE Gemini'') 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. 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

ISE Gemini is proposing to amend its Schedule of Fees to introduce a new higher maker rebate for Priority Customer orders from Tier 1 members that execute a set volume of Priority Customer Maker contracts in a given month. The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Schedule of Fees to introduce a new higher maker rebate for Priority Customer orders from Tier 1 members that execute a set volume of Priority Customer Maker contracts in a given month.[3] The Exchange's Schedule of Fees has separate tables for fees applicable to Standard Options and Mini Options. The Exchange notes that while the discussion below relates to fees for Standard Options, the fees for Mini Options, which are not discussed below, are and shall continue to be 1/10th of the fees for Standard Options.

Currently, Priority Customer orders that add liquidity on ISE Gemini are provided a maker rebate in Penny Symbols and SPY of $0.25 per contract for Tier 1, $0.40 per contract for Tier 2, $0.46 per contract for Tier 3, $0.48 per contract for Tier 4, and $0.50 per contract for Tier 5. In Non-Penny Symbols this maker rebate is $0.75 per contract for Tier 1, $0.80 per contract for Tier 2, and $0.85 per contract for Tier 3 and above.

In order to incentivize members to bring their Priority Customer orders to ISE Gemini, the Exchange now proposes to provide a higher maker rebate to Tier 1 members that execute a set volume of Priority Customer Maker contracts in a given month. In particular, Tier 1 members that execute a Priority Customer Maker average daily volume (''ADV'') of 5,000 to 19,999 contracts in a given month will qualify for the new maker rebates for their Priority Customer orders.[4] Priority Customer orders executed by members that meet the volume requirements for this new ''sub-tier'' will be entitled to a maker rebate of $0.32 per contract for Penny Symbols and SPY, and $0.76 per contract for Non-Penny Symbols.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and Section 6(b)(4) of the Act,[6] in particular, in that 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.

The Exchange believes that the proposed fee change is reasonable and equitable as the new maker rebate is designed to attract additional order flow from members that do not qualify for any of the higher maker rebate tiers but nevertheless execute a significant volume of liquidity-adding Priority Customer contracts on ISE Gemini. The Exchange believes that providing higher maker rebates for Priority Customer orders executed by members that are not able to reach the higher volume thresholds for Tier 2 but have achieved the volume threshold for this new ''sub-tier'' will attract that order flow to ISE Gemini, and thereby create additional liquidity to the benefit of all market participants who trade on the Exchange. The Exchange further believes that the proposed rule change is not unfairly discriminatory as all members that achieve the new volume threshold will receive the same maker rebate for their Priority Customer orders. The Exchange does not believe that it is unfairly discriminatory to offer this higher rebate only to Priority Customer orders as this is the order flow that the Exchange is trying to attract, and all market participants will benefit from the increased liquidity.

The Exchange notes that it has determined to charge fees and provide rebates in Mini Options at a rate that is 1/10th the rate of fees and rebates the Exchange provides for trading in Standard Options. The Exchange believes it is reasonable and equitable and not unfairly discriminatory to assess lower fees and rebates to provide market participants an incentive to trade Mini Options on the Exchange. The Exchange believes the proposed fees and rebates are reasonable and equitable in light of the fact that Mini Options have a smaller exercise and assignment value, specifically 1/10th that of a standard option contract, and, as such, is providing fees and rebates for Mini Options that are 1/10th of those applicable to Standard Options.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[7] the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b—4.

[3] A Tier 1 member is a member that does not qualify for Tier 2 or above by executing a Total Affiliated Member ADV of 50,000 contracts, Priority Customer Maker ADV of 20,000 contracts, or a Total Affiliated Member ADV of 40,000 contracts with a minimum Priority Customer Maker ADV of 15,000 contracts.

[4] Members that execute a Priority Customer Maker ADV of 20,000 contracts or more in a given month would qualify for the higher maker rebates applicable to Tier 2 or above.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78f(b)(8).

of the purposes of the Act. To the contrary, the Exchange believes that the proposed fee change will promote competition as it is designed to allow ISE Gemini to better compete for order flow by offering higher rebates to Priority Customer orders executed by certain members that do not currently qualify for any of the higher rebate tiers. The Exchange operates in a highly competitive market in which market participants can readily direct their order flow to competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed fee changes reflect this competitive environment.

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)(ii) of the Act [8] and subparagraph (f)(2) of Rule 19b–4 thereunder.[9] 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–ISEGemini–2014–21 *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–ISEGemini–2014–21. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of 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–ISEGemini–2014–21 and should be submitted on or before August 4, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–16366 Filed 7–11–14; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72554; File No. SR–ISE–2014–35

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to the Price Improvement Mechanism

July 8, 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 June 25, 2014, International Securities Exchange, LLC (''Exchange'' or ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules regarding the Price Improvement Mechanism (''PIM'').

The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend the Exchange's rules regarding the PIM functionality. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Exchange proposes to make two changes to its PIM rules. The first change is based on a proposal recently submitted by NASDAQ OMX PHLX LLC (''PHLX''), and approved by the Commission,[3] pursuant to which orders of any size may initiate the price improvement auction (''PIXL'') on PHLX at a price which is at or better than the national best bid or offer (''NBBO''), even in instances where PHLX has resting interest on the opposite side and thus not at least one cent better than PHLX's own best bid or offer as required in the past. The second change proposed in this filing relates to how responses are addressed in the PIM. With this proposed change, the manner in which response messages are treated will be similar to how they are treated in the price improvement auctions operated at other exchanges.[4]

The PIM is a process that allows Electronic Access Members (''EAM'') to provide price improvement opportunities for a transaction wherein the Member seeks to execute an agency order as principal or execute an agency order against a solicited order (a ''Crossing Transaction'').[5] A Crossing Transaction is comprised of the order the EAM represents as agent (the ''Agency Order'') and a counter-side order for the full size of the Agency Order (the ''Counter-Side Order''). The Counter-Side Order may represent interest for the Member's own account, or interest the Member has solicited from one or more other parties, or a combination of both.

Currently under Rule 723, a Crossing Transaction must be entered only at a price that is better than the ISE best bid or offer (''ISE BBO'') and equal to or better than the national best bid or offer (''NBBO''). Under Supplementary Material .08 to Rule 723, when the ISE BBO is equal to the NBBO, a Crossing Transaction may be entered where the price of the Crossing Transaction is equal to the ISE BBO if the Agency Order is on the opposite side of the market from the ISE BBO. In this case, the Agency Order is automatically executed against the ISE BBO. If the Agency Order is not fully executed after the ISE BBO is fully exhausted and is no longer at a price equal to the Crossing Transaction, the PIM is initiated for the balance of the order as provided in Rule 723.

The Exchange now proposes to modify PIM so that Members may enter a Crossing Transaction at a price that is at or better than the NBBO on either side of the Agency Order and better than the limit order or quote on the ISE order book on the same side of the Agency Order. Members are not required to improve the ISE BBO on the opposite side of the Agency Order to initiate a PIM. Any resting interest on the ISE order book on the opposite side of the Agency Order will participate at the end of the auction in accordance with Rule 723(d). With this proposed rule change, PIM will now operate similar to the PIXL functionality at PHLX in terms of the price at which a PIM can be initiated.[6] The proposed change to the start price of a PIM will not impact the current execution priority. However, as discussed in detail below, the Exchange is also proposing to make PIM auctions blind. In addition, the Exchange is proposing that Member orders will no longer yield priority to non-Member orders.[7]

The Exchange believes the proposed rule change will allow a greater number of orders to receive price improvement that might not currently be afforded any price improvement. By auctioning the entire quantity in the PIM, the opportunity for price improvement over the prevailing NBBO is extended to the whole order, rather than only the portion that does not interact with the resting liquidity at the auction price level. As before, Priority Customers will continue to have priority at each price level in accordance with Rule 723(d). At each given price point, ISE will execute Priority Customer interest in a price/time fashion such that all Priority Customer interest which was resting on the order book is satisfied before any other interest that arrived after the PIM was initiated. After Priority Customer interest at a given price point has been satisfied, remaining contracts will be allocated among all Exchange quotes and orders in accordance with the execution rules set forth in Rule 723(d). Interest, whether resting prior to the commencement of the auction or arriving during the auction process, will continue to be executed in accordance with Rule 723(d).

The Exchange believes using the allocation method that it currently does is a fair distribution because the Counter-Side Order provides significant value to the market. The EAM guarantees the Crossing Transaction price improvement, and is subject to market risk while the order is exposed to other market participants. The EAM may only improve the price where it stopped the agency side, and may not cancel its order once the PIM commences. Other market participants are free to modify or cancel their quotes and orders at any time during the auction. The Exchange believes that the EAM provides an important role in facilitating the price improvement opportunity for market participants.

The following examples illustrate how the proposed rule change would operate: *Example 1*

ISE BBO is 2.48–2.51 (60x30) (10 of the 30 on the offer is a Priority Customer; 20 of the 30 on the offer is a market maker (MM1); all 60 on the bid is a MM). NBBO is 2.48–2.51 (100x100). Under the proposed rule change, an Agency Order to buy may be entered into the PIM at any price between and including 2.49 and 2.51.

Assume a Priority Customer or non-Priority Customer order to buy 100 contracts is submitted into the PIM with a stop price of 2.51. The PIM auction will commence with a notification being sent to market participants. Assume, during the auction, two market makers (MM2 and MM3) respond. MM2 responds to sell 10 contracts at 2.50 and MM3 responds to sell 20 contracts at 2.51. At the end of the auction, the agency side of the order will buy 10 contracts from MM2 at 2.50, leaving 90 to be allocated at the original order limit of 2.51. The allocation process would continue and 10 contracts will be allocated to the Priority Customer on the book at 2.51, leaving 80 contracts to be allocated among the Counter-Side Order at 2.51 and the two market makers offering at 2.51. The remaining 80 contracts will be allocated at a price of 2.51 with 40 contracts (40% of the original order quantity) being allocated to the Counter-Side Order, 20 contracts allocated to MM1 and 20 contracts allocated to MM3.

The Exchange believes the proposed rule change will attract new order flow that might not currently be afforded any price improvement opportunity. Moreover, the Exchange notes that the Boston Options Exchange (''BOX'') currently has rules that allow it to commence its price improvement auction, called the Price Improvement Period (''PIP''), at a price equal to the

[3] *See* Securities Exchange Act Release No. 70654 (October 10, 2013), 78 FR 62891 (October 22, 2013) (SR–PHLX–2013–76).

[4] *See* Securities Exchange Act Release No. 72009 (April 23, 2014), 79 FR 24032 (April 29, 2014) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Adopt the MIAX PRIME Price Improvement Mechanism and the MIAX PRIME Solicitation Mechanism) (''MIAX Filing''). *See also* PHLX Rule 1080(n)(ii)(A)(6).

[5] *See* Securities Exchange Act No. 50819 (December 8, 2004), 69 FR 75093 (December 15, 2004) (SR–ISE–2003–06).

[6] *See* PHLX Rule 1080(n).

[7] Priority Customer interest will continue to be executed first followed by Professional Orders and Member interest. *See* proposed Rule 723(d)(2).

NBBO.[8] When a PIP is initiated at a price equal to the NBBO, regardless of size, the resting quotes and orders on BOX are considered for allocation at the end of the auction. BOX executes interest that existed on the BOX order book prior to the commencement of a PIP before executing any interest which joined during the auction. This behavior aligns with the BOX standard trade allocation rules as they employ a price/time allocation algorithm.

Similar to BOX, the ISE proposed rule change will allow orders of any size to initiate an auction at a price which is equal to or better than the NBBO where ISE may have resting interest. ISE will execute a Crossing Transaction against any interest, resting prior to the commencement of an auction or interest which arrived during the auction, in accordance with the rules as stated and illustrated with the example above. While this is different than the allocation algorithm that BOX employs, this behavior is consistent with the ISE PIM rules in place today. This proposal will continue to afford the same price improvement opportunities for Priority Customer and non-Priority Customer Crossing Transactions as is in operation today, but with the ability to initiate such price improving auctions at a price that is equal to the NBBO, and therefore permitting more of such orders to receive price improvement.

Further, as noted above, under Supplementary Material .08 to Rule 723, when the ISE BBO is equal to the NBBO, a Crossing Transaction may currently be entered where the price of the Crossing Transaction is equal to the ISE BBO if the Agency Order is on the opposite side of the market from the ISE BBO. However, with this proposed rule change, if a Crossing Transaction is entered at a price equal to the ISE BBO on the opposite side of the market, the Agency Order will no longer automatically execute and the Agency Order will trade against any interest, resting prior to the commencement of an auction or interest which arrived during the auction, in accordance with rule 723(d). The Exchange, therefore, proposes to delete Supplementary Material .08 to Rule 723.

The second change proposed in this filing is to modify the PIM functionality so responses sent by Members during a PIM auction are not visible to other auction participants. With this proposed change, responses will be treated in the same way they are treated in price improvement auctions operated by other exchanges.[9]

Currently, upon entry of a Crossing Transaction into the PIM, a broadcast message that includes the series, price and size of the Agency Order, and whether it is to buy or sell, is sent to all Members. Members are then given 500 milliseconds to indicate the size and price at which they want to participate in the execution of the Agency Order (''Improvement Orders''). Improvement Orders may be entered by all Members for their own account or for the account of a Public Customer in one-cent increments at the same price as the Crossing Transaction or at an improved price for the Agency Order, and for any size up to the size of the Agency Order. During the exposure period, Improvement Orders cannot be canceled, but can be modified to (1) increase the size at the same price, or (2) improve the price of the Improvement Order for any size up to the size of the Agency Order. During the exposure period, the aggregate size of the best prices (including the Counter-Side Order, Improvement Orders, and any changes to either) are continually updated and broadcast to all Members.

Because the PIM permits Members to continually receive broadcast messages, the Exchange adopted rules pursuant to which EAMs and Exchange Market Makers are required to yield priority to all non-Member orders [10] which the Commission found to be consistent with the requirements in Section 11(a) of the Act. At the time PIM was approved, although the ''effect versus execute'' exemption under Section 11(a) existed and was available to ISE Members, because of the manner in which the PIM was designed, ISE Members were not able to comply with that exemption. Instead, the PIM was designed to rely on yielding by Members to non-Member orders to be consistent with Section 11(a) of the Act. The Exchange notes it is now more than a decade since PIM was approved. The options markets have since greatly evolved and some options exchanges that have adopted a price improvement auction rely now on the ''effect versus execute'' exemption under Section 11(a) and yield execution priority to Priority Customers only. As a competitive response, the Exchange now proposes to delete relevant parts of Rule 723 to modify the PIM functionality so that responses submitted during a PIM auction will no longer be continually updated and broadcast to all Members.[11] Doing so will allow ISE Members to rely on the ''effect versus execute'' exemption under Section 11(a) of the Act when utilizing the PIM.

Section 11(a) of the Exchange Act prohibits any member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated persons exercises discretion (''covered accounts''), unless an exception applies.[12] Section 11(a)(1) contains a number of exceptions for principal transactions by members and their associated persons. As set forth below, the Exchange believes that with the proposed change, the PIM rules are now consistent with the requirements in Section 11(a) and the rules thereunder.

In this regard, Section 11(a)(1)(A) provides an exception from the prohibitions in Section 11(a) for dealers acting in the capacity of market makers. With respect to Market Makers on the Exchange, the Exchange believes that orders sent by them for covered accounts to the proposed PIM would qualify for this exception from Section 11(a).

In addition to this Market Maker exception, Rule 11a2–2(T) under the Exchange Act, known as the ''effect versus execute'' rule, provides exchange members with an exception from Section 11(a) by permitting them, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute the transactions on the exchange.[13] To comply with the ''effect versus execute'' rule's conditions, a member: (i) Must transmit the order from off the exchange floor; (ii) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution; [14] (iii) may not be affiliated with the member executing the transaction on the floor through the

[8] *See* BOX Rules Chapter V, Section 18(e).

[9] *See supra* note 4.

[10] *See* Securities Exchange Act No. 50819 (December 8, 2004), 69 FR 75093 (December 15, 2004) (SR–ISE–2003–06). *See also* Securities Exchange Act Release No. 59287 (January 23, 2009), 74 FR 5694 (January 30, 2009). In connection with the current proposal to make PIM auctions blind, the Exchange proposes to delete reference to non-Member Professional Orders from its rules.

[11] A number of exchanges currently operate price improvement auctions where responses submitted by a member are blind, i.e., not visible to other auction participants. For example, MIAX Rule 515A(a)(2)(i)(E) notes that ''responses shall not be visible to other Auction participants.'' *See* Securities Exchange Act Release No. 72009 (April 23, 2014), 79 FR 24032 (April 29, 2014). Additionally, PHLX Rule 1080(n)(ii)(A)(6) similarly provides that ''responses will not be visible to Auction participants.'' *See* PHLX Rule 1080(n)(ii)(A)(6).

[12] 15 U.S.C. 78k(a)(1).

[13] 17 CFR 240.11a2–2(T).

[14] The member, however, may participate in clearing and settling the transaction. *See* Securities Exchange Act Release No. 14563 (March 14, 1978), 43 FR 11542 (March 17, 1978).

facilities of the Exchange; and (iv) with respect to an account over which the member has investment discretion, neither the member nor its associated person may retain any compensation in connection with effecting the transaction except as provided in the rule.[15] The Exchange believes that orders sent by Members for covered accounts to the proposed PIM would qualify for this ''effect versus execute'' exception from Section 11(a), as described below. In this regard, the first condition of Rule 11a2–2(T) is that orders for covered accounts be transmitted from off the exchange floor. The ISE trading system and the PIM receives all orders electronically through remote terminals or computer-to-computer interfaces. The Exchange represents that orders for covered accounts from Members will be transmitted from a remote location directly to the PIM auction by electronic means. In the context of other automated trading systems, the Commission has found that the off-floor transmission requirement is met if a covered account order is transmitted from a remote location directly to an exchange's floor by electronic means.[16] The second condition of Rule 11a2–2(T) requires that the member not participate in the execution of its order once the order is transmitted to the floor for execution.[17] The Exchange represents that, upon submission to the PIM, an order will be executed automatically pursuant to the rules set forth for the mechanism. In particular, execution of an order sent to the mechanism depends not on the Member entering the order, but rather on what other orders are present and the priority of those orders. Thus, at no time following the submission of an order is a Member able to acquire control or influence over the result or timing of order execution.[18] Rule 11a2–2(T)'s third condition requires that the order be executed by an exchange member who is unaffiliated with the member initiating the order. The Commission has stated that the requirement is satisfied when automated exchange facilities, such as the PIM, are used, as long as the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange.[19] The Exchange represents that the PIM is designed so that no Member has any special or unique trading advantage in the handling of its orders after transmitting its orders to the mechanism. Rule 11a2–2(T)'s fourth condition requires that, in the case of a transaction effected for an account with respect to which the initiating member or an associated person thereof exercises investment discretion, neither the initiating member nor any associated person thereof may retain any compensation in connection with effecting the transaction, unless the person authorized to transact business for the account has expressly provided otherwise by written contract referring to Section 11(a) of the Act and Rule 11a2–2(T) thereunder.[20] The Exchange recognizes that Members relying on Rule 11a2–2(T) for transactions effected through the PIM must comply with this condition of the Rule.

2. Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act'')[21] in general, and furthers the objectives of Section 6(b)(5) of the Act[22] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest by creating positive, beneficial incentives for EAMs to provide price improvement opportunities to market participants. With the proposed change to the start price of a PIM auction, Members will not be required to improve the ISE BBO on the opposite side of the Agency Order to initiate a PIM. Further, any resting interest on the ISE order book on the opposite side of the Agency Order will now participate at the end of the auction. As a result, the proposed rule change will remove impediments to and perfect the mechanism for a free and open market and will result in more orders being executed in the PIM, thus providing an increased probability of price improvement for all orders, regardless of their size. With this proposed rule change, market participants would be incentivized to introduce more orders to the PIM for the opportunity to receive price improvement. Furthermore, Priority Customers will continue to have priority at each price level in accordance with ISE Rule 723(d). While currently non-Member Professional Orders are executed after Priority Customer interest and before Member interest, with this proposal, which in part amends ISE rules to make PIM a blind auction, all Professional Orders will now be at par with Member interest and will be executed after Priority Customer orders are executed. The Exchange believes it is appropriate to give Professionals Orders the same priority that is given to broker-dealer orders because professional customers and broker-dealers essentially behave the same, i.e., the type of trading professional customers engage in largely resembles that of a broker-dealer. The Exchange believes it is appropriate to treat these market participants at par with one another.

In particular, the Exchange believes that using the same allocation process as is used today for Crossing Transactions is fair and equitable because of the value the EAM brings to the marketplace.

[15] 17 CFR 240.11a2–2(T).

[16] *See, e.g.,* Securities Exchange Act Release Nos. 59154 (December 23, 2008), 73 FR 80468 (December 31, 2008) (SR–BSE–2008–48); 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR–NASDAQ–2007–004 and SR–NASDAQ–2007–080); 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (SR–BSE–2002–15); 15533 (January 29, 1979), 44 FR 6084 (January 31, 1979) (''1979 Release''); 14563 (March 14, 1978), 43 FR 11542 (March 17, 1978) (''1978 Release'').

[17] The description above covers the universe of the types of Members (i.e., Market Makers, EAMs).

[18] The Exchange notes that a Member may cancel or modify the order, or modify the instructions for executing the order, but that such instructions would be transmitted from off the floor of the Exchange. The Commission has stated that the non-participation requirement is satisfied under such circumstances so long as such modifications or cancellations are also transmitted from off the floor. *See* 1978 Release (stating that the ''non-participation requirement does not prevent initiating members from canceling or modifying orders (or the instructions pursuant to which the initiating member wishes to be executed) after the orders have been transmitted to the executing member, provided that any such instructions are also transmitted from off the floor'').

[19] In considering the operation of automated execution systems operated by an exchange, the Commission noted that, while there is not an independent executing exchange member, the execution of an order is automatic once it has been transmitted into the system. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2–2(T). *See* 1979 Release.

[20] *See* 17 CFR 240.11a2–2(T)(a)(2)(iv). In addition, Rule 11a2–2(T)(d) requires a member or associated person authorized by written contract to retain compensation, in connection with effecting transactions for covered accounts over which such member or associated persons thereof exercises investment discretion, to furnish at least annually to the person authorized to transact business for the account a statement setting forth the total amount of compensation retained by the member in connection with effecting transactions for the account during the period covered by the statement which amount must be exclusive of all amounts paid to others during that period for services rendered to effect such transactions. *See also* 1978 Release (stating ''[t]he contractual and disclosure requirements are designed to assure that accounts electing to permit transaction-related compensation do so only after deciding that such arrangements are suitable to their interests'').

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(5).

Specifically, by stopping the Crossing Transaction at or better than the NBBO, the EAM facilitates a process that protects investors and is in the public interest by providing an opportunity for price improvement. The Exchange believes the proposed rule change generally will benefit investors by offering more opportunities for orders to receive price improvement. For these reasons, the Exchange believes that the proposal is fair, reasonable and equitable for all market participants.

The Exchange believes its proposal to amend the manner in which responses in the PIM auction are addressed is consistent with Section 6(b) of the Act. The proposal to make responses in the PIM blind to other auction participants and the corresponding change to the priority rules for the PIM are similar to existing priority rules that distinguish between Priority Customers, Market Makers, and Professional interest in a manner that will help ensure a fair and orderly market by maintaining priority of orders and quotes while still affording the opportunity for price improvement is both reasonable and appropriate.

The Exchange believes the proposed rule change is appropriate in the [sic] price improvement auctions are widely recognized by market participants as invaluable, both as a tool to access liquidity, and a mechanism to help meet their best execution obligations. The proposed rule change will further the ability of market participants to carry out these strategies. Finally, as noted above, the proposed changes are a competitive response to how price improvement auctions on other exchanges currently operate and with this proposal, the Exchange will be on a more equal footing to compete with other exchanges for orders to be executed in the PIM.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange's proposal to amend its rules regarding the start price of a PIM auction will not impose a burden on competition because it will increase the number of orders that may be executed in the PIM and thereby receive price improvement opportunities that were not previously available to them. Further, the Exchange's proposal to make PIM a blind auction will allow ISE to compete with other options exchanges that already have blind auctions which most options exchanges that operate a price improvement auction do. Finally, the Exchange's proposal to amend the execution priority rules will not be a burden on competition because the proposed change will allow the Exchange to compete with other options exchanges that operate a price improvement auction and whose rules already permit its members to rely on the ''effect versus execute'' exemption when utilizing the price improvement auction of those markets. The changes proposed to Rule 723 will offer opportunities found on other options exchanges and create systems that embolden market participants to seek out price improvement opportunities for customers. Accordingly, the proposed rule change will have no impact on competition other than to strengthen competition among the options exchanges that provide price improvement opportunities.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [23] and subparagraph (f)(6) of Rule 19b–4 thereunder.[24]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–ISE–2014–35 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–2014–35. 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 ISE. 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–2014–35 and should be submitted on or before August 4, 2014.

[23] 15 U.S.C. 78s(b)(3)(a)(ii).

[24] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–16363 Filed 7–11–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

the Matter of ErgoBilt, Inc., FPB Bancorp, Inc., Geos Communications, Inc., Integra Bank Corporation, Latitude Solutions Inc., Noram Capital Holdings, Inc., Raptor Technology Group, Inc., and Subjex Corp.; Order Of Suspension Of Trading

July 10, 2014

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of ErgoBilt, Inc. because it has not filed any periodic reports since the period ended September 30, 1997.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of FPB Bancorp, Inc. because it has not filed any periodic reports since the period ended March 31, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Geos Communications, Inc. because it has not filed any periodic reports since the period ended March 31, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Integra Bank Corporation because it has not filed any periodic reports since the period ended March 31, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Latitude Solutions, Inc. because it has not filed any periodic reports since the period ended March 31, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Noram Capital Holdings, Inc. because it has not filed any periodic reports since the period ended March 31, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Raptor Technology Group, Inc. because it has not filed any periodic reports since the period ended September 30, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Subjex Corp. because it has not filed any periodic reports since the period ended March 31, 2011.

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 companies. 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 companies is suspended for the period from 9:30 a.m. EDT on July 10, 2014, through 11:59 p.m. EDT on July 23, 2014.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2014–16518 Filed 7–10–14; 4:15 pm]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice: 8793]

Determination under Section 107(a) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008

Pursuant to the authority vested in me by the President's September 20, 2010 delegation of the waiver function conferred in Section 107(a) of the William Wilberforce Trafficking Victims Protection Act of 2008 (Pub. L. 110–457), I hereby determine that a waiver of the application of clause (i) of Section 110(b)(2)(D) of the Trafficking Victims Protection Act of 2000, as amended (Pub. L. 106–386), is justified with respect to Angola, Bahrain, Belarus, Burma, Burundi, Comoros, Djibouti, Haiti, Kenya, Lebanon, Namibia, South Sudan, Suriname, and Turkmenistan.

This Determination shall be reported to Congress and published in the **Federal Register**.

John Kerry,

Secretary of State.

[FR Doc. 2014–16416 Filed 7–11–14; 8:45 am]

BILLING CODE 4710–17–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2014–0011–N–14]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the renewal Information Collection Requests (ICRs) abstracted below are being forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collections and their expected burdens. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collections of information was published on April 21, 2014 (79 FR 22178).

DATES: Comments must be submitted on or before August 13, 2014.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 25, Washington, DC 20590 (Telephone: (202) 493–6292), or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 35, Washington, DC 20590 (Telephone: (202) 493–6132). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, sec. 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On April 21, 2014, FRA published a 60-day notice in the **Federal Register** soliciting comment on ICRs that the agency was seeking OMB approval. *See* 79 FR 22178. FRA received no comments in response to this notice.

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5

[25] 17 CFR 200.30–3(a)(12).

CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507 (b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requests (ICRs) and their expected burdens. The revised requests are being submitted for clearance by OMB as required by the PRA.

Title: Railroad Operating Rules.

OMB Control Number: 2130–0035.

Abstract: The collection of information is due to the railroad operating rules set forth in 49 CFR part 217 which require Class I and Class II railroads to file with FRA copies of their operating rules, timetables, and timetable special instructions, and subsequent amendments thereto. Class III railroads are required to retain copies of these documents at their systems headquarters. Also, 49 CFR 220.21(b) prescribes the collection of information which requires railroads to retain one copy of their current operating rules with respect to radio communications and one copy of each subsequent amendment thereto. These documents must be made available to FRA upon request. Through these rules, FRA learns the condition of operating rules and practices with respect to trains and instructions provided by the railroad to their employees in operating practices.

Type of Request: Extension with change of a currently approved information collection.

Affected Public: Businesses (Railroads).

Form Number(s): N/A.

Annual Estimated Burden: 4,835,299 hours.

Title: Reflectorization of Freight Rolling Stock.

OMB Control Number: 2130–0566.

Abstract: The Federal Railroad Administration (FRA) issued this regulation to mandate the reflectorization of freight rolling stock (freight cars and locomotives) to enhance the visibility of trains in order to reduce the number and severity of accidents at highway-rail grade crossings in which train visibility acted as a contributing factor. The information collected is used by FRA to ensure that railroads/car owners follow the schedule established by the regulation for placing retro-reflective material on the sides of freight rolling stock (freight cars and locomotives) in order to improve the visibility of trains. The information is also used by FRA to confirm that railroads/car owners meet the prescribed standards for the application, inspection, and maintenance of the required retro-reflective material.

Type of Request: Extension with change of a currently approved information collection.

Affected Public: Businesses (Railroads).

Form Number(s): FRA F 6180.113.

Annual Estimated Burden: 8,769 hours.

Title: Track Safety Standards: Concrete Crossties.

OMB Control Number: 2130–0592.

Abstract: On April 1, 2011, FRA amended the Federal Track Safety Standards to promote the safety of railroad operations over track constructed with concrete crossties. In particular, FRA mandated specific requirements for effective concrete crossties, for rail fastening systems connected to concrete crossties, and for automated inspections of track constructed with concrete crossties. The information collected under § 213.234 is used by FRA to ensure that automated track inspections of track constructed with concrete crossties are carried out as specified in this section to supplement visual inspections by Class I and Class II railroads, intercity passenger railroads, and commuter railroads or small government jurisdictions that serve populations greater than 50,000.

Type of Request: Extension with change of a currently approved information collection.

Affected Public: Businesses (Railroads).

Form Number(s): N/A.

Annual Estimated Burden: 5,677 hours.

Addressee: Send comments regarding these information collections to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street NW., Washington, DC, 20503, Attention: FRA Desk Officer. Comments may also be sent via email to OMB at the following address: *oira_submissions@omb.eop.gov.*

Comments are invited on the following: Whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collections; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on July 7, 2014.

Rebecca Pennington,

Chief Financial Officer.

[FR Doc. 2014–16354 Filed 7–11–14; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

[Docket No. MARAD–2014–0102]

Agency Requests for Renewal of a Previously Approved Information Collection(s): Request for Waiver of Service Obligation, Request for Deferment of Service Obligation, and Application for Review of Waiver/Deferment Decision

AGENCY: Maritime Administration.

ACTION: Notice and request for comments.

SUMMARY: The Department of Transportation (DOT) invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. These information collections are for midshipmen or graduates of the United States Merchant Marine Academy (USMMA) or cadets or graduates of a State Maritime Academy (SMA) who received Student Incentive Payment (SIP) Program payments to determine if: (1) A waiver should be granted of all or a portion of the service obligation contract in cases where there would be undue hardship or impossibility of performance due to accident, illness or other justifiable reasons; (2) a deferment of all or a portion of the service obligation should be granted for the purpose of entering a marine or maritime-related graduate course of study; or (3) an original decision of items 1 or 2 should be overturned based on a student or graduate's appeal. Their service obligation is required by law. We are required to publish this notice

in the **Federal Register** by the Paperwork Reduction Act of 1995, Public Law 104–13.

DATES: Written comments should be submitted by September 12, 2014.

ADDRESSES: You may submit comments identified by Docket No. MARAD–2014–0102 through one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.
- *Fax:* 1–202–493–2251.

FOR FURTHER INFORMATION CONTACT: Anne Wehde, (202) 366–5469, Director, Office of Maritime Workforce Development, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2133–0510.

Title: Request for Waiver of Service Obligation, Request for Deferment of Service Obligation, and Application for Review of Waiver/Deferment Decision.

Form Numbers: MA–935, MA–936, MA–937.

Type of Review: Renewal of an information collection.

Background: The Information collection is essential for determining if a student or graduate of the USMMA or a SMA that participated in the Student Incentive Payment (SIP) Program has a valid circumstance preventing them from fulfilling the requirements of the service obligation contract signed at the time of their enrollment in USMMA or the SIP program. It also permits the Maritime Administration (MARAD) to determine if a graduate, who wishes to defer their service obligation to attend graduate school, is eligible to receive a deferment. Student or graduates who submit a waiver or deferral request have an opportunity to appeal MARAD's decision. This collection is essential for determining if the original decision for a waiver or deferral request should be overturned. Their service obligation is required by law.

Number of Respondents: 11.

Frequency: Annually.

Number of Responses: 11.

Total Annual Burden: 3.30.

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 the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department 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.

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://www.regulations.gov.*

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.93.

Dated: July 7, 2014.

Christine Gurland,

Acting Secretary, Maritime Administration.

[FR Doc. 2014–16322 Filed 7–11–14; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. DOT–MARAD 2014–0101]

Request for Comments of a Previously Approved Information Collection

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comments. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on April 23, 2014 (Vol. 79, No. 78, 22757).

DATES: Comments must be submitted on or before August 13, 2014.

FOR FURTHER INFORMATION CONTACT: Norman Serlin, 202–366–8159, Office of Marine Financing, MAR–720, Maritime Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Title: Title XI Obligation Guarantees.

OMB Control Number: 2133–0018.

Type of Request: Revision of a Previously Approved Information Collection.

Abstract: In accordance with the Merchant Marine Act, 1936, the Maritime Administration (MARAD) is authorized to execute a full faith and credit guarantee by the United States of debt obligations issued to finance or refinance the construction or reconstruction of vessels. In addition, the program allows for financing shipyard modernization and improvement projects. The information to be collected will be used to evaluate an applicant's project and capabilities, make the required determinations, and administer any agreements executed upon approval of loan guarantees.

Affected Public: Individuals/businesses interested in obtaining loan guarantees for construction or reconstruction of vessels as well as businesses interested in shipyard modernization and improvements.

Estimated Number of Respondents: 10.

Estimated Number of Responses: 10.

Annual Estimated Total Annual Burden Hours: 1,500.

Frequency of Collection: Annually.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, 725 17th Street NW., Washington, DC 20503.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1:93.

Dated: July 7, 2014.

Christine Gurland,

Acting Secretary, Maritime Administration.

[FR Doc. 2014–16320 Filed 7–11–14; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD–2012–0015]

America's Marine Highway Draft Programmatic Environmental Assessment and Public Comment Period

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of availability, request for comments.

SUMMARY: The Maritime Administration (MARAD) has prepared a draft Programmatic Environmental Assessment (PEA) in compliance with the National Environmental Policy Act of 1969 to evaluate potential environmental impacts associated with the execution of the ''America's Marine Highway'' Program. The draft PEA identifies and assesses hypothetical scenarios associated with the operation of potential Marine Highway services in five distinct regions throughout the continental United States. Once finalized, the PEA will serve as a guidance document from which future site specific NEPA analyses can be initiated.

DATES: Comments must be received on or before August 13, 2014. MARAD will consider comments filed after this date to the extent practicable.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2012–0015 by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Search MARAD–2012–0015 and follow the instructions for submitting comments.
- Email Mr. Andrew Larimore at *Rulemakings.MARAD@dot.gov*. Include MARAD–2012–0015 in the subject line of the message.
- Mail or Hand Delivery: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.
- Facsimile/Fax: (202) 493–2251.

Instructions: All submissions received must be written in English and include the agency name and docket number. All comments received will be posted without change to the docket at *www.regulations.gov*, including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

Note: If you mail or hand-deliver your comments, 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.

Docket: For access to the docket to read the PEA or comments received, go to *http://www.regulations.gov* at any time or to Room W12–401 of the Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Daniel Yuska, Office of Environment, (202) 366–0714 or via email at *Daniel.Yuska@dot.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 business hours. The FIRS is available 24 hours a day, seven days a week, to leave a message or question. You will receive a reply during normal business hours. You may send mail to Mr. Yuska at Department of Transportation, Maritime Administration, Office of Environment, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: The Energy Independence and Security Act of 2007 (2007 Energy Act) directed the Secretary of Transportation to establish a ''short sea'' transportation program, and to designate short sea transportation routes and projects to be conducted under the program, for the purpose of mitigating landside congestion. Pursuant to the statutory mandate, in 2010, MARAD established the ''America's Marine Highway'' Program (the Program), designating criteria, eligibility requirements and information for applicants seeking to establish America's Marine Highway (AMH) routes and projects. Projects designated under the program must use U.S. documented vessels, transport passengers or freight (in containers or trailers) and must operate on a designated Marine Highway route. Section 405 of the Coast Guard and Maritime Transportation Act of 2012 expanded the geographic scope of the program to include routes between all U.S. ports, including U.S. ports with no contiguous landside connection, as well as routes between U.S. ports and ports in Canada located in the Great Lakes Saint Lawrence Seaway System. The Act also added the purpose of promoting the use of short sea transportation.

The Program itself does not develop or operate Marine Highway services. Rather, the program provides a set of tools for use by ports, state and local governments, and private industry to consider expansion of AMH services. Where such designations are made, MARAD may encourage development of particular AMH projects or services when funding is available.

MARAD has prepared a programmatic environmental assessment (PEA) to analyze the potential environmental impacts of performance of the AMH program. As a programmatic document, the PEA does not analyze the environmental impacts of specific AMH route or project designations or the establishment of specific AMH services. Such analyses can only be done in the context of specific proposals, with known ports, infrastructure, natural environments, transportation volumes, etc. MARAD envisions that additional environmental analyses of the federal aspects of future project and service development along designated AMH routes will be necessary. Those future analyses may use this PEA as a starting point, to analyze the specific environmental impacts of each particular proposal.

Public Participation

We encourage you to participate 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.

A. Submitting comments

All submissions must be written in English and include the agency name and docket number for this rulemaking (MARAD–2012–0015), and should provide support for each suggestion or recommendation. You may submit your comments and material online via *http://www.regulations.gov* or by email, fax, mail, or hand delivery, but *please use only one of these means for your submission.* If you submit a comment online via *www.regulations.gov* or email, it will be considered received by MARAD when it posts to the *www.regulations.gov* Web site. (**Please Note:** Comments submitted to *www.regulations.gov* or via email are not immediately posted to the Web site. It may take several business days before your comments will be posted on the electronic docket.) If you fax, hand deliver, or mail your comment, it will be considered as having been received by MARAD 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 (MARAD–2012–0015) 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.

B. Viewing Comments and Documents

To view comments, go to *http://www.regulations.gov*, type the docket number ''MARAD–2012–0015'' in the ''SEARCH'' box and click ''Search.'' Click and Open the 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.

The draft PEA will be posted by MARAD to the electronic docket at *www.regulations.gov* and may be accessed using the same search as described above. You may also view the draft PEA by visiting MARAD's Marine Highway Web page at *http://www.marad.dot.gov/ships_shipping_landing_page/mhi_home/mhi_home.htm* and clicking on ''Draft Programmatic Environmental Assessment.''

Please note that even after the comment period has closed, MARAD will continue to file relevant information in the Docket as it becomes available. Accordingly, MARAD recommends that you periodically check the Docket for new material.

C. 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 the DOT Privacy Act system of records notice for the Federal Docket Management System (FDMS) in the **Federal Register** published on January 17, 2008, (73 FR 3316) at *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf*.

Authority: 49 CFR 1.92 and 1.93.

* * * * *

By Order of the Maritime Administrator.

Dated: July 8, 2014.

Thomas M. Hudson,

Secretary, Maritime Administration.

[FR Doc. 2014–16298 Filed 7–11–14; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

Advisory Board; Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation (SLSDC), to be held from 1:30 p.m. to 3:30 p.m. (EDT) on Wednesday, August 6, 2014 via conference call at the SLSDC's Policy Headquarters, 55 M Street SE., Suite 930, Washington, DC 20003. The agenda for this meeting will be as follows: Opening Remarks; Consideration of Minutes of Past Meeting; Quarterly Report; Old and New Business; Closing Discussion; Adjournment.

Attendance at the meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact, not later than Friday, August 1, 2014, Anita K. Blackman, Senior Advisor to the Administrator, Saint Lawrence Seaway Development Corporation, 1200 New Jersey Avenue SE., Washington, DC 20590; 202–366–0091.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC, on July 7, 2014.

Carrie Lavigne,

Chief Counsel.

[FR Doc. 2014–16395 Filed 7–11–14; 8:45 am]

BILLING CODE 4910–61–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations, Foreign Narcotics Kingpin Designation Act

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of 12 individuals and 14 entities whose property and interests in property have been blocked pursuant to the Foreign Narcotics Kingpin Designation Act (Kingpin Act) (21 U.S.C. 1901–1908, 8 U.S.C. 1182).

DATES: The designation by the Director of OFAC of the 12 individuals and 14 entities identified in this notice pursuant to section 805(b) of the Kingpin Act is effective on July 1, 2014.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance & Evaluation, Office of Foreign Assets Control, U.S. Department of the Treasury, Washington, DC 20220, Tel: (202) 622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available on OFAC's Web site at *http://www.treasury.gov/ofac* or via facsimile through a 24-hour fax-on-demand service at (202) 622–0077.

Background

The Kingpin Act became law on December 3, 1999. The Kingpin Act establishes a program targeting the activities of significant foreign narcotics traffickers and their organizations on a worldwide basis. It provides a statutory framework for the imposition of sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and the benefits of trade and transactions involving U.S. companies and individuals.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Secretary of the Treasury, in consultation with the Attorney General, the Director of the Central Intelligence Agency, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of

Defense, the Secretary of State, and the Secretary of Homeland Security may designate and block the property and interests in property, subject to U.S. jurisdiction, of persons who are found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; or (3) playing a significant role in international narcotics trafficking.

On July 1, 2014, the Director of OFAC designated the following 12 individuals and 14 entities whose property and interests in property are blocked pursuant to section 805(b) of the Kingpin Act.

Individuals

1. ALZATE GIRALDO, Rosalba; DOB 13 Sep 1956; POB Santuario, Antioquia, Colombia; citizen Colombia; Cedula No. 22082396 (Colombia) (individual) [SDNTK] (Linked To: MEJIA ALZATE ASOCIADOS Y CIA. LTDA.; Linked To: PROMOTORA TURISTICA SOL PLAZA S.A.; Linked To: CANTERAS COPACABANA S.A.; Linked To: ALMEQUIP S.A.S.; Linked To: ROSAGRO S.A.S.).
2. BARCO MEJIA, Jose Guillermo; DOB 03 Aug 1976; POB Santuario, Antioquia, Colombia; citizen Colombia; Cedula No. 94486900 (Colombia) (individual) [SDNTK] (Linked To: GRUPO EMPRESARIAL ENKOR PROFESIONAL S.A.S.; Linked To: GRUPO EMPRESARIAL GHEMA S.A.S.; Linked To: ALMACEN GUIBAR; Linked To: E-PROFESIONAL).
3. BARCO MEJIA, Jose Albeiro; DOB 23 May 1965; POB Santuario, Antioquia, Colombia; citizen Colombia; Cedula No. 70691995 (Colombia) (individual) [SDNTK] (Linked To: INVERSIONES MEYBAR S.A.S.; Linked To: GRUPO EMPRESARIAL ENKOR PROFESIONAL S.A.S.).
4. BARCO MEJIA, Jesus Rodolfo; DOB 19 Mar 1967; POB Santuario, Antioquia, Colombia; citizen Colombia; Cedula No. 70692776 (Colombia) (individual) [SDNTK] (Linked To: GRUPO EMPRESARIAL GHEMA S.A.S.).
5. BEDOYA ESPINOSA, Humberto Antonio; DOB 14 Jan 1949; POB Jerico, Antioquia, Colombia; citizen Colombia; Cedula No. 8293921 (Colombia) (individual) [SDNTK] (Linked To: PROMOTORA TURISTICA SOL PLAZA S.A.; Linked To: CANTERAS COPACABANA S.A.).
6. MEJIA ALZATE, Maria Leivy; DOB 28 Jul 1981; POB Medellin, Colombia; citizen Colombia; Cedula No. 43276113 (Colombia) (individual) [SDNTK] (Linked To: CANTERAS COPACABANA S.A.; Linked To: PROMOTORA TURISTICA SOL PLAZA S.A.; Linked To: ASESORIA Y ASISTENCIA AGROPECUARIA Y AMBIENTAL A4).
7. MEJIA ALZATE, Jose Alejandro; DOB 30 May 1984; POB Medellin, Colombia; citizen Colombia; Cedula No. 8126905 (Colombia) (individual) [SDNTK] (Linked To: CANTERAS COPACABANA S.A.; Linked To: PROMOTORA TURISTICA SOL PLAZA S.A.; Linked To: ALMEQUIP S.A.S.).
8. MEJIA ALZATE, Juan Carlos; DOB 17 Jul 1980; POB Medellin, Colombia; citizen Colombia; Cedula No. 71313043 (Colombia) (individual) [SDNTK] (Linked To: PROMOTORA TURISTICA SOL PLAZA S.A.; Linked To: TRITCON S.A.S.).
9. MEJIA ALZATE, Andres Camilo; DOB 15 Aug 1987; POB Medellin, Colombia; citizen Colombia; Cedula No. 1128270678 (Colombia) (individual) [SDNTK] (Linked To: CANTERAS COPACABANA S.A.; Linked To: PROMOTORA TURISTICA SOL PLAZA S.A.; Linked To: TRITCON S.A.S.).
10. MEJIA ALZATE, Victor Gabriel; DOB 05 Oct 1985; POB Medellin, Colombia; citizen Colombia; Cedula No. 98772126 (Colombia) (individual) [SDNTK] (Linked To: CANTERAS COPACABANA S.A.; Linked To: PROMOTORA TURISTICA SOL PLAZA S.A.; Linked To: TRITCON S.A.S.).
11. MEJIA SALAZAR, Pedro Claver; DOB 19 May 1943; POB Granada, Antioquia, Colombia; citizen Colombia; Cedula No. 3606361 (Colombia) (individual) [SDNTK] (Linked To: ARENERA EL CERREJON; Linked To: PROMOTORA TURISTICA SOL PLAZA S.A.; Linked To: INVERSIONES MEYBAR S.A.S.; Linked To: MEJIA ALZATE ASOCIADOS Y CIA. LTDA.).
12. MIRA PEREZ, Fredy Alonso (a.k.a. ''FREDY COLAS''); DOB 02 Jul 1966; POB Bogota, Colombia; citizen Colombia; Cedula No. 71683988 (Colombia) (individual) [SDNTK].

Entities

1. ALMACEN GUIBAR, Cali, Colombia; Matricula Mercantil No 441336 (Cali) [SDNTK].
2. ALMEQUIP S.A.S., Circular 73B No. 39B 115 Of. 9901, Medellin, Colombia; NIT #900314383–9 (Colombia) [SDNTK].
3. ARENERA EL CERREJON, Km. 2 via Aguadas, Aguadas, Caldas, Colombia; Matricula Mercantil No 121398 (Manizales) [SDNTK].
4. ASESORIA Y ASISTENCIA AGROPECUARIA Y AMBIENTAL A4, Manizales, Caldas, Colombia; Matricula Mercantil No 125828 (Manizales) [SDNTK].
5. CANTERAS COPACABANA S.A. (a.k.a. TRAMCO S.A.), Circular 73B No. 39B 15 Of. 9901, Medellin, Colombia; NIT #811035366–3 (Colombia) [SDNTK].
6. E-PROFESIONAL, Calle 6 50–166, Medellin, Colombia; Matricula Mercantil No 42525602 (Medellin) [SDNTK].
7. GRUPO EMPRESARIAL ENKOR PROFESIONAL S.A.S. (a.k.a. ENKOR PROFESIONAL), Calle 6 No. 50–154, Sector Coltabaco, Medellin, Colombia; Carrera 80 No. 49A–118, Medellin, Colombia; NIT #900440725–3 (Colombia) [SDNTK].
8. GRUPO EMPRESARIAL GHEMA S.A.S. (a.k.a. GHEMA), Carrera 80 No. 49A–118, Medellin, Colombia; Calle 10 No. 21–08, Ofc. 405, Bogota, Colombia; NIT #900441675–8 (Colombia) [SDNTK].
9. INVERSIONES MEYBAR S.A.S., Calle 48 No. 53–62 Int. 902, Medellin, Colombia; NIT #811004754–5 (Colombia) [SDNTK].
10. MEJIA ALZATE ASOCIADOS Y CIA. LTDA., Circular 73B 39 115–106, Copacabana, Antioquia, Colombia; Medellin, Colombia; NIT #800246606–1 (Colombia) [SDNTK].
11. PROMOTORA TURISTICA SOL PLAZA S.A. (a.k.a. HOTEL SOL PLAZA), Circular 73B No. 39B 115 Of. 9901, Medellin, Colombia; Carrera 32 No. 35B 44, La Pintada, Antioquia, Colombia; NIT #811035697–6 (Colombia); Matricula Mercantil No 30401904 (Medellin); alt. Matricula Mercantil No 37062402 (Medellin) [SDNTK].
12. ROSAGRO S.A.S., Circular 73B No. 39B–115, Of. 9901, Medellin, Colombia; NIT #900314092–0 (Colombia) [SDNTK].
13. TRITCON S.A.S., Circular 73B 39B 115 Of. 9901, Medellin, Colombia; NIT #900315365–0 (Colombia) [SDNTK].

14. VARIEDADES JOSE ALBEIRO BARCO M., Calle 48 53 62 Bod. 1202, Medellin, Colombia; Matricula Mercantil No 30517002 (Medellin) [SDNTK].

Dated: July 1, 2014.

Barbara C. Hammerle,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2014–16392 Filed 7–11–14; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel—Notice of Availability of Report of 2013 Closed Meetings

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice.

SUMMARY: Pursuant to 5 U.S.C. App. 2, section 10(d), of the Federal Advisory Committee Act, and 5 U.S.C. section 552b, of the Government in the Sunshine Act, a report summarizing the closed meeting activities of the Art Advisory Panel during Fiscal Year 2013 has been prepared. A copy of this report has been filed with the Assistant Secretary for Management.

DATES: *Effective Date:* This notice is effective *July 14, 2014.*

ADDRESSES: The report is available for public inspection and requests for copies should be addressed to: Internal Revenue Service, Freedom of Information Reading Room, Room 1621, 1111 Constitution Avenue NW., Washington, DC 20224, Telephone number (202) 622–5164 (not a toll free number). The report is also available at *www.irs.gov.*

FOR FURTHER INFORMATION CONTACT: Ruth Vriend, AP:SO:AAS, Internal Revenue Service/Appeals, 1111 Constitution Ave. NW., Ste. 700, Washington, DC 20224, telephone (202) 317–8853 (not a toll free telephone number).

SUPPLEMENTARY INFORMATION: It has been determined that this document is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore, is not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Kirsten B. Wielobob,

Chief, Appeals.

[FR Doc. 2014–16142 Filed 7–11–14; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

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No. 134 July 14, 2014

Part II

Department of Transportation

Federal Motor Carrier Safety Administration

National Hazardous Materials Route Registry; Notice

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2014–0022]

National Hazardous Materials Route Registry

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

ACTION: Notice and request for comment.

SUMMARY: This notice provides the updated National Hazardous Materials Route Registry (NHMRR), which is a listing, as reported by State and Tribal Government routing officials, of all designated and restricted road and highway routes for highway route controlled quantities (HRCQ) of Class 7 (radioactive) materials (RAM) (HRCQ/RAM) and non-radioactive hazardous materials (NRHMs) transportation. This notice also provides the limitations for using these routes. FMCSA developed this listing based on information received from State and Tribal Government routing agencies as of January 31, 2014. FMCSA is presenting the updated information with a new route-ordering format and changes to the table structure intended to improve the NHMRR usability for commercial drivers who must transport hazardous materials (HM) in compliance with routing requirements. This notice also provides current information on State and Tribal Government routing agency contacts. This listing supersedes the NHMRR published on December 4, 2000, and FMCSA requests comment on the new route ordering approach, table structure and content, and other related specific route issues from the States of Alaska, California, Colorado, and Texas, and the District of Columbia.

DATES: *Effective date:* July 14, 2014.

Submit comments on or before September 12, 2014.

ADDRESSES: You may submit your comments through the Federal Docket Management System (FDMS) by any one of the following methods:

- *Electronic:* You may submit comments electronically through the online FDMS docket Web site at *http://www.regulations.gov*. This site is the preferred method for receiving comments and submissions. Follow the online instructions for submissions.
- *Mail/Hand Delivery:* You may submit documents by mail or hand delivery to the Docket Services, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The U.S. Department of Transportation will scan the submission and post it to FDMS.
- *Fax:* You may fax your submissions to 202–493–2251. DOT will scan the submission and post it to FDMS.

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

FOR FURTHER INFORMATION CONTACT: Ms. Roxane Greene, (202) 366–0735, Office of Enforcement and Compliance, MC–ECH, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave. SE., Washington, DC 20590. Office hours are from 8:00 a.m. to 5:30 p.m., e.t., Monday through Friday, except for Federal holidays.

SUPPLEMENTARY INFORMATION: This section is organized under the following topics.

I. Public Participation and Request for Comments
II. Legal Basis for this Action
III. Background and Request for Comments

I. Public Participation and Request for Comments

FMCSA encourages stakeholders and members of the public to participate by submitting comments and related materials in response to this notice. All comments received will be posted without change to *http://www.regulations.gov* and will include personal information you provide. Anyone may access FDMS to submit a comment, or to review and copy all comments and background material received on this notice.

A. 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, email address, or 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*. In the search box, insert the docket number ''FMCSA–2014–0022'', 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. A new page will appear—enter the information required, including the specific section of this document to which each comment applies, providing 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 receipt confirmation, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period.

B. Viewing Comments and Documents

To view comments and any document mentioned in this preamble, go to *http://www.regulations.gov*. In the search box, insert the docket number ''FMCSA–2014–0022'' and click ''Search.'' Next, select ''Open Docket Folder'' and you will find all documents and comments related to this Notice.

C. Privacy Act

Anyone may search the electronic form of comments received into any of the 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 for its FDMS (*www.regulations.gov*) system of records notice in the **Federal Register** (FR) notice published on January 17, 2008 (73 FR 3316).

II. Legal Basis for this Action

Section 5112 of 49 U.S.C. paragraphs (a)(2) and (b) permit States and Tribal Governments to designate and limit highway routes over which HM may be transported provided the State or Tribal Government complies with standards prescribed by the Secretary of Transportation (the Secretary) and meets publication requirements in section 5112(c). To establish standards under paragraph (b), the Secretary must consult with the States, and, under section 5112(c), coordinate with the States to publish periodically a list of currently effective HM highway routing designations and restrictions. Subpart C of 49 CFR part 397 sets out the procedural requirements States and Tribal Governments must follow to establish, maintain, or enforce routing designations for the transport of placardable quantities of NRHM. In Subpart D, § 397.103 sets out the requirements for designating preferred routes for HRCQ/RAM shipments as an alternative to, or in addition to Interstate System highways. For HRCQ/RAM shipments, a preferred route is defined as an Interstate Highway for which no alternative route is designated by the

State; a route specifically designated by the State; or both. There is no similar definition for NRHM routes.

Under a delegation from the Secretary,[1] FMCSA has authority to implement 49 U.S.C. 5112 and 5125(c). Currently, § 397.73 establishes public information and reporting requirements for NRHM,[2] and requires each State or Tribal Government to furnish information regarding any new or changed routes to FMCSA within 60 days after establishment. Under 49 CFR 397.103, a State routing designation for HRCQ/RAM routes (preferred routes) as an alternative to, or in addition to an Interstate System highway is effective when the authorized routing agency provides FMCSA with written notification, and FMCSA acknowledges receipt in writing. FMCSA's regulations also include other standards and procedures that States and Tribal Governments must follow to establish, maintain, and enforce designations specifying road and highway routes within their jurisdictions over which HRCQ/RAM and NRHM may or may not be transported, and to impose limitations or requirements for transporting these materials over applicable roads and highways. The Office of Management and Budget (OMB) has approved these collections of information under control number 2126–0014, Transportation of Hazardous Materials, Highway Routing.

III. Background and Request for Comment

Having an accurate HM highway route designation listing is critical to public safety. Additionally, carriers must develop written route plans for transporting HRCQ/RAM, and adhere to the written route plan [§§ 397.71 and 397.101(d)].

In 49 CFR part 172, the Pipeline and Hazardous Materials Safety Administration (PHMSA) identifies and lists any chemical or product that is hazardous or that could pose a hazard if released during transportation. PHMSA lists HM in nine Classes, based on the type of substance and hazard, and determines the quantities that require a placard on the vehicle (e.g., truck, railroad car) transporting the substance so that emergency responders can identify the hazard at a distance.

States and Tribal Governments may designate routes for transporting these HM. The States and Tribal Governments may also establish limitations for the use of routes under section 5112 by using the required procedures specified in 49 CFR part 397.

The NHMRR, which provides publicly accessible information concerning mandatory assigned routes for transporting HM shipments (designated routes), and routes over which such shipments may not be transported (restricted routes), was last published on December 4, 2000 (65 FR 75771). That listing included codes to identify each designated route and each route restriction reported by the State. Designation codes identified the routes along which a driver could or must transport specified HM. Among the designation codes is one for ''preferred routes,'' which is defined in § 397.101(b)(1)[3] and applies to transporting ''a highway route controlled quantity of Class 7 (radioactive) materials.'' Restriction codes identified the routes along which a driver could not transport specified HM shipments.

The table published in December 2000 included the following Restriction/Designation key.[4]

TABLE 1—RESTRICTION/DESIGNATION KEY

Restrictions	Designations
0—ALL Hazardous Materials	A—ALL NRHM Hazardous Materials.
1—Class 1—Explosives	B—Class 1—Explosives.
2—Class 2—Gas	I—Poisonous Inhalation Hazard (PIH).
3—Class 3—Flammable	P—*Preferred Route* Class 7—Radioactive.
4—Class 4—Flammable Solid/Combustible.	
5—Class 5—Organic.	
6—Class 6—Poison.	
7—Class 7—Radioactive.	
8—Class 8—Corrosives.	
9—Class 9—Dangerous (Other).	
i—Poisonous Inhalation Hazard (PIH).	

Because route information was organized into various tables, a user might need to look in two different tables to identify all routes restricted for either HRCQ/RAM[5] or NRHM. For example, to find all restricted HRCQ/RAM routes, the user first would look under the ''Restricted Routes for ALL Hazmats'' table, and also under the ''RAM Restricted'' table, which lists routes where HRCQ/RAM alone are restricted.

In 2007, FMCSA sponsored analyses of the HM routing system to address requirements of the Implementing Recommendations of the 9/11 Commission Act of 2007.[6] Among the analyses performed were documenting existing and proposed routes for transporting HRCQ/RAM and NRHM by motor carriers, and developing a framework for using a geographic information system-based approach to characterize routes in NHMRR.[7]

The analysis used a combination of information collected from State contacts and Internet searches to change and update the routing information. In 2008, the Agency posted the updated spreadsheet (2008 spreadsheet) on its Web site as an interim document while it continued a data quality review and

[1] 49 CFR 1.87(d)(2).

[2] 49 CFR 397.65 defines NRHM as, ''A non-radioactive hazardous material transported by motor vehicle in types and quantities which require placarding, pursuant to Table 1 or 2 of 49 CFR 172.504.''

[3] 49 CFR 397.101(b)(1) defines ''preferred route'' as, ''an Interstate System highway for which an alternative route is not designated by a State routing agency; a State-designated route selected by a State routing agency pursuant to § 397.103; or both.''

[4] The Route/Designation Key table in the December 2000 NHMRR contained an ''M-Medical Waste'' designation code. Because Medical Waste is not a placardable hazardous material, FMCSA has removed the ''M'' designation from the table key.

[5] Although not all RAM are HRCQ, a RAM-designated route in the NHMRR is a route for HRCQ HM shipments.

[6] Public Law 110–53, 121 Stat. 266 (Aug. 3, 2007).

[7] The Department of Transportation was charged with carrying out this task under section 1553(a)(1) of the Act. For the complete results of this analysis, see The Hazardous Materials Highway Routing Route Plan Guidance Report to Congress, March 2009, FMCSA. See *http://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/HM-Highway-Routing-Route-Plan-Guidance-Report-and-Appendices-FINAL-March-2009.pdf.*

outreach to State routing officials to prepare the required updated NHMRR for publication in the **Federal Register**.[8]

Most recently, FMCSA attempted to validate route designations and limitations using the 2008 spreadsheet as the starting point. The Agency then used publicly available information easily obtained through Internet searches (e.g., State maps of HM routes, State lists of HM routes, and State HM regulations), reviewed each route description, and mapped each route. When necessary and where available, the Agency used aerial and street-view images.[9] Through this process, FMCSA identified the following types of systemic issues:

- Ambiguous route information regarding route termini;
- Duplicative routes (e.g., separate listing for the same route running North to South and South to North, or separately listing route segments that are part of a single, larger route);
- New or changed road names, exit numbers, or road rerouting;
- Incomplete route restrictions or designations;
- Misidentified city or county;
- Web addresses and telephone numbers for agencies and contacts no longer in service;
- Out of date State HM regulatory references; and
- Typographical errors.

FMCSA then went back to specific States and the District of Columbia to ask additional nonstandardized follow-up questions to clarify responses to one or more of the eight unclear systemic issues in the bulleted list above. FMCSA documented all clarifying responses received from State routing officials regarding the 2008 spreadsheet to report which routes should be removed, updated, or added, and for which routes no clarifying information was available. However, FMCSA was unable to resolve all identified route issues. Therefore, unresolved issues remain with the current listings. Docket FMCSA–2014–0022 includes a spreadsheet for each State that the Agency contacted and documents route changes and other information relevant to this NHMRR update.

This update of the NHMRR is to improve the clarity and functionality of the HM route listings. The HM route tables have been consolidated to reduce the repetition of information. Instead of continuing to separate information on RAM and NRHM restricted routes into separate tables, FMCSA has combined the information into a single table to present all HM route restrictions in a State. As a result, HM route information is presented in not more than three tables as applicable for each State: Restricted HM Routes (defined as prohibited routes for specified classes of HM shipments), Designated HRCQ/RAM Routes (defined as routes for highway route controlled quantities of Class 7 (radioactive) HM shipments), and Designated NRHM Routes (defined as routes for specified classes of non-radioactive HM shipments). In addition to the column headers that appeared in the 2000 NHMRR listing for each HM table, FMCSA has added, when provided by the State, columns for a ''City'' and/or ''County'' name.

If FMCSA was unable to resolve any questions about HM routes in a State, the HM table also includes an ''FMCSA QA Comment'' column. This column alerts users of unresolved quality assurance (QA) issues concerning routing information. The ''FMCSA QA Comment'' column appears in the HM tables for four States (Alaska, California, Colorado, and Texas) and the District of Columbia. Additional actions by the State routing agency may be necessary to address the identified issues (e.g., revisions to State HM regulations). The Agency will follow up with State routing officials to address these questions for the next NHMRR publication update.

A newly created route-ordering approach has been added to each HM table in a ''Route Order'' column.[10] Each HM table is sorted by the ''Route Order'' column and this information should help drivers navigate designated NRHM and HRCQ/RAM routes more easily, while avoiding restricted routes. The ''Route Order'' information also may assist organizations choosing to code the route information into geographic information system (GIS) data sets. Each entry in the ''Route Order'' column, at a minimum, includes a capital letter and may contain a combination of capital letters, Arabic numbers, dashes, and decimals that present a ''route order character'' that identifies the ordering relationship of each HM route in the table. The following table presents the alphanumeric key for understanding route order characters.

TABLE 2—ROUTE ORDER CHARACTER NAMING APPROACH

Order level	Alphanumeric identifier	Route order character example
1	A, B, CZ, AA, AB	A.
2	1, 2, 3	A1.
3	A, B, C	A2A.
4	1.0, 2.0, 3.0	A3A–1.0.
5	A, B, C	A4A–1.0–A.
6	1, 2, 3	A5A–1.0–A1.
7	A, B, C	A6A–1.0–A1A.
8	1.0, 2.0, 3.0	A7A–1.0–A1A–1.0.
9	A, B, C	A8A–1.0–A1A–1.0–A.
10	1, 2, 3	A9A–1.0–A1A–1.0–A1.

For the majority of states, the route order characters generally progress no further than the fourth order level. Alaska, California, Colorado, Illinois, Louisiana, Rhode Island, and Texas have route order characters beyond level four.

The route ordering approach is based on how distinct HM routes connect (each HM route is a separate row in the HM table). An HM route is a single road segment that does not connect (i.e., does not share a terminus) with any other

[8] *http://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/Hazardous_Materials_Route_Registry_9-28-2009_508.pdf.*

[9] Unless readily available information indicated otherwise, this review and analysis did not systematically evaluate if HM route restrictions and designations were complete and accurate, nor whether the designation dates were correct. Generally, FMCSA did not review the original submissions from State routing officials listing the HM route designations and restrictions because these were not available.

[10] The FMCSA route order is presented in all HM tables except for New York, which already established a route order for its NRHM designated routes in Table 79.

HM route. In this instance, the route order character only will be a capital letter. The route order character for HM routes begins at the first order level with a capital letter identifier (A, B, C, etc.) for each distinct HM route. If there are more than 26 distinct HM routes in a State (as with California and Texas), the first order level for the route order character for the 27th HM route will begin with two capital letters and continue in alphabetical sequence for each new HM route (AA, AB, AC, etc.).

For each HM table for a State, the route order character lettering runs directionally from Southwest to Northeast. For example, if the first letter of a route order character is ''A,'' the route is the first HM route encountered beginning from the Southwest section and moving across the State. Figure 1 displays an example of this relationship.

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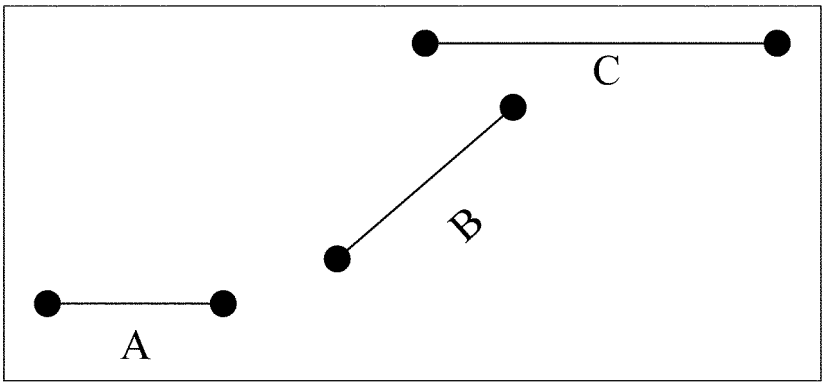
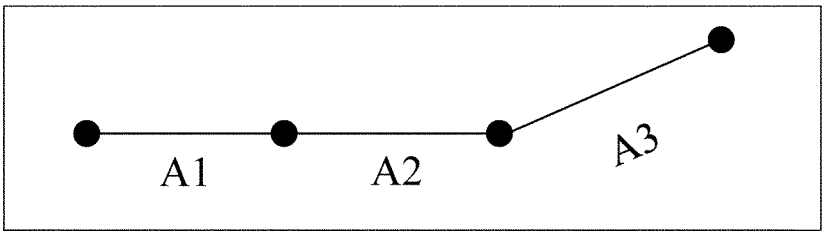
Figure 1. – Route Order Sequence, Example A



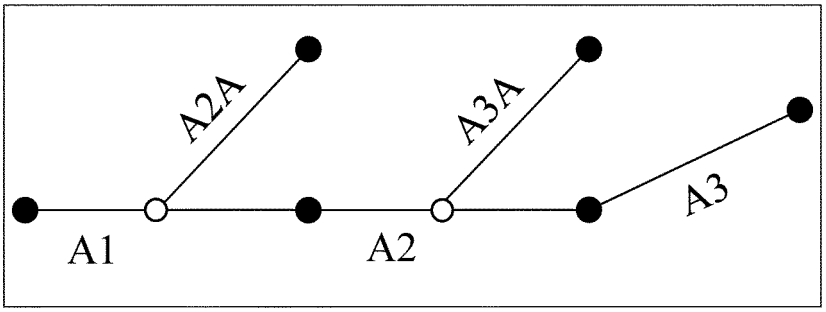
A ''continuous route'' is a sequence of distinct HM routes that connect at the termini. The individual HM routes will have the same first order level capital letter, with a second order level number added for each new, connecting HM route. In a continuous route, the second order level number increases by one from west to east for each connecting HM route (e.g., A1, A2, A3). Figure 2 displays an example of this relationship.

Figure 2. – Route Order Sequence, Example B



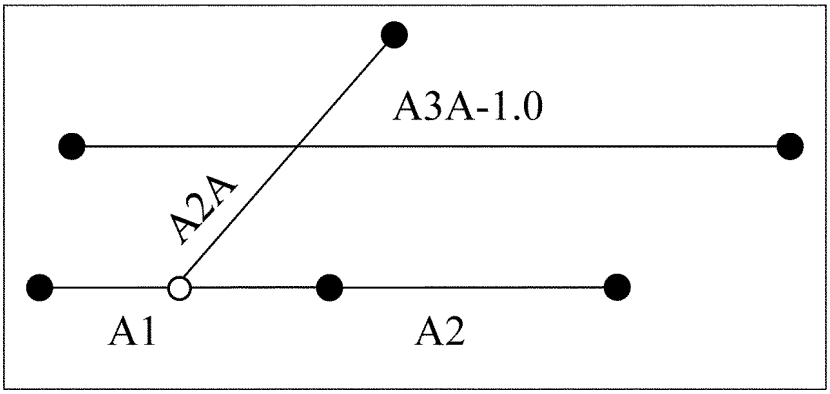
A ''continuous route with junctions'' is a sequence of distinct HM routes that connect and intersect or branch. A junction may be an intersection where two HM routes cross; or a branch where a new HM route starts either at the termini of the previous HM route or at a point along the HM route (see A2A or A3A in Figure 3). For a continuous route with junctions, the route order character begins alphabetically with a first order level capital letter, a second order level number, and at each junction, a third order level alphabetical letter. When an HM route (e.g., A1, A2) junctions, each new HM route will have a capital letter as the third element in the route order character and the second order level numeric character increases by one. In Figure 3, A1, A2 and A3 are continuous HM routes (i.e., connect at the termini) and A2A and A3A junction with HM routes A1 and A2 respectively.

Figure 3. – Route Order Sequence, Example C



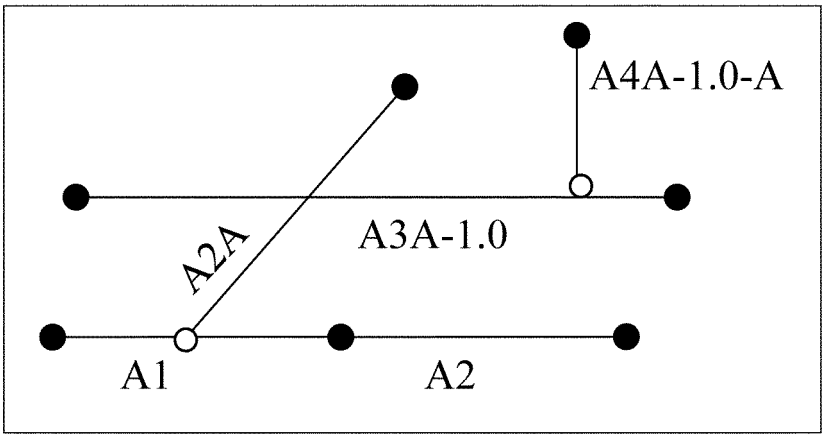
If an HM route (e.g., A2A, A2B) junctions a second time, the sequence will include the fourth order level which begins with a hyphen and number followed by a decimal point and a zero; the second order level number increases by one. In Figure 4, the next junction from A2A is A3A–1.0.

Figure 4. – Route Order Sequence, Example D



If a road segment (e.g., A3A–1.0) junctions a third time the fifth order level begins with a hyphen and an alphabetical letter; the second order level number increases by one. In Figure 5, the next junction from HM route A3A–1.0 is A4A–1.0–A.

Figure 5. – Route Order Sequence, Example E



The pattern of increasing and alternating sequential numbers, letters, dashes, and decimals continues for each new junction from a road segment. For the three HM tables (Designated NRHM Routes, Designated HRCQ/RAM Routes, and Restricted HM Routes), the route ordering sequence begins anew, with the first HM route originating in the Southwest starting with the letter A. Figures 6, 7 and 8 illustrate the ordering approach for a subset of Designated NRHM Routes in Lorain, Ohio, Columbus, Ohio, and Denver, Colorado. High-resolution images of Figures 6, 7, and 8 also will be available for review in the docket.

Note that the following 14 States have no designated or restricted HM routes in the NHMRR: Connecticut, Hawaii, Kansas, Maine, Mississippi, Missouri, Nevada, New Hampshire, New Jersey, North Carolina, North Dakota, South Carolina, Vermont, and Wisconsin. Note, too, that the NHMRR does not include HM route designations and restrictions applicable to lands under the jurisdiction of Federal entities except for National Parks Service (NPS) lands in Montana and South Dakota. The listing of HM routes on NPS lands is based on information readily available to the FMCSA at the time of publication of this notice and may not be complete.

NPS regulations generally prohibit commercial motor vehicles and traffic in National Parks, including commercial shipments of HM (36 CFR 5.6). However, a park Superintendent may allow commercial motor vehicles in a National Park subject to permits issued by the Superintendent, and to terms and conditions set in those permits. In the case of an HM shipment, if the Superintendent designates a route for HM shipments, the operator of the motor vehicle must apply for the permit under 36 CFR 1.6. The Superintendent will apply criteria in that provision to make a determination whether such a shipment is permissible, identify routes, and set other terms and conditions. Subject to obtaining the proper permit, current NPS regulations provide conditions for HM shipments along specified routes in Yellowstone (36 CFR 7.13) and Badlands (36 CFR 7.23) National Parks. NPS regulations expressly state the operator's obligation to comply with any State or Federal laws and regulations applicable to transportation of HM, including 49 CFR subtitle B (i.e., parts 100 to 1699). HM motor carriers and drivers should consult the Federal authorities with

jurisdiction over Federal lands and activities on those lands for route information.

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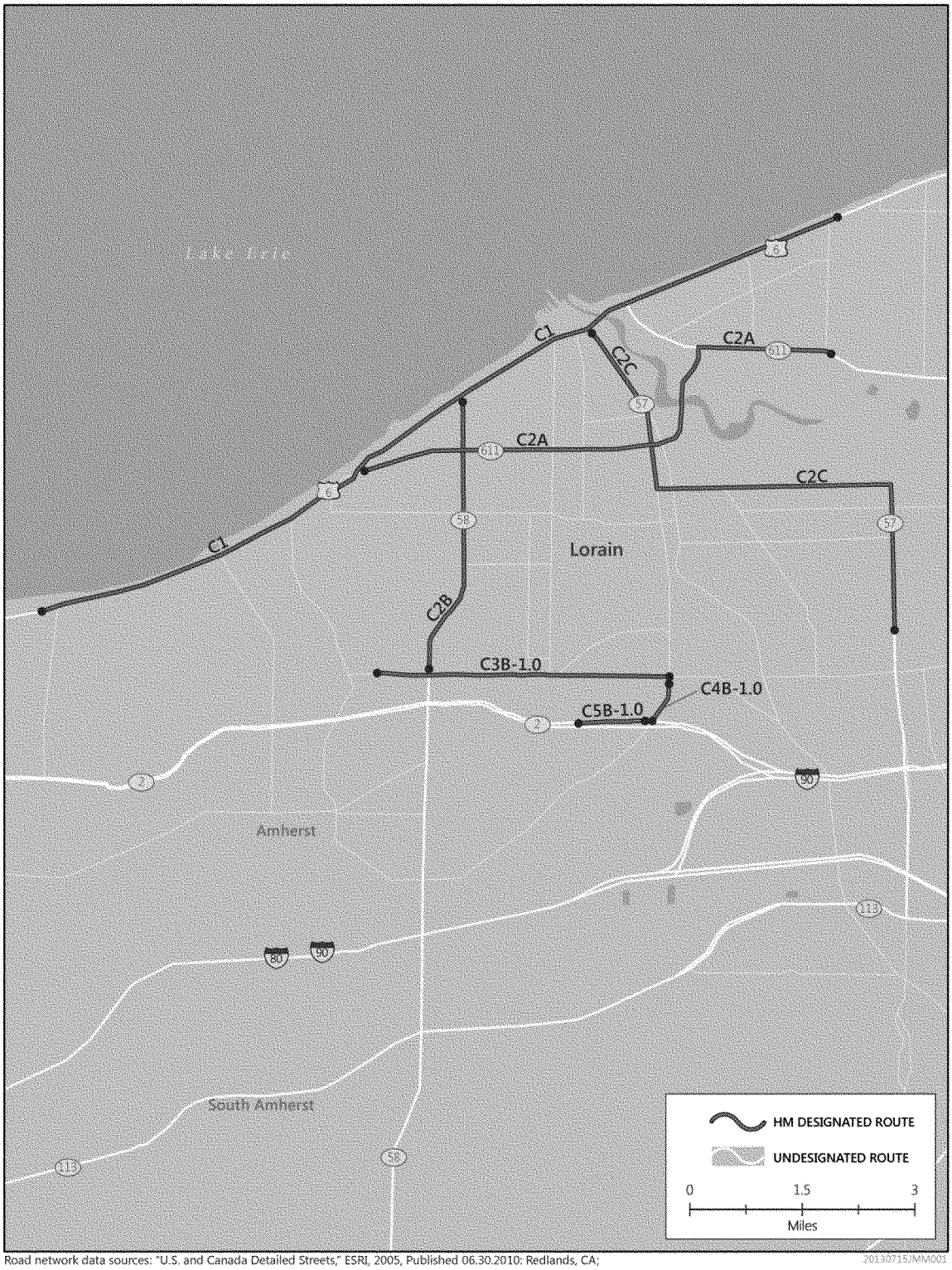
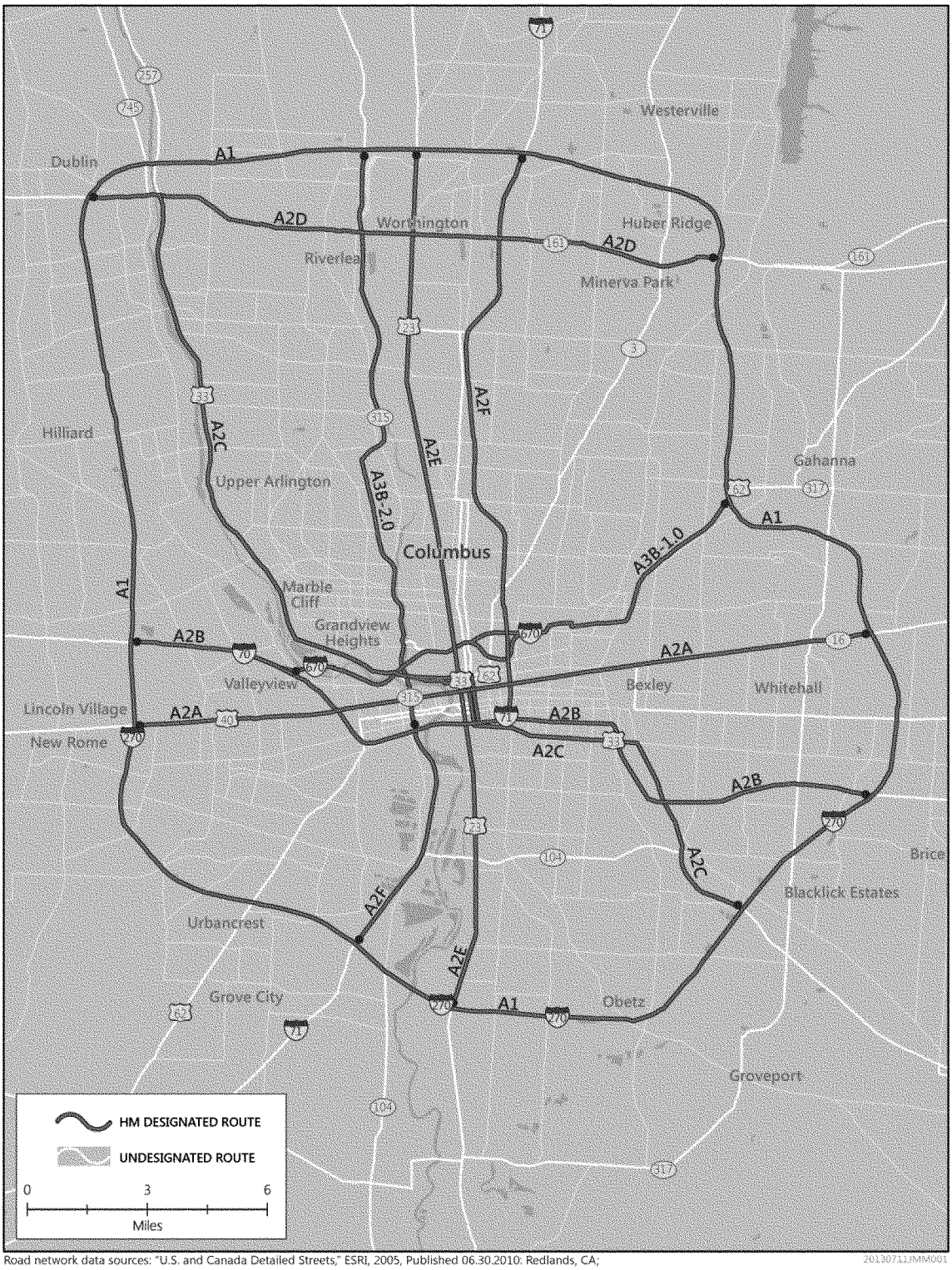
Figure 6. – Select Designated NRHM Routes in Lorain, Ohio [See Table 85]



Road network data sources: "U.S. and Canada Detailed Streets," ESRI, 2005, Published 06.30.2010: Redlands, CA; "U.S. Major Highways" and "U.S. Highways," Census 2000-2002TIGER Line files, ESRI, 2000-2002: Redlands, CA.

Figure 7. – Select Designated NRHM Routes in Columbus, Ohio [See Table 85]



Road network data sources: "U.S. and Canada Detailed Streets," ESRI, 2005, Published 06.30.2010: Redlands, CA; "U.S. Major Highways" and "U.S. Highways," Census 2000-2002TIGER Line files, ESRI, 2000-2002: Redlands, CA.

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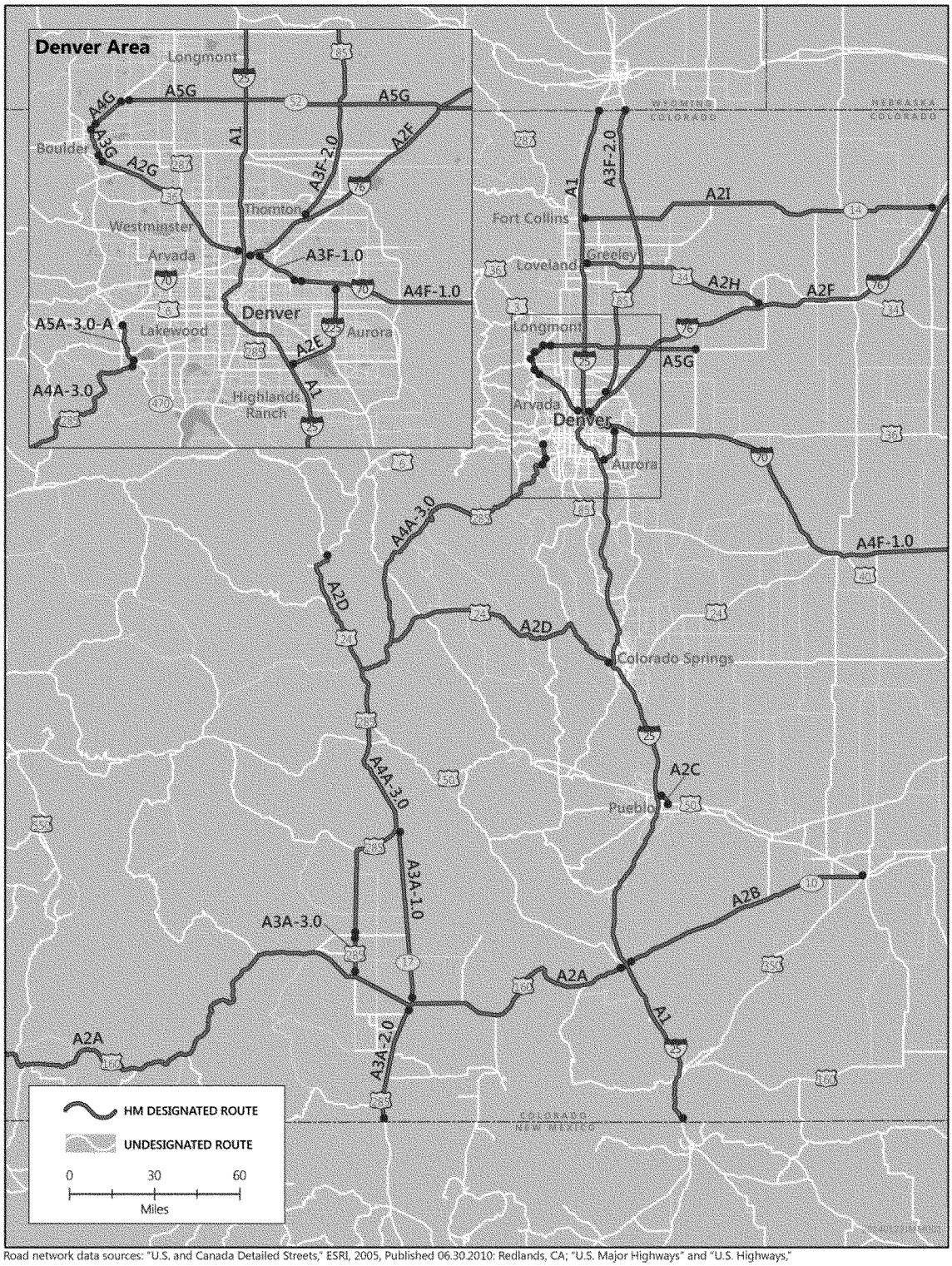
Figure 8. – Select Designated NRHM Routes in Colorado [See Table 22]



Road network data sources: "U.S. and Canada Detailed Streets," ESRI, 2005, Published 06.30.2010: Redlands, CA; "U.S. Major Highways" and "U.S. Highways," Census 2000-2002TIGER Line files, ESRI, 2000-2002: Redlands, CA.

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FMCSA has made these changes to promote the usefulness of the NHMRR listing for HM drivers, which will facilitate compliance and safety in HM transport by commercial motor vehicle. As previously stated, State HM routing authorities have supplied the information in this NHMRR update. The regulatory process that States must follow for route designations and limitations is provided in 49 CFR part 397. FMCSA is seeking comment regarding the route ordering approach, the reduced number of tables, and the consolidation of route information. We are especially interested in comments from the States of Alaska, California, Colorado, and Texas, and the District of Columbia about the route quality assurance issues identified in the tables as ''FMCSA QA Comment'' for these

States and the District of Columbia. We are also interested in comments concerning whether commercial motor vehicle motor carriers and drivers find this structure easy to comprehend and use, and whether mapping organizations find it facilitates creating geographic information system and other navigational data sets.

TABLE 3—STATE: ALABAMA

State Agency:AL DOT
POC: Randy Braden
Address: 1409 Coliseum Blvd., Montgomery, AL 36130
Phone: (334) 242–6474
Fax: (334) 242–6378
Web Address: *www.dot.state.al.us*
FMCSA: AL FMCSA Field Office

TABLE 3—STATE: ALABAMA—Continued

FMCSA POC: AL Motor Carrier Division Administrator
Address: 520 Cotton Gin Rd., Montgomery, AL 36117
Phone: (334) 209–4954
Fax: (334) 290–4944

TABLE 4—ALABAMA—RESTRICTED HM ROUTES

Designation date	Route order	Route description	City	County	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
11/07/94	A	Wallace Twin Tunnels [I–10 & US 90 in Mobile] ..... [A signed detour is in place to direct traffic along Water St., US 43, and Alt US 90. Traffic will pass over the Mobile River using the Cochrane Bridge.].	Mobile	.....	0

TABLE 5—ALABAMA—DESIGNATED HRCQ/RAM ROUTES

Designation date	Route order	Route description	City	County	Designation(s) (A,B,I,P)
11/07/94	A	US 43/Alt US 90 from State 16/US 90 or I–10 to State 16/US 90 or I–10 [Alternate route for Wallace Twin Tunnels, Mobile County.].	Mobile	.....	A

TABLE 6—ALABAMA—DESIGNATED NRHM ROUTES

Designation date	Route order	Route description	City	County	Designation(s) (A,B,I,P)
08/26/96	A1	Interstate 10 from Mobile City Limits to Exit 26B [Water St] [Eastbound Traffic: To avoid the downtown area, exit on I–65 North].	Mobile	.....	P
08/26/96	A2A	Interstate 65 from Interstate 10 to Interstate 165 [A route for trucks wishing to by-pass the downtown area.].	Mobile	.....	P
08/26/96	A2B	Water St. [Mobile] from Interstate 10 [exit 26B] to Interstate 165 ..	Mobile	.....	P
08/26/96	A3A	Interstate 65 from Mobile City Limits to Interstate 165	Mobile	.....	P
08/26/96	A3B	Interstate 165 from Water St. [Mobile] to Bay Bridge Rd. exit [Mobile].	Mobile	.....	P
08/26/96	A4B	Bay Bridge Rd. [Mobile] from Interstate 165 to Battleship Parkway [over Africa Town Cochran Bridge] [Westbound Traffic: Head south on I–165; To by-pass the downtown area, head north on I–165.].	Mobile	.....	P
08/26/96	A5B	Battleship Parkway [Mobile] from Bay Bridge Rd. [Mobile] to Interstate 10 [exit 27].	Mobile	.....	P
08/26/96	A6B	Interstate 10 from Mobile City Limits to Exit 27	Mobile	.....	P
09/27/93	B	Interstate 459 from Interstate 20/I–59 [Northeast of Birmingham] to Interstate 20/I–59 [Southwest of Birmingham] [This route should be used in lieu of I–20/I–50 in the Birmingham area, Jefferson county.].	Birmingham ..	Jefferson	P

TABLE 7—STATE: ALASKA

State Agency: AK DOT
POC: Sgt. Daniel Byrd
Address: Transportation & Public Facilities, 12050 Industry Way, #0–6 MS–2540, Anchorage, AK 99515

TABLE 7—STATE: ALASKA—Continued

Phone: (907) 365–1207
Web Address:*www.dot.state.ak.us*
FMCSA: AK FMCSA Field Office
FMCSA: POC: AK Motor Carrier

TABLE 7—STATE: ALASKA—Continued

Address: Division Administrator Frontier Building, Suite 260, 3601 ''C'' Street, Anchorage, AK 99503
Phone: (907) 271–4068
Fax: (907) 271–4069

TABLE 8—ALASKA: DESIGNATED NRHM ROUTES

Designation date	Route order	Route description	City	Designation(s) (A,B,I,P)	FMCSA QA comment
11/01/05	A1	Pasagshak Rd. from Chiniak Highway south to end of road.	Kodiak	A.	
11/01/05	A2	Chiniak Highway from West Rezanof Dr. to Pasagshak Rd.	Kodiak	A.	
11/01/05	A3	West Rezanof Dr. from Marine Way to Chiniak Highway.	Kodiak	A.	

TABLE 8—ALASKA: DESIGNATED NRHM ROUTES—Continued

Designation date	Route order	Route description	City	Designation(s) (A,B,I,P)	FMCSA QA comment
11/01/05	A4	Marine Way from ocean to West Rezanof Dr.	Kodiak	A.	
11/01/05	A4A	Airport Terminal Rd. from Rezanof Dr. south to end of road.	Kodiak	A.	
11/01/05	B1	Kachemak Bay Dr. from Sterling Highway/ Homer Spit Rd. to East End Rd.	Homer	A.	
11/01/05	B2	Sterling Highway from Seward Highway to Homer Spit Rd.	Moose Pass and Homer.	A.	
11/01/05	B3A	K-Beach Rd. from Bridge Access Rd. to Sterling Highway.	Kenai	A.	
11/01/05	B3B	Seward Highway from Gambell/Ingra split to Railway Ave.	Anchorage and Seward.	A.	
11/01/05	B4A	Bridge Access Rd. from Kenai Spur Highway to K-Beach Rd.	Kenai	A.	
11/01/05	B4B	Gambell St. from Third Ave. to Seward Highway.	Anchorage	A	
11/01/05	B4B	Ingra St. from Third Ave. to Seward Highway.	Anchorage	A.	
11/01/05	B4B–1.0	Nash Rd. from Seward Highway to Morris Ave.	Seward	A.	
11/01/05	B4B–2.0	O'Malley Rd. from Minnesota Dr. to Seward Highway.	Anchorage	A.	
11/01/05	B5A–1.0	Kenai Spur Highway from Beach Bay Rd. along coast to Marathon Rd.	Kenai	A.	
11/01/05	B5B–2.0	Minnesota Drive from Tudor Rd. to O'Malley Rd.	Anchorage	A.	
11/01/05	B5B–3.0	Third Ave. from the ocean to Reeve Blvd	Anchorage	A.	
11/01/05	B6A–1.0–A	Nikishka Beach Rd. from Dock Gate Rd. to Kenai Spur Highway.	Kenai	A.	
11/01/05	B6B–2.0	Tudor Road from Muldoon Rd. to Minnesota Drive.	Anchorage	A.	
11/01/05	B6B–2.0–A	Raspberry Road from the ocean to Minnesota Drive.	Anchorage	A.	
11/01/05	B6B–3.0–A	Reeve Blvd. from Post Rd. to 5th Ave	Anchorage	A.	
11/01/05	B7B–2.0	Muldoon Road from Glenn Highway to Tudor Rd.	Anchorage	A.	
11/01/05	B7B–3.0–A	Post Rd. from Whitney Rd. to Reeve Blvd	Anchorage	A.	
11/01/05	B8B–2.0–B	Glenn Highway from 5th Ave. to Richardson Highway.	Anchorage and Glenallen.	A.	
11/01/05	B8B–3.0–A	Whitney Rd. from Ocean Dock Rd. to Post Rd.	Anchorage	A.	
11/01/05	B9B–2.0–B1	Artillery Rd. from Mausel St. to Artillery Rd./Glenn Highway overpass.	Eagle River	A.	
11/01/05	B9B–2.0–B2	George Parks Highway from Glenn Highway northwest to Richardson Highway.	Fairbanks and Wasilla.	A.	
11/01/05	B9B–2.0–B3	Palmer/Wasilla Highway from Glenn Highway to Knik Goose Bay Rd.	Palmer and Wasilla.	A.	
11/01/05	B9B–2.0–B4	Palmer-Fishhook Rd. from Glenn Highway north to Willow Fishhook Rd.	Palmer	A.	
11/01/05	B9B–3.0–A	Ocean Dock Road from the ocean to Whitney Rd.	Anchorage	A.	
11/01/05	B10B–2.0–B2	Richardson Highway from George Parks Highway (Fairbanks) southeast to Meals Ave. (Valdez).	Fairbanks and Valdez.	A.	
11/01/05	B10B–2.0–B2A	Sheep Creek Rd. from George Parks Highway to Murphy Dome Rd., continuing on Goldstream Rd. to Steese Highway.	Fairbanks	A.	
11/01/05	B10B–2.0–B2B	Geist Rd. from George Parks Highway to Peger Rd.	Fairbanks	A.	
11/01/05	B10B–2.0–B2C	Airport Way from George Parks Highway to Cushman St.	Fairbanks	A.	
11/01/05	B10B–2.0–B3	Knik Goose Bay Rd. from Palmer/Wasilla Highway to Point MacKenzie Rd.	Wasilla/ Knik	A.	
11/01/05	B11B–2.0–B2B–1.0	Johansen Expressway from Geist Rd. to Steese Expressway/Elliot Highway.	Fairbanks	A.	
11/01/05	B11B–2.0–B2B–2.0	Peger Rd. from Geist Rd. southward until end of road.	Fairbanks	A.	
11/01/05	B11B–2.0–B2D	Steese Highway from Richardson Highway (Fairbanks) to end of road (Circle).	Fairbanks and Circle.	A.	

TABLE 8—ALASKA: DESIGNATED NRHM ROUTES—Continued

Designation date	Route order	Route description	City	Designation(s) (A,B,I,P)	FMCSA QA comment
11/01/05	B11B–2.0–B2E	Badger Rd. from Richardson Highway to Richardson Highway.	Fairbanks and the North Pole.	A.	
11/01/05	B11B–2.0–B2F	Old Richardson Highway from Richardson Highway to Laurance Rd.	North Pole	A.	
11/01/05	B11B–2.0–B3	Point McKenzie Rd. from Knik Goose Bay Rd. south to end of road.	Port MacKenzie	A.	
11/01/05	B12B–2.0–B2B–2.0–A	Van Horn Rd. from Cushman St west to University Ave.	Fairbanks	A.	
11/01/05	B12B–2.0–B2D–1.0	Elliott Highway from Steese Highway (Fairbanks) to Airfield Access (Manley Hot Springs).	Fairbanks and Manley Hot Springs.	A.	
11/01/05	B12B–2.0–B2F	Laurance Rd. from Old Richardson Highway east to end of road.	North Pole	A.	
11/01/05	C1	South Tongass Highway from North Tongass Highway east to end of road.	Ketchikan	A.	
11/01/05	C2	North Tongass Highway from South Tongass Highway north to end of road.	Ketchikan	A.	
11/01/05	D1	Hydaburg Highway from Craig/Klawock/Hollis Highway south to ocean.	Hydaburg	A.	
11/01/05	D2A	Craig/Klawock/Hollis Highway from Big Salt Lake Rd. east to Hollis Ferry Terminal Rd.	Klawock and Hollis.	A.	
11/01/05	D3A–1.0	Big Salt Lake Rd. from Thorne Bay Rd. south to Craig/Klawock/Hollis Highway.	Klawock	A.	
11/01/05	D3A–2.0	Hollis Ferry Terminal Rd. from Craig/Klawock/Hollis Highway to end of road.	Hollis	A.	
11/01/05	D4A–1.0–A	North Prince of Wales Rd. from Big Salt Lake Rd. (Thorne Bay) north to the Labouchere Bay (Prince of Wales).	Thorne Bay and Prince of Wales.	A.	
11/01/05	D4A–1.0–B	Thorne Bay Rd. from Big Salt Lake Rd. east to Sandy Beach Rd.	Thorne Bay	A.	
11/01/05	E1	Zimovia Highway from Bennett St./Wrangell Avenue south to McCormick Creek Rd.	Wrangell	A.	
11/01/05	E2	Bennett St. from Airport Rd. to Wrangell Ave.	Wrangell	A.	
11/01/05	F1	Mitkof Highway from Nordic Dr. to end of road.	Petersburg	A.	
11/01/05	F2	Nordic Dr. from ocean to Mitkof Highway	Petersburg	A.	
11/01/05	F3A	Haugen Dr. from Sandy Beach Rd. to Nordic Dr.	Petersburg	A.	
11/01/05	H1	Halibut Point Rd. along coast to Sawmill Creek Rd.	Sitka	A.	
11/01/05	H2	Sawmill Creek Rd. from end of Rd. west to Halibut Point Rd.	Sitka	A.	
11/01/05	H3A	Lake St. from Sawmill Creek Rd. to Harbor Dr.	Sitka	A.	
11/01/05	H4A	Harbor Drive from Lake St. to Airport Rd	Sitka	A.	
11/01/05	H5A	Airport Rd. from Harbor Dr. to ocean	Sitka	A.	
11/01/05	I	Airport Way to and from Garteeni Highway	Hoonah	A.	
11/01/05	J	Cannery Rd. from Hoonah Ferry Terminal Rd. to end of road.	Hoonah	A.	
11/01/05	K	North Douglas Highway along coast to Douglas Highway.	Juneau	A.	
11/01/05	L1	Thane Rd. from Franklin St. to end of road	Juneau	A.	
11/01/05	L2	Egan Dr. from Glacier Highway to Franklin St to Thane Rd.	Juneau	A.	
11/01/05	L3	Glacier Highway along coast to Egan Dr	Juneau	A.	
11/01/05	L3A	Channel Dr. from Egan Dr. to Egan Dr	Juneau	A.	
11/01/05	L3B	Yandukin Dr. from Egan Dr. west to Shell Simmons Dr.	Juneau	A.	
11/01/05	L4B	Shell Simmons Dr. from Yandukin Dr. to Yandukin Dr.	Juneau	A.	
11/01/05	M1	Old Haines Highway/Beach Rd. from Second Ave. east to end of road.	Haines	A.	
11/01/05	M2A	Haines Highway from the intersection of Main St. to Second Ave.	Haines	A.	
11/01/05	M2B	Second Ave. from Union St. to Beach Rd	Haines	A.	
11/01/05	M3A	Haines Highway from Main St. west to US/Canada Border.	Haines	A.	
11/01/05	M3A–1.0	Union St. from Haines Highway/Lutak Rd./Second Ave to Haines Highway/Main St.	Haines	A.	
11/01/05	M4A–1.0–A	Haines Highway/Lutak Rd. from Ferry Terminal Rd. to Haines Highway/Main St.	Haines	A.	

TABLE 8—ALASKA: DESIGNATED NRHM ROUTES—Continued

Designation date	Route order	Route description	City	Designation(s) (A,B,I,P)	FMCSA QA comment
11/01/05	M4A–2.0	Airport Rd. from Haines Highway west to Haines Airport.	Haines	A.	
11/01/05	M5A–1.0–A	Ferry Terminal Rd. from ocean to Haines Highway/Lutak Rd.	Haines	A.	
11/01/05	N	Klondike Highway from State St. to US/Canada Border.	Skagway	A.	
11/01/05	O1	Dangerous River Rd. from ocean to ocean	Yakutat	A.	
11/01/05	O2A	Mallott Ave. from Airport Rd. to ocean	Yakutat	A.	
11/01/05	O3A	Airport Rd. from Mallott Ave. southeast to airport.	Yakutat	A.	
11/01/05	TBD	Cushman St. from the Johansen Expressway to Peger Rd.	Fairbanks	A	Unable to confirm route information with state.
11/01/05	TBD	Illinois Street from the Johansen Expressway to Phillips Field Rd.	Fairbanks and the North Pole.	A	Unable to confirm route information with state.
11/01/05	TBD	Phillips Field Rd. from Geist Rd. to Illinois St.	Fairbanks and the North Pole.	A	Phillips Field Rd. is not in the Alaska GIS database of HM routes. Unable to confirm route information with state.
11/01/05	TBD	Airport Rd. from Keku Rd. north	Kake	A	Unable to confirm route information with state.
11/01/05	TBD	Church Street	Kake	A	Church St. is not in the Alaska GIS database of HM routes. Unable to confirm route information with state.
11/01/05	TBD	Fourth St. from Church St. to Kake Rd	Kake	A	Church St. and Fourth St. are not in the Alaska GIS database of HM routes. Unable to confirm route information with state.
11/01/05	TBD	Kake Rd. from 4th St. to Keku Rd	Kake	A	Keku Rd. is the only road in the route description included in the Alaska GIS database of HM routes. Unable to confirm route information with state.
11/01/05	TBD	Keku Rd. from Church St. to Airport Rd	Kake	A	Church St. is not in the Alaska GIS database of HM routes. Unable to confirm route information with state.
11/01/05	TBD	Silver Spike Rd	Kake	A	Silver Spike Rd. is not in the Alaska GIS database of HM routes. Unable to confirm route information with state.
11/01/05	TBD	Douglas Highway along coast	Juneau	A	Two distinct route segments appear to comprise Douglas Highway: (1) North Douglas Highway from Douglas Highway roundabout to end of road; and (2) Douglas Highway from Egan/Glacier Highway to end of road. Unable to confirm route information with state.
11/01/05	TBD	Marathon Road from Kenai Spur Rd. north	Kenai	A	Marathon Rd. is not in the Alaska GIS database of HM routes. Unable to confirm route information with state.

TABLE 9—STATE: ARIZONA

State Agency: AZ DOT
POC: Mike Manthey
Address: 206 South 17th Ave., Phoenix, AZ 85007
Phone: (602) 712–8888
Fax: (602) 407–3243

TABLE 9—STATE: ARIZONA—Continued

Web Address: *www.azdot.gov*
FMCSA: AZ FMCSA Field Office
FMCSA POC: AZ Motor Carrier

TABLE 9—STATE: ARIZONA—Continued

Address: Division Administrator, 400 East Van Buren St., Suite 401, Phoenix, AZ 85004
Phone: (602) 379–6851
Fax: (602) 379–3627

TABLE 10—ARIZONA: RESTRICTED HM ROUTES

Designation date	Route order	Route description	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
03/27/99	A	Exit Ramp from US 60 [Eastbound] to State 101 [Southbound]	0
03/20/99	B	Exit Ramp from US 60 [Westbound] to State 101 [Northbound]	0
01/01/90	C	Interstate 10 [Deck Tunnel—Phoenix] from 7th St. exit [Mile Post 144.3] to 7th Ave. exit [Mile Post 146.2] [Interstate 17 is the designated truck route which has been posted as the alternative route for hazmat traffic.].	0
10/16/95	D	State 202 from Mile Post 8.33 [McClintock Exit] to Mile Post 11.07 [Dobson Exit] [Alternate Routes are as follows: 1. McClintock to University to Dobson 2. McClintock to McKellips to SR–101 Note: Freeway ends at SR–101 with temporary lanes to Dobson. Alternative routing may vary with continuing construction.]	0

TABLE 11—ARIZONA: DESIGNATED NRHM ROUTES

Designation date	Route order	Route description	Designation(s) (A,B,I,P)
01/01/90	A	Interstate 17 from Interstate 10 [west of Deck Tunnel] to Interstate 10 [east of Deck Tunnel]	A

TABLE 12—STATE: ARKANSAS

State Agency: AR Hwy & Transportation Dept.
POC: Yolanda Gomillion
Address: Arkansas Highway Police Div., 10324 Interstate 30, Little Rock, AR 72209
Phone: (501) 569–2546

TABLE 12—STATE: ARKANSAS—Continued

Fax: (501) 569–4998
Web Address: *www.arkansashighways.com*
FMCSA: AR FMCSA Field Office
FMCSA POC: AR Motor Carrier Division Administrator

TABLE 12—STATE: ARKANSAS—Continued

Address: Room 2427 Federal Building, 700 W. Capitol Ave., Little Rock, AR 72201
Phone: (501) 324–5050
Fax: (501) 324–6562

TABLE 13—ARKANSAS: RESTRICTED HM ROUTES

Designation date	Route order	Route description	City	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
07/08/92	A1	Interstate 630 [Entire Highway] [Downtown Little Rock. Exception for local delivery.]	Little Rock	0
07/08/92	A2A	Interstate 30 from Interstate 440 to Interstate 40 [in downtown Little Rock] [Exception for local delivery.]	Little Rock	0

TABLE 14—ARKANSAS: DESIGNATED HRCQ/RAM ROUTES

Designation date	Route order	Route description	City	Designation(s) (A,B,I,P)
(unknown)	A1	Interstate 30 from Interstate 440 to Texas [Memphis to Texarkana Route. Use this route in lieu of I–430, I–630 or that portion of I–30 connecting I–40 and I–440].		P
11/28/88	A2	Interstate 440 from Interstate 40 to Interstate 30 [Memphis to Texarkana route. Use this route in lieu of I–430, I–630 or that portion of I–30 connecting I–40 and I–440].		P
11/28/88	A3A	Interstate 40 from Tennessee to Oklahoma [Memphis to Fort Smith route]		P

TABLE 15—STATE: CALIFORNIA

State Agency: CA Highway Patrol
POC: Tian-Ting Shih
Address: Commercial Vehicle Section, P.O. Box 942898, Sacramento, CA 94298–0001
Phone: (916) 843–3400

TABLE 15—STATE: CALIFORNIA—Continued

Fax: (916) 322–3154
Web Address: *www.chp.ca.gov*
FMCSA: CA FMCSA Field Office
FMCSA POC: CA Motor Carrier Division Administrator

TABLE 15—STATE: CALIFORNIA—Continued

Address: 1325 J Street, Suite 1540, Sacramento, CA 95814
Phone: (916) 930–2760
Fax: (916) 930–2778

TABLE 16—CALIFORNIA: RESTRICTED HM ROUTES

Designation date	Route order	Route description	City	County	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
10/28/92	A	No person shall drive or permit the driving of any vehicle transporting commodities listed in Section 13 CCR 1150 upon any highway not designated by this article. For pickup and delivery not over designated routes, the route selected must be the shortest-distance route from the pickup location to the nearest designated route entry location, and the shortest-distance route to the delivery location from the nearest designated route exit location.			1
01/01/95	B	State 75 [Coronado Toll Bridge] from Mile Post 20.28 to Mile Post R22.26 Junction 5 [San Diego County]. No flammables/corrosives or explosives on Coronado Bay Bridge (otherwise route is terminal access).	San Diego	San Diego	1,2,3,4
06/29/00	C	Sepulveda Blvd. [tunnel] from Interstate 105/Imperial Highway to W. Century Blvd. [Restriction for Tank Vehicles].	Los Angeles	Los Angeles	1,2,3,4,5,6,8
10/28/92	D	State 118 from State 232 [Oxnard] to Los Angeles [western county line].			1
01/01/95	E	State 154 from State 246 [MP 8.11—Santa Ynez] to US 101 [near Los Olivos]. No hazardous materials or waste except pickup and delivery (otherwise, from R8.11 to R9.97 is Terminal Access and from R9.97 to 32.29 is California Legal).		Santa Barbara.	0
1968	F	Monterey Traffic Underpass from Washington St. to Lighthouse Ave. [Alternate route: Pacific St. to Del Monte Ave.].	Monterey	Monterey	0
03/26/13	G	State 1 Tom Lantos Tunnel (Devil's Slide Tunnel) ..... No explosives (Class 1), flammable gases (Division 2.1), or flammable and combustible liquids (Class 3).	Pacifica	San Mateo ...	1, 2, 3

TABLE 16—CALIFORNIA: RESTRICTED HM ROUTES—Continued

Designation date	Route order	Route description	City	County	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
01/01/95	H	State 84 from State 238/Mission Blvd. [MP 10.83—Fremont] to Interstate 680 [Sunol]. Trucks restricted from transporting hazardous materials and waste due to adjacent drinking water source (otherwise, route is Advisory 32).		Alameda	0
02/25/95	I	US 101/Golden Gate Bridge ..... [Bridge escort required. No explosive laden trucks permitted on the bridge between 6:30–9:30 and 16:00–19:00 weekdays].		San Francisco.	1
01/01/95	J	Interstate 80—SF-Oakland Bay Bridge from Mile Post 4.92 [San Francisco] to Mile Post 2.20 [Alameda County]. No flammable tank vehicles or explosives on SF-Oakland Bay Bridge (otherwise, route is National Network).	San Francisco.		1, 2, 3, 4
01/01/95	K	State 260 from Atlantic Ave. [MP R0.62—Alameda] to Interstate 880 [MP R1.92—Oakland] [Eastbound Webster St. Tube & Westbound Posey Tube]. Trucks restricted from transporting hazardous materials and waste through Webster and Posey Tubes (otherwise, route is California Legal).		Alameda	0
01/01/95	L	State 24 [Caldecott Tunnel] from Mile Post R5.89 [Alameda County] to Mile Post R0.35 [Contra Costa County]. [Transportation of an explosive substance, flammable liquid, liquefied petroleum gas, or poisonous gas in a tank truck, trailer, or semi-trailer is allowed through the tunnel only between the hours of 3:00 AM and 5:00 AM.] Otherwise route is National Network.			1, 2, 3
10/28/92	M	Tennessee St. from Mare Island Way to Columbus Way	Vallejo	Solano	1
01/01/95	N	State 20 from State 29 [MP 8.32—Upper Lake] to State 53 [MP 31.62—Clearlake Oaks]. [No vehicles transporting hazardous materials or waste due to adjacent waters (otherwise, route is terminal access).].		Lake	0

TABLE 17—CALIFORNIA: DESIGNATED HRCQ/RAM ROUTES

Designation date	Route order	Route description	City	County	Designation(s) (A,B,I,P)	FMCSA QA comment
10/19/94	A	Interstate 5 from Mexican Border [MP 0] to Interstate 805 [MP 1—San Ysidro].			P	This route will be considered by the California Highway Patrol for updates in a future rulemaking.
10/19/94	B1	Interstate 805 from Interstate 5 [Torrey Pines] to Interstate 5 [San Ysidro].		San Diego	P	This route will be considered by the California Highway Patrol for updates in a future rulemaking.
10/19/94	B2	Interstate 5 from State 78 [MP 51—Carlsbad] to Interstate 805 [MP 31—Torrey Pines].			P	
10/19/94	B2A	Interstate 15 from State 163 to Interstate 8.	San Diego	San Diego	P	
10/19/94	B2B	Interstate 8 from Arizona to Interstate 5 [San Diego].			P	
10/19/94	B3	Interstate 5 from Interstate 405 [MP 93—Irvine] to State 78 [MP 78—Carlsbad].			P	
10/19/94	B3A	Interstate 15 from State 60 [Mira Loma] to State 163 [San Diego].			P	
10/19/94	B4	Interstate 5 from Interstate 605 [MP 123—Santa Fe Springs] to Interstate 405 [MP 93—Irvine].			P	
10/19/94	B4A	Interstate 15 from Nevada border to State 60 [Mira Loma].			P	
10/19/94	B5	Interstate 605 from Interstate 210 [Duarte] to Interstate 5 [Santa Fe Springs].		Los Angeles	P	
10/19/94	B5A–1.0	Interstate 40 from Arizona to Interstate 15 [Barstow].			P	

TABLE 17—CALIFORNIA: DESIGNATED HRCQ/RAM ROUTES—Continued

Designation date	Route order	Route description	City	County	Designation(s) (A,B,I,P)	FMCSA QA comment
10/19/94	B6A–1.0	Interstate 10 from Arizona to Interstate 605 [Baldwin Park].			P	
10/19/94	B6A–2.0	Interstate 210 from Interstate 5 [Sylmar] to State 57 [Glendora].		Los Angeles	P	
10/19/94	B7A–2.0	Interstate 5 from Oregon [MP 796] to Interstate 210 [MP 160—Sylmar].			P	
10/19/94	C1	Interstate 280 from Interstate 680 [in San Jose] to Interstate 380 [in San Francisco].			P	
10/19/94	C2	Interstate 680 from Interstate 80 [Cordelia Junction, Fairfield] to Interstate 280 [San Jose].			P	
10/19/94	D1	Interstate 880 from Interstate 980 [Oakland] to Interstate 238 [San Leandro].		Alameda	P	
10/19/94	D2A	Interstate 980 from Interstate 580 to Interstate 880.	Oakland	Alameda	P	
10/19/94	E	Interstate 238 from Interstate 580 [Ashland] to Interstate 880 [San Leandro].		Alameda	P	
10/19/94	F1	Interstate 580 from Interstate 5 [Southwest of Tracy] to Interstate 680 [in Dublin].			P	
10/19/94	F2A	Interstate 205 from Interstate 5 [Lanthrop] to Interstate 580 [Alameda County]".			P	
10/19/94	G	Interstate 80 from Nevada to Interstate 580 [north of Oakland].			P	

TABLE 18—CALIFORNIA: DESIGNATED NRHM ROUTES

Designation date	Route order	Route description	City	County	Designation(s) (A,B,I,P)	FMCSA QA comment
10/28/92 (B) 04/16/92 (I).	A1	Interstate 5 from Mexican Border [MP 0] to Interstate 805 [MP 1—San Ysidro].	San Diego	San Diego	B,I	This route will be considered by the California Highway Patrol for updates in a future rulemaking.
10/28/92	A2	Interstate 805 from Interstate 5 [Torrey Pines] to Interstate 5 [San Ysidro].	.....	San Diego	B	This route will be considered by the California Highway Patrol for updates in a future rulemaking.
04/16/92	A2	Interstate 805 [San Diego] from SR 163 [San Diego] to Interstate 8 [San Diego].	San Diego	San Diego	I	
10/28/92	A2A	Interstate 5 from Interstate 805 [MP 31—Torrey Pines] to State 805 [San Ysidro].	San Diego	San Diego	B	This route will be considered by the California Highway Patrol for updates in a future rulemaking.
10/28/92	A3	Interstate 5 from State 78 [MP 51—Carlsbad] to Interstate 805 [MP 31—Torrey Pines].	.....	San Diego	B	
10/28/92	A3A–1.0	State 75 from Interstate 5 [San Diego] to R. H. Dana Place [Coronado].	.....	San Diego	B	
10/28/92	A3A–2.0	State 15 from State 94 to Interstate 5.	San Diego	San Diego	B	
04/16/92	A3A–3.0	Interstate 8 from Arizona to Interstate 805 [San Diego].	.....	.....	I	
10/28/92	A3A–3.0	Interstate 8 from Arizona to end of road [San Diego] at the intersection of Sunset Cliffs Blvd./Nimitz Blvd.	.....	.....	B	
10/28/92	A3B	State 94 from Interstate 5 to Interstate 8.	San Diego	San Diego	B	

TABLE 18—CALIFORNIA: DESIGNATED NRHM ROUTES—Continued

Designation date	Route order	Route description	City	County	Designation(s) (A,B,I,P)	FMCSA QA comment
10/28/92 (B) 04/16/92 (I).	A4	Interstate 5 from Interstate 405 [MP 93—Irvine] to State 78 [MP 78—Carlsbad].	.....	.....	B,I	
10/28/92	A4A–1.0	R.H. Dana Place from State 75 to Ocean Blvd.	San Diego	San Diego	B	
10/28/92	A4A–3.0–A	State 163 from Interstate 8 to Interstate 15.	San Diego	San Diego	B	
04/16/92	A4A–3.0–A	State 163 from Interstate 15 to Interstate 805.	San Diego	San Diego	I	
04/16/92	A4A–3.0–B	Interstate 15 from State 60 [Mira Loma] to State 163 [San Diego].	.....	.....	I	This route will be considered by the California Highway Patrol for updates in a future rulemaking.
10/28/92	A4A–3.0–B	Interstate 15 from State 91 [Corona] and Interstate 8 [San Diego].	.....	.....	B	
10/28/92	A4A–3.0–C	State 98 from Interstate 8 [MP 88—Ocotillo] to Interstate 8 [MP 144—Warren H. Brock Reservoir].	.....	Imperial	B	This route will be considered by the California Highway Patrol for updates in a future rulemaking.
10/28/92 (B) 04/16/92 (I).	A4A–3.0–D	CR S30/Forrester Rd. from State 86 [Westmorland] to Interstate 8 [El Centro].	.....	Imperial	B, I	This route will be considered by the California Highway Patrol for updates in a future rulemaking.
10/28/92	A4B–1.0	State 125 from State 94 to Interstate 8.	La Mesa	San Diego	B	
04/16/92	A4C	State 78 from Interstate 5 [Oceanside] to Interstate 15 [Escondido].	.....	San Diego	I	
10/28/92	A5	Interstate 5 from Interstate 605 [MP 123—Santa Fe Springs] to Interstate 405 [MP 93—Irvine].	.....	.....	B	
10/28/92	A5A–1.0	Ocean Blvd. from R.H. Dana Place to North Island Naval Air Station.	Coronado	San Diego	B	
10/28/92 (B) 04/16/92 (I).	A5A–3.0–B	Interstate 15 from Nevada border to State 60 [Mira Loma].	.....	.....	B, I	
10/28/92	A5A–3.0–B1	Interstate 215 from Interstate 15 [San Bernardino] to Interstate 15 [Murietta].	.....	.....	B	
10/28/92	A5A–3.0–C1	Railroad Blvd./River Rd. from State 98 to U.S. Customs Compound [at Mexico].	Calexico	Imperial	B	This route will be considered by the California Highway Patrol for removal in a future rulemaking.
10/28/92	A5A–3.0–C2	State 111 from Interstate 8 [El Centro] to State 98 [Calexico].	.....	Imperial	B	This route will be considered by the California Highway Patrol for updates in a future rulemaking.
10/28/92 (B) 04/16/92 (I).	A5A–3.0–D	State 86 [Indio] to CR S30/Forrester Rd. [Westmorland].	.....	.....	B, I	This route will be considered by the California Highway Patrol for updates in a future rulemaking.
10/28/92	A5D	State 76 from Interstate 5 [Oceanside] to Interstate 15 [Fallbrook].	.....	San Diego	B	
10/28/92 (B) 04/16/92 (I).	A5E	Interstate 405 from Interstate 5 [North Valley] to Interstate 5 [Irvine].	.....	.....	B, I	
10/28/92	A6	Interstate 5 from Interstate 405 [MP158—North Valley] to Interstate 605 [MP 123—Santa Fe Springs].	.....	Los Angeles	B	
10/28/92	A6A–3.0–B2	US 395 from Oregon to US 6 [Bishop]. [NOTE: US 395 enters Nevada and returns into California near Topaz].	.....	.....	B	

TABLE 18—CALIFORNIA: DESIGNATED NRHM ROUTES—Continued

Designation date	Route order	Route description	City	County	Designation(s) (A,B,I,P)	FMCSA QA comment
10/28/92 (B) 04/16/92 (I).	A6A–3.0–B2	US 395 from US 6 [Bishop] to Interstate 15 [Hesperia]. [NOTE: US 395 enters Nevada and returns into California in the mid-eastern section].	.....	.....	B, I	
10/28/92 (B) 04/16/92 (I).	A6A–3.0–B3	Lenwood Rd. from State 58 to Interstate 15.	.....	San Bernardino.	B, I	This route will be considered by the California Highway Patrol for removal in a future rulemaking.
10/28/92 (B) 04/16/92 (I).	A6A–3.0–B4	Interstate 40 from Arizona to Interstate 15 [Barstow].	.....	.....	B, I	
10/28/92	A6A–3.0–B5	Fort Irwin Rd. from Interstate 15 to Fort Irwin.	Barstow	San Bernardino.	B	
10/28/92	A6A–3.0–B6	State 127 from Nevada to Interstate 15 [Baker].	.....	.....	B	
10/28/92	A6D–1.0	CR–S13 from Interstate 15 to State 76.	Fallbrook	San Diego	B	This route will be considered by the California Highway Patrol for updates in a future rulemaking.
10/28/92	A6E–1.0	State 55 from Interstate 405 [Costa Mesa] to State 91 [Anaheim].	.....	Orange	B	
10/28/92	A6E–2.0	State 22/Garden Grove Freeway from State 1 [Seal Beach] to State 55 [Orange].	.....	Orange	B	
10/28/92	A6E–3.0	Seal Beach Blvd. from Interstate 405 to Electric Ave.	Seal Beach ..	Orange	B	
10/28/92	A6E–4.0	Interstate 605 from Interstate 210 to Interstate 405.	Los Angeles	Los Angeles	B	
10/28/92	A6E–5.0	Interstate 105 from Interstate 405 [Hawthorne] to Interstate 605 [Norwalk].	.....	Los Angeles	B	
04/16/92	A6E–6.0	Interstate 10 from Arizona to State 60 [Beaumont].	.....	.....	I	
10/28/92	A6E–6.0	Interstate 10 from Interstate 405 [Los Angeles] to Arizona.	.....	.....	B	
04/16/92	A6E–7.0	US 101 from State 34/Lewis Rd. [Camarillo] to Interstate 405 [Sherman Oaks, Los Angeles].	.....	.....	I	
10/28/92	A6E–8.0	State 118 from Interstate 405 [Mission Hills, Los Angeles] to L.A. county line [Chatsworth].	Los Angeles	Los Angeles	B	
10/28/92	A6F	State 57 from Interstate 5 [Orange] to Interstate 210 [Glendora].	.....	Los Angeles	B	
10/28/92 (B) 04/16/92 (I).	A7	Interstate 5 from Interstate 210 [MP 160] to Interstate 405 [MP 158].	Sylmar	Los Angeles	B, I	
10/28/92	A7A–3.0–B2A	State 190 [Olancha] from US 395 to State 127 [Death Valley Junction].	.....	.....	B	
10/28/92	A7A–3.0–B2B	State 136 from US 395 to State 190.	Lone Pine	Inyo	B	
10/28/92 (B) 04/16/92 (I).	A7A–3.0–B2C	US 6 from Nevada to US 395 [Bishop].	.....	.....	B, I	
10/28/92	A7A–3.0–B2D	State 167/Pole Line Rd. from Nevada to US 395 [Mono City].	.....	.....	B	
10/28/92	A7A–3.0–B4–A	A St. from National Trails Hwy/Historical US–66 to Interstate 40.	.....	San Bernardino.	B	

TABLE 18—CALIFORNIA: DESIGNATED NRHM ROUTES—Continued

Designation date	Route order	Route description	City	County	Designation(s) (A,B,I,P)	FMCSA QA comment
10/28/92	A7E–6.0–A	Interstate 110 from Interstate 10 [Pico Union] to State 47 [San Pedro].	.....	Los Angeles	B	
10/28/92	A7E–6.0–B	Interstate 710 from Interstate 10 to Interstate 405.	Los Angeles	Los Angeles	B	
10/28/92	A7E–6.0–C	Alabama St. from Interstate 10 [Redlands] to San Bernardino International Airport [San Bernardino].	.....	San Bernardino.	B	
10/28/92	A7E–6.0–D	State 62 [Desert Hot Springs] from Interstate 10 to Arizona.	.....	.....	B	
10/28/92	A7E–6.0–E	State 177 from State 62 to Interstate 10.	Desert Center	Riverside	B	
10/28/92 (B) 04/16/92 (I).	A7E–6.0–F	US 95 from Nevada to Interstate 10 [Blythe].	.....	.....	B, I	
04/16/92	A7E–8.0	State 27/Topanga Canyon Blvd. from State 118 to Chatsworth St.	Chatsworth ...	Los Angeles	I	
10/28/92	A7G	State 60 from Interstate 5 [Los Angeles] to Interstate 10 [Beaumont].	.....	.....	B	
04/16/92	A7G	State 60 from Interstate 605 [South El Monte] to Interstate 10 [Beaumont].	.....	.....	I	
10/28/92	A7H	State 2 from Interstate 5 to Interstate 210.	Los Angeles	Los Angeles	B	
10/28/92	A7I	State 134 from Interstate 5 to Interstate 210.	Los Angeles	Los Angeles	B	
10/28/92	A7J	State 118 from Interstate 5 to Interstate 210.	Los Angeles	Los Angeles	B	
10/28/92 (B) 04/16/92 (I).	A8	Interstate 5 from Oregon [MP 796] to Interstate 210 [MP 160—Sylmar].	.....	.....	B, I	
10/28/92	A8A–3.0–B2E	State 89 from State 49 [Sierraville] to US 395 [Topaz].	.....	.....	B	
10/28/92	A8A–3.0–B2F	CR A3/Standish-Buntingville Rd. from US 395 [Standish] to US 395 [Buntingville].	.....	Lassen	B	
10/28/92	A8A–3.0–B4–A	Daggett-Yermo Rd. from Interstate 15 [Yermo] to National Trails Hwy./Historical US–66.	.....	San Bernardino.	B	
10/28/92	A8E–6.0–A	State 47 from Interstate 110 to Navy Way.	San Pedro	Los Angeles	B	
04/16/92	A8E–6.0–B1	State 91 from Interstate 605 to Interstate 710.	Los Angeles	Los Angeles	I	
04/16/92	A8E–6.0–B2	Interstate 710 from Interstate 5 [Commerce] to Port of Long Beach [Long Beach].	.....	Los Angeles	I	
10/28/92	A8E–6.0–C1	W. Lugonia Ave. from Alabama St. to Orange St.	Redlands	San Bernardino.	B	
10/28/92	A8E–6.0–D1	Adobe Rd. from Amboy Rd. to State 62.	Twentynine Palms.	San Bernardino.	B	
04/16/92	A8J	State 118 from Interstate 405 [Mission Hills] to State 27 [Chatsworth].	.....	Los Angeles	I	
10/28/92	A8L	Interstate 210 from Interstate 5 [Sylmar] to State 57 [Glendora].	.....	Los Angeles	B	
10/28/92	A9A–3.0–B2E–1.0	State 88 from State 89 [Woodfords] to Nevada.	.....	Alpine	B	
10/28/92	A9AA	State 44 from Interstate 5 [Redding] to State 36 [Susanville].	.....	Lassen	B	
10/28/92 (B) 04/16/92 (I).	A9AB	US 97 from Oregon to Interstate 5 [Weed].	.....	Siskiyou	B, I	

TABLE 18—CALIFORNIA: DESIGNATED NRHM ROUTES—Continued

Designation date	Route order	Route description	City	County	Designation(s) (A,B,I,P)	FMCSA QA comment
10/28/92	A9E–6.0–B1	State 91 from Interstate 605 [Cerritos] to State 215 [Riverside].	.....	.....	B	
04/16/92	A9E–6.0–B1A	Interstate 605 from State 60 [City of Industry] to State 91 [Cerritos].	.....	Los Angeles	I	
10/28/92	A9E–6.0–C1	E. Lugonia Ave./State 38 from Orange St. to N. Wabash Ave.	Redlands	San Bernardino.	B	
10/28/92	A9E–6.0–D1	Amboy Rd. from National Trails Highway [Amboy] to Adobe Rd. [Twentynine Palms].	.....	San Bernardino.	B	
04/16/92	A9M	State 14 from US 395 [Indian Wells] to State 138 [Lancaster].	.....	.....	I	
10/28/92	A9M	State 14 from US 395 [Indian Wells] to Interstate 5 [Santa Clarita].	.....	.....	B	
04/16/92	A9N	State 126 from Interstate 5 [Castaic Junction] to Santa Paula [western boundary].	.....	.....	I	
10/28/92	A9N	State 126 from Interstate 5 [Castaic Junction] to State 118 [Saticoy].	.....	.....	B	
04/16/92	A9O	State 138 from Interstate 5 [Gorman] to State 14 [Lancaster].	.....	Los Angeles	I	
10/28/92	A9O	State 138 from Interstate 5 [Gorman] to Interstate 15 [Cajon Junction].	.....	.....	B	
10/28/92 (B) 04/16/92 (I).	A9P	State 166 from Interstate 5 [Mettler] to US 101/State 166 to E. Main St. [Santa Maria].	.....	.....	B, I	
10/28/92	A9Q	State 99 from State 36 [Red Bluff] to Interstate 5 [MP 217—Mettler].	.....	.....	B	
04/16/92	A9Q	State 99 from State 46 [Famoso] to McFarland [northern city boundary].	.....	.....	I	
10/28/92	A9R	State 223 from Interstate 5 [Bakersfield] to State 58 [Caliente].	.....	Kern	B	
10/28/92	A9S	State 119 from State 99 to Interstate 5.	Bakersfield ...	Kern	B	
10/28/92	A9T	State 140 from State 49 [Mariposa] to Interstate 5 [Gustine].	.....	.....	B	
10/28/92	A9U	Kasson Rd. from Interstate 205B/11th St. to Interstate 5.	Tracy	San Joaquin	B	
10/28/92	A9V	State 120 from Interstate 5 [Lathrop] to Yosemite National Park.	.....	.....	B	
10/28/92	A9W	Twin Cities Rd./E13 from State 99 [Galt] To Interstate 5 [MP 497—Elk Grove].	.....	Sacramento ..	B	
10/28/92	A9X	CR E8 [Road 102] from Interstate 5 [Woodland] to State 113 [Knights Landing].	.....	Yolo	B	
10/28/92	A9Y	State 32 from State 36/89 [Mill Creek] to Interstate 5 [Orland].	.....	.....	B	
10/28/92	A9Z	State 36 from Interstate 5 [Red Bluff] to US 395 [Susanville].	.....	.....	B	
10/28/92	A10E–6.0–B1A	State 71 from Interstate 10 [Pomona] to State 91 [Corona].	.....	.....	B	
10/28/92	A10E–6.0–C1	Menton Blvd./State 38 from Crafton Ave. to N. Wabash Ave.	Mentone	San Bernardino.	B	

TABLE 18—CALIFORNIA: DESIGNATED NRHM ROUTES—Continued

Designation date	Route order	Route description	City	County	Designation(s) (A,B,I,P)	FMCSA QA comment
10/28/92	A10E–6.0–D1A	National Trails Hwy./State 66 from Interstate 40 [Ludlow] to Interstate 40 [Fenner].	.....	San Bernardino.	B	
10/28/92	A10N	State 118 from State 126 to State 232.	Saticoy	Ventura	B	
10/28/92	A10O–1.0	State 18 from State 138 [Llano] to US 395 [Adelanto].	.....	.....	B	
10/28/92	A10P–1.0	State 33 from Interstate 5 [Tracy] to State 166 [Maricopa].	.....	.....	B	
04/16/92	A10P–2.0	US 101 from Healdsburg [northern city boundary] to State 37 [Novato].	.....	Marin	I	
10/28/92	A10P–2.0	US 101 from Oregon to State 246 [Buellton].	.....	Sonoma	B	
04/16/92	A10P–2.0	US 101 from State 166 [Nipomo] to State 246 [Buellton].	.....	.....	I	
02/25/95	A10P–2.0	US 101 [Golden Gate Bridge] from Marin/San Francisco [County Line—North End] to Toll Plaza [South End]. [Route is restricted from 6:30–9:30 and 16:00–19:00 weekdays. Separate entry is included in table for RESTRICTION.].	.....	San Francisco.	B	
10/28/92	A10Q–1.0	State 65 from State 198 [Exeter] to State 99 [Oildale].	.....	.....	B	
10/28/92	A10Q–2.0	State 43 from State 99 [Selma] to State 58 [Rosedale].	.....	.....	B	
10/28/92	A10Q–3.0	W. Jensen Ave./E. Jensen Ave. from S. Marks Ave. to State 99.	Fresno	Fresno	B	
10/28/92	A10Q–4.0	State 145 from State 99 to State 41.	Madera	Madera	B	
10/28/92	A10Q–5.0	State 26 from State 99 [Stockton] to State 49 [Mokelumne Hill].	.....	.....	B	
10/28/92	A10Q–6.0	State 88 from State 99 [MP 269—Stockton] to State 49 [Martell].	.....	.....	B	
10/28/92	A10Q–7.0	State 70 from State 99 [Pleasant Grove] to US 395 [Hallelujah Junction, east of Chilcoot-Vinton].	.....	.....	B	
10/28/92	A10Q–8.0	State 149 from State 99 to State 70.	Oroville	Butte	B	
10/28/92	A10T	State 49 from State 70 [Vinton] to State 140 [Mariposa].	.....	.....	B	
10/28/92	A10U	Grant Line Rd./CR–J4 from Byron Rd./CR–J4 to Interstate 205B/11th St..	Tracy	San Joaquin	B	
10/28/92	A10X	State 113 from State 99 [Woodland] to CR E8/Road 102 [Yuba City].	.....	.....	B	
10/28/92	A10Z–1.0	State 139 from Oregon to State 36 [Susanville].	.....	.....	B	
10/28/92	A11E–6.0–C1	Crafton Ave. from Sand Canyon Rd. to Lockheed Propulsion.	Mentone	San Bernardino.	B	This route will be considered by the California Highway Patrol for removal in a future rulemaking.
10/28/92	A11N	State 232 from State 118 [Saticoy] to US 101 [Oxnard].	.....	Ventura	B	
10/28/92	A11O–1.0	Bear Valley Rd. from US 395 [Victorville] to State 18 [Apple Valley].	.....	San Bernardino.	B	
10/28/92	A11P–1.0	Ahern Rd. from S. Bird Rd. to Interstate 5.	Tracy	San Joaquin	B	

TABLE 18—CALIFORNIA: DESIGNATED NRHM ROUTES—Continued

Designation date	Route order	Route description	City	County	Designation(s) (A,B,I,P)	FMCSA QA comment
04/16/92	A11P–1.0–A	State 58 from State 14 [Mojave] to Interstate 15 [Barstow].			I	
10/28/92	A11P–1.0–A	State 58 from State 33 [McKittrick] to Interstate 15 [Barstow].			B	This route will be considered by the California Highway Patrol for updates in a future rulemaking.
10/28/92	A11P–1.0–B	State 180 from State 33 [Mendota] to Marks Ave. [Fresno].		Fresno	B	
10/28/92	A11P–1.0–C	State 132 from Interstate 580 [Tracy] to State 49 [Coulterville].			B	
10/28/92	A11P–2.0–A	State 246 from State 1 [Lompoc] to US 101 [Buellton].		Santa Barbara.	B	
04/16/92	A11P–2.0–B	State 246 from US 101 [Buellton] to Purisima Rd. [Lompoc].		Santa Barbara.	I	
04/16/92	A11P–2.0–C	State 46 from Interstate 5 [Lost Hills] to State 99 [McFarland].		Kern	I	
10/28/92	A11P–2.0–C	State 46 from US 101 [Paso Robles] to State 99 [McFarland].			B	
10/28/92	A11P–2.0–D	CR G18 from CR G14 [Lockwood] to US 101 [Bradley].		Monterey	B	
10/28/92	A11P–2.0–E	State 198 from US 101 [San Lucas] to State 99 [Visalia].			B	
10/28/92	A11P–2.0–F	State 25 from US 101 [Gilroy] to State 156 [Hollister].			B	
04/16/92	A11P–2.0–G	State 152/Pacheco Pass Highway from Interstate 5 [Los Banos] to State 101 [Gilroy].			I	
10/28/92	A11P–2.0–G	State 152/Pacheco Pass Highway from US 101 [Gilroy] to State 99 [Fairmead].			B	
10/28/92	A11P–2.0–H	State 85 from Interstate 280 [Cupertino] to US 101 [Mountain View].		Santa Clara	B	
10/28/92	A11P–2.0–I	Interstate 280 from US 1010 [San Francisco] to Interstate 680/US 101 [San Jose].			B	
04/16/92	A11P–2.0–J	Interstate 680 from Interstate 80 [Cordelia Junction, Fairfield] to Interstate 580 [Dublin].			I	
10/28/92	A11P–2.0–J	Interstate 680 [Cordelia Junction, Fairfield] to US 101 [San Jose].			B	
10/28/92	A11P–2.0–K	State 237 from Interstate 680 [Milpitas] to US 101 [Sunnyvale].		Santa Clara	B	
10/28/92	A11P–2.0–L	State 92 from US 101 to Interstate 280.	San Mateo	San Mateo	B	
10/28/92	A11P–2.0–M	3rd St. [San Francisco Bay] from US 101 to Cesar Chavez St.	San Francisco.		B	This route will be considered by the California Highway Patrol for removal in a future rulemaking.
10/28/92	A11P–2.0–N	State 1 from US 101 [Presidio, San Francisco] to the Tom Lantos Tunnels [north entrance, Pacifica].			B	
10/28/92	A11P–2.0–O	State 1 from US 101 [Leggett, Mendocino County] to US 101 [Manzanita, Marin County].			B	
10/28/92 (B) 04/16/92 (I).	A11P–2.0–P	State 37 from US 101 [City of Novato] to Interstate 80 [MP 32 City of Vallejo].			B, I	

TABLE 18—CALIFORNIA: DESIGNATED NRHM ROUTES—Continued

Designation date	Route order	Route description	City	County	Designation(s) (A,B,I,P)	FMCSA QA comment
10/28/92	A11P–2.0–Q	State 299 from US 101 [Arcata] to Nevada.			B	
10/28/92	A11P–2.0–R	US 199 from Oregon to US 101 [Crescent City].		Del Norte	B	
10/28/92	A11Q–1.0	State 245 from State 201 [Elderwood] to State 198 [Exeter].		Tulare	B	
10/28/92	A11Q–1.0–A	State 198 from State 65 [Visalia] to the Sequoia National Park.		Tulare	B	
10/28/92	A11Q–3.0	S. Marks Ave. from State 180 to W. Jensen Ave.	Fresno	Fresno	B	
10/28/92	A11Q–4.0	State 41 from State 145 [Madera] to Yosemite National Park.			B	
10/28/92	A11Q–7.0–A	State 89 from Interstate 5 [Mount Shasta] to State 80/State 70 to State 70 [Blairsden].			B	
10/28/92	A11U	Byron Hwy./CR–J4 from Grant Line Rd. [Tracy] to Byron Hwy./Byron-Bethany Rd./CR–J4 to State 4 [Byron].			B	
10/28/92	A11U–1.0	Interstate 205 from Interstate 5 [Lanthrop] to Interstate 580 [Alameda County].			B	
10/28/92	A11Z–1.0–A	Termo-Grasshopper Rd. from State 139 to US 395.	Termo	Lassen	B	
10/28/92	A12E–6.0–C1A	Sand Canyon Rd. from Crafton Ave. to Interstate 10.	Redlands	San Bernardino.	B	This route will be considered by the California Highway Patrol for updates in a future rulemaking.
10/28/92	A12N	US 101 from State 232 [Oxnard] to Las Posas Rd [Camarillo].			B	
10/28/92	A12O–1.0	State 18 from Bear Valley Rd. [Apple Valley] to Old Woman Springs Rd. [Lucerne Valley].		San Bernardino.	B	
10/28/92	A12P–1.0	S. Bird Rd. from Interstate 205B/11th St. to Ahern Rd.	Tracy	San Joaquin	B	
10/28/92	A12P–1.0–A1	Old State 58 from State 58 [Hinkley] to Interstate 15 [Barstow].		San Bernardino.	B	This route will be considered by the California Highway Patrol for removal in a future rulemaking.
10/28/92	A12P–1.0–C	Chrisman Rd. from Interstate 205B/11th St. to Interstate 580.	Tracy	San Joaquin	B	
10/28/92	A12P–1.0–C1	State 108 from State 132 [Modesto] to US 395 [Sonora Junction].			B	
10/28/92	A12P–2.0–A	State 1 from State 246 [Lompoc] to US 101 [Las Cruces].			B	
10/28/92	A12P–2.0–A1	Mission Gate Rd. from Purisima Rd. to State 246.	Lompoc	Santa Barbara.	B	
10/28/92 (B) 04/16/92 (I).	A12P–2.0–B	Purisima Rd. from State 246 to State 1.	Lompoc	Santa Barbara.	B, I	
10/28/92	A12P–2.0–C1	State 41 from State 46 [Cholame] to E. Jensen Ave. [Fresno].			B	
10/28/92	A12P–2.0–D	CR G14/Jolon Rd. from US 101 [King City] to CR G18 [Lockwood].		Monterey	B	
10/28/92	A12P–2.0–J1	Interstate 580 from Interstate 236 [Ashland] to Interstate 680 [Dublin].			B	
10/28/92 (B) 04/16/92 (I).	A12P–2.0–J2	Interstate 580 from Interstate 5 [Southwest of Tracy] to Interstate 680 [in Dublin].			B, I	

TABLE 18—CALIFORNIA: DESIGNATED NRHM ROUTES—Continued

Designation date	Route order	Route description	City	County	Designation(s) (A,B,I,P)	FMCSA QA comment
04/16/92	A12P–2.0–J3	State 242 from Interstate 680 to State 4.	Concord	Contra Costa	I	
04/16/92	A12P–2.0–J4	State 4 from Interstate 680 [Pacheco] to Loveridge Rd. [Pittsburg].		Contra Costa	I	
10/28/92	A12P–2.0–M1	Evans Ave. [San Francisco Bay] from 3rd St. to Jennings St.	San Francisco.		B	This route will be considered by the California Highway Patrol for removal in a future rulemaking.
10/28/92	A12P–2.0–M2	Cargo Way [San Francisco Bay] from 3rd St. to Jennings St.	San Francisco.		B	This route will be considered by the California Highway Patrol for removal in a future rulemaking.
10/28/92	A12P–2.0–O1	State 128 from State 1 [Near Albion Mendocino County] to US 101 [Cloverdale Sonoma County].			B	
10/28/92	A12P–2.0–O2	State 20 from State 1 [Fort Bragg] to State 29 [Upper Lake].		Mendocino	B	
10/28/92	A12P–2.0–Q1	State 96 from State 299 [Willow Creek] to Interstate 5 [Yreka].			B	
10/28/92	A12P–2.0–Q2	CR A2/Susanville Rd. from State 299 [Bieber] to State 139 [Adin].		Lassen	B	
10/28/92	A12Q–1.0	State 201 from State 99 [Kingsburg] to State 245 [Elderwood].			B	
10/28/92	A12Q–3.0	N. Marks Ave. from State 99 south to State 180.	Fresno	Fresno	B	
10/28/92	A12Q–7.0–A1	State 147 from State 36 [Westwood] to State 89 [Canyondam].			B	
10/28/92	A12U–1.0–A	Mountain House Parkway from Byron Rd. to Interstate 580.	Tracy	San Joaquin	B	
10/28/92	A13N	Las Posas Rd. from US 101 [Camarillo] to Naval Base Ventura County [Oxnard].		Ventura	B	
10/28/92	A13O–1.0	Old Woman Springs Rd. from State 18 to State 247.	Lucerne Valley.	San Bernardino.	B	
10/17/94	A13P–1.0–C	Interstate 205B/11th St. from Chrisman Rd. to Interstate 5.	Tracy	San Joaquin	B	
10/28/92	A13P–2.0–B	State 1 from State 166 [Guadalupe] to Purisima Rd. [Lompoc].			B	
04/16/92	A13P–2.0–B2	State 1 from Purisima Rd. to Santa Lucia Canyon Rd.	Lompoc	Santa Barbara.	I	This route will be considered by the California Highway Patrol for updates in a future rulemaking.
10/28/92	A13P–2.0–C1A	Grangeville Blvd. from State 41 to Lemoore Naval Air Station.	Lemoore	Kings	B	
10/28/92	A13P–2.0–J1	Interstate 238 from Interstate 580 [Ashland] to Interstate 880 [San Leandro].			B	
10/28/92	A13P–2.0–M1	Hunters Point Blvd. [San Francisco Bay] from Evans Ave. to Innes Ave.	San Francisco.		B	This route will be considered by the California Highway Patrol for removal in a future rulemaking.
10/28/92	A13P–2.0–M2	Jennings St. [San Francisco Bay] from Evans Ave. to Cargo Way.	San Francisco.		B	This route will be considered by the California Highway Patrol for removal in a future rulemaking.
10/28/92	A13P–2.0–O2	State 29 from State 20 [Upper Lake] to State 53 [Clear Lake].		Lake	B	
10/28/92	A13Q–1.0–A	State 63 from American Ave. [Orange Cove] to State 201 [Cutler].		Fresno	B	

TABLE 18—CALIFORNIA: DESIGNATED NRHM ROUTES—Continued

Designation date	Route order	Route description	City	County	Designation(s) (A,B,I,P)	FMCSA QA comment
10/28/92	A14N–1.0	E. Hueneme Rd. from S. Las Posas Rd. [Camarillo] to W. Hueneme Rd. to E. Port Hueneme Rd. to end of road at Port Hueneme Harbor [Hueneme].		Ventura	B	
10/28/92	A14N–2.0	State 1 from Hueneme Rd. [Oxnard] to Las Posas Rd. [Camarillo].		Ventura	B	
10/28/92	A14O–1.0	State 247 from Old Woman Springs Rd. [Lucerne Valley] to State 62 [Yucca Valley].		San Bernardino.	B	
10/28/92	A14P–2.0–B	State 166/W. Main St. from Bonita School Rd. [Santa Maria] to State 1 [Guadalupe].		Santa Barbara.	B	
10/28/92	A14P–2.0–B1	Santa Lucia Canyon Rd. from State 1 to Lompoc Gate, Vandenberg AFB.	Lompoc	Santa Barbara.	B	
10/28/92	A14P–2.0–M1	Innes Ave. [San Francisco Bay] from Hunters Point Blvd. to Hunters Pt. Naval Shipyards.	San Francisco.		B	This route will be considered by the California Highway Patrol for removal in a future rulemaking.
10/28/92	A14P–2.0–O2	State 53 from State 20 [Clearlake Oaks] to State 29 [Lower Lake].		Lake	B	
10/28/92	A14Q–1.0–A	E. American Ave. from Cove Ave. [Squaw Valley] to State 63 [Orange Cove].		Fresno	B	
10/28/92	A15P–2.0–B	Bonita School Rd. from Division St. [Nipomo] to State 166/W. Main St. [Santa Maria].			B	
10/28/92	A15P–2.0–O2	State 20 from State 53 [Clearlake Oaks] to Interstate 80 [MP 166—Yuba Pass].			B	
10/28/92	A15Q–1.0–A	Cove Rd. from State 180 [Squaw Valley] to American Ave. [Orange Cove].		Fresno	B	
10/28/92	A16P–2.0–B	Division St. from State 1 to Bonita School Rd..	Nipomo	San Luis Obispo.	B	
10/28/92	A16Q–1.0–A	State 180 from McCall Ave [Sanger] to Cove Rd. [west of Squaw Valley].		Fresno	B	
10/28/92	A17P–2.0–B	State 1 from Tom Lantos Tunnel [south entrance, Pacifica] to Division St. [Guadalupe].			B	
10/28/92	A17Q–1.0–A	S. McCall Ave. from E. Jensen Ave. to State 180.	Sanger	Fresno	B	
10/28/92	A17Q–1.0–A1	N. Academy Ave. from State 180 [Sanger] to State 168 [Clovis].		Fresno	B	
10/28/92	A18P–2.0–B3	State 68 from State 1 [Monterey] to US 101 [Salinas].			B	
10/28/92	A18P–2.0–B4	State 156 from State 1 [Castroville] to State 152/Pacheco Pass Highway [Hollister].			B	
10/28/92	A18P–2.0–B5	State 183 from State 1 [Castroville] to N. Main St. [Salinas].		Monterey	B	
10/28/92	A18P–2.0–B6	State 17 from Interstate 880/Interstate 280 [San Jose] to State 1 [Santa Cruz].			B	
10/28/92	A18Q–1.0–A	E. Jensen Ave. from S. Chestnut Ave. [Fresno] to S. McCall Ave. [Sanger].		Fresno	B	

TABLE 18—CALIFORNIA: DESIGNATED NRHM ROUTES—Continued

Designation date	Route order	Route description	City	County	Designation(s) (A,B,I,P)	FMCSA QA comment
10/28/92	A18Q–1.0–A1	State 168 from N. Academy Ave [Clovis] to Huntington Lake Rd./Big Creek Rd. [Lakeshore].	.....	.....	B	
10/28/92	A19P–2.0–B6	Interstate 880 from Interstate 280 [San Jose] to Market St. [Oakland].	.....	.....	B	
10/28/92	A19Q–1.0–A	S. Chestnut Ave. from State 99 to E. Jensen Ave.	Fresno	Fresno	B	
10/28/92	A20P–2.0–B6	Oakland Army Base [US Navy Supply Center] from W. Grand Ave. [at Interstate 80] to Market St. [at Interstate 880] [From W. Grand Ave. via Interstate 80 to Maritime St. to Middle Harbor Rd. to 3rd St. to Market St. which connects to Interstate 880].	Oakland	Alameda	B	
10/28/92	A20P–2.0–B6A	Hegenberger Rd. from Interstate 880 to Doolittle Dr./State 61.	Oakland	Alameda	B	
10/28/92	A20P–2.0–B6B	Dennison St. from Interstate 880 [Oakland] to Coast Guard Island [Alameda].	.....	Alameda	B	
10/28/92	A20P–2.0–B6C	Interstate 980 from Interstate 580 to Interstate 880.	Oakland	Alameda	B	
10/28/92	A21P–2.0–B6	Interstate 80 from Interstate 580 and W. Grand Ave.	Oakland	Alameda	B	
10/28/92	A21P–2.0–B6A	State 61 from Webster St. [Alameda] to Hegenberger Rd. [Oakland].	.....	Alameda	B	
10/28/92	A21P–2.0–B6C	Interstate 580 from Interstate 80 to Interstate 980.	Oakland	Alameda	B	This route will be considered by the California Highway Patrol for updates in a future rulemaking.
04/16/92	A22P–2.0–B6	Interstate 80 from Interstate 5 [MP 92—Sacramento] to State 37 [MP 32—Vallejo].	.....	.....	I	
10/28/92	A22P–2.0–B6	Interstate 80 from Nevada to Interstate 580 [north of Oakland].	.....	.....	B	
10/28/92	A22P–2.0–B6A	Central Ave. from State 61/Webster St. to Main St.	Alameda	Alameda	B	
10/28/92	A22P–2.0–B6A–1.0	Grand St. from Encinal Ave. to Buena Vista Ave.	Alameda	Alameda	B	
10/28/92	A23P–2.0–B6A	Main St. from Central Ave. to Atlantic Ave.	Alameda	Alameda	B	
10/28/92	A23P–2.0–B6D	State 4 from 80 [Hercules] to State 89 [Markleeville].	.....	.....	B	
10/28/92	A23P–2.0–B6E	Interstate 780 from Interstate 80 [Vallejo] to Interstate 680 [Benicia].	.....	Solano	B	
10/28/92	A23P–2.0–B6F	State 12 from Interstate 80 [MP 49—Fairfield] to State 49 [San Andreas].	.....	Solano	B	
10/28/92 (B) 04/16/92 (I).	A23P–2.0–B6G	Interstate 505 from Interstate 5 [MP 552—Zamora] to Interstate 80 [MP 61—Vacaville].	.....	.....	B, I	
10/28/92	A23P–2.0–B6H	CR E7/Pedrick Rd. from Interstate 80 [Dixon] to Interstate 5 [Woodland].	.....	.....	B	

TABLE 18—CALIFORNIA: DESIGNATED NRHM ROUTES—Continued

Designation date	Route order	Route description	City	County	Designation(s) (A,B,I,P)	FMCSA QA comment
10/28/92 (B) 04/16/92 (I).	A23P–2.0–B6I	Interstate Business 80 from Interstate 80 [west of Sacramento] to US 50/State 99/Interstate Business 80 [east of Sacramento].	Sacramento ..	Sacramento ..	B, I	
10/28/92	A23P–2.0–B6J	State 65 from State 70 [Olivehurst] to Interstate 80 [Roseville].	.....	.....	B	
10/28/92	A24P–2.0–B6A	Atlantic Ave. from Main St. to Webster St./State 61.	Alameda	Alameda	B	This route will be considered by the California Highway Patrol for updates in a future rulemaking.
10/28/92	A24P–2.0–B6F–1.0	State 113 from Interstate 80 [Dixon] to State 12 [Rio Vista].	.....	Solano	B	
10/28/92	A24P–2.0–B6H–1.0	State 16 from State 20 [Williams] to CR E7/County Road 98/Pedrick Rd. [Woodland].	.....	.....	B	
10/28/92 (B) 04/16/92 (I).	A24P–2.0–B6I–1.0	US 50 from US 50/State 99/Interstate Business 80 [east of Sacramento] to Prairie City Rd [Folsom].	.....	Sacramento ..	B, I	
10/28/92	A24P–2.0–B6I–2.0	Interstate Business 80 from US 50/State 99 [east of Sacramento] to Interstate 80 [north of Sacramento].	Sacramento ..	Sacramento ..	B	
11/16/94	A24P–2.0–B6J–1.0	Old Highway 65/Lincoln Blvd from State 65 [Lincoln] to Riosa Rd. [Sheridan].	.....	Placer	B	
10/28/92	A25P–2.0–B6A	State 61 from Atlantic Ave. to Buena Vista Ave.	Alameda	Alameda	B	
10/28/92	A25P–2.0–B6I–1.0	US 50 from Prairie City Rd. [Folsom] to Nevada.	.....	.....	B	
10/28/92	A25P–2.0–B6I–1.0–A	State 16 from US 50 [Sacramento] to State 49 [Plymouth].	.....	.....	B	
04/16/92	A25P–2.0–B6I–2.0–A	W. El Camino Ave. from Interstate 80 to El Centro Rd.	Sacramento ..	Sacramento ..	I	This route will be considered by the California Highway Patrol for updates in a future rulemaking.
11/16/94	A25P–2.0–B6J–1.0	Riosa Rd. from State 65 to Old Highway 65/Lincoln Blvd.	Sheridan	Placer	B	
10/28/92	A25P–2.0–B6J–1.0–A	State 193 from State 65 [Lincoln] to Interstate 80 [Newcastle].	.....	Placer	B	
10/28/92	A26P–2.0–B6A	Buena Vista Ave. from Webster St./State 61 to Park St.	Alameda	Alameda	B	This route will be considered by the California Highway Patrol for updates in a future rulemaking.
10/28/92	A27P–2.0–B6A	23rd Ave. from Park St. [Alameda] to Interstate 880 [Oakland].	.....	Alameda	B	
10/28/92	A27P–2.0–B6A–1.0	Sherman St. [San Francisco Bay] from Buena Vista Ave. to S.F. Bay [Inner Harbor].	Alameda	.....	B	This route will be considered by the California Highway Patrol for update or removal in a future rulemaking.
10/28/92	A28P–2.0–B6A	Park St. from Buena Vista Ave. [Alameda] to 23rd Ave. [Oakland].	.....	Alameda	B	This route will be considered by the California Highway Patrol for updates in a future rulemaking.

TABLE 18—CALIFORNIA: DESIGNATED NRHM ROUTES—Continued

Designation date	Route order	Route description	City	County	Designation(s) (A,B,I,P)	FMCSA QA comment
10/28/92	B	Army St. [San Francisco Bay] from 3rd St. to Pier 80.	San Francisco.	.....	B	This route will be considered by the California Highway Patrol for updates in a future rulemaking.
10/28/92	C1	6th St. [San Francisco Bay] from Channel St. to [southeast].	San Francisco.	.....	B	This route will be considered by the California Highway Patrol for removal in a future rulemaking.
10/28/92	C2	Channel St. from 4th St. to 6th St.	San Francisco.	.....	B	This route will be considered by the California Highway Patrol for removal in a future rulemaking.
10/28/92	C3	4th St. [San Francisco Bay] from 3rd St. to Channel St.	San Francisco.	.....	B	This route will be considered by the California Highway Patrol for removal in a future rulemaking.
10/28/92	D	Berry St. [San Francisco Bay] from 3rd St. to pier.	San Francisco.	.....	B	This route will be considered by the California Highway Patrol for removal in a future rulemaking.

TABLE 19—STATE: COLORADO

State Agency: CO State Patrol
POC: Capt. Josh Downing
Address: 15065 South Golden Rd., Golden, CO 80401
Phone: (303) 273–1900
Fax: (303) 273–1911

TABLE 19—STATE: COLORADO—Continued

Web Address: *www.colorado.gov/cs/Satellite/StatePatrol-Main/CBON/1251592908196*
FMCSA: CO FMCSA Field Office
FMCSA POC: CO Motor Carrier,

TABLE 19—STATE: COLORADO—Continued

Address: Division, Administrator, 12300 West Dakota Ave., Suite 130, Lakewood, CO 80228
Phone: (720) 963–3130
Fax: (720) 963–3131

TABLE 20—COLORADO: RESTRICTED HM ROUTES

Designation date	Route order	Route description	City	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
12/30/86	A	Interstate 70 from Interstate 25 [at Mile Post 274.039] to State 2 [at Mile Post 276.572].	.....	7
12/30/86	B	Interstate 70 from Utah to US 40 [at Mile Post 261.63]	.....	7

TABLE 21—COLORADO: DESIGNATED HRCQ/RAM ROUTES

Designation date	Route order	Route description	City	Designation(s) (A,B,I,P)
04/30/89	A1	Interstate 25 from Wyoming to New Mexico	.....	P
04/30/89	A2A	Interstate 225 from Interstate 70 to Interstate 25	.....	P
04/30/89	A2B	Interstate 76 from Interstate 25 to Nebraska	.....	P
04/30/08	A3A	Interstate 270 [Near Denver] from Interstate 25 to Interstate 70	.....	P
04/30/89	A4A	Interstate 70 from Interstate 270 to Kansas	.....	P

TABLE 22—COLORADO—DESIGNATED NRHM ROUTES

Designation date	Route order	Route description	City	Designation(s) (A,B,I,P)	FMCSA QA Comment
04/30/89	A1	Interstate 25 from Wyoming to New Mexico	.....	A.	
04/30/89	A2A	US 160 from New Mexico to Interstate 25 [Business Route in Walsenburg South to Exit 49 on I–25].	.....	A.	
04/30/89	A2B	State 10 from Interstate 25 [in Walsenburg] to US 50 [in La Junta]	.....	A.	
04/30/89	A2C	State 47 from Interstate 25 to US 50 [State 96]	.....	A.	
04/30/89	A2D	US 24 from State 91 [at Leadville] to Interstate 25 [in Colorado Springs].	.....	A.	
04/30/89	A2E	Interstate 225 from Interstate 70 to Interstate 25	.....	A.	
04/30/89	A2F	Interstate 76 from Interstate 25 to Nebraska	.....	A.	
04/30/89	A2G	US 36 from Interstate 25 to State 157	.....	A.	
04/30/89	A2H	US 34 from Interstate 25 to Interstate 76	.....	A.	
04/30/89	A2I	State 14 from Interstate 25 to US 6 [in Sterling]	.....	A.	

TABLE 22—COLORADO—DESIGNATED NRHM ROUTES—Continued

Designation date	Route order	Route description	City	Designation(s) (A,B,I,P)	FMCSA QA Comment
04/30/89	A3A–1.0	State 17 from US 285 [near Mineral Hot Springs] to US 160 [near Alamosa].		A.	
04/30/89	A3A–2.0	US 285 from US 160 [in Alamosa] to New Mexico		A.	
04/30/89	A3A–3.0	US 285 from State 112 to US 160		A.	
04/30/89	A3A–4.0	State 112 from US 285 to US 160		A.	
04/30/89	A3A–5.0	US 550 from US 160 to New Mexico		A.	
04/30/89	A3A–6.0	US 491 from Utah to New Mexico		A.	
04/30/89	A3D	State 91 from Interstate 70 to US 24 [near Leadville]		A.	
04/30/89	A3F–1.0	Interstate 270 [Near Denver] from Interstate 70 to Interstate 76		A.	
04/30/89	A3F–2.0	US 85 from Wyoming to Interstate 76		A.	
04/30/89	A3G	State 157 from US 36 to State 119		A.	
04/30/89	A3I	US 6 from State 14 [(Main St.) in Sterling] to Nebraska		A.	
04/30/89	A3I–1.0	State 71 from Nebraska to State 14		A.	
04/30/89	A4A–3.0	US 285 from State 470 to State 112		A.	
04/30/89	A4A–6.0–A	State 141 from US 50 to US 491		A.	
04/30/89	A4F–1.0	Interstate 70 from Interstate 270 to Kansas		A.	
04/30/89	A4G	State 119 from State 157 to State 52		A.	
04/30/89	A4I–1.0	US 138 from State 113 to US 6 [(Chestnut St.) in Sterling]		A.	
04/30/89	A5A–3.0–A	State 470 from US 285 to Interstate 70		A	Colorado State Patrol plans to update HM regulation 8 CCR 1507–25 in April 2014 to address an inconsistency with this route. The anticipated route revision is ''State 470 from Interstate 70 to Interstate 25.''
04/30/89	A5A–6.0–A1	US 50 from State 141 [north junction near Grand Junction] to Kansas.		A.	
11/21/11	A5F–1.0–A	US 36 from Interstate 70 [in Byers] to Kansas		A.	
04/30/89	A5G	State 52 from State 119 to State 79		A.	
04/30/89	A5I–1.0	State 113 from Nebraska to US 138		A.	
04/30/89	A6A–6.0–A1	State 141 from Interstate 70 [(Business Loop) near Grand Junction] to US 50.		A.	
04/30/89	A6A–6.0–A1A	State 115 from State 83 (also called Academy Blvd.) to US 50		A.	
04/30/89	A6A–6.0–A1B	State 71 from US 24 [in Limon (west junction)] to US 50 [near Rocky Ford].		A.	
04/30/89	A6A–6.0–A1C	US 287 from US 40 [in Kit Carson] to Oklahoma		A.	
04/30/89	A6G	State 79 from State 52 to Interstate 70 [at Bennett]		A.	
04/30/89	A7A–6.0–A1	Interstate 70 [business loop] from Interstate 70 [east of Grand Junction] to State 141.		A.	
04/30/89	A7A–6.0–A1A	State 83 (also called Academy Blvd.) from US 24 to State 115		A.	
04/30/89	A7A–6.0–A1B	US 24 [Business Route] from US 24 [on the west side of Limon] to State 71 [west junction].		A.	

TABLE 22—COLORADO—DESIGNATED NRHM ROUTES—Continued

Designation date	Route order	Route description	City	Designation(s) (A,B,I,P)	FMCSA QA Comment
04/30/89	A7A–6.0–A1D–1.0	Maple St. [City of Lamar] from 2nd St. to US 50/287	Lamar	A.	
04/30/89	A7A–6.0–A1D–2.0	US 40 from Interstate 70 [(Exit 363) in Limon] to Kansas		A.	
04/30/89	A8A–6.0–A1A	Interstate 70 from Utah to US 6 [at Silverthorne [Loveland Pass]		A.	
04/30/89	A8A–6.0–A1B	US 24 from State 83 (also called Academy Blvd.) to Interstate 70 [at West Limon (Exit 359)].		A.	
04/30/89	A8A–6.0–A1D–1.0	2nd St. [City of Lamar] from US 50/385 to Maple St.	Lamar	A.	
04/30/89	A8A–6.0–A1D–2.0	US 24 [Business Route] from State 71 [east junction in Limon] to Interstate 70 (Exit 363).		A.	
04/30/89	A8A–6.0–A1D–2.0–A	US 385 from Interstate 76 [in Julesburg] to US 40 [in Cheyenne Wells].		A.	
04/30/89	A9A–6.0–A1A	US 6 [Loveland Pass] from Interstate 70 [just east of the Eisenhower/Johnson Tunnels] to [just west of the Eisenhower/Johnson Tunnels at Silverthorne].		A.	
04/30/89	A9A–6.0–A1A–1.0	State 139 from State 64 [in Rangely] to Interstate 70 [near Loma]		A.	
04/30/89	A9A–6.0–A1A–2.0	US 6 from State 13 [west of Rifle] to Interstate 70 [Exit 87]		A.	
04/30/89	A9A–6.0–A1A–3.0	State 9 from US 40 [in Kremmling] to Interstate 70 [in Silverthorne].		A.	
04/30/89	A9A–6.0–A1D–2.0	State 71 from State 14 to US 24 [in Limon (east junction)]		A.	
04/30/89	A10A–6.0–A1A	Interstate 70 from US 6 [east of Loveland Pass] to Interstate 25		A.	
04/30/89	A10A–6.0–A1A–1.0–A	State 64 from US 40 [in Dinosaur] to State 13		A.	
04/30/89	A10A–6.0–A1A–2.0	State 13 from US 40 [west of Craig] to US 6 [west of Rifle]		A.	
04/30/89	A10A–6.0–A1D–2.0–A	US 34 from State 71 [west junction] to Nebraska		A.	
04/30/89	A11A–6.0–A1A–1.0–A1	US 40 from Utah to State 13 [west of Craig]		.	
04/30/89	A11A–6.0–A1A–2.0–A	1st St. [City of Craig] from State 13 [east] to State 394 [Craig City Limit].	Craig	A.	

TABLE 22—COLORADO—DESIGNATED NRHM ROUTES—Continued

Designation date	Route order	Route description	City	Designa-tion(s) (A,B,I,P)	FMCSA QA Comment
04/30/89	A12A–6.0–A1A–1.0–A1	County 7 [Great Divide Rd.] from US 40 to City Limit [City of Craig (north)].	.....	A.	
04/30/89	A12A–6.0–A1A–2.0–A	1st. St. [Moffat County Rd. CG 2] from State 394 [Craig City Limit] to US 40 [Runs East from Route 394 to US 40.].	.....	A.	
04/30/89	A13A–6.0–A1A–1.0–A1	County 7 [(Great Divide Rd.)] from City Limit [City of Craig (north)] to County 183 [in Moffat County].	.....	A.	
04/30/89	A13A–6.0–A1A–2.0–A	US 40 from First St. [Moffat County Road CG 2] to Interstate 70 [east of Craig].	.....	A.	
04/30/89	A14A–6.0–A1A–1.0–A1	County 183 [Moffat County] from County 7 (Great Divide Rd.) [Moffat County] to State 13.	.....	A.	
04/30/89	A14A–6.0–A1A–2.0–A1	State 14 from US 40 to State 125	.....	A.	
04/30/89	A14A–6.0–A1A–2.0–A2	State 125 from Wyoming to US 40 [west of Granby]	.....	A.	
04/30/89	A15A–6.0–A1A–1.0–A1	State 13 from Wyoming to Moffat County 183 [North of Craig]	.....	A.	
04/30/89	A15A–6.0–A1A–2.0–A2	State 127 from Wyoming to State 125	.....	A.	

TABLE 23—*State: Connecticut*

State Agency: CT Dept. of Env. Protection
POC: Dave Sattler
Address: 79 Elm St., Hartford, CT 06106
Phone: (860) 424–3289
Fax: (860) 424–4059
Web Address: *www.ct.gov/dep/site/default.asp*
FMCSA: CT FMCSA Field Office, CT Motor Carrier
FMCSA POC: Division Administrator
Address: 628–2 Hebron Ave., Suite 302, Glastonbury, CT 06033
Phone: (860) 659–6700

TABLE 23—*State: Connecticut*—Continued

Fax: (860) 659–6725
No designated or restricted routes as of 01/31/2014

TABLE 24—*State: Delaware*

State Agency: DE Emergency Mgmt. Agency
POC: Kevin Kille
Address: 165 Brick Stone Landing Rd., Smyrna, DE 19977
Phone: (302) 659–2237

TABLE 24—*State: Delaware*—Continued

Fax: (302) 659–6855
Web Address: *dema.delaware.gov/*
FMCSA: DE FMCSA Field Office
FMCSA POC: DE Motor Carrier, Division Administrator
Address: J. Allen Frear Federal Building, 300 South New St., Suite 1105, Dover, DE 19904
Phone: (302) 734–8173
Fax: (302) 734–5380

TABLE 25—DELAWARE: DESIGNATED HRCQ/RAM ROUTES

Designation date	Route order	Route description	Designation(s) (A,B,I,P)
08/09/00	A1	Interstate 95 from Maryland to Interstate 495 [southwest of Wilmington]	P
08/09/00	A2	Interstate 495 from Interstate 95 [southwest of Wilmington] to Interstate 95 [northeast of Wilmington].	P
08/09/00	A2A	Interstate 295 from Interstate 95 [Southwest of Wilmington] to New Jersey	P

TABLE 25—DELAWARE: DESIGNATED HRCQ/RAM ROUTES—Continued

Designation date	Route order	Route description	Designation(s) (A,B,I,P)
08/09/00	A3	Interstate 95 from Interstate 495 [Northeast of Wilmington] to Pennsylvania	P

TABLE 26—*State: District of Columbia*

State Agency: DC Dept. of the Environment
POC: Mary Begin, Toxic Substances Division
Address: 1200 First Street NE., Washington, DC 20002
Phone: (202) 481–3838

TABLE 26—*State: District of Columbia*—Continued

Fax: (202) 481–3770
Web Address: *green.dc.gov*
FMCSA: DC FMCSA Field Office
FMCSA POC: DC Motor Carrier, Division Administrator

TABLE 26—*State: District of Columbia*—Continued

Address: 1990 K Street NW., Suite 510, Washington, DC 20006
Phone: (202) 219–3576
Fax: (202) 219–3546

TABLE 27—DISTRICT OF COLUMBIA: RESTRICTED HM ROUTES

Designation date	Route order	Route description	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
03/08/95	A	9th St. Expressway Tunnel from North Portal [at Madison Dr.] to South Portal [south of Independence Ave.].	0
03/08/95	B	Interstate 395 Tunnel from South Portal [south of Independence Ave.] to the most northerly portal [at K St.].	0

TABLE 28—DISTRICT OF COLUMBIA: DESIGNATED NRHM ROUTES

Designation date	Route order	Route description	Designation(s) (A,B,I,P)	FMCSA QA Comment
03/08/95	A1	Interstate 395 from Virginia to Interstate 695 [vicinity of 2nd and E St., SW.].	A	
03/08/95	A2	Interstate 695 from Interstate 295 [vicinity of 11th and L St., SE.] to Interstate 395 [vicinity of 2nd and E St., SW.].	A	
03/08/95	A3	Interstate 295 from Maryland to Interstate 695 [vicinity of 11th and L St., SE.].	A	According to Google maps, ''Anacostia Freeway'' is another name for ''Interstate 295.'' Should both names be included in the route description?
03/08/95	A3	Anacostia Fwy from Interstate 295 [11th St. Bridge] to E. Capitol St.	A	According to Google maps, ''Anacostia Freeway'' is also called ''Interstate 295.'' This route segment appears to be included in the larger route (see Route Order A3). Should this duplicative route be removed?
03/08/95	B	Kenilworth Ave., NE. from E. Capitol St. to Maryland.	A	According to Google maps, ''DC 295'' IS another name for ''Kenilworth Ave., NE.'' Should both names be included in the route description?

TABLE 29—STATE: FLORIDA

State Agency: FL Dept. of Highway Safety and Motor Vehicles
POC: Artez Lester
Address: 2400 Apalachee Pkwy., Tallahassee, FL 32399
Phone: (850) 617–2287

TABLE 29—STATE: FLORIDA—Continued

Fax:
Web Address: *www.flhsmv.gov*
FMCSA: FL FMCSA Field Office
FMCSA POC: FL Motor Carrier, Division Administrator

TABLE 29—STATE: FLORIDA—Continued

Address: 545 John Knox Rd., Room 102, Tallahassee, FL 32303
Phone: (850) 942–9338
Fax: (850) 942–9680

TABLE 30—FLORIDA: RESTRICTED HM ROUTES

Designation date	Route order	Route description	City	Restriction(s) (1,2,3,4,5,6,7,8,9,i)
02/14/95	A	Tampa central business area ..... [Bounded on the east by Ybor Channel, on the west by the Hillsborough River, and on the north by a line running along Scott Street east to Orange Ave., south to Cass St., east to the Seaboard Cost Line Railroad, northeast to Adamo Drive, and on the south by Garrison Channel. * State-maintained highways other than Florida Ave. and Kennedy Blvd. are exceptions to this restriction *].	.....	0

TABLE 30—FLORIDA: RESTRICTED HM ROUTES—Continued

Designation date	Route order	Route description	City	Restriction(s) (1,2,3,4,5,6,7,8,9,i)
02/14/95	B1	Kennedy Blvd. [Tampa] from Crosstown Expressway to Hillsborough River [Use Crosstown Expressway to Hyde Park Ave. and Davis Island Exit No. 5 to all points west.].	Tampa	0
02/14/95	B2A	Florida Ave. [Tampa] from Crosstown Expressway to Scott Street [Use Crosstown Expressway to 22nd St. North, thence north along 22nd Street to Interstate 4 to either Interstate 275 or points east.].	Tampa	0

TABLE 31—STATE: GEORGIA

State Agency: GA Dept. of Public Safety
POC: Cpt. Bruce Bugg, Motor Carrier Compliance Div.
Address: 320 Chester Ave. SE., Atlanta, GA 30316
Phone: (404) 463–3880

TABLE 31—STATE: GEORGIA—Continued

Fax: (770) 357–8867
Web Address: *dps.georgia.gov/*
FMCSA: GA FMCSA Field Office
FMCSA POC: GA Motor Carrier, Division Administrator

TABLE 31—STATE: GEORGIA—Continued

Address: Two Crown Center, 1745 Phoenix Blvd., Suite 380, Atlanta, GA 30349
Phone: (678) 284–5130
Fax: (678) 284–5146

TABLE 32—GEORGIA: RESTRICTED HM ROUTES

Designation date	Route order	Route description	Restriction(s) (0,1,2,3,4,5,6, 7,8,9,i)
03/14/95	A	Georgia Highway 400 between its origin at I–85 and Exit 2 (Lenox Road/Buckhead Loop), due to a tunnel underneath an office building. The restriction applies to hazardous materials that require placarding..	0

TABLE 33—STATE: HAWAII

State Agency: No Agency Designated
POC:
Address:
Phone:
Fax:
FMCSA: HI FMCSA Field Office
FMCSA POC: HI Motor Carrier
Address: Division Administrator, 300 Ala Moana Blvd., Room 3–239, Box 50226, Honolulu, HI 96850
Phone: (808) 541–2790
Fax: (808) 541–2702

TABLE 33—STATE: HAWAII—Continued

No designated or restricted routes as of 01/31/2014

TABLE 34—STATE: IDAHO

State Agency: ID State Police
POC: Cpt. Bill Reese
Address: P.O. Box 700, 700 S. Stratford Dr., Meridian, ID 83680
Phone: (208) 884–7220

TABLE 34—STATE: IDAHO—Continued

Fax: (208) 884–7192
Web Address: *www.isp.idaho.gov/cvs/index.html*
FMCSA: ID FMCSA Field Office
FMCSA POC: ID Motor Carrier
Address: Division Administrator, 3200 N. Lakeharbor Lane, Suite 161, Boise, ID 83703
Phone: (208) 334–1842
Fax: (208) 334–1046

TABLE 35—IDAHO: DESIGNATED NRHM ROUTES

Designation date	Route order	Route description	City	County	Designation(s) (A,B,I,P)
01/01/85	A	US 95 [northbound] from Oregon to Missile Base Road [US Ecology waste site]. Northbound hazardous waste transporters are directed to turn right from US 95 onto Sommer Camp Rd. (STC–3710) to its junction with State 78. Turn right on SH78 to its junction with Missile Base Rd. and follow to the US Ecology waste site.	Mountain Home.	Elmore	A
01/01/85	B	Interstate 84 from Exit 99 to Missile Base Rd. [US Ecology waste site]. Transporters are to exit at Exit 99 onto I–84 Business Loop (AKA Old Oregon Trail Road & Bennett Road) to its intersection with old US 30 (You will follow I–84B the entire time and go over an overpass. The road names will change). Turn Right and follow Old US 30 and go approximately ¾ mile to Hamilton Rd. Turn right and follow Hamilton for 3 miles and turn south onto State 51 until its junction with State 78. Turn right on SH78 and continue to Grandview. The US Ecology Waste site is approximately 10.5 miles past Grandview. Exit State 78 onto Missile Base Rd. and follow to US Ecology waste site.	Mountain Home.	Elmore	A

TABLE 36—STATE: IDAHO

State Agency: Fort Hall Reservation

TABLE 36—STATE: IDAHO—Continued

POC: Dept. of Public Safety

TABLE 36—STATE: IDAHO—Continued

Address: P.O. Box 306, Fort Hall, ID 83203

TABLE 36—STATE: IDAHO—Continued

Phone: (208) 237–0137
Fax: (208) 237–0049
Web Address: *www.shoshonebannocktribes.com*

TABLE 36—STATE: IDAHO—Continued

FMCSA: ID FMCSA Field Office
FMCSA POC: ID Motor Carrier, Division Administrator

TABLE 36—STATE: IDAHO—Continued

Address: 3200 N. Lakeharbor Lane, Suite 161, Boise, ID 83703
Phone: (208) 334–1842
Fax: (208) 334–1046

TABLE 37—IDAHO—DESIGNATED NRHM ROUTESDESIGNATION DATE

Designation date	Route description	Designation(s) (A,B,I,P)
01/12/95	C	Interstate 15 [within the Fort Hall Reservation] [Designation by Shoshone-Bannock Tribes. Only valid within Fort Hall Reservation.]. A

TABLE 38—STATE: ILLINOIS

State Agency: IL DOT
POC: Tom Wise, Division of Traffic Safety
Address: 1340 North 9th St., P.O. Box 19212, Springfield, IL 62794–9212
Phone: (217) 785–1181

TABLE 38—STATE: ILLINOIS—Continued

Fax: (217) 782–9159
Web Address: *www.dot.state.il.us*
FMCSA: IL FMCSA Field Office
FMCSA POC: IL Motor Carrier, Division Administrator

TABLE 38—STATE: ILLINOIS—Continued

Address: 3250 Executive Park Dr., Springfield, IL 62703
Phone: (217) 492–4608
Fax: (217) 492–4986

TABLE 39—ILLINOIS: DESIGNATED NRHM ROUTES

Designation date	Route order	Route description	City	County	Designation(s) (A,B,I,P)
02/10/86	A1	W. State St. from Meridian Rd. to Kilburn Ave. [Primary Rockford Hazmat route as per City ordinance 1986–18–0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.].	Rockford	Winnebago ...	A
02/10/86	A2A	Springfield—Riverside St. from W. State St. to Interstate 90 [Primary Rockford Hazmat route as per City ordinance 1986–18–0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.].	Rockford	Winnebago ...	A
02/10/86	A2B	S. Pierpont from W. State St. to Montague Rd. [Primary Rockford Hazmat route as per City ordinance 1986–18–0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.].	Rockford	Winnebago ...	A
02/10/86	A2C	Kilburn Ave. from Auburn St. to W. State St. [Primary Rockford Hazmat route as per City ordinance 1986–18–0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.].	Rockford	Winnebago ...	A
02/10/86	A2D	US 20 [Business Route throughout the City of Rockford] [Primary Rockford Hazmat route as per City ordinance 1986–18–0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.].	Rockford	Winnebago ...	A
02/10/86	A3A–1.0	Auburn St. from Springfield St. to Rock River [Primary Rockford Hazmat route as per City ordinance 1986–18–0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.].	Rockford	Winnebago ...	A
02/10/86	A3A–2.0	IL251 [throughout the City of Rockford] [Primary Rockford Hazmat route as per City ordinance 1986–18–0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.].	Rockford	Winnebago ...	A
02/10/86	A3A–3.0	Forest Hills Rd. from N. Second St. to Riverside Blvd. [Primary Rockford Hazmat route as per City ordinance 1986–18–0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.].	Rockford	Winnebago ...	A
02/10/86	A3A–4.0	Alpine Rd. from Bypass 20 to Riverside Blvd. [There is a section of Alpine Rd. that is an unmarked state highway but it is on the NHS so it should be OK—Primary Rockford Hazmat route as per City ordinance 1986–18–0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.].	Rockford	Winnebago ...	A
02/10/86	A3A–5.0	Mulford Rd. from Sandy Hollow Rd. to Riverside Blvd. [Primary Rockford Hazmat route as per City ordinance 1986–18–0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.].	Rockford	Winnebago ...	A
02/10/86	A3B	Montague Rd. from S. Pierpont to Bypass 20 [Primary Rockford Hazmat route as per City ordinance 1986–18–0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.].	Rockford	Winnebago ...	A

TABLE 39—ILLINOIS: DESIGNATED NRHM ROUTES—Continued

Designation date	Route order	Route description	City	County	Designation(s) (A,B,I,P)
02/10/86	A3B–1.0	Preston St. from Tay to S. Pierpont [Primary Rockford Hazmat route as per City ordinance 1986–18–0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.].	Rockford	Winnebago ...	A
02/10/86	A3C–1.0	Whitman St. from N. Second St. to Kilburn Ave. [Primary Rockford Hazmat route as per City ordinance 1986–18–0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.].	Rockford	Winnebago ...	A
02/10/86	A3D	First Ave. from Kishwaukee St. to Longwood [Primary Rockford Hazmat route as per City ordinance 1986- 18–0 which amended Chapter 11 with Routing.].	Rockford	Winnebago ...	A
02/10/86	A4A–1.0–A	N. Main St. from Riverside Blvd. to Auburn St. [Primary Rockford Hazmat route as per City ordinance 1986–18–0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.].	Rockford	Winnebago ...	A
02/10/86	A4A–2.0–A	College Ave. from Rock River to Kishwaukee St. [Primary Rockford Hazmat route as per City ordinance 1986–18–0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.].	Rockford	Winnebago ...	A
02/10/86	A4A–2.0–B	Fifteenth Ave. from S. Main St. to Kishwaukee St. [Primary Rockford Hazmat route as per City ordinance 1986–18–0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.].	Rockford	Winnebago ...	A
02/10/86	A4A–2.0–C	Blackhawk Park from Magnolia St. to Kishwaukee St. [Primary Rockford Hazmat route as per City ordinance 1986–18–0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.].	Rockford	Winnebago ...	A
02/10/86	A4A–2.0–D	Kishwaukee St. from Harrison Ave. to Airport Drive including bypass 20 [Primary Rockford Hazmat route as per City ordinance 1986–18–0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.].	Rockford	Winnebago ...	A
02/10/86	A4A–5.0	Sandy Hollow Rd. from Kishwaukee St. to Mulford Rd. [Primary Rockford Hazmat route as per City ordinance 1986–18–0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.].	Rockford	Winnebago ...	A
02/10/86	A4B–1.0	Tay from Cedar St. to Preston St. [Primary Rockford Hazmat route as per City ordinance 1986–18–0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.].	Rockford	Winnebago ...	A
02/10/86	A4B–1.0–A	Central Ave. from Auburn Street to Riverside Blvd. [Primary Rockford Hazmat route as per City ordinance 1986–18–0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.].	Rockford	Winnebago ...	A
02/10/86	A4D–1.0	Charles St. from East State Street to Alpine Rd. [Primary Rockford Hazmat route as per City ordinance 1986–18–0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.].	Rockford	Winnebago ...	A
02/10/86	A5A–2.0–A	Morgan St. from S. Main St. to Rock River [Primary Rockford Hazmat route as per City ordinance 1986–18–0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.].	Rockford	Winnebago ...	A
02/10/86	A5A–2.0–B1	Seminary St. from Harrison Ave. Fifteenth Ave. [Primary Rockford Hazmat route as per City ordinance 1986–18–0 which amended Chapter 11, with Article VII, Division 1, Hazardous Materials Routing.].	Rockford	Winnebago ...	A
02/10/86	A5A–5.0–A	20th St. from Sandy Hollow Rd. to 23rd Ave. underpass [Primary Rockford Hazmat route as per City ordinance 1986–18–0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.].	Rockford	Winnebago ...	A
02/10/86	A5B–1.0	Cedar St. from S. Main St. to Tay [Primary Rockford Hazmat route as per City ordinance 1986–18–0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.].	Rockford	Winnebago ...	A
02/10/86	A5D–1.0–A	E. State St. from Second St. to Interstate 90 [Primary Rockford Hazmat route as per City ordinance 1986–18–0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.].	Rockford	Winnebago ...	A
02/10/86	A6A–2.0–A	S. Main St. from Morgan St. to Bypass 20 [Primary Rockford Hazmat route as per City ordinance 1986–18–0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.].	Rockford	Winnebago ...	A
02/10/86	A6A–5.0–A	23rd Ave. from 11th St. to 20th St. [Primary Rockford Hazmat route as per City ordinance 1986–18–0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.].	Rockford	Winnebago ...	A

TABLE 39—ILLINOIS: DESIGNATED NRHM ROUTES—Continued

Designation date	Route order	Route description	City	County	Designation(s) (A,B,I,P)
02/10/86	A7A–2.0–A1	Harrison Ave. from S. Main St. to Mulford Rd. [Primary Rockford Hazmat route as per City ordinance 1986–18–0 which amended Chapter 11 with Article VII, Division I, Hazardous Materials Routing.].	Rockford	Winnebago ...	A

TABLE 40—STATE: INDIANA

State Agency: IN DOT
POC: Commissioner Curtis A. Wiley
Address: IN Gov. Center North, 100 N. Senate Ave., Room N755, Indianapolis, IN 46204–2249
Phone: (317) 232–5526

TABLE 40—STATE: INDIANA—Continued

Fax: (317) 232–0238
Web Address: *www.in.gov/indot*
FMCSA: IN FMCSA Field Office
FMCSA POC: IN Motor Carrier, Division Administrator

TABLE 40—STATE: INDIANA—Continued

Address: 575 N. Pennsylvania St., Room 261, Indianapolis, IN 46204
Phone: (317) 226–7474
Fax: (317) 226–5657

TABLE 41—INDIANA: RESTRICTED HM ROUTES

Designation date	Route order	Route description	City	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
06/19/89	A1	Interstate 70 [within Indianapolis I–465 beltway]	Indianapolis ..	0
06/19/89	A2A	Interstate 65 [within Indianapolis I–465 beltway]	Indianapolis ..	0

TABLE 42—INDIANA: DESIGNATED NRHM ROUTES

Designation date	Route order	Route description	City	Designation(s) (A,B,I,P)
06/19/89	A	Interstate 465 [around the city of Indianapolis]	Indianapolis ..	A

TABLE 43—STATE: IOWA

State Agency: IA DOT, Motor Vehicle Enforcement
POC: Maj. Lance Evans
Address: 6310 SE Convenience Blvd., Ankeny, IA 50021

TABLE 43—STATE: IOWA—Continued

Phone: (515) 237–3214
Fax: (515) 237–3387
Web Address: *www.iowadot.gov*
FMCSA: IA FMCSA Field Office

TABLE 43—STATE: IOWA—Continued

FMCSA POC: IA Motor Carrier Division Administrator
Address: 105 6th St., Ames, IA 50010
Phone: (515) 233–7400
Fax: (515) 233–7494

TABLE 44—IOWA: DESIGNATED HRCQ/RAM ROUTES

Designation date	Route order	Route description	Designation(s) (A,B,I,P)
07/18/88	A1	Interstate 680 from Nebraska to Interstate 80 [Use I–680 and I–80 in lieu of I–29 in the Council Bluffs area when heading north/south per 49 CFR 397.103(b). Use I–680 in lieu of I–80 in the Council Bluffs area when heading east/west per IA–NE coordination.].	P
07/18/88	A2A	Interstate 29 from Missouri to Interstate 80 [I–80 and I–680 are used in lieu of I–29 in the Council Bluffs area when heading North/South per 49 CFR 397.103(b)].	P
07/18/88	A2B	Interstate 80 from Interstate 29 to Illinois [Use I–280 or I–80 in the Quad cities. Use I–80 in lieu of I–235 in the Des Moines area. Use I–680 in lieu of I–80 in the Council Bluffs area per IA–NE coordination when heading east/west. Use I–80 and I–680 in the Council Bluffs area in lieu of I–29 when heading north/south].	P
07/18/88	A3B–1.0	Interstate 680 from Interstate 80 to Interstate 29 [Used in lieu of I–29 in the Council Bluffs area per 49 CFR 397.103(b)].	P
07/18/88	A3B–2.0	Interstate 35 from Minnesota to Missouri [Stay on I–35/I–80 in lieu of I–235 in the Des Moines area per 49 CFR 397.103(b)].	P
07/18/88	A3B–3.0	Interstate 280 from Interstate 80 to Illinois [Use I–280 or I–80 in Quad cities area.]	P
07/18/88	A4B–1.0	Interstate 29 from Nebraska to Interstate 680 [I–80 and I–680 are used in lieu of I–29 in the Council Bluffs area when heading North/South per 49 CFR 397.103(b)].	P

TABLE 45—STATE: KANSAS

State Agency: KS Div. of Emergency Mgmt.
POC: Harry Heintzelman, Technological Hazards Section
Address: 2800 SW. Topeka Blvd., Topeka, KS 66611.

TABLE 45—STATE: KANSAS—Continued

Phone: (785) 274–1408
Fax: (785) 274–1426
Web Address: *www.kansastag.gov/kdem*
FMCSA: KS FMCSA Field Office

TABLE 45—STATE: KANSAS—Continued

FMCSA POC: KS Motor Carrier, Division Administrator
Address: 1303 SW. First American Place, Suite 200, Topeka, KS 66604

TABLE 45—STATE: KANSAS—Continued

Phone: (785) 271–1260
Fax: (877) 547–0378
No designated or restricted routes as of 01/31/2014

TABLE 46—STATE: KENTUCKY

State Agency: KY Transportation Cabinet
POC: Brian Bevin
Address: 200 Mero St., Frankfort, KY 40601
Phone: (502) 564–9900 x. 4136
Fax: (502) 564–4138
Web Address: *transportation.ky.gov/Pages/default.aspx*
FMCSA: KY FMCSA Field Office

TABLE 46—STATE: KENTUCKY—Continued

FMCSA POC: KY Motor Carrier, Division Administrator
Address: 330 West Broadway, Room 124, Frankfort, KY 40601
Phone: (502) 223–6779
Fax: (502) 223–6767

TABLE 47—KENTUCKY: RESTRICTED HM ROUTES

Designation date	Route order	Route description	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
07/15/13	A	Interstate 75 from Interstate 275 to Ohio	0

TABLE 48—KENTUCKY: DESIGNATED NRHM ROUTES

Designation date	Route order	Route description	Designation(s) (A,B,I,P)
07/15/13	A	Interstate 275 from Interstate 75 to Ohio	A

TABLE 49—STATE: LOUISIANA

State Agency: LA State Police
POC: Sgt. Brad Yates, Transportation and Environmental Safety Section
Address: P.O. Box 66614, Baton Rouge, LA 70896
Phone: (225) 925–6113

TABLE 49—STATE: LOUISIANA—Continued

Fax: (225) 925–4048
Web Address: *www.lsp.org/tess.html*
FMCSA: LA FMCSA Field Office
FMCSA POC: LA Motor Carrier, Division Administrator

TABLE 49—STATE: LOUISIANA—Continued

Address: 5304 Flanders Drive, Suite A, Baton Rouge, LA 70808
Phone: (225) 757–7640
Fax: (225) 757–7636

TABLE 50—LOUISIANA: RESTRICTED HM ROUTES

Designation date	Route order	Route description	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
03/01/95	A	Tunnel Boulevard Tunnel [in Terrebonne Parish (Houma)]	0
03/01/95	B	Harvey Tunnel [of Jefferson Parish on US90–B]	0
03/01/95	C	State 73 [In Ascension Parish] from Interstate 10 to State 74 and within 300 yards or less of any building used as a public or private elementary or secondary school except for carriers making local deliveries on this portion of State 73. [R.S. 32:1521 Motor Vehicles—Traffic Regulations]	0
08/01/99	D	No carrier shall transport hazardous materials on any route in Caddo or Bossier Parish within three hundred yards or less of any building used as a public or private elementary or secondary school, except for (1) carriers making local pickups or deliveries, (2) carriers using the route to reach a local pickup or delivery point, (3) carriers traveling to or from their terminal facilities, (4) carriers using the route to reach maintenance or service facilities within the boundaries of the parishes, or (5) on prescribed routes. [R.S. 32:1521.E and F Motor Vehicles—Traffic Regulations] ..... See *http://legis.la.gov/lss/lss.asp?doc=88111*	0
08/01/99	E	US 171 from State 3132 to US 80 ..... [R.S. 32:1521 Motor Vehicles—Traffic Regulations]	0
08/01/99	F	State 1 from State 526 to Interstate 220 ..... [R.S. 32:1521 Motor Vehicles—Traffic Regulations]	0
08/01/99	G	US 71 from Interstate 220 to Interstate 20 ..... [R.S. 32:1521 Motor Vehicles—Traffic Regulations]	0

TABLE 51—LOUISIANA: DESIGNATED NRHM ROUTES

Designation date	Route order	Route description	Designation(s) (A,B,I,P)
08/01/99	A1	US 79 from Texas to Interstate 20 ..... [R.S. 32:1521 Caddo-Bossier designated route]	A
08/01/99	A2A	US 80 from Texas to City of Greenwood ..... [R.S. 32:1521 Caddo-Bossier designated route]	A
08/01/99	A2B	Interstate 20 from Texas to Caddo-Bossier [parish boundary] ..... [R.S. 32:1521 Caddo-Bossier designated route]	A
08/01/99	A3B	Interstate 20 from Bossier-Caddo [parish boundary] to Bossier-Webster [parish boundary] ..... [R.S. 32:1521 Caddo-Bossier designated route]	A

TABLE 51—LOUISIANA: DESIGNATED NRHM ROUTES—Continued

Designation date	Route order	Route description	Designation(s) (A,B,I,P)
08/01/99	A3B–1.0	State 526 ..... [R.S. 32:1521 Caddo-Bossier designated route]	A
08/01/99	A3B–2.0	Interstate 220 from Bossier-Caddo [parish boundary] to Interstate 20 ..... [R.S. 32:1521 Caddo-Bossier designated route]	A
08/01/99	A3B–3.0	State 3132 ..... [R.S. 32:1521 Caddo-Bossier designated route]	A
08/01/99	A3B–4.0	Interstate 49 from Caddo-DeSoto [parish boundary] to Interstate 20 ..... [R.S. 32:1521 Caddo-Bossier designated route]	A
08/01/99	A4B–1.0	State 3 [Benton Road] from Arkansas to Interstate 20 ..... [R.S. 32:1521 Caddo-Bossier designated route]	A
08/01/99	A4B–1.0–A	State 1 from Caddo-Red River [parish boundary] to State 526 to State 3132 ..... [R.S. 32:1521 Caddo-Bossier designated route]	A
08/01/99	A4B–2.0	US 71 from Bossier-Red River [parish boundary] to Interstate 20 ..... [R.S. 32:1521 Caddo-Bossier designated route]	A
08/01/99	A4B–2.0–A	State 1 from Interstate 220 to Arkansas ..... [R.S. 32:1521 Caddo-Bossier designated route]	A
08/01/99	A4B–3.0–A	State 511 [Jimmie Davis Highway] from US 71 to State 3132 ..... [R.S. 32:1521 Caddo-Bossier designated route]	A
08/01/99	A4B–3.0–B	US 171 from Caddo-DeSoto [parish boundary] to State 3132 ..... [R.S. 32:1521 Caddo-Bossier designated route]	A
08/01/99	A5B–2.0–A	State 3 from Arkansas to State 3105 [Airline Drive] to US 71 ..... [R.S. 32:1521 Caddo-Bossier designated route	A
08/01/99	A5B–2.0–A1	US 71 from Interstate 220 to Arkansas ..... [R.S. 32:1521 Caddo-Bossier designated route]	A
08/01/99	A5B–2.0–A2	State 2 from State 1 to Caddo-Bossier [parish boundary] ..... [R.S. 32:1521 Caddo-Bossier designated route]	A
08/01/99	A6B–2.0–A2	State 2 from Caddo-Bossier [parish boundary] to Bossier-Webster [parish boundary] ..... [R.S. 32:1521 Caddo-Bossier designated route]	A

TABLE 52—STATE: MAINE

State Agency: ME State Police
POC: Shawn Currie, Department of Public Safety
Address: 20 State House Station, Augusta, ME 04330
Phone: (207) 624–8938
Fax: (207) 287–5247
Web Address: *www.maine.gov/dps/msp/*
FMCSA: ME FMCSA Field Office
FMCSA POC: ME Motor Carrier, Division Administrator
Address: Edmund S. Muskie Federal Bldg., 40 Western Ave., Room 411, Augusta, ME 04330
Phone: (207) 622–8358
Fax: (207) 622–8477
No designated or restricted routes as of 01/31/2014

TABLE 53—STATE: MARYLAND

State Agency: MD Trans. Authority Police
POC: 1st Sgt. Joel Layfield
Address: 2301 South Clinton Street, Baltimore, MD 21224
Phone: (410) 575–6955
Fax: (410) 537–1376
FMCSA: MD FMCSA Field Office
FMCSA POC: MD Motor Carrier, Division Administrator
Address: City Crescent Building, 10 S. Howard Street, Suite 2710 Baltimore, MD 21201
Web Address: *www.mdta.maryland.gov/Police/policeMain.html*
Phone: (410) 962–2889
Fax: (410) 962–3916
State agency is responsible for all HM routes listed in Table 55 and Table 56, except for "J.F.K. Memorial Highway [I–95]" and "Interstate 495".

TABLE 54—STATE: MARYLAND

State Agency: MD State Highway Admin.
POC: David Czorapinski
Address: Motor Carrier Division, 7491 Connelley Dr., Hanover, MD 21076
Phone: (410) 582–5734
Fax: (410) 787–2863
Web Address: *sha.md.gov/Home.aspx*
FMCSA: MD FMCSA Field Office
FMCSA POC: MD Motor Carrier, Division Administrator,
Address: City Crescent Building, 10 S. Howard Street, Suite 2710 Baltimore, MD 21201
Phone: (410) 962–2889
Fax: (410) 962–3916
State agency is only responsible for the following HM routes listed in Table 55 and Table 56: "J.F.K. Memorial Highway [I–95]" and "Interstate 495".

TABLE 55—MARYLAND: RESTRICTED HM ROUTES

Designation date	Route order	Route description	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
01/25/80	A	Harry W. Nice Memorial Bridge [US Route 301] [For specific exemptions to these restrictions, see Title 11 of the Code of MD Regulations, Transportation of Hazardous Materials (11.07.01.05)].	1,7
01/25/80	B	William Preston Lane, Jr. Memorial (Bay) Bridge [US 50/301] [For specific exemptions to these restrictions, see Title 11 of the Code of MD Regulations, Transportation of Hazardous Materials (11.07.01.05)].	1,7
01/25/80	C	Francis Scott Key Bridge [State 695] [For specific exemptions to these restrictions, see Title 11 of the Code of MD Regulations, Transportation of Hazardous Materials (11.07.01.05)].	1,7

TABLE 55—MARYLAND: RESTRICTED HM ROUTES—Continued

Designation date	Route order	Route description	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
01/25/80	D	Baltimore Harbor Tunnel [I–895] [For specific exemptions to this restriction, see Title 11 of the Code of MD Regulations, Transportation of Hazardous Materials (11.07.01.04)].	0
01/25/80	E	Fort McHenry Tunnel [I–95] [For specific exemptions to this restriction, see Title 11 of the Code of MD Regulations, Transportation of Hazardous Materials (11.07.01.04)].	0
01/25/80	F	J.F.K. Memorial Highway [I–95]	1,7
01/25/80	G	Thomas J. Hatem Memorial Bridge [US Route 40] [For specific exemptions to these restrictions, see Title 11 of the Code of MD Regulations, Transportation of Hazardous Materials (11.07.01.05)].	1,7

TABLE 56—MARYLAND: DESIGNATED NRHM ROUTES

Designation date	Route order	Route description	Designation(s) (A,B,I,P)
08/16/95	A	Interstate 495 [NOTE: Restricts all vehicles carrying hazardous materials to right two lanes.]	A

TABLE 57—STATE: MASSACHUSETTS

State Agency: MA DOT
POC: Eileen Fenton
Address: 3150 Ten Park Plaza, Boston, MA 02116
Phone: (617) 973–7760
Fax: (617) 973–8037

TABLE 57—STATE: MASSACHUSETTS—Continued

Web Address: *www.massdot.state.ma.us/highway/Main.aspx*
FMCSA: MA FMCSA Field Office
FMCSA POC: MA Motor Carrier, Division Administrator

TABLE 57—STATE: MASSACHUSETTS—Continued

Address: 50 Mall Road, Suite 212, Burlington, MA 01803
Phone: (781) 425–3210
Fax: (781) 425–3225

TABLE 58—MASSACHUSSETS: RESTRICTED HM ROUTES

Designation date	Route order	Route description	City	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
06/13/12	A	City of Boston [City Streets in Downtown Area] ..... [Use of City Streets in the Downtown Area for the through transportation of ALL NRHM in the City of Boston is prohibited between 6:00 a.m. and 8:00 p.m. where there is neither a point of origin nor destination (delivery point) within the City. For local deliveries within Boston, use of City Streets in the Downtown Area for the transportation of NRHM is further STRICTLY PROHIBITED during the hours of 7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m. daily, except on Saturdays, Sundays, and legal holidays. When city streets are to be used for local deliveries, the transporter must use Major Thoroughfares to a point as close as possible to the destination and comply with 49 CFR 397.67.]. Downtown Area is defined as the area bounded by and including Massachusetts Avenue at the Mass. Ave. Entrance Ramp to the Southeast Expressway, the Southeast Expressway to the Kneeland Street Ramp, along Kneeland Street to Atlantic Avenue then along a line following the waterfront to the Charles River, along the Charles River to Massachusetts Avenue and along Massachusetts Avenue to the Mass. Ave Entrance Ramp to the Southeast Expressway all as shown on the map attached and incorporated as Exhibit A to the City of Boston's Regulations Controlling the Transportation of Hazardous Materials, issued December 15, 1980.	Boston	0
12/01/95	B	Interstate 90 from Logan Airport to Massachusetts Avenue	Boston	0
11/13/94	C	Interstate 93 [Thomas P. O'Neill Tunnel] from Exit 26 [Leverett Connector] to Kneeland Street	Boston	0
11/13/94	D	Callahan Tunnel [Route 1A Northbound under Boston Inner Harbor]	Boston	0
11/13/94	E	Sumner Tunnel [Route 1A Southbound under Boston Inner Harbor]	Boston	0
11/13/94	F	Charlestown Tunnel/City Square Tunnel from Interstate 93 to Charlestown	Boston	0

TABLE 59—MASSACHUSSETTS: DESIGNATED NRHM ROUTES

Designation date	Route order	Route description	City	Designation(s) (A,B,I,P)
06/13/12	A	[PREFERRED THROUGH ROUTE FOR ALL NRHM HAZMATS APPROACHING THE CITY OF BOSTON WITHOUT A POINT OF ORIGIN OR DESTINATION WITHIN THE CITY BETWEEN THE HOURS OF 6:00 AM AND 8:00 PM]. For vehicles approaching Boston from Quincy and points south, the northbound route starts at Exit 9 on I–93 and continues as follows: Start on I–93 at Exit 9, South on I–93 to its termination at Exit 1 where the roadway continues as I–95N, North on I–95 to Exit 37A to I–93S, South on I–93 to the MA–38 ramp, South on MA–38, South on Maffa Way to Cambridge Street, East on Cambridge Street to Alford Street/MA–99, Northeast on Alford Street/MA–99, End on Alford St./MA–99 Bridge before Everett.	Boston	A

TABLE 59—MASSACHUSSETTS: DESIGNATED NRHM ROUTES—Continued

Designation date	Route order	Route description	City	Designation(s) (A,B,I,P)
		For vehicles approaching Boston from Everett and points north, the southbound route starts on MA–99 Bridge before Everett and continues as follows: Start on Alford Street/MA–99 Bridge just before Everett, Southwest on Alford Street/MA–99, Northwest onto Main Street to Mystic Avenue/MA–38, North on the Mystic Avenue to I–93N ramp, North on I–93 to the I–95S ramp, South on I–95 to Exit 12 where the roadway continues as I–93N, North on I–93, End on I–93 at Exit 9. Hazmat through cargoes approaching from other points west, north or south, may access and join the preferred hazmat route at the nearest logical access point outside of Downtown Boston along I–93N, I–93S or I–95.		

TABLE 59—MASSACHUSSETTS: DESIGNATED NRHM ROUTES

Designation date	Route order	Route description	City	Designation(s) (A,B,I,P)
06/13/12	A	[PRESCRIBED THROUGH ROUTE FOR ALL NRHM HAZMATS APPROACHING THE CITY OF BOSTON WITHOUT A POINT OF ORIGIN OR DESTINATION WITHIN THE CITY BETWEEN THE HOURS OF 8:00 PM AND 6:00 AM]. For vehicles approaching Boston from Quincy and points south, the northbound route starts at Exit 9 on I–93 and continues as follows: Start at Exit 9 on I–93, North on I–93, North on I–93 Frontage Road, Northeast on Atlantic Avenue, Northwest onto Cross Street, North on North Washington Street, Northwest on Rutherford Avenue, Northeast on Alford Street/MA–99, End on Alford Street/MA–99 Bridge just before Everett. For vehicles approaching Boston from Everett and points north, the southbound route starts on MA–99 Bridge before Everett and continues as follows: Start at the Alford Street Bridge/MA–99 just before Everett, Southwest on Alford Street/MA–99, Southeast on Rutherford Avenue, South on North Washington Street, Southwest onto John F. Fitzgerald Surface Road, South on Purchase Street, South on Surface Road, South on Albany Street, South on I–93 Frontage Road, South on I–93.	Boston	A
07/03/06	B1	Interstate 93 (north) to Frontage Rd., straight on Atlantic Ave., straight on Cross St., right on North Washington St. (northbound route).	Boston	A
06/19/06	B2	New Rutherford Ave. [North] from North Washington St. to Rutherford Ave	Boston	A
06/19/06	B3	Rutherford Ave. [North] from New Rutherford Ave. to Main St	Boston	A
06/19/06	B4	Main St [North] from Rutherford Ave. to Mystic Ave	Boston	A
06/19/06	B5	Mystic Ave. [North] from Main St. to Interstate 93	Boston	A
06/19/06	B6	Interstate 93 [North] from Mystic Ave. out of Boston [North]	Boston	A
06/19/06	C1	Interstate 93 [South] into Boston [Southbound] until Sullivan Sq. [Mystic Ave.]	Boston	A
06/19/06	C2	Mystic Ave. [South] from Interstate 93 to Maffa Way	Boston	A
06/19/06	C3	Maffa Way [South] from Mystic Ave. though roundabout Rutherford Ave	Boston	A
06/19/06	C4	Rutherford Ave. [South] from Maffa Way to New Rutherford Ave	Boston	A
06/19/06	C5	New Rutherford Ave. [South] from Rutherford Ave. to North Washington St	Boston	A
07/03/06	C6	North Washington St. left on John F. Fitzgerald Expressway Surface Rd., right onto Purchase St., straight on John F. Fitzgerald Expressway Surface Rd., straight on Albany St. to Route 93 (southbound route).	Boston	A

TABLE 60—STATE: MICHIGAN

State Agency: MI State Police
POC: Sgt. John Holder
Address: 333 South Grand Avenue, P.O. Box 30634, Lansing, MI 48909
Phone: (517) 241–0551

TABLE 60—STATE: MICHIGAN—Continued

Fax: (517) 241–0501
Web Address: *www.michigan.gov/msp/*
FMCSA: MI FMCSA Field Office
FMCSA POC: MI Motor Carrier, Division Administrator

TABLE 60—STATE: MICHIGAN—Continued

Address: 315 West Allegan Street, Room 219, Lansing, MI 48933
Phone: (517) 853–5990
Fax: (517) 377–1868

TABLE 61—MICHIGAN: RESTRICTED HM ROUTES

Designation date	Route order	Route description	City	County	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
04/02/14	A	Ambassador Bridge [Detroit] from Porter St. to Canada [Windsor] [Phone (313) 849–5244].	Detroit	Wayne	1,3,6.2,7,8
04/02/14	B	State Route M–10/Lodge Freeway [Detroit] from Howard St. to Woodward Ave. [Under Cobo Hall (approximately one mile)].	Detroit	Wayne	0
04/02/14	C	Windsor Tunnel [Detroit] from Jefferson Ave. to Canada [Windsor] [Phone: (313) 567–4422].	Detroit	Wayne	0
04/02/14	D	State Route M–10/Lodge Freeway [Detroit] from 8 Mile Rd [South] to Wyoming St.	Detroit	Wayne	1,2,3,5,6,8

TABLE 61—MICHIGAN: RESTRICTED HM ROUTES—Continued

Designation date	Route order	Route description	City	County	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
03/08/95	E	Blue Water Bridge [I–69] [Port Huron, MI to Sarnia, Ontario. **Note:** In addition to the listed restrictions, Pyrophoric Liquids prohibited. Contact Michigan Dept. of Transportation for specific restrictions. (810) 984–3131].	Port Huron ...	St. Clair	1,5,7,9
01/01/90	F	Interstate 696 [County of Oakland] from State Route M–10 to Interstate 75.	Royal Oak	Oakland	1,3
10/03/98	G	State Route M–59 [Utica] [1.1 mile from either direction of the Mound Rd exit].	Utica	Macomb	1,3
03/08/95	H	Mackinac Bridge [I–75] [Mackinac City to St. Ignace. All placarded loads require an escort by the Mackinac Bridge Authority. Phone (906) 643–7600.]	Mackinac—St. Ignace.	Emmet	0
03/08/95	I	International Bridge [I–75] [All placarded vehicles require an escort. Contact Operations Supervisor at (906) 635–5255 before crossing. Sault Ste. Marie, MI to Sault Ste. Marie, Ontario.].	Saulte St. Marie.	Chippewa	0

TABLE 62—STATE: MINNESOTA

State Agency: MN DOT
POC: Jim Fox
Address: Oakdale Bridge Office, 3485 Hadley Avenue North, Oakdale, MN 55128
Phone: (651) 215–6330

TABLE 62—STATE: MINNESOTA—Continued

Fax: (651) 366–4497
Web Address: *www.dot.state.mn.us*
FMCSA: MN FMCSA Field Office
FMCSA POC: MN Motor Carrier Division Administrator

TABLE 62—STATE: MINNESOTA—Continued

Address: 380 Jackson Street, Galtier Plaza, Suite 500, St. Paul, MN 55101
Phone: (612) 291–6150
Fax: (651) 291–6001

TABLE 63—MINNESOTA: RESTRICTED HM ROUTES

Designation date	Route order	Route description	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
03/09/95	A	Lowry Hill Tunnel [I–94] ..... [Restricted from all hazardous material requiring the vehicle to be marked or placarded. Marked or Placarded trucks should follow signed hazmat truck routes around the tunnel.]	0

TABLE 64—STATE: MISSISSIPPI

State Agency: MS Emergency Mgmt. Agency
POC: Brian Maske
Address: 1 Mema Dr., Pearl, MS 39208
Phone: (601) 933–6369
Fax: (601) 933–6815
Web Address: *www.msema.org*
FMCSA: MS FMCSA Field Office
FMCSA POC: MS Motor Carrier Division Administrator
Address: 100 West Capitol St., Suite 1049, Jackson, MS 39269
Phone: (601) 965–4219
Fax: (601) 965–4674
No designated or restricted routes as of 01/31/2014

TABLE 65—STATE: MISSOURI

State Agency: No Agency Designated
POC:
Address:
Phone:
Fax:
FMCSA: MO FMCSA Field Office

TABLE 65—STATE: MISSOURI—Continued

FMCSA POC: MO Motor Carrier, Division Administrator
Address: 3219 Emerald Lane, Suite 500, Jefferson City, MO 65109
Phone: (573) 636–3246
Fax: (573) 636–8901
No designated or restricted routes as of 01/31/2014

TABLE 66—STATE: MONTANA

State Agency: MT DOT
POC: Dan Kiely
Address: 2701 Prospect Avenue, Helena, MT 59604
Phone: (406) 444–7629
Fax: (406) 444–0800
Web Address: *www.mdt.mt.gov*
FMCSA: MT FMCSA Field Office
FMCSA POC: MT Motor Carrier, Division Administrator
Address: 2880 Skyway Drive, Helena, MT 59602
Phone: (406) 449–5304

TABLE 66—STATE: MONTANA—Continued

Fax: (406) 449–5318
No designated or restricted routes as of 01/31/2014

TABLE 67—MONTANA: YELLOWSTONE NATIONAL PARK

NPS: Yellowstone National Park, NPS
NPS POC: Park Superintendent
Address: Yellowstone National Park, PO Box 168, Yellowstone National Park, WY 82190–0168
Phone: (307) 344–2115
Fax: (307) 344–2014
Web Address: *www.nps.gov/yell/index.htm*
FMCSA: MT FMCSA Field Office
FMCSA POC: MT Motor Carrier, Division Administrator
Address: 2880 Skyway Drive, Helena, MT 59602
Phone: (406) 449–5304
Fax: (406) 449–5318

TABLE 68—MONTANA (YELLOWSTONE NATIONAL PARK): RESTRICTED HM ROUTES

Designation date	Route order	Route description	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
09/26/94	A	US 191 from Mile Post 11 to Mile Post 31 [through Yellowstone National Park] [This route is under the jurisdiction of the U.S. National Park Service, not the State of Montana. For additional information, contact the Yellowstone Visitor Services Office at (307) 344–2115.]	0

TABLE 69—STATE: NEBRASKA

State Agency: NE State Patrol
POC: Sgt. Brad Wagner
Address: 3920 West Kearney Street, Lincoln, NE 68524
Phone: (402) 479–4950

TABLE 69—STATE: NEBRASKA—Continued

Fax: (402) 479–4002
Web Address: *www.statepatrol.nebraska.gov*
FMCSA: NE FMCSA Field Office
FMCSA POC: NE Motor Carrier, Division Administrator

TABLE 69—STATE: NEBRASKA—Continued

Address: 100 Centennial Mall North, Room 406, Lincoln, NE 68508
Phone: (402) 437–5986
Fax: (402) 437–5837

TABLE 70—NEBRASKA: DESIGNATED HRCQ/RAM ROUTES

Designation date	Route order	Route description	Restriction(s) (A,B,I,P)
08/03/88	A	Interstate 680 from Interstate 80 to Iowa [Use in lieu of I–80 in the Omaha area.]	P

TABLE 71—STATE: NEVADA

State Agency: No Agency Designated
POC:
Address:
Phone:
Fax:
FMCSA: NV FMCSA Field Office
FMCSA POC: NV Motor Carrier, Division Administrator
Address: 705 N. Plaza St., Suite 204, Carson City, NV 89701
Phone: (775) 687–5335
Fax: (775) 687–8353
No designated or restricted routes as of 01/31/2014

TABLE 72—STATE: NEW HAMPSHIRE

State Agency: NH Dept. of Safety
POC: Sgt. John P. Begin, State Police—Troop G
Address: 33 Hazen Dr., Concord, NH 03305
Phone: (603) 223–8778
Fax: (603) 271–1760
Web Address: *www.nh.gov/safety/*

TABLE 72—STATE: NEW HAMPSHIRE—Continued

FMCSA: NH FMCSA Field Office
FMCSA POC: NH Motor Carrier, Division Administrator
Address: 70 Commercial St., Suite 102, Concord, NH 03301
Phone: (603) 228–3112
Fax: (603) 223–0390
No designated or restricted routes as of 01/31/2014

TABLE 73—STATE: NEW JERSEY

State Agency: NJ State Police
POC: Lt. Lance Tokash
Address: 3925 US Route 1, Princeton, NJ 08540
Phone: (609) 452–2601 ext. 5913
Fax: (609) 452–8495
Web Address: *www.njsp.org*
FMCSA: NJ FMCSA Field Office
FMCSA POC: NJ Motor Carrier, Division Administrator
Address: One Independence Way, Suite 120, Princeton, NJ 08540

TABLE 73—STATE: NEW JERSEY—Continued

Phone: (609) 275–2604
Fax: (609) 275–5108
No designated or restricted routes as of 01/31/2014

TABLE 74—STATE: NEW MEXICO

State Agency: NM Dept. of Homeland Security & Emergency Mgmt.
POC: Don Shainin
Address: P.O. Box 27111, Santa Fe, NM 87502
Phone: (505) 476–9628
Fax: (505) 476–9695
Web Address: *www.nmdhsem.org*
FMCSA: NM FMCSA Field Office
FMCSA POC: NM Motor Carrier Division Administrator
Address: 2400 Louisiana Blvd. NE., Suite 520, Albuquerque, NM 87110
Phone: (505) 346–7858
Fax: (505) 346–7859

TABLE 75—NEW MEXICO: DESIGNATED HRCQ/RAM ROUTES

Designation date	Route order	Route description	City	Designation(s) (A,B,I,P)
04/30/99	A	Southern Route to WIPP facility: From the Texas-New Mexico border [MP 0.000] north on US 285 through Loving to the Junction on US 285 and US 62/180 [MP 31.180] in Carlsbad; east on US 62/180 to the WIPP north access road [MP 64.857]. If and when a south Carlsbad Relief Route is available, it shall be used instead of the route through the city. Currently posted ''truck routes'' shall not be used. Note: This designation is based on 18 NMAC 20.9 (Designation of Highway Routes for the Transport of Radioactive Materials).	.....	P
01/01/14	B	Negotiated Alternate Route A to WIPP facility: An alternate Southern Route departing US 285 at the inspection point west of Loving, traveling north on NM 31 to the junction with NM 128 (also known as the Jal Highway), proceeding east on NM 128 to the South Access Road, north on the South Access Road, terminating at the WIPP facility (reduces the designated route length by approximately 25 miles).	.....	P

TABLE 75—NEW MEXICO: DESIGNATED HRCQ/RAM ROUTES—Continued

Designation date	Route order	Route description	City	Designation(s) (A,B,I,P)
		[Shall terminate on or before 12/31/2014, unless earlier terminated by 30-day written notice.]		
01/01/14	C	Negotiated Alternate Route B to WIPP facility: An alternate Southern Route beginning at the TX/NM border on Interstate 20 at Big Spring, TX, proceeding west on TX/NM 176 to the junction with NM 18, continuing south on NM 18 to Jal, NM and turning west on NM 128 to the WIPP South Access Road, terminating at the WIPP facility (reduces the designated route length by approximately 93 miles). [Shall terminate on or before 12/31/2014, unless earlier terminated by 30-day written notice.]	.....	P
04/30/99	D	Western Route to WIPP facility: From the Arizona-New Mexico border [MP 0.000] east on I–40 through Gallup, Thoreau, Grants, Albuquerque and Moriarty to the junction of I–40 and US 285 [MP 218.128], Exit 218 at Clines Corners; south on US 285 through Encino, Vaughn, Roswell (along the Roswell Relief Route) [MP 119.930] and Artesia to the junction of US 285 and NM 200 North of Carlsbad [38.940] East on NM 200 (Carlsbad Relief Route) to the Junction of US 62/180 east of Carlsbad [38.789], east on US 62/180 to the WIPP north access road [MP 64.652]. Relief Routes are available; they shall be used instead of the route through each respective city. Currently posted ''truck routes'' shall not be used. Note: This designation is based on 18 NMAC 20.9 (Designation of Highway Routes for the Transport of Radioactive Materials).	.....	P
04/30/99	E	Los Alamos National Laboratory to WIPP facility: From the Los Alamos National Laboratory in Los Alamos County Tech Area 54, [MP 0.000] east on the Los Alamos Truck Route to the junction of the Los Alamos Truck Route and NM 4; east on NM 4 to the junction of NM 4 and NM 502; [MP 68.186] east on NM 502 to the junction of NM 502 [18.081] and US 84/285 at Pojoaque; south on US 84/285 [MP 181.251] to the junction of US 84/285 and NM 599; [MP 167.443] south on NM 599 to the junction of NM 599 and I–25; north on I–25 to the junction of I–25 and US 285 [MP 292.185], Exit 290]; south on US 285 through Clines Corners, Encino, Vaughn, Roswell (along the Roswell Relief Route) and Artesia to the junction of US 285 and NM 200 North of Carlsbad [38.940] East on (NM 200 Carlsbad Relief Route) to the Junction of US 62/180 east of Carlsbad [38.789], east on US 62/180 to the WIPP north access. Relief Routes are available; they shall be used instead of the route through each respective city. Currently posted ''truck routes'' shall not be used, except for the Los Alamos Truck Route as stated above. Note: This designation is based on 18 NMAC 20.9 (Designation of Highway Routes for the Transport of Radioactive Materials).	.....	P
04/30/99	F	Northern Route to WIPP facility: From the Colorado-New Mexico border [MP 462.124] south on I–25 through Raton, Springer, and Las Vegas to the junction of I–25 and US 285 [MP292.185], Exit 290 near Santa Fe; south on US 285 through Clines Corners, Encino, Vaughn, Roswell (along the Roswell Relief Route) [MP 119.930] and Artesia to the junction of US 285 and NM 200 North of Carlsbad [38.940] East on NM 200 (Carlsbad Relief Route) to the Junction of US 62/180 east of Carlsbad [38.789], east on US 62/180 to the WIPP north access road [MP 64.652]. Relief Routes are available; they shall be used instead of the route through each respective city. Currently posted ''truck routes'' shall not be used. Note: This designation is based on 18 NMAC 20.9 (Designation of Highway Routes for the Transport of Radioactive Materials).	.....	P
01/01/14	G	Negotiated Alternate Route C to WIPP Facility: An alternate Northern Route departing US 285 at the intersection of the WIPP Relief Route (also known as the Loop Road) north of Carlsbad traveling east to the junction of US 62/180, continuing east on US 62/180 to NM 31, which heads south to NM 128, and then proceeding east on NM 128 to the South Access Road, terminating at the WIPP site (increases the designated route length by approximately 10 miles). [Shall terminate on or before 12/31/2014, unless earlier terminated by 30-day written notice.]	.....	P
04/30/99	H	Eastern Route to WIPP facility: From the Texas-New Mexico border [MP 373.530] west on I–40 through Tucumcari to the junction of I–40 and US 54 [MP 276.836], Exit 275 at Santa Rosa; west on US 54 through Pastura to the junction of US 54 and US 285 at Vaughn; south on US 285 through Roswell (along the Roswell Relief Route) [MP 119.930] and Artesia to the junction of US 285 and NM 200 North of Carlsbad [38.940] East on (NM 200 Carlsbad Relief Route) to the Junction of US 62/180 east of Carlsbad [38.789], east on US 62/180 to the WIPP north access road [MP 64.857]. Relief Routes are available; they shall be used instead of the route through each respective city. Currently posted ''truck routes'' shall not be used.	.....	P

TABLE 75—NEW MEXICO: DESIGNATED HRCQ/RAM ROUTES—Continued

Designation date	Route order	Route description	City	Designation(s) (A,B,I,P)
		Note: This designation is based on 18 NMAC 20.9 (Designation of Highway Routes for the Transport of Radioactive Materials).		

TABLE 76—NEW MEXICO: DESIGNATED NRHM ROUTES

Designation date	Route order	Route description	City	Designation(s) (A,B,I,P)
02/18/91	A1	Interstate 10 [within Las Cruces city Limits]	Las Cruces ...	A
02/18/91	A2	Interstate 25 [within Las Cruces city Limits]	Las Cruces ...	A
02/18/91	A3A	US 70 from East City Limits [Las Cruces near Organ] to Interstate 25	Las Cruces ...	A

TABLE 77—STATE: NEW YORK

State Agency: New York City Fire Dept.
POC: Sandy Camacho, Bureau of Operations
Address: 9 Metro Tech Center, Brooklyn, NY 11201
Phone: (718) 999–2464
Fax:
Web Address: *www.nyc.gov/html/fdny/html/home2.shtml*

TABLE 77—STATE: NEW YORK—Continued

FMCSA: NY FMCSA Field Office
FMCSA POC: NY Motor Carrier, Division Administrator
Address: Leo W. O'Brien Federal Bldg.
Clinton Avenue & N. Pearl St., Albany, NY 12207
Phone: (518) 431–4145

TABLE 77—STATE: NEW YORK—Continued

Fax: (518) 431–4140
Note: New York City Fire Department already established a specific route ordering approach for designated NRHM routes (i.e., NYC Route 1, NYC Route 2, etc.). As a result, FMCSA chose not to include an FMCSA route order column in Table 79.

TABLE 78—NEW YORK: RESTRICTED HM ROUTES

Designation date	Route order	Route description	City	County	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
01/06/95	A	City of New York Hazmat Restrictions. [For shipments of Hazardous Cargo through the City without pickup or delivery within the City, to piers, airports, and shipping terminals, hazardous cargo transportation prohibited by City, State, Federal law or regulation shall not be permitted to enter or pass through New York City, except where specifically authorized by authorized governmental agencies and the Fire Commissioner. Such shipments shall conform to routes, times, and safety conditions specified by the Fire Commissioner. (Such designated routes are listed here in the FMCSA National Hazardous Material Route Registry.)	New York	All	0

TABLE 78—NEW YORK: RESTRICTED HM ROUTES—Continued

Designation date	Route order	Route description	City	County	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
		Motor Vehicles conforming to Fire Department specifications and under Fire Department permit may be used to transport allowable Hazardous Cargo in accordance with Chapter 4 of Title 27 Administrative Code and the rules and regulations of the Fire Commissioner without conformance to the routing, time, escorts, and other restrictions and such "permitted" vehicles must be used for deliveries for storage and/or use or for pick-up in the City. Hazardous cargo shipments shall transit the City only during non-rush hours. Shipments of explosives are permitted only during daylight hours, except that shipments at night may be allowed in individual cases for escorted shipments as pursuant to Administrative Code 27–4019(b). Times for shipments are as follows: Monday through Friday: For explosives, and prohibited materials for which specific permission has been given by Fire Department: 10:00 a.m. to 3:00 p.m. and 7:00 p.m. to 6:00 a.m. For all other -hazardous cargo: 9:00 a.m. to 4:00 p.m. and -6:00 p.m. to 7:00 a.m. Saturday, Sunday, and Holidays: As traffic conditions permit, consistent with the rules and regulations of government agencies and/or authorities having jurisdiction.]			
01/06/95	B	Verrazano Bridge ..... [Contact the FDNY (718) 403–1580 for more information.]	New York (Staten Island & Brooklyn).	Richmond & King.	

TABLE 79—NEW YORK: DESIGNATED NRHM ROUTES

Designation date	Route description	City	County	Designation(s) (A,B,I,P)
01/06/95	City of New York Escort Rendezvous Points ..... [Escorts by a fully manned fire department engine company shall be required for all permitted Class "A", Class "B", and Class "C" explosives (over 50 pounds in weight) from point of entry into the City until its exit from the City pursuant to 27–4034(j) Administrative Code of the City of New York. The fire commissioner reserves the right to require escorts for any hazardous cargo shipment when he deems necessary. Notification of arrival of explosives shipments shall be made 48 hours in advance by calling the notification desk in the chief of department's office (718) 403–1580.	New York	All	B

TABLE 79—NEW YORK: DESIGNATED NRHM ROUTES—Continued

Designation date	Route description	City	County	Designation(s) (A,B,I,P)
	Shipments from North Shore Long Island: Meet at safety area of Westbound Long Island Expressway (I–495) on the right side between Lakeville Road and Little Neck Parkway. Shipments from South Shore Long Island: Meet at northwest corner of intersection of Sunrise Highway (State 27) between Hook Creek Blvd. and 246th Street. From Upstate New York or New England via New England Thruway (I–95): exit at Connors Street exit, proceed on New England Thruway Service Road to Connors Street to meet Fire Department escort. From Upstate New York and New England via New York Thruway (I–87): exit into Service Area of Major Deegan Expressway located between Westchester County line and the East 233rd street exit of the expressway, to meet Fire Department escort. From NJ via Goethals, Bayonne, Outerbridge Crossing, and George Washington Bridges: Meet at Adm. Bldg—Toll Plaza. From J.F.K. International Airport: Meet in front of the Major Robert Fitzgerald Building #111 on the inbound service road of the Federal Circle. From LaGuardia Airport: Meet at Marine Air Terminal P.A.N.Y.N.J. Police Building, entering at 82nd Street entrance to LaGuardia Airport.]			
01/06/95	NYC Route 1: From NJ to western Westchester County and upstate New York. [George Washington Bridge (upper level) to Washington Expressway (without detour on City streets) via the Alexander Hamilton Bridge to the Major Deegan Expressway to New York Thruway (I–87). Note: Reverse routing permitted. Rendezvous with escort if required.]	Washington Heights.	New York & Westchester.	A
01/06/95	NYC Route 2: From NJ to eastern Westchester County, upstate New York, and New England. [George Washington Bridge (upper level) to Washington Expressway (without detour on City streets) via the Alexander Hamilton Bridge directly to Cross Bronx Expressway (I–95) to Bruckner Interchange, continue on Bruckner Expressway to New England Thruway (I–95). Note: Reverse routing permitted. Rendezvous with escort if required.]	.....	New York & Westchester.	A
01/06/95	NYC Route 3: From NJ to Nassau and Suffolk Counties ..... [NYC Route 3(i): George Washington Bridge (upper level) via Washington Expressway (without detour on City streets) via the Alexander Hamilton Bridge directly to Cross Bronx Expressway (I–95), east on Cross Bronx Expressway (I–95) to Throgs Neck Bridge, south across Throgs Neck Bridge to Clearview Expressway (I–295) to Long Island Expressway, east on Long Island Expressway (I–495) to Nassau and/or Suffolk Counties. NYC Route 3(ii): Use either NYC Route 3(ii)A, 3(ii)B, or 3(ii)C THEN, East on Staten Island Expressway (I–278) to Verrazano Bridge, cross upper level of Verrazano Bridge to Brooklyn Queens Expressway (I–278), then east on Brooklyn Queens Expressway (I–278) to Long Island Expressway (I–495), then east on Long Island Expressway (I–495) to Nassau and/or Suffolk Counties. NYC Route 3(ii)A: Outerbridge crossing to West Shore Expressway, North on West Shore Expressway (State 440) to Staten Island Expressway (I–278). NYC Route 3(ii)B: Bayonne Bridge to Willowbrook Expressway (State 440) south to Staten Island Expressway (I–278). NYC Route 3(ii)C: Goethals Bridge to Staten Island Expressway (I–278). Note: Reverse routing permitted. Rendezvous with escort if required. Hazardous cargo requiring escort (i.e. explosives) shall use route via George Washington Bridge only to minimize travel time within the city. Explosives are prohibited on Verrazano Bridge.]	.....	Nassau & Suffolk.	A
01/06/95	NYC Route 4: From Upstate NY or New England to Nassau and Suffolk Counties. [NYC Route 4(i): New England Thruway (I–95) (to Connors Street exit to meet escort if required), to Bruckner Expressway (I–95) to Throgs Neck Expressway (I–295), to Throgs Neck Bridge, to Clearview Expressway (I–295), to Long Island Expressway (I–495), east on Long Island Expressway to City Line. NYC Route 4(ii): New York State Thruway (I–87) south to Major Deegan Expressway (I–87), to Cross Bronx Expressway (I–95), east to Bruckner Expressway (I–278) to Throgs Neck Bridge, to Clearview Expressway (I–295), to Long Island Expressway (I–495), east on Long Island Expressway to City Line. Note: See NYC Route 25 for alternate routes. Reverse routing permitted. Rendezvous with escort if required.]	.....	Nassau & Suffolk.	A

TABLE 79—NEW YORK: DESIGNATED NRHM ROUTES—Continued

Designation date	Route description	City	County	Designation(s) (A,B,I,P)
01/06/95	NYC Route 5: From NJ to LaGuardia Airport via Goethals Bridge ..... [Goethals Bridge to Staten Island Expressway (I–278) to Verrazano Narrows Bridge (upper level) to Brooklyn Queens Expressway (I–278) to Astoria Blvd. (exit 39), east to 82nd Street then north on 82nd Street to LaGuardia Airport. Note: Reverse routing permitted. Rendezvous with escort if required. Explosives prohibited on Verrazano Bridge.]	.....	.....	A
01/06/95	NYC Route 6: From NJ to LaGuardia Airport via Outerbridge Crossing ..... [Outerbridge Crossing to West Shore Expressway (State 440) to Staten Island Expressway (I–278) east to Verrazano Narrows Bridge (upper level) to Brooklyn Queens Expressway (I–278) to Astoria Blvd. (exit 39), east to 82nd Street then north on 82nd Street to LaGuardia Airport. Note: Reverse routing permitted. Rendezvous with escort if required. Explosives prohibited on Verrazano Bridge.]	.....	.....	A
01/06/95	NYC Route 7: From NJ to LaGuardia Airport via George Washington Bridge [George Washington Bridge (upper level) via Washington Expressway (without detour on City streets) via the Alexander Hamilton Bridge directly to Cross Bronx Expressway (I–95), east on Cross Bronx Expressway (I–95) to Throgs Neck Bridge, south across Throgs Neck Bridge to Clearview Expressway (I–295) to Long Island Expressway (I–495), west on L.I.E. (I–495) to Van Wyck Expressway (I–678), north on Van Wyck Expressway (I–678) to Northern Blvd. (25A), west on Northern Blvd. to Astoria Blvd. West on Astoria Blvd to 82nd Street, north on 82nd Street to LaGuardia Airport. Note: See NYC Route 25 for alternate routes. Reverse routing permitted. Rendezvous with escort if required.]	.....	.....	A
01/06/95	NYC Route 8: From Long Island to LaGuardia Airport ..... [NYC Route 8(i): Long Island Expressway (I–495) West to Van Wyck Expressway (I–678), North to Northern Blvd. (25–A), West to Astoria Blvd., Astoria Blvd. to 82nd Street, North on 82nd Street to LaGuardia Airport. NYC Route 8(ii): Long Island Expressway (I–495) West to Brooklyn Queens Expressway (I–278) East to Astoria Blvd. (Exit 39) East to 82nd Street, North on 82nd to LaGuardia Airport. NYC Route 8(iii): West on Sunrise Highway (State 27) to North Conduit Blvd. to Van Wyck Expressway (I–678), North on Van Wyck Expressway (I–678) to Northern Blvd. (25–A), West to Astoria Blvd., Astoria Blvd. to 82nd Street, North on 82nd Street to LaGuardia Airport. NYC Route 8(iv): West on Sunrise Highway (State 27) to North Conduit Blvd. to Van Wyck Expressway (I–678), North on Van Wyck Expressway (I–678) to Long Island Expressway (I–495), West to Brooklyn Queens Expressway (I–278), East to Astoria Blvd. (Exit 39), East to 82nd Street, North on 82nd Street to LaGuardia Airport. Note: Reverse routing permitted. Rendezvous for escort if required.]	.....	.....	A
01/06/95	NYC Route 9: From New England or upper New York State to LaGaurdia Airport. [NYC Route 9(i): New England Thruway (I–95) south take to LaGuardia Airport (to Connors Street exit to meet escort, if required), to Bruckner Expressway (I–95) to Throgs Neck Expressway (I–295), via Throgs Neck Bridge to Clearview Expressway (I–295) to Long Island Expressway (I–495), west to Brooklyn Queens Expressway (I–278) east, to Astoria Blvd. (exit 39), east to 82nd Street, then north on 82nd Street to LaGuardia Airport. NYC Route 9(ii): New York State Thruway (I–87) south to Major Deegan Expressway (I–87) to Cross Bronx Expressway (I–95) east to Bruckner Expressway (I–278) to Throgs Neck Bridge, to Clearview Expressway (I–295), to Long Island Expressway (I–495) west, to Brooklyn Queens Expressway (I–278) east, to Astoria Blvd. (Exit 39), east to 82nd Street, then north on 82nd Street to LaGuardia Airport. Note: See NYC Route 25 for alternate routes. Reverse routing permitted. Rendezvous with escort if required.]	.....	.....	A
01/06/95	NYC Route 10: From New Jersey to J.F.K. International Airport via Goethals Bridge. [From New Jersey via Goethals Bridge to Staten Island Expressway (I–278) to Verrazano-Narrows Bridge (upper level), Brooklyn Queens Expressway (I–278) east to Long Island Expressway (I–495), east to Van Wyck Expressway (I–678), south on Van Wyck Expressway (I-678) to J.F.K. International Airport. Note: Reverse routing permitted. Rendezvous with escort if required. Explosives prohibited on Verrazano Bridge.]	.....	.....	A

TABLE 79—NEW YORK: DESIGNATED NRHM ROUTES—Continued

Designation date	Route description	City	County	Designation(s) (A,B,I,P)
01/06/95	NYC Route 11: From New Jersey to J.F.K. International Airport via Outerbridge Crossing. [From New Jersey via Outerbridge Crossing to West Shore Expressway (State 440) to Staten Island Expressway (I–278) to Verrazano-Narrows Bridge (upper level), to Brooklyn Queens Expressway east (I–278) to Long Island Expressway (I–495), East on Long Island Expressway (I–495) to Van Wyck Expressway (I–678), South on Van Wyck Expressway (I–678) to J.F.K. International Airport. Note: Reverse routing permitted. Rendezvous with escort if required. Explosives prohibited on Verrazano Bridge.]	.....	.....	A
01/06/95	NYC Route 12: From New Jersey to J.F.K. International Airport via George Washington Bridge (upper level). [From New Jersey via George Washington Bridge (upper level), via Washington Expressway (without detouring onto City streets) via the Alexander Hamilton Bridge directly to Cross Bronx Expressway (I–95), east on Cross Bronx Expressway (I–95), to Throgs Neck Bridge, south across Throgs Neck Bridge to Clearview Expressway (I–295) to Long Island Expressway (I–495), west to Van Wyck Expressway (I–678), south on Van Wyck Expressway (I–678) to J.F.K. International Airport. Note: See NYC Route 25 for alternate routes. Reverse routing permitted. Rendezvous with escort if required.]	.....	.....	A
01/06/95	NYC Route 13: From New England and upper New York State to J.F.K. International Airport. [NYC Route 13(i): New England Thruway (I–95), south (to Connors Street exit to meet escort, if required) to Bruckner Expressway (I–95), to Throgs Neck Expressway (I–295), via Throgs Neck Bridge to Clearview Expressway (I–295), to Long Island Expressway (I–495) west on Long Island Expressway (I–495) to Van Wyck Expressway (I–678), south on Van Wyck Expressway (I–678), to J.F.K. International Airport. NYC Route 13(ii): New York State Thruway (I–87) south to Major Deegan Expressway (I–87) to Cross Bronx Expressway (I–95), east to Bruckner Expressway (I–278) to Throgs Neck Bridge, to Clearview Expressway (I–295) to L.I. Expressway (I–495) west to Van Wyck Expressway (I–678), south on Van Wyck Expressway (I–678) to J.F.K. Airport. Note: See NYC Route 25 for alternate routes. Reverse routing permitted. Rendezvous with escort if required.].	.....	.....	A
01/06/95	NYC Route 14: From Long Island to J.F.K. International Airport ..... [NYC Route 14(i): West on Long Island Expressway (I–495) to Van Wyck Expressway (I–676), south on Van Wyck Expressway (I–678) to J.F.K. International Airport. NYC Route 14(ii): West on Sunrise Highway (State 27) to North Conduit Blvd. to Van Wyck Expressway (I–678), south on Van Wyck Expressway (I–678) to J.F.K. International Airport. NYC Route 14(iii): West on Sunrise Highway (State 27) to North Conduit Blvd. to Rockaway Blvd., or 150th Street, to J.F.K. International Airport. Note: Reverse routing permitted. Rendezvous with escort if required.].	.....	.....	A
01/06/95	NYC Route 15: From New Jersey to Staten Island Piers ..... [NYC Route 15(i): From New Jersey via Bayonne Bridge Plaza via Willowbrook Expressway (State 440) to Staten Island Expressway (I–278), west on Staten Island Expressway to Western Avenue, north on Western Avenue to Richmond Terrace, east on Richmond Terrace to Northside Piers, or Staten Island Expressway, east to Bay Street Exit, then local streets to east side piers. NYC Route 15(ii): From Goethals Bridge Plaza via Staten Island Expressway (I–278) to Forest Avenue, north on Forest Avenue to Goethals Road North, west on Goethals Road North to Western Avenue, north on Western Avenue to Northside Piers, or Staten Island Expressway east to Bay Street exit, then local streets to east side piers. NYC Route 15(iii): From Outerbridge Crossing via West Shore Expressway (State 440) and Staten Island Expressway (I–278), west on Staten Island Expressway to Western Avenue, north on Western Avenue to Richmond Terrace, then local streets for Northside piers, or Staten Island Expressway east to Bay Street exit, then local streets to east side piers. Note: Reverse routing permitted. Rendezvous with escort if required.].	.....	.....	A

TABLE 79—NEW YORK: DESIGNATED NRHM ROUTES—Continued

Designation date	Route description	City	County	Designation(s) (A,B,I,P)
01/06/95	NYC Route 16: From New Jersey to Brooklyn Piers	.....	.....	A
	[NYC Route 16(i): From Bayonne Bridge, south via Willowbrook Expressway (State 440) to Staten Island Expressway (I–278), east to Verrazano-Narrows Bridge (upper level) to Brooklyn Queens Expressway (I–278), east on Brooklyn Queens Expressway (I–278), east on Brooklyn Queens Expressway (I–278) to nearest exit to location of pier then local streets to pier.			
	NYC Route 16(ii): From New Jersey via Goethals Bridge to Staten Island Expressway (I–278) to Verrazano-Narrows Bridge (upper level), to Brooklyn Queens Expressway (I–278), east on Brooklyn Queens Expressway (I–278) to nearest exit to location of pier then local streets to pier.			
	NYC Route 16(iii): From New Jersey via Outerbridge Crossing to West Shore Expressway (State 440) to Staten Island Expressway (I–278) to Verrazano-Narrows Bridge (upper level), to Brooklyn Queens Expressway (I–278), east on Brooklyn Queens Expressway (I–278) to nearest exit to location of pier, local streets to pier.			
	Note: Reverse routing permitted. Rendezvous with escort if required. Explosives prohibited on Verrazano Bridge.]			
01/06/95	NYC Route 17(i): From New Jersey to Manhattan Piers via George Washington Bridge.	.....	.....	A
	[NYC Route 17(i): From New Jersey via George Washington Bridge (upper level), exit at 178th Street and Fort Washington Avenue, east on 178th Street to Amsterdam Avenue, south on Amsterdam Avenue to Cathedral Parkway (110th Street), east on 110th Street to Columbus Avenue, south on Columbus Avenue to west 57th Street, west on 57th Street to 11th Avenue, south on 11th Avenue to 55th Street, west on 55th Street to 12th Avenue, 12th Avenue north or south to pier location.			
	Note: Reverse routing permitted. Rendezvous with escort if required. In area of 12th Street, 12th Avenue becomes West Street.]			
01/06/95	NYC Route 17(ii)A and 17(ii)B: From New Jersey to Manhattan Piers via Lincoln Tunnel.	.....	.....	A
	[NYC Route 17(ii)A: Lincoln Tunnel to west side piers north of Lincoln Tunnel: From Lincoln Tunnel, exit at Dyer Avenue (40th Street) north on Dyer Avenue to 41st Street, west (left) on 41st Street, to 12th Avenue (right turn at 12th Avenue adjacent to elevated structure of West Side Highway, continue north on 12th Avenue to piers.			
	Return NYC Route 17(ii)A: Return route to Lincoln Tunnel: South on 12th Avenue (at 43rd Street, move to left traffic lane to exit at 42nd Street), east (left turn) at 42nd Street on block to 11th Avenue, turn south (right) at 11th Avenue, continue south on 11th Avenue for two blocks (follow signs to Lincoln Tunnel), east (left) on 40th Street to Lincoln Tunnel entrance at Galvin Avenue.			
	NYC Route 17(ii)B: Lincoln Tunnel to west side piers south of Lincoln Tunnel: From Lincoln Tunnel exit at Dyer Avenue (40th Street) north on Dyer Avenue to 41st Street, west (left) on 41st Street to 12th Avenue, south (left) on 12th Avenue (under elevated structure of West Side Highway to southbound traffic lane of 12th Avenue) continue south on 12th Avenue and/or West Street to piers.			
	Return NYC Route 17(ii)B: Return route to Lincoln Tunnel: North on West Street to 12th Avenue, north on 12th Avenue to 40th Street, east on 40th Street across 11th Avenue to Galvin Avenue entrance to Lincoln Tunnel.			
	Note: In area of 12th Street, 12th Avenue becomes West Street.].			
01/06/95	NYC Route 17(ii)C and 17(ii)D: From New Jersey to Manhattan Piers via Holland Tunnel.	Manhattan	New York	A
	[NYC Route 17(ii)C: Holland Tunnel to west side piers north of Holland Tunnel: Exit from Holland Tunnel at Hudson Street, north (right turn) on Hudson Street to Canal Street, west (left turn) on Canal Street to West Street, north (right turn) on West Street, continue north on West Street and/or 12th Avenue, to piers.			
	Return NYC Route 17(ii)C: Return route to Holland Tunnel: South on 12th Avenue and continue south on West Street to Canal Street, east (left turn) on Canal Street to Hudson Street, then north (left turn) at Hudson Street to Holland Tunnel entrance.			
	NYC Route 17(ii)D: Holland Tunnel to west side piers south of Holland Tunnel: Exit from Holland Tunnel at Hudson Street, north (right turn) on Hudson Street to Canal Street, west (left turn) on Canal Street to West Street, north (right turn) on West Street to west Houston Street, make "U" turn from north bound traffic lane under elevated West Side Highway to south bound traffic lane of West Street, continue south on West Street to piers.			

TABLE 79—NEW YORK: DESIGNATED NRHM ROUTES—Continued

Designation date	Route description	City	County	Designation(s) (A,B,I,P)
	Return NYC Route 17(ii)D: North on West Street to Canal Street, east (right turn) on Canal Street to Hudson Street, then north (left turn) on Hudson Street to Holland Tunnel entrance. Note: In area of 12th Street, 12th Avenue becomes West Street.].			
01/06/95	NYC Route 17(ii)E: From New Jersey, via George Washington Bridge, Lincoln or Holland Tunnels to lower east side (East River) piers [Utilize routes 17(ii)A through 17(ii)D, continue south on 12th Avenue or West Street, south on West Street to Battery Park Underpass (head room 12' 11''), enter Battery Park Underpass and exit on South Street, continue north on South Street and/or marginal street under elevated F.D.R. Drive to location of pier Return route: Proceed south on marginal street under elevated F.D.R. Drive and/or South Street to Battery Park Underpass, enter Battery Park Underpass and exit on West Street, proceed north on West Street and/or 12th Avenue, continue as per routes 17(ii)A through 17(ii)D to Lincoln and Holland Tunnels respectively, and, for George Washington Bridge, proceed north on 12th Avenue to 57th Street, east on 57th Street to Amsterdam Avenue, north on Amsterdam Avenue to 179th Street, west on 179th Street to George Washington Bridge. Note: Rendezvous with escort if required. In area of 12th Street, 12th Avenue becomes West Street.].	.....	.....	A
01/06/95	NYC Route 18(i): From New England to Manhattan piers ..... [South on New England Thruway (I–95) (to Connors Street exit to meet escort if required), to Bruckner Expressway (I–278), to Willis Avenue and Third Avenue exit on 135th Street, west on 135th Street Third Avenue, south on Third Avenue across 3rd Avenue Bridge to 129th Street, east on 129th Street to Second Avenue, south on Second Avenue to East 125th Street. Return route: From Manhattan Piers to upstate New York, Westchester County, and New England. Reverse NYC Route 18(i) to 12th Avenue, north to West 57th Street, then east on West 57th Street to Amsterdam Avenue, north on Amsterdam Avenue to 125th Street, east to 1st Avenue, north on 1st Avenue to Willis Avenue Bridge, across Willis Avenue Bridge to Bruckner Blvd., Bruckner Blvd. to 138th Street entrance to Bruckner Expressway (I–278), east and north on Bruckner Expressway (I–278) to New England Thruway (I–95), then New England Thruway (I–95) north to City line. Note: Rendezvous with escort if required.].	.....	.....	A
01/06/95	NYC Route 18(ii): From Westchester County or upstate New York to Manhattan piers. [New York Thruway (I–87), south to Major Deegan Expressway (I–87), Major Deegan Expressway, (I–87) south to 138th Street exit, service road to Third Avenue, south on 3rd Avenue, across 3rd Avenue Bridge to east 129th Street, east on 129th Street to Second Avenue, south on Second Avenue to east 125th Street. Then, west on 125th Street to Amsterdam Avenue, south on Amsterdam Avenue to Cathedral Parkway (110th Street) east on 110th Street to Columbus Avenue, south on Columbus Avenue to west 57th Street, west on 57th Street to 11th Avenue, south on 11th Avenue to west 55th Street, west on west 55th Street to 12th Avenue north or south to pier location. For lower East River piers, continue south on 12th Avenue to West Street, south on West Street around Battery Park (do not use Battery Under-Pass) to South Street, north on marginal streets under the elevated F.D.R. Drive to location of pier. Return route: Reverse NYC Route 18(ii) to 12th Avenue, then north to West 57th Street, then east on west 57th Street to Amsterdam Avenue, north on Amsterdam Avenue to 125th Street, east on 125th Street to 1st Avenue, north on 1st Avenue to Willis Avenue Bridge, across Willis Avenue Bridge, Willis Avenue to Major Deegan Expressway (I–87), Major Deegan Expressway north to New York Thruway (I–87), then north to City line. Note: Rendezvous with escort if required.].	.....	.....	A
01/06/95	NYC Route 19: From New England, upper New York State and Westchester County to Staten Island Piers. [NYC Route 19(i): South on New England Thruway (I–95) (to Connors Street exit to meet escort if required) to Bruckner Expressway (I–95) to Throgs Neck Expressway (I–295) via Throgs Neck Bridge to Clearview Expressway (I–295) to Long Island Expressway (I–495), west on Long Island Expressway (I–495) to Brooklyn Queens Expressway (I–278), west to Verrazano-Narrows Bridge (upper level) to Staten Island Expressway (I–278) to Bay Street exit for eastside piers, or west to Western Avenue, north to Richmond Terrace, then local streets to northside piers.	.....	.....	A

TABLE 79—NEW YORK: DESIGNATED NRHM ROUTES—Continued

Designation date	Route description	City	County	Designation(s) (A,B,I,P)
	NYC Route 19(ii): New York State Thruway (I–87) south to Major Deegan Expressway (I–87) (exit into ''service area'' of Expressway, located between Westchester County line and east 233rd Street exit of the Expressway, to rendezvous with escort, if required) to Cross Bronx Expressway (I–95), east on Cross Bronx Expressway (I–95) to Throgs Neck Bridge, to Clearview Expressway (I–295) to Long Island Expressway (I–495), west to Brooklyn Queens Expressway (I–279), west to Verrazano-Narrows Bridge (upper level), to Staten Island Expressway (I–278), exit at Bay Street for eastside piers, or continue on Staten Island Expressway (I–278) to Western Avenue, north on western Avenue to Richmond Terrace, then local streets to northside piers. Note: Reverse routing permitted. Rendezvous with escort if required. Explosives prohibited on Verrazano Bridge.].			
01/06/95	NYC Route 20: From New England, Westchester County and upstate New York to Brooklyn piers. [NYC Route 20(i): South on New England Thruway (I–95) (to Connors Street exit to meet escort if required) to Bruckner Expressway (I–95) to Throgs Neck Expressway (I–295) via Throgs Neck Bridge to Expressway (I–495), west on Long Island Expressway (I–495) to Brooklyn Queens Expressway (I–278) west on Brooklyn Queens Expressway (I–278) to nearest exit to pier location. Route from nearest expressway exit to pier via local streets. NYC Route 20(ii): From New York State Thruway (I–87), south to Major Deegan Expressway (I–87), (exit into ''service area'' of Expressway, located between Westchester County line and east 233rd Street exit of the Expressway, to rendezvous with escort, if required), to Cross Bronx Expressway (I–95), east on Cross Bronx Expressway (I–95) to Throgs Neck Bridge, south to Clearview Expressway (I–295), to Long Island Expressway, west on Long Island Expressway (I–495) to Brooklyn Queens Expressway, west on Brooklyn Queens Expressway (I–278) to nearest exit to pier location, then via local streets to pier. Note: Reverse routing permitted. Rendezvous with escort if required.].	.....	.....	A
01/06/95	NYC Route 21: From Long Island (Nassau or Suffolk) to Brooklyn and Staten Island piers. [Long Island Expressway (I–495) west to Brooklyn Queens Expressway (I–278), then west on Brooklyn Queens Expressway (I–278), then either: NYC Route 21(i)A: Continue to nearest exit for Brooklyn piers location. NYC Route 21(i)B: Continue west on Brooklyn Queens Expressway (I–278) to Verrazano Bridge (upper level), cross bridge to Staten Island Expressway (I–278), exit at Bay Street for Staten Island eastside piers (utilizing local streets) , or continue west on Staten Island Expressway (I–278) to Western Avenue, north on Western Avenue to Richmond Terrace, then local streets for northside Staten Island piers. Note: Reverse routing permitted. Rendezvous with escort if required. Explosives prohibited on Verrazano Bridge.]	.....	.....	A
01/06/95	NYC Route 22: From Long Island (Nassau or Suffolk) to Manhattan piers ..... [East on Long Island Expressway (I–495) to Clearview Expressway (I–295), north on Clearview Expressway (I–295) across Throgs Neck Bridge to Bruckner Expressway (I–278), west on Bruckner Expressway (I–278) continuing as per NYC route 18(i) and 18(ii) to Manhattan piers. Return routing: From Manhattan piers to Long Island. Use return route for 18(i) to Bruckner Expressway (I–278), east on Bruckner Expressway (I–278) to Throgs Neck Expressway (I–295) south on Throgs Neck Expressway (I–295), over Throgs Neck Bridge, south on Clearview Expressway (I–295) to Long Island Expressway (I–495), then east on Long Island Expressway (I–495) to Nassau and Suffolk Counties. Note: Rendezvous with escort if required.].	.....	.....	A
01/06/95	NYC Route 23(i): From New Jersey to Howland Hook Truck Terminal, Staten Island. [NYC Route 23(i)A: From New Jersey via Bayonne Bridge Plaza via Willowbrook Expressway (State 440) south to Staten Island Expressway (I–278), north on Western Avenue, east to Howland Hook Terminal. NYC Route 23(i)B: From New Jersey via Outerbridge Crossing, north on West Shore Expressway (State 440) to Staten Island Expressway (I–278), west on Staten Island Expressway (I–278) to Western Avenue, north on Western Avenue, east to Howland Hook Terminal. NYC Route 23(i)C: From New Jersey via Goethals Bridge to Staten Island Expressway (I–278) to Forest Avenue, north on Forest Avenue to Goethals Road North, west on Goethals Road North to Western Avenue, north on Western Avenue, then east to Howland Hook Terminal. Note: Reverse routing permitted. Rendezvous with escort if required.].	.....	.....	A

TABLE 79—NEW YORK: DESIGNATED NRHM ROUTES—Continued

Designation date	Route description	City	County	Designation(s) (A,B,I,P)
01/06/95	NYC Route 23(ii): From New England, upper New York State and Westchester County to Howland Hook Truck Terminal, Staten Island. [Use NYC Routes 19(i) and 19(ii) except that entrance to Howland Hook Terminal is east from Western Avenue. Note: Reverse routing permitted. Rendezvous with escort if required. Explosives prohibited on Verrazano Bridge.].	.....	.....	A
01/06/95	NYC Route 23(iii): From Nassau County and Suffolk County to Howland Hook Truck Terminal, Staten Island. [West on Long Island Expressway (I–495) to Brooklyn Queens Expressway (I–278), then west on Brooklyn Queens Expressway (I–278) to Verrazano Bridge, cross upper level of Verrazano Bridge, then west on Staten Island Expressway (I–278) to Western Avenue, north on Western Avenue, then east to Howland Hook Terminal. Note: Reverse routing permitted. Rendezvous with escort if required. Explosives prohibited on Verrazano Bridge.].	.....	.....	A
01/06/95	NYC Route 23(iv): From Airports to Howland Hook Truck Terminal, Staten Island. [NYC Route 23(iv)A: From J. F. Kennedy Airport, north on Van Wyck Expressway (I–678) to Long Island Expressway (I–495), then west on Long Island Expressway continuing as per NYC Route 23(iii). NYC Route 23(iv)B: From LaGuardia Airport, south on 82nd Street to Astoria Blvd., west on Astoria Boulevard to Brooklyn Queens Expressway (I–278), then west on Brooklyn Queens Expressway (I–278), continuing as per NYC Route 23(iii). Note: Reverse routing permitted. Rendezvous with escort if required. Explosives prohibited on Verrazano Bridge.]	.....	.....	A
01/06/95	NYC Route 24: Truck and Railroad Terminal in Bushwick area, Brooklyn and Maspeth area, Queens. [Utilize NYC Routes 3(i) or 3(ii) from New Jersey, NYC Routes 4(i) or 4(ii) from upstate New York, New England or Westchester County, C–3 Island Expressway (I–495), then Long Island Expressway (I–495) to Grand Avenue exit (westbound) or Maurice Ave. exit (eastbound), then to Grand Avenue (and Grand Street), east or west as required. Note: Reverse routing permitted. Rendezvous with escort if required.].	.....	.....	A
01/06/95	NYC Route 25: Alternate hazmat routes in lieu of the Throgs Neck Bridge .... [For vehicles not carrying explosives, alternate routes utilizing the Whitestone Bridge or the Triboro Bridge may be used in lieu of the Throgs Neck Bridge specified in NYC Routes 4(ii), 7(i), 9(ii), 12(i), 13(ii), 19(ii), and 20(ii), as follows: NYC Route 25(i): Cross Bronx Expressway (I–95) to Hutchinson River Parkway, south on Hutchinson River Parkway over Whitestone Bridge, and continue south on Whitestone Expressway (I–678)—THEN either: NYC Route 25(i)A: To Astoria Blvd., west on Astoria Blvd. to 82nd Street, north on 82nd Street to LaGuardia Airport. NYC Route 25(i)B: To Van Wyck Expressway (I–678), south on Van Wyck Express way (I–676) to J.F. Kennedy Airport. NYC Route 25(i)C: To Van Wyck Expressway (I–678), south to Long Island Expressway (I–495), west on Long Island Expressway (I–495) to Brooklyn Queens Expressway (I–278), west on Brooklyn Queens Expressway (I–278) to Brooklyn or Staten Island piers as per NYC Routes (19) or (20). NYC Route 25(ii): South on Major Deegan Expressway (I–87) from Cross Bronx Expressway or Upstate New York, to Triboro Bridge, across Triboro Bridge to Queens, exit and proceed east on Astoria Blvd.—THEN either: NYC Route 25(ii)A: To 82nd Street, north on 82nd Street to LaGuardia Airport. NYC Route 25(ii)B: To Brooklyn Queens Expressway (I–278), west on Brooklyn Queens Expressway (I–278) to Long Island Expressway (I–495), east on Long Island Expressway (I–495) to Van Wyck Expressway (I–678), south on Van Wyck Expressway (I–678) to J.F.K. Airport. NYC Route 25(ii)C: To Brooklyn Queens Expressway (I–278), west on Brooklyn Queens Expressway (I–278) to Brooklyn or Staten Island Piers as per NYC Routes (19) or (20). Note: Reverse routing permitted. Rendezvous with escort if required.].	.....	.....	A

TABLE 80—STATE: NORTH CAROLINA

State Agency: NC State Hwy. Patrol
POC: Herbert G. Tucker, Jr.
Address: 1142 Southeast Maynard Rd., Cary, NC 27511
Phone: (919) 319–1523
Fax: (919) 319–1534
Web Address: *www.nccrimecontrol.org/SHP*
FMCSA: NC FMCSA Field Office
FMCSA POC: NC Motor Carrier, Division Administrator
Address: 310 Bern Ave. Suite 468 Raleigh, NC 27601
Phone: (919) 856–4378
Fax: (919) 856–4369
No designated or restricted routes as of 01/31/2014

TABLE 81—STATE: NORTH DAKOTA

State Agency: ND Highway Patrol
POC: Col. James Prochniak
Address: 600 East Blvd. Ave., Dept 504, Bismarck, ND 58505
Phone: (701) 328–2455
Fax: (701) 328–1717
Web Address: *www.nd.gov/ndhp/*
FMCSA: ND FMCSA Field Office
FMCSA POC: ND Motor Carrier, Division Administrator
Address: 1471 Interstate Loop, Bismarck, ND 58503
Phone: (701) 250–4346
Fax: (701) 250–4389
No designated or restricted routes as of 01/31/2014

TABLE 82—STATE: OHIO

State Agency: Public Utilities Comm. of OH
POC: Dan Fisher
Address: 180 East Broad St., Columbus, OH 43215
Phone: (614) 752–7991
Fax: (614) 728–2133
Web Address: *www.puco.ohio.gov/puco/*
FMCSA: OH FMCSA Field Office
FMCSA POC: OH Motor Carrier, Division Administrator
Address: 200 N. High St., Room 609, Columbus, OH 43215
Phone: (614) 280–5657
Fax: (614) 280–6875

TABLE 83—OHIO: RESTRICTED HM ROUTES

Designation date	Route order	Route description	City	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
07/01/96	A	Any other highway or state or local road not otherwise designated for the transportation of hazardous materials by the routing designation [in Northeastern Ohio].		0
11/03/86	B	City of Lorain [Hazardous materials transportation in the City of Lorain is prohibited where there is neither a point of origin or destination within the City on the following routes: State Route 57, State Route 611, State Route 58, US Route 6, and any city streets.]	Lorain	0
05/04/92	C	City of Cleveland [City Streets] [Hazardous materials transportation in the City of Cleveland is prohibited where there is neither a point of origin nor delivery point with the City unless the point of origin or delivery is within one mile of the City limits and the use of the city streets is the safest and most direct route and the shortest distance of travel. Downtown streets are restricted from hazmat transportation between 7 AM and 6PM daily, except on the weekend. When city streets are to be used, the transporter must use interstate highways to a point as close as possible to the destination.]	Cleveland	0
10/14/93	D	City of Cambridge [Hazardous materials transportation in the City of Cambridge is prohibited where there is neither a point of origin or destination within the City on the following routes: US Route 40, US Route 22, State Route 209, and any City streets.]	Cambridge	0
07/01/96	E1	Interstate 90 from Interstate 271 [in Lake County] to Interstate 80/90 [in Lorain County].	Lorain	0
07/01/96	E2A	Interstate 71 from Interstate 80 to Interstate 90 [in Cuyahoga County]		0
07/01/96	E2B	Interstate 490 from Interstate 90 to Interstate 77 [in Cuyahoga County]		0
07/01/96	E2C	Interstate 77 from Interstate 80 to Interstate 90 [in Cuyahoga County]		0
07/01/96	E2D	State 2 from State 44 to Interstate 90 [in Lake County]		0
07/01/96	E3D	State 44 from State 2 to Interstate 90 [in Lake County]		0
07/01/96	F	Interstate 480 from Interstate 271 to Interstate 480N [in Cuyahoga County]—Cleveland.	Cleveland	0

TABLE 84—OHIO: DESIGNATED HRCQ/RAM ROUTES

Designation date	Route order	Route description	City	Designation(s) (A,B,I,P)
09/09/88	A	State-Wide [Preferred routes for high route controlled quantities of radioactive materials (HRCQ of RAM) are, ''Interstate System highways, including interstate system bypasses or Interstate System beltways'' as per 49 CFR Part 397].		P
06/11/02	B	US 23 from Michigan to Interstate 475 (Toledo)	Toledo	P

TABLE 85—OHIO—DESIGNATED NRHM ROUTES

Designation date	Route order	Route description	City	Designation(s) (A,B,I,P)
04/06/85	A1	Interstate 270 [Columbus Outerbelt] [Shipments which do not have the destination within the City of Columbus, but as a throughway.].	Columbus	A

TABLE 85—OHIO—DESIGNATED NRHM ROUTES—Continued

Designation date	Route order	Route description	City	Designation(s) (A,B,I,P)
04/06/85	A2A	Broad St. [inside Interstate 270] [Only for the delivery of NRHM within the City of Columbus].	Columbus	A
04/06/85	A2B	Interstate 70 [inside Interstate 270] [Only for the delivery of NRHM within the City of Columbus].	Columbus	A
04/06/85	A2C	State 33 [inside Interstate 270] [Only for the delivery of NRHM within the City of Columbus].	Columbus	A
04/06/85	A2D	State 161 [inside Interstate 270] [Only for the delivery of NRHM within the City of Columbus].	Columbus	A
04/06/85	A2E	High St. [inside Interstate 270] [Only for the delivery of NRHM within the City of Columbus].	Columbus	A
04/06/85	A2F	Interstate 71 [inside Interstate 270] [Only for the delivery of NRHM within the City of Columbus].	Columbus	A
04/06/85	A3B–1.0	Interstate 670 from Interstate 70 to Interstate 270 [Only for the delivery of NRHM within the City of Columbus].	Columbus	A
04/06/85	A3B–2.0	State 315 [inside Interstate 270] [Only for the delivery of NRHM within the City of Columbus].	Columbus	A
10/14/93	B1	Interstate 70 [in the City of Cambridge] [For hazardous material shipments which have neither a point of origin or destination within the City of Cambridge.]	Cambridge	A
10/14/93	B2	State 209 [Southgate Parkway in the City of Cambridge] [for destination within City only].	Cambridge	A
10/14/93	B3A	US 40 [Wheeling Ave. in the City of Cambridge] [for destination within City only]	Cambridge	A
10/14/93	B3B	US 22 [Wheeling Ave. in the City of Cambridge] [for destination within City only]	Cambridge	A
10/14/93	B4A–1.0	County 35 [Old 21/Clark/Byesville Rd. in the City of Cambridge] [for destination within City only].	Cambridge	A
10/14/93	B4A–2.0	Interstate 77 [in the City of Cambridge] [For hazardous material shipments which have neither a point of origin or destination within the City of Cambridge.]	Cambridge	A
10/14/93	B4B	North Second St. [in the City of Cambridge] [for destination within City only]	Cambridge	A
10/14/93	B5B–1.0	Steubenville Ave. [in the City of Cambridge] [for destination within City only]	Cambridge	A
11/03/86	C1	US 6 [in the city limits of Lorain] [for destination within City only]	Lorain	A
11/03/86	C2A	State 611 [in the city limits of Lorain] [for destination within City only]	Lorain	A
11/03/86	C2B	State 58 [in the city limits of Lorain] [for destination within City only]	Lorain	A
11/03/86	C2C	State 57 [in the city limits of Lorain] [for destination within City only]	Lorain	A
11/03/86	C3B–1.0	Cooper Foster Park Rd. [in the City of Lorain] [for destination within City only]	Lorain	A
11/03/86	C4B–1.0	Middle Ridge Rd. [in the City of Lorain] [for destination within City only]	Lorain	A
11/03/86	C5B–1.0	State 2 [in the City of Lorain] [For hazardous material shipments which have neither a point of origin nor destination within the City of Lorain.]	Lorain	A
11/03/86	C5B–1.0	Interstate 90/State Route 2 [around the City of Lorain] [For hazardous material shipments which have neither a point of origin or destination within the City of Lorain.]	Lorain	A
07/01/96	D1	Interstate 80 [and I80/I90 Ohio Turnpike] from Gate 13 [in Portage County] to Lorain/Erie County Line.		A
07/01/96	D2	Interstate 480 from Interstate 80 [Gate 13 in Portage County] to Interstate 271 [in Summit County].		A
07/01/96	D2A	Interstate 480N from Interstate 271 to Interstate 480 [in Cuyahoga County]		A
07/01/96	D2B	Interstate 71 from Interstate 80 [in Cuyahoga County] to Interstate 271 [in Summit County].		A
07/01/96	D2C	Interstate 77 from Interstate 80 [in Cuyahoga County] to Interstate 271 [in Summit County].		A
07/01/96	D3A	Interstate 480 from Interstate 480N [in Cuyahoga County] to Interstate 80 [in Lorain County]—Cleveland.	Cleveland	A
07/01/96	D3B	Interstate 271 from Interstate 90 [in Lake County] to Interstate 71 [in Medina County]—Northeastern Ohio.		A
07/01/96	D4B	Interstate 90 from Lake/Ashtabula county line to Interstate 271 [in Lake County]		A
01/29/90	D4B–1.0	Bedford from Erieway Facility [at 33 Industry Drive] [Proceed on Industry Dr, turn right on Northfield Rd, turn left on Alexander Rd., to I271 access road. Alternatively, from Northfield Rd, turn right on Forbes Rd, turn right on Broadway Rd. to I–271.]	Bedford	A
11/01/94	E1	US 20 [Center Ridge Rd. in the City of Westlake]	Westlake	A, B
11/01/94	E2A	State 252 [Columbia Rd. in the City of Westlake]	Westlake	A, B
11/01/94	E3A–1.0	State 254 [Detroit Rd. in the City of Westlake]	Westlake	A, B
11/01/94	E3A–2.0	Interstate 90 [in the City of Westlake]	Westlake	A

TABLE 86—STATE: OKLAHOMA

State Agency: OK DOT
POC: Harold Smart
Address: 200 NE 21st St, Oklahoma City, OK 73105
Phone: (405) 521–2861
Fax: (405) 521–2865

TABLE 86—STATE: OKLAHOMA—Continued

Web Address: *www.okladot.state.ok.us/*
FMCSA: OK FMCSA Field Office
FMCSA POC: OK Motor Carrier, Division Administrator
Address: 300 N. Meridian, Suite 106 North, Oklahoma City, OK 73107

TABLE 86—STATE: OKLAHOMA—Continued

Phone: (405) 605–6047
Fax: (405) 605–6176

TABLE 87—OKLAHOMA—RESTRICTED HM ROUTES

Designation date	Route order	Route description	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
07/29/97	A	Oklahoma City and Tulsa ..... [Carriers transporting hazardous material cargo should avoid traveling through large metropolitan areas during times of the day when congestion is expected. These carriers should also avoid construction zones when possible. Construction information can be accessed by calling the OK Department of Transportation at (405) 521–2554.]	0
07/29/97	B	Interstate 40 [in Oklahoma City] from Interstate 44 to Interstate 35 is banned	0

TABLE 88—OKLAHOMA—DESIGNATED NRHM ROUTES

Designation date	Route order	Route description	Designation(s) (A,B,I,P)
07/29/97	A	All Interstates ..... [All hazardous material shipments moving through Oklahoma should remain on Interstate routes, when possible.]	A
07/29/97	B1	Interstate 44 [Southwest of Oklahoma City] from Interstate 40 to Interstate 240 [Use to bypass section of I–40 running through downtown Oklahoma City].	A
07/29/97	B2	Interstate 240 [South of Oklahoma City] from Interstate 44 to Interstate 40 [Southeast of Oklahoma City] [Use to bypass section of I–40 running through downtown Oklahoma City].	A
07/29/97	C	Interstate 244 [Tulsa] from Interstate 44 [West of Tulsa] to Interstate 44 [East of Tulsa] [Use to bypass downtown Tulsa].	A

TABLE 89—STATE: OREGON

State Agency: OR DOT
POC: Jess Brown
Address: 550 Capitol Street NE., Salem, OR 97301
Phone: (503) 378–6336

TABLE 89—STATE: OREGON—Continued

Fax: (503) 378–3567
Web Address: *www.oregon.gov/odot/Pages/index.aspx*
FMCSA: OR FMCSA Field Office
FMCSA POC: OR Motor Carrier, Division Administrator

TABLE 89—STATE: OREGON—Continued

Address: The Equitable Center, 530 Center Street NE., Suite 440, Salem, OR 97301
Phone: (503) 399–5775
Fax: (503) 316–2580

TABLE 90—OREGON—RESTRICTED HM ROUTES

Designation date	Route order	Route description	City	County	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
11/01/94	A	US 26 from Interstate 405 to State 217 [includes Vista Ridge Tunnel]. Restrictions apply to any quantity of hazardous material required to be marked or placarded in accordance with 49 CFR 177.823.	Portland	Multnomah ...	0
11/01/94	B	Arrowhead Truck Plaza on Route 331 [at the MP 216 Interstate 84 interchange 4 miles east of Pendleton (on tribal land)] overnight parking prohibited.	.....	Umatilla	1,7
11/01/94	C	Wildhorse Casino parking lot on Route 331 [at the MP 216 Interstate 84 interchange 4 miles east of Pendleton adjacent to the Arrowhead Truck Plaza (on tribal land)] prohibits parking of all classes of hazardous material in the casino parking lot.	.....	Umatilla	0

TABLE 91—OREGON—DESIGNATED NRHM ROUTES

Designation date	Route order	Route description	City	County	Designation(s) (A,B,I,P)
01/01/00	A	Kittridge Ave. Overpass [Portland] from US 30 [NW St. Helens Ave.] to NW Front Ave. and the Northwest Portland Industrial Area.	Portland	Multnomah ...	A

TABLE 92—STATE: PENNSYLVANIA

State Agency: PA DOT
POC: Kenneth Thornton
Address: Chief Motor Carrier Division, P.O. Box 8210, Harrisburg, PA 17105
Phone: (717) 787–0459
Fax: (717) 787–7839
Web Address: *www.dot.state.pa.us/*
FMCSA: PA FMCSA Field Office
FMCSA POC: PA Motor Carrier, Division Administrator
Address: 215 Limekiln Road, Suite 200, New Cumberland, PA 17070
Phone: (717) 614–4060

TABLE 92—STATE: PENNSYLVANIA—Continued

Fax: (717) 614–4066
State agency is responsible for all HM routes listed in Table 94, except for those routes on the Pennsylvania Turnpike.

TABLE 93—STATE: PENNSYLVANIA

State Agency: PA Turnpike Commission
POC: Kenneth Slippey
Address: P.O. Box 67676, Harrisburg, PA 17106

TABLE 93—STATE: PENNSYLVANIA—Continued

Phone: (717) 939–9551
Fax:
Web Address: *www.paturnpike.com/*
FMCSA: PA FMCSA Field Office
FMCSA POC: PA Motor Carrier, Division Administrator
Address: 215 Limekiln Road, Suite 200, New Cumberland, PA 17070
Phone: (717) 614–4060
Fax: (717) 614–4066
State agency is only responsible for HM routes listed in Table 94 on the Pennsylvania Turnpike.

TABLE 94—PENNSYLVANIA—RESTRICTED HM ROUTES

Designation date	Route order	Route description	City	County	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
01/01/50	A	Liberty Tunnel [in Allegheny County] from Carson St. to Saw Mill Run Blvd. [(1) Explosives 1.1 to 1.6, (2) Blasting Agents, (3) Flammable Gas, (4) Flammable, (5) Flammable Solids, and (6) Flammable Solid W. prohibited.]	.....	Allegheny	1,2,3,4,5,6
01/01/58	B	Interstate 376 [Fort Pitt Tunnels in Pittsburgh] ..... [(1) Explosives 1.1 to 1.6, (2) Blasting Agents, (3) Flammable Gas, (4) Flammable, (5) Flammable Solids, and (6) Flammable Solid W. prohibited.]	Pittsburgh	.....	1,2,3,4,5,6
01/01/52	C	Interstate 376 [Squirrel Hill Tunnels in Pittsburgh] from Exit 8 to Exit 9. [(1) Explosives 1.1 to 1.6, (2) Blasting Agents, (3) Flammable Gas, (4) Flammable, (5) Flammable Solids, and (6) Flammable Solid W. prohibited.]	Pittsburgh	.....	1,2,3,4,5,6
07/22/89	D	US 30 [West—Descending Laurel Mountain in Somerset/Westmoreland Counties] [Descending Laurel Mountain into the Village of Laughlintown (to protect Ligonier Municipal Reservoir). The ''recommended'' alternate route is south on US 219 to I–76 (PA Turnpike), west on I–76 to New Stanton.].	.....	Somerset and Westmoreland.	0
01/01/40	E	Interstate 70/76 [Allegheny Tunnel—Somerset County] from Exit 110 to Exit 146. [Effective July 16, 2000: All Table 1 materials and Explosives are still prohibited. Table 2 materials (except explosives) permitted for non-bulk packages (those placards that do not require four-digit codes)] For additional information, visit the Pennsylvania Turnpike Web site: *www.paturnpike.com/trucking/placard.aspx#top*.	.....	Somerset	1,2,3,4,5,6,7,8,i
01/01/40	F	Interstate 76 [Tuscarora Tunnel—Franklin/Huntingdon Counties] from Exit 180 to Exit 189. [Effective July 16, 2000: All Table 1 materials and Explosives are still prohibited. Table 2 materials (except explosives) permitted for non-bulk packages (those placards that do not require four-digit codes)]. For additional information, visit the Pennsylvania Turnpike Web site: *www.paturnpike.com/trucking/placard.aspx#top*.	.....	Franklin and Huntingdon.	1,2,3,4,5,6,7,8,i
01/01/40	G	Interstate 76 [Blue Mountain Tunnel and Kittatinny Tunnel—Franklin County] from Exit 189 to Exit 201. [Effective July 16, 2000: All Table 1 materials and Explosives are still prohibited. Table 2 materials (except explosives) permitted for non-bulk packages (those placards that do not require four-digit codes)].	.....	Franklin	1,2,3,4,5,6,7,8,i

TABLE 94—PENNSYLVANIA—RESTRICTED HM ROUTES—Continued

Designation date	Route order	Route description	City	County	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
		For additional information, visit the Pennsylvania Turnpike Web site: *www.paturnpike.com/trucking/placard.aspx#top*.			
09/15/93	H	US 11 [Cumberland County] from the intersection of Allen Rd. and SR 465 (at Segment 0360/Offset 2119) to Interstate 76/PA Turnpike (at Segment 0510/Offset 0000).	.....	Cumberland	0
09/15/93	I	SR 74 [Cumberland County] from Fairfield St. (at Segment 0170/Offset 0000) to N. College St. (at Segment 0210/Offset 0000).	.....	Cumberland	0
09/15/93	J	SR 641 [Cumberland County] from Interstate 81 (at Segment 0440/Offset 3196) to N. College St. (at Segment 0470/Offset 0000).	.....	Cumberland	0
09/15/93	K	SR 34 [Cumberland County] from Noble Blvd./Lamberton Middle School (at Segment 0270/Offset 0000) to Carlisle Springs Rd./N. Hanover St. split (at Segment 0300/Offset 0000).	.....	Cumberland	0
11/03/94	L	SR 3009/River Rd. [Dauphin County] (at Segment 0210/Offset 0720) to Country Club Rd. (at Segment 0221/Offset 1382) just before SR 443.	.....	Dauphin	0
09/09/93	M	SR 39 [Dauphin County] from Terrace Dr. (at Segment 0030/Offset 0000) to SR 81 (at Segment 0210/Offset 0000) just past the Travel Center of America Truck Stops''.	.....	Dauphin	0
09/09/93	N	US 22 [Dauphin County] from SR 39 (at Segment 0420/Offset 0000) to Interstate 83 (at Segment 0571/Offset 0000).	.....	Dauphin	0
03/21/94	O	SR 4020 [Lancaster County] from Esbenshade Rd./SR 230 (at Segment 0010/Offset 0000) to Mcgovernville Rd./Route 741 (at Segment 0130/Offset 0000).	.....	Lancaster	0
01/01/65	P	Interstate 476 [Northeast Extension of PA Turnpike at Lehigh Tunnel] from Exit 56 to Exit 74. [Effective July 16, 2000: All Table 1 materials and Explosives are still prohibited. Table 2 materials (except explosives) permitted for non-bulk packages (those placards that do not require four-digit codes)]. For additional information, visit the Pennsylvania Turnpike Web site: *www.paturnpike.com/trucking/placard.aspx#top*.	.....	Carbon and Lehigh.	1,2,3,4,5,6,7,8,i

TABLE 95—STATE: RHODE ISLAND

State Agency: RI Dept. of Environmental Management
POC: Mark Dennen
Address: Office of Waste Mgt., 235 Promenade Street, Providence, RI 02908
Phone: (401) 222–2797 ext. 7112

TABLE 95—STATE: RHODE ISLAND—Continued

Fax: (401) 222–3812
Web Address: *www.dem.ri.gov/*
FMCSA: RI FMCSA Field Office
FMCSA POC: RI Motor Carrier, Division Administrator

TABLE 95—STATE: RHODE ISLAND—Continued

Address: 20 Risho Avenue, Suite E, East Providence, RI 02914
Phone: (401) 431–6010
Fax: (401) 431–6019

TABLE 96—RHODE ISLAND: RESTRICTED HM ROUTES

Designation date	Route order	Route description	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
07/18/84	A1	Old Plainfield Pike [in Foster & Scituate] from Route 102 to Route 12 [Scituate]	0
07/18/84	A2A	Route 12 [in Scituate and Cranston] from Route 14 [Scituate] to Route 116 [Scituate]	0
07/18/84	A3A	Route 116 [in Scituate & Smithfield] from Scituate Ave. [Scituate] to Snake Hill Rd. [Smithfield]	0
07/18/84	A3A–1.0	Route 102 [in Scituate and Foster] from Route 94 [Foster] to Snake Hill Road [Glocester]	0
07/18/84	A4A–1.0	Route 94 [in Foster] from Route 101 to Route 102 [Scituate]	0
07/18/84	A4A–1.0–A	Route 14 [in Scituate] from Route 102 to Route 116	0
07/18/84	A5A–1.0	Route 101 [in Foster, Glocester, and Scituate] from Route 94 [Foster] to Route 6 [Scituate]	0
07/18/84	A5A–1.0–A	Central Pike [in Scituate and Foster] from Route 94 [Foster] to Route 102 [Scituate]	0
07/18/84	A5A–1.0–B	Route 6 [in Scituate, Johnston, & Foster] from Route 94 [Foster] to Hopkins Avenue [Johnson]	0
07/18/84	A6A–1.0–B1	Danielson Pike [in Scituate] from Route 6 to Route 6	0
07/18/84	A6A–1.0–C	Rocky Hill Road & Peeptoad Road [in Scituate] from Route 101 to Route 116 [Sawmill Road]	0

TABLE 96—RHODE ISLAND: RESTRICTED HM ROUTES—Continued

Designation date	Route order	Route description	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
07/18/84	B	Route 295 [in Smithfield and Lincoln] from Exit 8 [Douglas Pike—Smithfield] to Exit 9 [Route 146—Lincoln].	0
07/18/84	C	Reservoir Road [in its entirety in Smithfield and North Smithfield]	0
07/18/84	D	Route 120 [in Cumberland] from Mendon Road to Massachusetts	0
07/18/84	E	Reservoir Road [in Cumberland] from Route 114 to Massachusetts	0
07/18/84	F	North Main Road [in Jamestown] from Route 138 to East Shore Road	0
07/18/84	G1	Bliss Mine Road [in its entirety in Newport & Middletown]	0
07/18/84	G2	Miantonami Ave. [in Middletown] from Bliss Mine Road to Valley Road	0
07/18/84	G3A	Valley Road [in Middletown] from Miantonami Avenue to Route 138	0
07/18/84	G4A	Aquidneck Ave. [in Middletown] from Wave Avenue to Valley Road	0
07/18/84	G5A	Wave Avenue [in its entirety in Middletown]	0
07/18/84	H1	Serpentine Road [in its entirety in Warren]	0
07/18/84	H2A	School House Road [in Warren] from Birch Swamp Road to Long Lane	0
07/18/84	I1	Burchard Road [in its entirety in Little Compton]	0
07/18/84	I2	Peckham Road [in Little Compton] from Route 77 to Burchard Road	0
07/18/84	I3	Route 77 [in Little Compton and Tiverton] from Peckham Road [Little Compton] to Route 179 [Tiverton].	0
07/18/84	I4	Neck Road [in its entirety in Tiverton]	0

TABLE 97—STATE: SOUTH CAROLINA

State Agency: No Agency Designated
POC:
Address:
Phone:
Fax:
FMCSA: SC FMCSA Field Office
FMCSA POC: SC Motor Carrier
Address: Division Administrator, 1835 Assembly St., Suite 1253, Columbia, SC 29201
Phone: (803) 765–5414
Fax: (803) 765–5413
No designated or restricted routes as of 01/31/2014.

TABLE 98—STATE: SOUTH DAKOTA

State Agency: Motor Carrier Services
POC:
Address: 118 West Capitol Ave., Pierre, SD 57501
Phone: (605) 773–4578
Fax: (605) 773–7144
Web Address: *dps.sd.gov/enforcement/highway_patrol/default.aspx*
FMCSA: SD FMCSA Field Office
FMCSA POC: SD Motor Carrier
Address: Division Administrator, 1410 E. Highway 14, Suite B, Pierre, SD 57501
Phone: (605) 224–8202
Fax: (605) 224–1766
No designated or restricted routes as of 01/31/2014.

TABLE 99—SOUTH DAKOTA: BADLANDS NATIONAL PARK

NPS: Badlands National Park, NPS
NPS POC: Park Superintendent
Address: 25216 Ben Reifel Road, P.O. Box 6, Interior, SD 57750
Phone: (605) 433–5361
Fax: (605) 433–5404
Web Address: *www.nps.gov/badl/index.htm*
FMCSA: SD FMCSA Field Office
FMCSA POC: SD Motor Carrier, Division Administrator
Address: 1410 E. Highway 14, Suite B, Pierre, SD 57501
Phone: (605) 224–8202
Fax: (605) 224–1766

TABLE 100—SOUTH DAKOTA (BADLANDS NATIONAL PARK): RESTRICTED HM ROUTES

Designation date	Route order	Route description	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
01/17/97	A	Badlands National Park—Park road between the Northeast Entrance to the Interior Entrance [Northeast Entrance/SD–240 to the intersection with SD–377 to SD–377/Interior Entrance]. [This route is under the jurisdiction of the U.S. National Park Service, not the State of South Dakota. For additional information, contact the Badlands National Park at (605) 433–5361.]	0

TABLE 101—STATE: TENNESSEE

State Agency: TN DOT
POC: Alan Durham
Address: James K. Polk Bldg., 505 Deaderick St., Suite 400, Nashville, TN 37243
Phone: (615) 741–2848/(615) 741–5616
Fax: (615) 741–2508
Web Address: *www.tdot.state.tn.us/*
FMCSA: TN FMCSA Field Office
FMCSA POC: TN Motor Carrier

TABLE 101—STATE: TENNESSEE—Continued

Address: Division Administrator, 640 Grassmere Park, Suite 111, Nashville, TN 37211
Phone: (615) 781–5781
Fax: (615) 781–5780

TABLE 102—TENNESSEE: RESTRICTED HM ROUTES

Designation date	Route order	Route description	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
05/15/87	A	Interstate 40 [Through City of Knoxville] from Exit 385 [intersection with I–75/I–640 west of Knoxville] to Exit 393 [intersection with I–640 east of Knoxville]. [Prohibition does not apply to hazardous material shipments originating at or destined to the City of Knoxville and to service points of US 129 in Blount County as verified by appropriate shipping papers, or shipments to be interlined with other carriers or to be transferred to other vehicles of the same carrier at facilities in these areas, or to vehicles which need emergency repair or warranty work performed at authorized dealers in these areas.]	0
10/18/96	B	Cumberland Gap Tunnel [US 25E/State Route 32] ..... [Trucks that display a hazardous material placard are required to stop at the Cumberland Gap Tunnel inspection lanes. After stopping in the lane, a CGTA operator requests information from the driver such as Trucking Company name and address, DOT #, Truck license #, Truck Order # or bill of lading, origin and destination of goods, and driver's name and signature. The operator then performs a walk around inspection of the truck and looks for possible hazardous material leaks. Trucks transporting Class 1 Explosives are prohibited and are turned around at the tunnel. For further information, contact John R. Burke (*cgta@vaughnmelton.com*) at 606–248–0996.]	1

TABLE 103—TENNESSEE: DESIGNATED HRCQ/RAM ROUTES

Designation date	Route order	Route description	Designation(s) (A,B,I,P)
08/03/88	A	Interstate 640/I–75 from Interstate 40 [exit 385 West of Knoxville] to Interstate 40 [exit 393 East of Knoxville] [In lieu of I–40 in the Knoxville area.	P

TABLE 104—STATE: TEXAS

State Agency: TX Dept. Public Safety
POC: Josh Verastique
Address: P.O. Box 4087, Austin, Texas 78773–0001
Phone: (512) 416–3122
Web Address: *www.txdot.gov/*
FMCSA: TX FMCSA Field Office
FMCSA POC: TX Motor Carrier
Address: Division Administrator, 903 San Jacinto Blvd., Suite 101, Austin, TX 78701
Phone: (512) 916–5440
Fax: (512) 916–5482

TABLE 105: TEXAS—RESTRICTED HM ROUTES

Designation date	Route order	Route description	City	County	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)	FMCSA QA Comment
12/12/97	A	International Bridges I & II [Laredo].	Laredo	Webb	0	
06/28/01	B1	Interstate 35 [Bexar County] from the IH 35/IH 10 interchange to the IH 10/IH 35/US 90 interchange.	San Antonio	Bexar	0	
06/28/01	B2A	Interstate 10 [Bexar County] from the Fredericksburg/Woodlawn interchange to the IH 10/IH 35 interchange.	San Antonio	Bexar	0	
06/28/01	B2B	Interstate 35 [Bexar County] from IH 35/IH 37/US 281 interchange to IH 10/IH 35 interchange.	San Antonio	Bexar	0	
06/28/01	B3B	Interstate 37 [Bexar County] from the IH 35/IH 37/US 281 interchange to the IH 37/Durango St. interchange.	San Antonio	Bexar	0	
03/04/70	D1	Interstate 45 [Houston] from Franklin St. to US 59.	Houston	Harris	0	
03/04/70	D2	US 59 [Houston] from Interstate 45 to Buffalo Bayou.	Houston	Harris	0	

TABLE 105: TEXAS—RESTRICTED HM ROUTES—Continued

Designation date	Route order	Route description	City	County	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)	FMCSA QA Comment
10/13/83	E1	Interstate 45 [Galveston, Galveston County] from State 342 to West City Limits. [During a 30-hour hurricane warning only. See City of Galveston code for more information.].	Galveston	Galveston	0	
10/13/83	E2	State 342 (61st. St.) [Galveston, Galveston County] from Broadway Ave. to Seawall Blvd. [During a 30-hour hurricane warning only. See City of Galveston code for more information.].	Galveston	Galveston	0	
10/13/83	F	North of Church St. [Galveston, Galveston County] from 14th Street to 2nd Street. [See City of Galveston code for special restrictions/more information.].	Galveston	Galveston	0	
01/25/84	G1	Interstate 30 (East RL Thornton Freeway) [Dallas] from Interstate 35 E to Malcolm X Blvd. Overpass.	Dallas	Dallas	0	
01/25/84	G2A	Interstate 45 Elevated (Julius Schepps Freeway) [Dallas] from Lamar Underpass to Bryan St. Underpass. [No operator of a motor vehicle transporting hazardous material scheduled for delivery to or from a Dallas Terminal shall transport those materials on any street or highway, or segment of a street or public highway designated as ''Prohibited Hazardous Materials Area''].	Dallas	Dallas	0	
01/25/84	G3A–1.0	Interstate 345 (Central Expressway) [Dallas] from Interstate 45 (Julius Schepps Freeway) to Bryan Street.	Dallas	Dallas	0	
01/25/84	H	Spur 366 (Woodall Rodgers Freeway) [Dallas] from US 75 to Interstate 35E.	Dallas	Dallas	0	
10/10/95	I	Loop 335 [Amarillo] from West Amarillo Blvd to City Limits (7 pm to 7 am).	Amarillo	Potter/Randall.	0	
10/10/95	J	US 60/US 87/US 287 (Taylor and Filmore St. only) [Amarillo] from Interstate 40 to Loop 335.	Amarillo	Potter/Randall.	0	
03/04/70	TBD	Holcombe Boulevard [Houston] from Main St. to South Braeswood Boulevard.	Houston	Harris	0	Route description is inconsistent with current maps of area. Unable to confirm current route. [State relabeling route based on changing physical conditions.]
03/04/70	TBD	Main St. [Houston] from N. MacGregor Way to Holcombe Boulevard.	Houston	Harris	0	Route description is inconsistent with current maps of area. Unable to confirm current route. [State relabeling route based on changing physical conditions.]

TABLE 105: TEXAS—RESTRICTED HM ROUTES—Continued

Designation date	Route order	Route description	City	County	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)	FMCSA QA Comment
03/04/70	TBD	N. MacGregor Way [Houston] from South Braeswood Boulevard to Main St.	Houston	Harris	0	Route description is inconsistent with current maps of area. Unable to confirm current route. [State relabeling route based on changing physical conditions.]
03/04/70	TBD	South Braeswood Boulevard [Houston] from Holcombe Boulevard to N. MacGregor Way.	Houston	Harris	0	Route description is inconsistent with current maps of area. Unable to confirm current route. No response received from Texas DOT on this question.
01/25/84	TBD	Underground tunnel system [Dallas (Entire Highway)].	Dallas	Dallas	0	Insufficient information provided in route description to validate route. [State relabeling route based on changing physical conditions.]

TABLE 106—TEXAS—DESIGNATED HRCQ/RAM ROUTES

Designation date	Route order	Route description	City	County	Designation(s) (A,B,I,P)
07/09/12	A	Big Spring, TX to Pecos, TX to Carlsbad, NM to WIPP North Access Road (Current New Mexico designated route).	.....	.....	P
07/09/12	B	Big Spring, TX to Andrews, TX to FM 115 to intersection with FM 128 in Texas to SR 128 in New Mexico to WIPP South Access Road.	.....	.....	P
07/09/12	C	Big Spring, TX to Monahans, TX to Kermit, TX to Jal, NM to WIPP South Access Road.	.....	.....	P
07/09/12	D	Big Spring, TX to Andrews, TX to Eunice, NM to Hobbs, NM to WIPP North Access Road.	.....	.....	P
07/09/12	E	Big Spring, TX to Andrews, TX to Eunice, NM to Jal, NM to WIPP South Access Road.	.....	.....	P

TABLE 107—TEXAS—DESIGNATED NRHM ROUTES

Designation date	Route order	Route description	City	County	Designation(s) (A,B,I,P)
10/16/90	A1	Farm to Market 2061 [Edinburg] from Owassa Road to Farm to Market 1925 [Through only].	Edinburg	Hidalgo	A
10/16/90	A2	Farm to Market 1925 [Edinburg] from Bus. US 281 to Farm to Market 2061 [Through only].	Edinburg	Hidalgo	A
10/16/90	A2A	State 107 [Edinburg] from State 336 to Farm to Market 2061 [Through only].	Edinburg	Hidalgo	A
10/16/90	A3	Bus. US 281 [Edinburg] from its North intersection with US 281 to Farm to Market 1925 [Through only].	Edinburg	Hidalgo	A
10/16/90	A3A	Bus. US 281 [Edinburg] from Farm to Market 1925 to its South intersection with US 281 [Local destination only].	Edinburg	Hidalgo	A
10/16/90	A4	US 281 [Edinburg] from its North intersection with Bus. US 281 to Owassa Road [Through only].	Edinburg	Hidalgo	A
10/16/90	A4A–1.0	Chapin Street [Edinburg] from Bus. US 281 to US 281 [Local destination only].	Edinburg	Hidalgo	A
10/16/90	A4A–2.0	Farm to Market 2128 [Edinburg] from Bus. US 281 to US 281 [Local destination only].	Edinburg	Hidalgo	A
10/16/90	A4A–3.0	McIntyre St. [Edinburg] from 12th Ave. to 10th Ave. [Local destination only.].	Edinburg	Hidalgo	A
10/16/90	A5A	Farm to Market 2128 [Edinburg] from Tower Road to US 281 [Through only].	Edinburg	Hidalgo	A
10/16/90	A5A–3.0	10th Ave. [Edinburg] from McIntyre to Cano Street [Local destination only].	Edinburg	Hidalgo	A

TABLE 107—TEXAS—DESIGNATED NRHM ROUTES—Continued

Designation date	Route order	Route description	City	County	Designation(s) (A,B,I,P)
10/16/90	A5B	State 107 [Edinburg] from Tower Road to US 281 [Through only].	Edinburg	Hidalgo	A
10/16/90	A6A–3.0	Cano St. [Edinburg] from 10th Ave. to 12th Ave. [Local destination only.].	Edinburg	Hidalgo	A
10/16/90	A6A–3.0–A	State 107 [Edinburg] from 12th Ave. to US 281 [Local destination only].	Edinburg	Hidalgo	A
10/16/90	A7A–3.0	12th Ave. [Edinburg] from McIntyre to Cano Street [Local destination only].	Edinburg	Hidalgo	A
10/16/90	A8A–3.0–B	State 107 [Edinburg] from Farm to Market 2061 to 10th Ave. [Local destination only].	Edinburg	Hidalgo	A
04/15/81	B1	US 83 [Harlingen] from Southeast City Limits to West City Limits.	Harlingen	Cameron	A
04/15/81	B2A	Spur 54 [Harlingen] from US 77 to US 83	Harlingen	Cameron	A
04/15/81	B3A–1.0	US 77 [Harlingen] from Northwest City Limits to Southeast City Limits.	Harlingen	Cameron	A
04/15/81	B4A–1.0–A	Farm to Market 1479 (Rangerville Road) [Harlingen] from Southwest City Limits to US 77/83.	Harlingen	Cameron	A
04/15/81	B4A–1.0–B	Loop 206 (Tyler St.) [Harlingen] from US 77/US 83 to West City Limits.	Harlingen	Cameron	A
04/15/81	B4A–1.0–C	Farm to Market 106 (Harrison St.) [Harlingen] from US 77 to West City Limits.	Harlingen	Cameron	A
04/15/81	B4A–1.0–D	Bus. US 77 [Harlingen] from North City Limits to South City Limits.	Harlingen	Cameron	A
04/15/81	B5A–1.0–D1	Loop 499 (Ed Carey Dr.) [Harlingen] from Bus. US 77 N to US 77/83.	Harlingen	Cameron	A
04/15/81	B5A–1.0–D2	Commerce St. [Harlingen] from Bus. US 77 N to Bus. US 77 S	Harlingen	Cameron	A
04/15/81	B5A–1.0–D3	Farm to Market 507 (Morgan Blvd.) [Harlingen] from Rio Hondo Rd. to Bus. US 77.	Harlingen	Cameron	A
04/15/81	B5A–1.0–D3A	25th St. [Harlingen] from Rio Hondo Rd. to North City Limits	Harlingen	Cameron	A
04/15/81	B5A–1.0–D3B	Rio Hondo Rd. [Harlingen] from 25th Street to East City Limits	Harlingen	Cameron	A
04/15/81	B5A–1.0–D4	Farm to Market 106 (Harrison St.) [Harlingen] from East City Limits to Bus. US 77.	Harlingen	Cameron	A
12/12/97	C	SH 255 (Camino Columbia Toll Road) [Laredo] from Interstate 35 to International Bridge III.	Laredo	Webb	A
12/28/93	D1	Interstate 10 [El Paso] from East City Limits to North City Limits	El Paso	El Paso	A
12/28/93	D2A	Trowbridge Dr. [El Paso] from Interstate 10 to Delta Dr.	El Paso	El Paso	A
12/28/93	D2B	Airway Blvd [El Paso] from Interstate 10 to US 62/180	El Paso	El Paso	A
12/28/93	D3A	Delta Dr. [El Paso] from Trowbridge Dr. to Fonseca Dr.	El Paso	El Paso	A
12/28/93	D3B	US 62/180 (Montana Ave.) [El Paso] from East City Limits to Airway Blvd.	El Paso	El Paso	A
12/28/93	D4A	Fonesca Dr. [El Paso] from Delta Dr. to Loop 375	El Paso	El Paso	A
12/28/93	D4B	Loop 375 (Joe Battle Blvd.) [El Paso] from Interstate 10 to US 62/180.	El Paso	El Paso	A
12/28/93	D5B	Loop 375 (Americas Ave.) [El Paso] from Border Highway (Loop 375) to Interstate 10.	El Paso	El Paso	A
12/28/93	D5B–1.0	Farm to Market 659 [El Paso] from East City Limits to Loop 375 N (Americas Ave.) [Its North intersection with LP 375 (Americas Ave.)].	El Paso	El Paso	A
12/28/93	D6B	Loop 375 (Border Highway) [El Paso] from US 54 (Patriot Freeway) to Loop 375 (Americas Ave.).	El Paso	El Paso	A
12/28/93	D6B–2.0	Farm to Market 659 [El Paso] from LP 375 (Border Highway) to South City Limits [International boundary at Ysleta Port of entry Zaragoza Bridge].	El Paso	El Paso	A
12/28/93	D7B	US 54 [El Paso] from New Mexico to South Loop 375	El Paso	El Paso	A
12/28/93	D7B–3.0	Interstate 110 [El Paso] from Cordova Port-of-Entry to Interstate 10.	El Paso	El Paso	A
12/28/93	D8B–4.0	Fred Wilson Dr. [El Paso] from Airport Rd. to US 54	El Paso	El Paso	A
12/28/93	D9B–4.0–A	Railroad Dr. [El Paso] from Dyer St. (SP 478) to Fred Wilson Dr.	El Paso	El Paso	A
12/28/93	D9B–4.0–B	Marshall Rd. [El Paso] from Fred Wilson Dr. to Railroad Dr	El Paso	El Paso	A

TABLE 107—TEXAS—DESIGNATED NRHM ROUTES—Continued

Designation date	Route order	Route description	City	County	Designation(s) (A,B,I,P)
12/28/93	D10B–4.0–A	Spur 478 (Dyer Rd.) [El Paso] from Railroad Dr. to US 54 N	El Paso	El Paso	A
10/24/95	E1	Interstate 20 [Odessa] from Southwest City Limits to Southeast City Limits.	Odessa	Ector	A
10/24/95	E2A	Loop 338 [Odessa] from South City Limits to North City Limits	Odessa	Ector	A
06/14/83	F1	Interstate 20 [Midland] from East City Limits to West City Limits	Midland	Midland	A
06/14/83	F2A	Loop 250 [Midland] from Interstate 20 to Fairgrounds Rd	Midland	Midland	A
06/14/83	F2B	Midkiff Rd. [Midland] from Interstate 20 to Loop 250	Midland	Midland	A
06/14/83	F2C	Cotton Flat Rd. [Midland] from Interstate 20 to Bus. I 20/US 80	Midland	Midland	A
06/14/83	F2D	State 349 [Midland] from Interstate 20 to South City Limits	Midland	Midland/Martin.	A
06/14/83	F3A	Fairgrounds Rd. [Midland] from South City Limits to Loop 250	Midland	Midland	A
06/14/83	F3A–1.0	Farm to Market 868 (Midland Dr.) [Midland] from Bus. SR 158 to Loop 250.	Midland	Midland	A
06/14/83	F3A–2.0	State 349 [Midland] from Loop 250 to North City Limits	Midland	Midland/Martin.	A
06/14/83	F3C–1.0	Garfield St. [Midland] from Bus. SH 158 to Florida Ave	Midland	Midland	A
06/14/83	F3E–1.0	Scharbauer Rd. [Midland] from State 349 to Golf Course Rd	Midland	Midland	A
06/14/83	F4E–1.0	Golf Course Rd. [Midland] from Scharbauer Dr. to State 158	Midland	Midland	A
10/01/91	G1	US 67 [San Angelo] from Southwest City Limits to Loop 306 W	San Angelo	Tom Green	A
10/01/91	G2	Loop 306 [San Angelo] from US 67 N to US 87/US 277	San Angelo	Tom Green	A
10/01/91	G3	US 87 [San Angelo] from loop 306 to South City Limits	San Angelo	Tom Green	A
06/28/01	H1	Interstate 35 [Bexar County] from South IH 410 to Atascosa/Bexar county line.	San Antonio	Bexar	A
06/28/01	H2A	Interstate 410 [Bexar County] Entire Highway	San Antonio	Bexar	A
06/28/01	H3A–1.0	US 90 [Bexar County] from West IH 410 to the Medina/Bexar county line.	San Antonio	Bexar	A
06/28/01	H3A–2.0	Interstate 10 [Bexar County] from North IH 410 to the Kendall/Bexar county line.	San Antonio	Bexar	A
06/28/01	H3A–3.0	US 281 [Bexar County] from North IH 410 to the Comal/Bexar county line.	San Antonio	Bexar	A
06/28/01	H3A–4.0	Interstate 35 [Bexar County] from North IH 410 to the Guadalupe/Bexar county line.	San Antonio	Bexar	A
06/28/01	H3A–5.0	Interstate 10 [Bexar County] from East IH 410 to the Guadalupe/Bexar county line.	San Antonio	Bexar	A
06/28/01	H3A–6.0	US 87 [Bexar County] from East IH 410 to the Wilson/Bexar County line.	San Antonio	Bexar	A
06/28/01	H3A–7.0	US 181 [Bexar County] from IH 410 to the Wilson/Bexar county line.	San Antonio	Bexar	A
06/28/01	H3A–8.0	Interstate 37 [Bexar County] from IH 410 to Atascosa/Bexar county line.	San Antonio	Bexar	A
06/28/01	H3A–9.0	US 281 [Bexar County] from South IH 410 to the Atascosa/Bexar county line.	San Antonio	Bexar	A
06/28/01	H3A–10.0	State 16 [Bexar County] from South IH 410 to the Atascosa/Bexar county line.	San Antonio	Bexar	A
01/08/93	I1	Interstate 35 [New Braunfels] from North City Limits to South City Limits.	New Braunfels.	Comal	A
01/09/93	I2A	Loop 337 [New Braunfels] from Interstate 35 N to Interstate 35 S.	New Braunfels.	Comal	A
10/07/82	J1	US 77 [Victoria] from West City Limits to North City Limits	Victoria	Victoria	A
10/07/82	J2A	Bus. US 59 [Victoria] from US 77 (downtown) to John Stockbauer Rd.	Victoria	Victoria	A
10/07/82	J2B	Loop 463 [Victoria] from US 87 to US 77	Victoria	Victoria	A
10/07/82	J3A	John Stockbauer Rd. [Victoria] from US 59 to Bus. US 59	Victoria	Victoria	A
10/07/82	J3A–1.0	State 185 [Victoria] from Bus. US 59 to South City Limits	Victoria	Victoria	A
10/07/82	J4A–2.0	US 59 [Victoria] from US 87 to East City Limits	Victoria	Victoria	A
10/07/82	J5A–2.0	US 87 [Victoria] from South City Limits to Northwest City Limits	Victoria	Victoria	A
06/28/93	K1	Farm to Market 609 [La Grange] from West City Limits to Bus. US 71.	La Grange	Fayette	A
06/28/93	K2	Bus. US 71 [La Grange] from West City Limits to Farm to Market 609.	La Grange	Fayette	A
06/28/93	L1	State 71 [La Grange] from East City Limits to West City Limits	La Grange	Fayette	A
06/28/93	L2	US 77 [La Grange] from North City Limits to State 71	La Grange	Fayette	A
08/06/90	M	US 59 [Rosenberg] from South City Limits to North City Limits	Rosenberg	Fort Bend	A
08/06/90	N	State 36 [Rosenberg] from 3400 Block to 4300 Block [This segment of State 36 is on the South side of town.].	Rosenberg	Fort Bend	A
08/06/90	O	State 36 [Rosenberg] from 500 Block [to US 90, 900 block only] to Farm to Market 529 [This segment of State 36 is to the Northwest side of town.].	Rosenberg	Fort Bend	A
01/21/87	P	US 90A [Stafford] from West City Limits to East City Limits	Stafford	Fort Bend	A

TABLE 107—TEXAS—DESIGNATED NRHM ROUTES—Continued

Designation date	Route order	Route description	City	County	Designation(s) (A,B,I,P)
01/21/87	Q	US 59 [Stafford] from West City Limits to North City Limits	Stafford	Fort Bend/ Harris.	A
03/25/91	R1	Farm to Market 518 [Pearland] from West City Limits to East City Limits.	Pearland	Brazoria	A
03/25/91	R2A	State 35 [Pearland] from North City Limits to South City Limits	Pearland	Brazoria	A
03/04/70	S	Interstate 610 [Houston] Entire Highway	Houston	Harris	A
02/22/72	T	State 225 [Deer Park] from East City Limits to West City Limits	Deer Park	Harris	A
05/25/82	U1	State 6 [Santa Fe] from West City Limits to East City Limits	Santa Fe	Galveston	A
05/25/82	U2A	Farm to Market 1764 [Santa Fe] Entire highway within city limits	Santa Fe	Galveston	A
05/25/82	U2B	Farm to Market 646 [Santa Fe] from North City Limits to South City Limits.	Santa Fe	Galveston	A
10/13/83	V1	Interstate 45 [Galveston, Galveston County] from West City Limits to Farm to Market 188 [Teichman Rd.]. [See City of Galveston code for special restrictions/more information.].	Galveston	Galveston	A
10/13/83	V2	State 275 (Port Industrial Blvd. and Harborside Drive) [Galveston, Galveston County] from Interstate 45 to 9th St. [See City of Galveston code for special restrictions/more information.].	Galveston	Galveston	A
10/13/83	V3A	51st St./Seawolf Pkwy. [Galveston, Galveston County] from State 275 (Harborside Drive) to 1/4 mile south of Seawolf Park. [See City of Galveston code for special restrictions/more information.].	Galveston	Galveston	A
10/13/83	W1	State 342 (61st St.) [Galveston, Galveston County] from Broadway Ave. to Seawall Blvd. [See City of Galveston code for special restrictions/more information.].	Galveston	Galveston	A
10/13/83	W2	Broadway Ave. [Galveston, Galveston County (entire length)] [See City of Galveston code for special restrictions/more information.].	Galveston	Galveston	A
03/01/72	X1	State 146 [Texas City, Galveston County] from North City Limits to South City Limits.	Texas City	Galveston	A
03/01/72	X2A	Loop 197 [Texas City, Galveston County] from South City Limits to 2nd Ave. S.	Texas City	Galveston	A
03/01/72	X2B	Farm to Market 519 [Texas City, Galveston County] from State 146 to Loop 197.	Texas City	Galveston	A
03/01/72	X2C	5th Ave. [Texas City, Galveston County] from State 146 to 14th St.	Texas City	Galveston	A
03/01/72	X2D	Farm to Market 1764 [Texas City, Galveston County] from Interstate 45 to State 146.	Texas City	Galveston	A
03/01/72	X3A	2nd Ave. [Texas City, Galveston County] from Loop 197 to Bay St.	Texas City	Galveston	A
03/01/72	X3A–1.0	4th Ave. [Texas City, Galveston County] from Loop 197 to 10th St.	Texas City	Galveston	A
03/01/72	X3B–1.0	Grant Ave. [Texas City] from 5th Ave. South to FM 519/SH 341	Texas City	Galveston	A
03/01/72	X3C	14th St. [Texas City, Galveston County] from Loop 197 to 5th Ave. S.	Texas City	Galveston	A
03/01/72	X4A–1.0	10th St. [Texas City, Galveston County] from S. 4th Ave. to S. 6th Ave.	Texas City	Galveston	A
01/11/94	Y1	Interstate 45 [Dickinson] from Northwest City Limits to Southeast City Limits.	Dickinson	Galveston	A
01/10/91	Y2	Interstate 45 [League City] from Northwest City Limits to Southeast City Limits.	League City	Galveston	A
01/11/94	Y3A	Farm to Market 646 [Dickinson/League City] from Interstate 45 east to eastern City Limit [Dickinson].	Dickinson/ League City.	Galveston	A
01/11/94	Y4A–1.0	Farm to Market 1266 [Dickinson] from Farm to Market 646 to Farm to Market 517.	Dickinson	Galveston	A
05/21/92	Z1	Interstate 35 [Temple] from North City Limits to Southwest City Limits.	Temple	Bell	A
05/21/92	Z2A	Loop 363 [Temple] Entire Highway	Temple	Bell	A
07/07/81	AA1	State 36 [Brenham] from South City Limits to US 290	Brenham	Washington	A
07/07/81	AA2A	US 290 [Brenham] from East City Limits to West City Limits	Brenham	Washington	A
07/07/81	AB1	Farm to Market 577 [Brenham] from East City Limits to BS 36	Brenham	Washington	A
07/07/81	AB2	Bus. US 36 [Brenham] from North City Limits to Farm to Market 577.	Brenham	Washington	A
07/07/81	AB2A	State 105 [Brenham] from Northeast City Limits to Farm to Market 577.	Brenham	Washington	A

TABLE 107—TEXAS—DESIGNATED NRHM ROUTES—Continued

Designation date	Route order	Route description	City	County	Designation(s) (A,B,I,P)
07/07/81	AB2B	Farm to Market 2935 [Brenham] from North City Limits to Farm to Market 577.	Brenham	Washington	A
12/17/84	AC1	State 159 [Hempstead] from State 6/Bus. US 290 to South City Limits.	Hempstead	Waller	A
12/17/84	AC2A	Farm to Market 1887 [Hempstead] from State 159 to South City Limits.	Hempstead	Waller	A
12/17/84	AC2B	State 6/Bus US 290 [Hempstead] from North City Limits to East City Limits.	Hempstead	Waller	A
12/17/84	AC3B–1.0	St. Mary's St. [Hempstead] from State 6/Bus US 290 to Blasengane Rd.	Hempstead	Waller	A
12/17/84	AC3B–2.0	Farm to Market 1488 [Hempstead] from Bus. US 290/SH 6 to East City Limits.	Hempstead	Waller	A
12/17/84	AC4B–1.0	Blasengane Rd. [Hempstead] from St. Mary's St. to US 290	Hempstead	Waller	A
09/28/87	AD1	State 146 [Mont Belvieu] from North City Limits to South City Limits.	Mont Belvieu	Chambers	A
09/28/87	AD2A	Loop 207 [Mont Belvieu] from north SR 146 to South SR 146	Mont Belvieu	Chambers	A
09/28/87	AD3A–1.0	Farm to Market 565 [Mont Belvieu] from Loop 207 to East City Limits.	Mont Belvieu	Chambers	A
09/23/82	AE1	Interstate 45 [Conroe] from North City Limits to South City Limits.	Conroe	Montgomery	A
09/23/82	AE2A	Loop 336 [Conroe] Entire highway within city limits	Conroe	Montgomery	A
08/01/91	AF1	Interstate 10 [Beaumont] from East City Limits to West City Limits.	Beaumont	Jefferson	A
08/01/91	AF2A	US 69/96/287 [Beaumont] from North City Limits to Southeast City Limits.	Beaumont	Jefferson	A
08/01/91	AF2B	US 90 [Beaumont] from West City Limits to Interstate 10	Beaumont	Jefferson	A
08/01/91	AF3A–1.0	Spur 380 (Railroad Ave.) [Beaumont] from US 69/US96/US287 (Cardinal Dr.) to Washington Blvd.	Beaumont	Jefferson	A
08/01/91	AF3A–2.0	State 105 [Beaumont] from West City Limits to US 69/96/287	Beaumont	Jefferson	A
08/01/91	AF4A–1.0	Washington Blvd. [Beaumont] from Spur 380 to Irving St	Beaumont	Jefferson	A
08/01/91	AF5A–1.0	Irving St. [Beaumont] from Washington Blvd. to Madison St	Beaumont	Jefferson	A
08/01/91	AF6A–1.0	Madison St. [Beaumont] from Irving St. to Grove St	Beaumont	Jefferson	A
01/16/78	AG1	Farm to Market 2110 [Crockett] from Southwest City Limits to Loop 304 SW.	Crockett	Houston	A
01/16/78	AG2	Loop 304 [Crockett] Entire highway	Crockett	Houston	A
01/16/78	AG3A	State 7/21 [Crockett] from West City Limits to Loop 304 W	Crockett	Houston	A
01/16/78	AG3B	Farm to Market 2076 [Crockett] from West City Limits to Loop 304 W.	Crockett	Houston	A
01/16/78	AG3C	Farm to Market 229 [Crockett] from Northwest City Limits to Loop 304 NW.	Crockett	Houston	A
01/16/78	AG3D	US 287/State 19 [Crockett] from North City Limits to Loop 304 N.	Crockett	Houston	A
01/16/78	AG3E	Farm to Market 2022 [Crockett] from Northeast City Limits to NE Loop 304.	Crockett	Houston	A
01/16/78	AG3F	State 21 [Crockett] from Northeast City Limits to Loop 304 NE	Crockett	Houston	A
01/16/78	AG3G	State 7 [Crockett] from East City Limits to Loop 304 E	Crockett	Houston	A
01/16/78	AG3H	US 287 [Crockett] from Southeast City Limits to Loop 304 E	Crockett	Houston	A
01/16/78	AG3I	Farm to Market 2712 [Crockett] from South City Limits to Loop 304 S.	Crockett	Houston	A
01/16/78	AG3J	State 19 [Crockett] from South City Limits to Loop 304 S	Crockett	Houston	A
08/16/88	AH1	US 59 [Lufkin] from South City Limits to South Loop 287	Lufkin	Angelina	A
09/23/88	AH2	Loop 287 [Lufkin] Entire highway	Lufkin	Angelina	A
08/16/88	AH3A	State 94 [Lufkin] from West City Limits to West Loop 287	Lufkin	Angelina	A
08/16/88	AH3B	State 103 [Lufkin] from West City Limits to West Loop 287	Lufkin	Angelina	A
08/16/88	AH3C	US 69 [Lufkin] from Northwest City Limits to Northwest Loop 287.	Lufkin	Angelina	A
08/16/88	AH3D	US 59 [Lufkin] from North City Limits to North Loop 287	Lufkin	Angelina	A
09/23/88	AH3E	State 103 [Lufkin] from East City Limits to East Loop 287 US 59/69.	Lufkin	Angelina	A
09/23/88	AH3F	US 69 [Lufkin] from Southeast City Limits to East Loop 287	Lufkin	Angelina	A
09/20/77	AI1	US 59 [Nacogdoches] from South City Limits to Loop 224 S	Nacogdoches	Nacogdoches	A
09/20/77	AI2	Loop 224 [Nacogdoches] Entire Highway	Nacogdoches	Nacogdoches	A
09/20/77	AI3A	State 7 [Nacogdoches] from West City Limits to Loop 224 W	Nacogdoches	Nacogdoches	A
09/20/77	AI3B	State 21 [Nacogdoches] from West City Limits to Loop 224 W	Nacogdoches	Nacogdoches	A
09/20/77	AI3C	US 59 [Nacogdoches] from North City Limits to Loop 224 N	Nacogdoches	Nacogdoches	A
09/20/77	AI3D	State 7 [Nacogdoches] from East City Limits to Loop 224 E	Nacogdoches	Nacogdoches	A

TABLE 107—TEXAS—DESIGNATED NRHM ROUTES—Continued

Designation date	Route order	Route description	City	County	Designation(s) (A,B,I,P)
09/20/77	AI3E	State 21 [Nacogdoches] from East City Limits to Loop 224 E	Nacogdoches	Nacogdoches	A
08/22/88	AJ1	US 96 [Center] from North City Limits to South City Limits	Center	Shelby	A
08/22/88	AJ2A	State 7 [Center] from West City Limits to US 96	Center	Shelby	A
08/22/88	AJ2B	State 87 [Center] from West City Limits to US 96	Center	Shelby	A
08/22/88	AK1	Loop 500 [Center] from US 96 S to East State 7	Center	Shelby	A
08/22/88	AK2A	State 87 [Center] from East City Limits to Loop 500	Center	Shelby	A
11/01/94	AL1	US 377 [Benbrook] from North City Limits to South City Limits	Benbrook	Tarrant	A
03/06/79	AL2	US 377 [Fort Worth] from Southwest City Limits to Interstate 20	Fort Worth	Tarrant	A
11/01/94	AL2A	Farm to Market 2871 [Benbrook] from West City Limits to US 377.	Benbrook	Tarrant	A
09/06/84	AL3A–1.0	Interstate 20/820 [Benbrook] from East City Limits to West City Limits.	Benbrook	Tarrant	A
03/06/79	AL4A–1.0	Interstate 820 [Fort Worth] Entire highway [To include: Benbrook, Haltom, Hurst, Lake Worth, N. Richland Hills, Signaw].	Fort Worth	Tarrant	A
07/01/86	AL4A–1.0	Interstate 820 [Haltom] from West City Limits to East City Limits	Haltom	Tarrant	A
09/09/86	AL4A–1.0	Interstate 820 [Hurst] from West City Limits to Southwest City Limits.	Hurst	Tarrant	A
10/14/86	AL4A–1.0	Interstate 820 [Lake Worth] from South City Limits to East City Limits.	Lake Worth	Tarrant	A
08/25/86	AL4A–1.0	Interstate 820 [North Richland Hills] from West City Limits to East City Limits.	North Richland Hills.	Tarrant	A
11/15/86	AL4A–1.0	Interstate 820 [Saginaw] from West City Limits to East City Limits.	Saginaw	Tarrant	A
03/06/79	AL5A–1.0–A	Interstate 30 [Fort Worth] from West City Limits to West Interstate 820.	Fort Worth	Tarrant	A
03/06/79	AL5A–1.0–B	State 199 (Jacksboro Hwy) [Fort Worth/Lake Worth] from Northwest City Limits of Fort Worth to Interstate 820 NW.	Fort Worth/Lake Worth.	Tarrant	A
03/06/79	AL5A–1.0–C	Interstate 35 W [Fort Worth] from North City Limits to North Interstate 820.	Fort Worth	Tarrant	A
08/25/86	AL5A–1.0–D	State 26 [North Richland Hills (entire highway within city limits)]	North Richland Hills.	Tarrant	A
03/06/79	AL5A–1.0–E	Interstate 30 [Fort Worth] from East City Limits to East Interstate 820.	Fort Worth	Tarrant	A
03/06/79	AL5A–1.0–F	State 180 [Fort Worth] from Interstate 820 to East City Limits	Fort Worth	Tarrant	A
09/02/86	AL5A–1.0–G	Interstate 20 [Forest Hill] from East City Limits to West City Limits.	Forest Hill	Tarrant	A
09/02/86	AL5A–1.0–H	Interstate 20 [Arlington] from East City Limits to West City Limits.	Arlington	Tarrant	A
03/06/79	AL6A–1.0–H	Interstate 20 [Fort Worth] from East City Limits to West City Limits.	Fort Worth	Tarrant	A
03/06/79	AL7A–1.0–H1	Interstate 35 W [Fort Worth] from South City Limits to Interstate 20.	Fort Worth	Tarrant	A
04/22/91	AM	US 287 [Mansfield] Entire Highway	Mansfield	Tarrant/Johnson.	A
01/01/76	AN1	Interstate 35E [Lancaster] from North City Limits to South City Limits.	Lancaster	Dallas	A
01/25/84	AN2	Interstate 35 E [Dallas] from South City Limits to Interstate 20	Dallas	Dallas	A
11/14/94	AN3A	Interstate 20 [Balch Springs] from East City Limits to South City Limits.	Balch Springs	Dallas	A
01/25/84	AN3A	Interstate 20 [Dallas] Entire Length within City Limits	Dallas	Dallas	A
08/18/86	AN3A	Interstate 20 [Duncanville] from East City Limits to West City Limits.	Duncanville	Dallas	A
02/09/87	AN3A	Interstate 20 [Hutchins] from West City Limits to East City Limits.	Hutchins	Dallas	A
01/01/76	AN3A	Interstate 20 [Lancaster] from West City Limits to East City Limits.	Lancaster	Dallas	A
01/25/84	AN4A–1.0	US 67 [Dallas] from Interstate 20 to South City Limits	Dallas	Dallas	A
01/25/84	AN4A–2.0	Spur 408 [Dallas] from Interstate 20 to Loop 12	Dallas	Dallas	A
01/25/84	AN4A–3.0	State 342 [Dallas] from Interstate 20 to South City Limits	Dallas	Dallas	A
01/25/84	AN4A–4.0	Interstate 45 [Dallas] from Southeast City Limits to Interstate 20	Dallas	Dallas	A
01/25/84	AN4A–5.0	US 175 [Dallas] from South City Limits to Interstate 20	Dallas	Dallas	A

TABLE 107—TEXAS—DESIGNATED NRHM ROUTES—Continued

Designation date	Route order	Route description	City	County	Designation(s) (A,B,I,P)
08/18/86	AN5A–1.0	US 67 [Duncanville] from East City Limits to South City Limits	Duncanville	Dallas	A
01/25/84	AN5A–2.0	Loop 12 [Dallas] from Spur 408 to South City Limits of Irving	Dallas	Dallas	A
01/25/84	AN5A–2.0–A	Spur 303 [Dallas] from Spur 408 to West City Limits	Dallas	Dallas	A
02/09/87	AN5A–4.0	Interstate 45 [Hutchins] from North City Limits to South City Limits.	Hutchins	Dallas	A
06/20/91	AN6A–2.0	Loop 12 [Irving] from North City Limits to South City Limits	Irving	Dallas	A
01/25/84	AN6A–2.0–B	State 180 [Dallas] from Loop 12 to West City Limits	Dallas	Dallas	A
01/25/84	AN6A–2.0–C	Interstate 30 [Dallas] from West City Limits to Loop 12	Dallas	Dallas	A
01/25/84	AN7A–2.0	Loop 12 [Dallas] from North City Limits of Irving to Interstate 35 E.	Dallas	Dallas	A
01/25/84	AN8A–2.0	Interstate 35 E [Dallas] from North City Limits to LP 12	Dallas	Dallas	A
01/25/84	AN8A–2.0–D	Spur 348 (Northwest Highway) [Dallas] from Loop 12 to West City Limits.	Dallas	Dallas	A
01/25/84	AN9A–2.0–E	Interstate 635 [Dallas] Entire highway within Dallas City Limits	Dallas	Dallas	A
11/01/94	AN10A–2.0–E	Interstate 635 [Garland] from Southwest City Limits to South City Limits.	Garland	Dallas	A
01/25/84	AN10A–2.0–E1	State 289 (Preston Rd.) [Dallas] from Interstate 635 to North City Limits.	Dallas	Dallas	A
01/25/84	AN10A–2.0–E2	US 75 [Dallas] from North City Limits to Interstate 635 N	Dallas	Dallas	A
08/06/90	AN11A–2.0–E	Interstate 635 [Mesquite] from North City Limits to South City Limits.	Mesquite	Dallas	A
11/14/94	AN12A–2.0–E	Interstate 635 [Balch Springs] from North City Limits to Interstate 20.	Balch Springs	Dallas	A
03/28/96	AO1	US 62/82 [Lubbock] from Southwest City Limits to Loop 289 SW.	Lubbock	Lubbock	A
03/28/96	AO2	Loop 289 (Lubbock) from W. US 62/82, North, East, South, & West to South Interstate 27/87.	Lubbock	Lubbock	A
03/28/96	AO3A	State 114 [Lubbock] from West City Limits to Loop 289 W	Lubbock	Lubbock	A
03/28/96	AO3B	US 84 [Lubbock] from Northwest City Limits to Loop 289 N	Lubbock	Lubbock	A
03/28/96	AO3C	US 62/82/SH 114 [Lubbock] from Northeast City Limits to Loop 289 NE.	Lubbock	Lubbock	A
03/28/96	AO3D	US 84 [Lubbock] from Southeast City Limits to Loop 289 S	Lubbock	Lubbock	A
03/28/96	AO3E	Interstate 27 [Lubbock] from North City Limits to South City Limits.	Lubbock	Lubbock	A
09/09/86	AP1	Interstate 27/US 87/US 60 [Amarillo] from South City Limits to Interstate 40.	Amarillo	Potter/Randall.	A
10/10/95	AP2	US 60/US 87/US 287 (Buchanan and Pierce St. only) [Amarillo] from Loop 335 to Interstate 40 [7 p.m. to 7 a.m.].	Amarillo	Potter/Randall.	A
09/09/86	AP2A	Interstate 40 [Amarillo] from East City Limits to West City Limits	Amarillo	Potter/Randall.	A
09/09/86	AP3A	Loop 335 [Amarillo] from Dumas Dr. [(US 87/US 287)] to West City Limits.	Amarillo	Potter/Randall.	A
09/09/86	AP3A–1.0	Loop 335 [Amarillo] from NE 24th Ave. to Interstate 40	Amarillo	Potter/Randall.	A
09/09/86	AP3B	Loop 335 [Amarillo] from Dumas Dr. [US 27/US 287] to East City Limits.	Amarillo	Potter/Randall.	A
09/09/86	AP4A–1.0–A	US 60 [Amarillo] from East City Limits to Loop 335 E	Amarillo	Potter/Randall.	A
09/09/86	AQ1	BI 40 [Amarillo] from West City Limits to Farm to Market 1719	Amarillo	Potter/Randall.	A
09/09/86	AQ2	Farm to Market 1719 [Amarillo] from North City Limits to BI 40	Amarillo	Potter/Randall.	A

TABLE 108—STATE: UTAH

State Agency: UT DOT
POC: Lane Murphy
Address: Motor Carrier Division, 4501 South 2700 West, P.O. Box 148240, Salt Lake City, UT 84114–8240
Phone: (801) 965–4508

TABLE 108—STATE: UTAH—Continued

Fax: (801) 965–4211
Web Address: *www.udot.utah.gov/*
FMCSA: UT FMCSA Field Office
FMCSA POC: UT Motor Carrier

TABLE 108—STATE: UTAH—Continued

Address: Division Administrator, 310 East 4500 South, Suite 102, Salt Lake City, UT 84107
Phone: (801) 288–0360
Fax: (801) 288–8867

TABLE 109—UTAH—DESIGNATED HRCQ/RAM ROUTES

Designation date	Route order	Route description	Designation(s) (A,B,I,P)
07/01/97	A1	Interstate 80 from Interstate 84 to Wyoming	P
07/01/97	A2	Interstate 84 from Interstate 15 to Interstate 80	P
		[Note: The Perry Port of Entry on I–15/I–84 is a designated safe haven for radioactive materials in transit.]	
07/01/97	A3	Interstate 15 from Idaho to Interstate 84	P

TABLE 110—UTAH—DESIGNATED NRHM ROUTES

Designation date	Route order	Route description	Designation(s) (A,B,I,P)
07/01/97	A	All Interstates	A
		[The Utah Department of Transportation states that all Interstate routes in the State are designated NRHM routes.]	

TABLE 111—STATE: VERMONT

State Agency: VT Emergency Mgmt. Division
POC: William E. Irwin, Sc.D., CHP
Address: 108 Cherry St., Burlington, VT 05402
Phone: (802) 863–7238
Fax: (802) 865–7745
Web Address: *vem.vermont.gov/*
FMCSA: VT FMCSA Field Office
FMCSA POC: VT Motor Carrier
Address: Division Administrator, 87 State St., Room 305, P.O. Box 338, Montpelier, VT 05601

TABLE 111—STATE: VERMONT—Continued

Phone: (802) 828–4480
Fax: (802) 828–4581
No designated or restricted routes as of 01/31/2014.

TABLE 112—STATE: VIRGINIA

State Agency: VA DOT
POC: Perry Cogburn

TABLE 112—STATE: VIRGINIA—Continued

Address: 1221 East Broad St., Richmond, VA 23219
Phone: (804) 786–2848
Fax: (804) 225–4979
Web Address: *virginiadot.org/*
FMCSA: VA FMCSA Field Office
FMCSA POC: VA Motor Carrier
Address: Division Administrator, 400 North 8th St., Suite 750, Richmond, VA 23219
Phone: (804) 771–8585
Fax: (804) 771–8670

TABLE 113—VIRGINIA—RESTRICTED HM ROUTES

Designation date	Route order	Route description	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
11/15/95	A	East River Mountain Tunnel—Interstate 77 [Phone: (276) 928–1994]	7
		Highway Route Controlled Quantities (HRCQ) of high level radioactive material is not allowed.	
11/15/95	B	Big Walker Mountain Tunnel—Interstate 77 [Phone: (276) 228–5571]	7
		Highway Route Controlled Quantities (HRCQ) of high level radioactive material is not allowed.	
05/25/85	C	Airport Tunnel (Airport Rd [State 118]) [City of Roanoke] from Trapper Cir NW to Dent Rd NW	0
11/15/95	D	Elizabeth River Tunnel [Downtown]—Interstate 264 [Phone: (757) 494–2424].	1,2,3,4,5,6,7,8,i
.....		Materials in hazard classes 1.1, 1.2, 1.3, 2.3, 4.3, 6.1, 7 (i.e., Highway Route Controlled Quantities-HRCQ), and toxic inhalation hazard are not allowed passage through this tunnel.	
		Materials in hazard classes 2.1, 3, 5.1, 5.2, and 8, are allowed access to this tunnel only in ''non-bulk''.	
		Hazmat shipper MUST abide by rules and regulations outlined in VDOT's ''Rules and Regulations Governing the Transportation of Hazardous Materials through Bridge-Tunnel Facilities''. For additional information, see *www.virginiadot.org/info/resources/vdothazmat.pdf*.	
11/15/95	E	Elizabeth River Tunnel [Midtown]—US 58 [Phone: (757) 683–8123]	1,2,3,4,5,6,7,8,i
		Materials in hazard classes 1.1, 1.2, 1.3, 2.3, 4.3, 6.1, 7 (Highway Route Controlled Quantities (HRCQ)), and toxic inhalation hazard are not allowed passage through this tunnel.	
		Materials in hazard classes 2.1, 3, 5.1, 5.2, and 8, are allowed access to this tunnel only in ''non-bulk''.	
		Hazmat shipper MUST abide by rules and regulations outlined in VA DOT's ''Rules and Regulations Governing the Transportation of Hazardous Materials through Bridge-Tunnel Facilities''. For additional information, see *www.virginiadot.org/info/resources/vdothazmat.pdf*.	
11/15/95	F	Monitor-Merrimac Memorial [Bridge/Tunnel]—Interstate 664 [Phone: (757) 247–2123]	1,2,3,4,5,6,7,8,i

TABLE 113—VIRGINIA—RESTRICTED HM ROUTES—Continued

Designation date	Route order	Route description	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
		Materials in hazard classes 1.1, 1.2, 1.3, 2.3, 4.3, 6.1,7 (i.e., Highway Route Controlled Quantities-HRCQ), and toxic inhalation hazard are not allowed passage through this tunnel. Materials in hazard classes 2.1, 3, 5.1, 5.2, and 8, are allowed access to this tunnel only in ''non-bulk''. Hazmat shipper MUST abide by rules and regulations outlined in VDOT's ''Rules and Regulations Governing the Transportation of Hazardous Materials through Bridge-Tunnel Facilities''. For additional information, see *www.virginiadot.org/info/resources/vdothazmat.pdf*	
11/15/95	G	Hampton Roads Bridge-Tunnel [Interstate 64] [Phone: (757) 727–4832] Materials in hazard classes 1.1, 1.2, 1.3, 2.3, 4.3, 6.1, 7 (i.e., Highway Route Controlled Quantities-HRCQ), and toxic inhalation hazard are not allowed passage through this tunnel. Materials in hazard classes 2.1, 3, 5.1, 5.2, and 8, are allowed access to this tunnel only in ''non-bulk''. Hazmat shipper MUST abide by rules and regulations outlined in VDOT's ''Rules and Regulations Governing the Transportation of Hazardous Materials through Bridge-Tunnel Facilities''. For additional information, see *www.virginiadot.org/info/resources/vdothazmat.pdf*	1,2,3,4,5,6,7,8,i
11/12/96	H	Chesapeake Bay Bridge—Tunnel [Phone: (757) 331–2960] The jurisdiction for this bridge and tunnel falls under the Chesapeake Bay Bridge and Tunnel District, which maintains its own regulations on hazardous materials.] Classes 1.1, 1.2, 1.3, 2.3, 4.3, and 6.1 (Inhalation Hazard only) are not allowed passage in any quantity. Classes 2.1., 2.2, 3, 4.1, 4.2, 5.1, 5.2, 6.1, 7, 8, and 9 are prohibited in limited circumstances. For additional information on route restrictions, see *www.cbbt.com/hazmat.html*	1,2,3,4,5,6,7,8,9,i

TABLE 114—VIRGINIA—DESIGNATED NRHM ROUTES

Designation date	Route order	Route description	Designation(s) (A,B,I,P)
07/31/95	A	Interstate 495 [** Restricted to right lanes only **]	A

TABLE 115—STATE: VIRGINIA

State Agency: Dept. of Emergency Mgmt.
POC: Brian Iverson
Address: 10501 Trade Court, Richmond, VA 23236
Phone: (804) 897–9953
Fax: (804) 897–6576
Web Address: *www.vaemergency.gov/*
FMCSA: VA FMCSA Field Office
FMCSA POC: VA Motor Carrier
Address: Division Administrator, 400 North 8th St., Suite 750, Richmond, VA 23219
Phone: (804) 771–8585
Fax: (804) 771–8670

TABLE 116—VIRGINIA—HRCQ/RAM ROUTES

Designation date	Route order	Route description	Designation(s) (A,B,I,P)
03/11/94	A	US 460 from West Virginia to State 100 [Pearisburg]	P
03/11/94	B1	US 220 Alt. from US 460 to Interstate 81	P
03/11/94	B2	US 460 from State 726 [Mt. Athos Rd. in Lynchburg] to US 220 Alt	P
03/11/94	B3	State 460 from Interstate 85 to State 726 [Mt. Athos Rd. in Lynchburg]	P
03/11/94	B4	Interstate 85 from Interstate 95 to State 460	P
03/11/94	C1	US 58 from Portsmouth to Interstate 95	P
03/11/94	C2A	US 460 from US 1 [in Petersburg] to US 58 [North of Suffolk]	P
03/11/94	C2B	State 10 from State 156 to State 58	P
03/11/94	C3B	State 156 from State 5 to State 10	P
03/11/94	C3B–1.0	US 17/US 258 from Interstate 64 to State 10	P
03/11/94	C4B	State 5 from State 155 [in Charles City] to State 156	P
03/11/94	C5B	State 155 from Interstate 64 to State 5 [at Charles City]	P
03/11/94	D	US 29 from Interstate 66 to Interstate 64	P
03/11/94	E1	US 522 from State 208 to Interstate 64	P
03/11/94	E2	State 208 from US 522 to US 1	P
03/11/94	E3	US 1 from State 208 to Interstate 95 [At Four Mile Fork]	P

TABLE 117—STATE: WASHINGTON

State Agency: WA DOT Commercial Vehicle Services
POC: Ann Ford, Commercial Vehicle Services Administrator
Address: P.O. Box 47367, Olympia, WA 98504–7367
Phone: (360) 705–7341
Fax: (360) 704–6350
Web Address: *wsdot.wa.gov/Commercial Vehicle/*
FMCSA: WA FMCSA Field Office
FMCSA POC: WA Motor Carrier, Division Administrator
Address: 2424 Heritage Court, SW., Suite 302, Olympia, WA 98502
Phone: (360) 753–9875
Fax: (360) 753–9024

TABLE 118—WASHINGTON—RESTRICTED HM ROUTES

Designation date	Route order	Route description	City	County	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
1990	A	I–90 [Seattle] P 3–6 Flammable loads cannot be transported through the Mercer Island tunnel or the tunnel on the west side of Lake Washington when the sprinkler systems are not operational or being tested.	Seattle	King	3
1989	B	I–5 [Seattle] MP 164 Flammable loads cannot be transported through the tunnel under convention center when the sprinkler systems are not operational or being tested.''	Seattle	King	3

TABLE 119—STATE: WEST VIRGINIA

State Agency: WV DOT, District 6
POC: David Sada
Address: 1 DOT Drive, Moundsville, WV 26041–1605
Phone: (304) 843–4032
Fax: (304) 843–4059

TABLE 119—STATE: WEST VIRGINIA—Continued

Web Address: *www.transportation.wv.gov/Pages/default.aspx*
FMCSA: WV FMCSA Field Office
FMCSA POC: WV Motor Carrier

TABLE 119—STATE: WEST VIRGINIA—Continued

Address: Division Administrator, 700 Washington St., East Geary Plaza, Suite 205, Charleston, WV 25301
Phone: (304) 347–5935
Fax: (304) 347–5617

TABLE 120—WEST VIRGINIA—RESTRICTED HM ROUTES

Designation date	Route order	Route description	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
12/06/66	A	Wheeling Tunnel (at I–70)	1,3,4

TABLE 121—STATE: WISCONSIN

State Agency: WI DOT
POC: Mark Gottlieb
Address: Office of the Secretary, P.O. Box 7910 Madison, WI 53707
Phone: (608) 266–1114
Fax: (608) 266–9912
Web Address: *www.dot.state.wi.us*
FMCSA: WI FMCSA Field Office
FMCSA POC: WI Motor Carrier
Address: Division Administrator, 1 Point Place, Suite 101, Madison, WI 53719
Phone: (608) 662–2010

TABLE 121—STATE: WISCONSIN—Continued

Fax: (608) 829–7540
No designated or restricted routes as of 01/31/2014.

TABLE 122—STATE: WYOMING

State Agency: WY Highway Patrol
POC: Capt. Scot Montgomery
Address: 5300 Bishop Blvd., Cheyenne, WY 82009

TABLE 122—STATE: WYOMING—Continued

Phone: (307) 777–4312
Fax: (307) 777–4282
Web Address: *www.whp.dot.state.wy.us/wydot*
FMCSA: WY FMCSA Field Office
FMCSA POC: WY Motor Carrier
Address: Division Administrator, 1637 Stillwater Avenue, Suite F, Cheyenne, WY 82009
Phone: (307) 772–2305
Fax: (307) 772–2905

TABLE 123—WYOMING—RESTRICTED HM ROUTES

Designation date	Route order	Route description	City	County	Restriction(s) (0,1,2,3,4,5,6,7,8,9,i)
04/12/94	A	City of Cheyenne [City Ordinance: Hazardous materials and radioactive materials may not be transported by motor vehicle within the City of Cheyenne except for the purpose of making pickups and/or deliveries within the City, unless such routing is consistent with 49 CFR 397.7 or 49 CFR 177.825. Motor vehicles carrying hazardous and/or radioactive materials which are making local pickups and/or deliveries must be operated over the safest and most direct route to and from the origination and destination point. Such routes shall not pass through residential areas unless there is no practical alternative.]	Cheyenne	Laramie	0

Issued on: July 1, 2014.

Anne S. Ferro,

Administrator.

[FR Doc. 2014–15861 Filed 7–11–14; 8:45 am]

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Part III

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 411, 412, 416, *et al.*

Medicare and Medicaid Programs: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs; Physician-Owned Hospitals: Data Sources for Expansion Exception; Physician Certification of Inpatient Hospital Services; Medicare Advantage Organizations and Part D Sponsors: Appeals Process for Overpayments Associated With Submitted Data; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 411, 412, 416, 419, 422, 423, and 424

[CMS–1613–P]

RIN 0938–AS15

Medicare and Medicaid Programs: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs; Physician-Owned Hospitals: Data Sources for Expansion Exception; Physician Certification of Inpatient Hospital Services; Medicare Advantage Organizations and Part D Sponsors: Appeals Process for Overpayments Associated With Submitted Data

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the Medicare hospital outpatient prospective payment system (OPPS) and the Medicare ambulatory surgical center (ASC) payment system for CY 2015 to implement applicable statutory requirements and changes arising from our continuing experience with these systems. In this proposed rule, we describe the proposed changes to the amounts and factors used to determine the payment rates for Medicare services paid under the OPPS and those paid under the ASC payment system. In addition, this proposed rule would update and refine the requirements for the Hospital Outpatient Quality Reporting (OQR) Program and the ASC Quality Reporting (ASCQR) Program.

In this document, we also are proposing changes to the data sources used for expansion requests for physician owned hospitals under the physician self-referral regulations; changes to the underlying authority for the requirement of an admission order for all hospital inpatient admissions and changes to require physician certification for hospital inpatient admissions only for long-stay cases and outlier cases; and changes to establish a three-level appeals process for Medicare Advantage (MA) organizations and Part D sponsors that would be applicable to CMS-identified overpayments associated with data submitted by these organizations and sponsors.

DATES: *Comment Period:* To be assured consideration, comments on all sections of this proposed rule must be received at one of the addresses provided in the **ADDRESSES** section no later than 5 p.m. EST on September 2, 2014.

ADDRESSES: In commenting, please refer to file code CMS–1613–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (no duplicates, please):

1. *Electronically.* You may (and we encourage you to) submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the instructions under the ''submit a comment'' 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–1613–P, P.O. Box 8013, 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 via express or overnight mail to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1613–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to either of the following addresses:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call the telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, we refer readers to the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION, CONTACT: Marjorie Baldo, (410) 786–4617, for issues related to new CPT and Level II HCPCS codes, revised process for soliciting comments related to new Category I and III CPT codes, and exceptions to the 2 times rule.

Anita Bhatia, (410) 786–7236, for issues related to the Ambulatory Surgical Center Quality Reporting (ASCQR) Program—Program Administration and Reconsideration Issues, and for issues related to the Hospital Outpatient Quality Reporting—Program Administration, Validation, and Reconsideration Issues.

Chuck Braver, (410) 786–9379, for issues related to the CMS web posting of the OPPS & ASC payment files.

Erick Chuang, (410) 786–1816, for issues related to OPPS APC weights, OPPS data claims, geometric mean calculation, copayments, rural hospital payments, and wage index.

Dexter Dickey, (410) 786–6856, or Dorothy Myrick, (410) 786–9671, for issues related to partial hospitalization and community mental health center (CMHC) issues.

Eva Fung, (410) 786–7539, or Fiona Larbi, (410) 786–7224, or Felicia Diggs, (410) 786–1591, for issues related to HOQR and ASCQR measures issues and publication of HOQR program data issues.

Julie Gover, (410) 786–0525, for issues related to Medicare Advantage (MA) organizations and Medicare Part D sponsor overpayments.

Twi Jackson, (410) 786–1159, for issues related to device-dependent APCs, extended assessment and management composite APCs, hospital outpatient visits, inpatient procedures list, and no cost/full credit and partial credit devices.

Marina Kushnirova, (410) 786–2682, for issues related to OPPS status indicators and comment indicators.

Barry Levi, (410) 786–4529, for issues related to OPPS pass-through devices, brachytherapy sources, brachytherapy composite APC, and multiple imaging composite APCs.

John McInnes, (410) 786–0791, for issues related to comprehensive APCs, provider-based issues, packaged items/services, OPPS drugs/radiopharmaceuticals/biologicals payments, new technology intraocular

lenses (NTIOLs), and ambulatory surgical center (ASC) payments.

David Rice, (410) 786–6004, for issues related to blood and blood products, cancer hospital payments, conversion factor, cost-to-charge ratios (CCRs), and outlier payments.

Daniel Schroder, (410) 786–7452, for issues related to physician certification of hospital inpatient services.

Carol Schwartz, (410) 786–0576, for issues related to the Advisory Panel on Hospital Outpatient Payment (HOP Panel).

Teresa Walden, (410) 786–3755, or Patricia Taft, (410) 786–4561, for issues related to the physician self-referral law/physician-owned hospital expansion exception process.

Marjorie Baldo, (410) 786–4617, for all other issues related to hospital outpatient and ambulatory surgical center payments not previously identified.

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, generally beginning approximately 3 weeks after publication of the rule, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244, on Monday through Friday of each week from 8:30 a.m. to 4:00 p.m. EST. To schedule an appointment to view public comments, phone 1–800–743–3951.

Electronic Access

This **Federal Register** document is also available from the **Federal Register** online database through *Federal Digital System (FDsys),* a service of the U.S. Government Printing Office. This database can be accessed via the internet at *http://www.gpo.gov/fdsys/*.

Addenda Available Only Through the Internet on the CMS Web site

In the past, a majority of the Addenda referred to in our OPPS/ASC proposed and final rules were published in the **Federal Register** as part of the annual rulemakings. However, beginning with the CY 2012 OPPS/ASC proposed rule, all of the Addenda no longer appear in the **Federal Register** as part of the annual OPPS/ASC proposed and final rules to decrease administrative burden and reduce costs associated with publishing lengthy tables. Instead, these Addenda are published and available only on the CMS Web site. The Addenda relating to the OPPS are available at: *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HospitalOutpatientPPS/index.html*. The Addenda relating to the ASC payment system are available at: *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/ASCPayment/index.html*.

Alphabetical List of Acronyms Appearing in This Federal Register Document

AHA American Hospital Association
AMA American Medical Association
APC Ambulatory Payment Classification
ASC Ambulatory surgical center
ASCQR Ambulatory Surgical Center Quality Reporting
ASP Average sales price
AWP Average wholesale price
BBA Balanced Budget Act of 1997, Pub. L. 105–33
BBRA Medicare, Medicaid, and SCHIP [State Children's Health Insurance Program] Balanced Budget Refinement Act of 1999, Pub. L. 106–113
BIPA Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, Pub. L. 106–554
BLS Bureau of Labor Statistics
CAH Critical access hospital
CAP Competitive Acquisition Program
C–APC Comprehensive Ambulatory Payment Classification
CASPER Certification and Survey Provider Enhanced Reporting
CAUTI Catheter-associated urinary tract infection
CBSA Core-Based Statistical Area
CCI Correct Coding Initiative
CCN CMS Certification Number
CCR Cost-to-charge ratio
CDC Centers for Disease Control and Prevention
CEO Chief executive officer
CERT Comprehensive Error Rate Testing
CFR Code of Federal Regulations
CLFS Clinical Laboratory Fee Schedule
CMHC Community mental health center
CMS Centers for Medicare & Medicaid Services
CPI–U Consumer Price Index for All Urban Consumers
CPT Current Procedural Terminology (copyrighted by the American Medical Association)
CQM Clinical quality measure
CR Change request
CSAC Consensus Standards Approval Committee
CY Calendar year
DFO Designated Federal Official
DRA Deficit Reduction Act of 2005, Pub. L. 109–171
DRG Diagnosis-Related Group
DSH Disproportionate share hospital
EACH Essential access community hospital
eCQM Electronically specified clinical quality measure
ECT Electroconvulsive therapy
ED Emergency department
E/M Evaluation and management
EHR Electronic health record
ESRD End-stage renal disease
FACA Federal Advisory Committee Act, Pub. L. 92–463
FDA Food and Drug Administration
FFS [Medicare] Fee-for-service
FY Fiscal year
FFY Federal fiscal year
GAO Government Accountability Office
HAI Healthcare-associated infection
HCERA Health Care and Education Reconciliation Act of 2010, Pub. L. 111–152
HCPCS Healthcare Common Procedure Coding System
HCRIS Healthcare Cost Report Information System
HEU Highly enriched uranium
HIPAA Health Insurance Portability and Accountability Act of 1996, Pub. L. 104–191
HITECH Health Information Technology for Economic and Clinical Health [Act] (found in the American Recovery and Reinvestment Act of 2009, Pub. L. 111–5)
HOP Hospital Outpatient Payment [Panel]
HOPD Hospital outpatient department
ICD–9–CM International Classification of Diseases, Ninth Revision, Clinical Modification
ICD Implantable cardioverter defibrillator
ICU Intensive care unit
IHS Indian Health Service
IMRT Intensity Modulated Radiation Therapy
I/OCE Integrated Outpatient Code Editor
IOL Intraocular lens
IOM Institute of Medicine
IORT Intraoperative radiation treatment
IPPS [Hospital] Inpatient Prospective Payment System
IQR [Hospital] Inpatient Quality Reporting
LDR Low dose rate
LOS Length of stay
LTCH Long-term care hospital
MAC Medicare Administrative Contractor
MAP Measure Application Partnership
MedPAC Medicare Payment Advisory Commission
MEI Medicare Economic Index
MFP Multifactor productivity
MGCRB Medicare Geographic Classification Review Board
MIEA–TRHCA Medicare Improvements and Extension Act under Division B, Title I of the Tax Relief Health Care Act of 2006, Pub. L. 109–432
MIPPA Medicare Improvements for Patients and Providers Act of 2008, Pub. L. 110–275
MMA Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. 108–173
MMEA Medicare and Medicaid Extenders Act of 2010, Pub. L. 111–309
MMSEA Medicare, Medicaid, and SCHIP Extension Act of 2007, Pub. L. 110–173
MPFS Medicare Physician Fee Schedule
MRA Magnetic resonance angiography

MRI Magnetic resonance imaging
MSA Metropolitan Statistical Area
NCCI National Correct Coding Initiative
NHSN National Healthcare Safety Network
NQF National Quality Forum
NTIOL New technology intraocular lens
NUBC National Uniform Billing Committee
OACT [CMS] Office of the Actuary
OBRA Omnibus Budget Reconciliation Act of 1996, Pub. L. 99–509
OIG [HHS] Office of the Inspector General
OMB Office of Management and Budget
OPD [Hospital] Outpatient Department
OPO Organ Procurement Organization
OPPS [Hospital] Outpatient Prospective Payment System
OPSF Outpatient Provider-Specific File
OQR [Hospital] Outpatient Quality Reporting
OT Occupational therapy
PBD Provider-Based Department
PCR Payment-to-cost ratio
PE Practice expense
PEPPER Program for Evaluating Payment Patterns Electronic Report
PHP Partial hospitalization program
PHS Public Health Service [Act], Pub. L. 96–88
PPI Producer Price Index
PPS Prospective payment system
PQRS Physician Quality Reporting System
PT Physical therapy
QDC Quality data code
QIO Quality Improvement Organization
RFA Regulatory Flexibility Act
RTI Research Triangle Institute, International
RVU Relative value unit
SCH Sole community hospital
SCOD Specified covered outpatient drugs
SI Status indicator
SIR Standardized infection ratio
SLP Speech-language pathology
SNF Skilled nursing facility
SRS Stereotactic radiosurgery
TEP Technical Expert Panel
TMS Transcranial Magnetic Stimulation Therapy
TOPs Transitional Outpatient Payments
UR Utilization review
USPSTF United States Preventive Services Task Force
UTI Urinary tract infection
VBP Value-based purchasing
WAC Wholesale acquisition cost

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I. Summary and Background

A. Executive Summary of This Document

1. Purpose

In this proposed rule, we are proposing to update the payment policies and payment rates for services furnished to Medicare beneficiaries in hospital outpatient departments and Ambulatory Surgical Centers (ASCs) beginning January 1, 2015. Section 1833(t) of the Social Security Act (the Act) requires us to annually review and update the relative payment weights and the conversion factor for services payable under the Outpatient Prospective Payment System (OPPS). Under section 1833(i) of the Act, we annually review and update the ASC payment rates. We describe these and various other statutory authorities in the relevant sections of this proposed rule. In addition, this proposed rule would update and refine the requirements for the Hospital Outpatient Quality Reporting (OQR) Program and the ASC Quality Reporting (ASCQR) Program.

In this document, we also are proposing changes to the data sources used for expansion requests for physician owned hospitals under the physician self-referral regulations; changes to the underlying authority for the requirement of an admission order for all hospital inpatient admissions and changes to require physician certification for hospital inpatient admissions only for long-stay cases and outlier cases; and changes to establish a three-level appeals process for Medicare Advantage (MA) organizations and Part D sponsors that would be applicable to CMS-identified overpayments associated with data submitted by these organizations and sponsors.

2. Summary of the Major Provisions

- *OPPS Update:* For CY 2015, we are proposing to increase the payment rates under the OPPS by an Outpatient Department (OPD) fee schedule increase factor of 2.1 percent. This proposed increase is based on the proposed hospital inpatient market basket percentage increase of 2.7 percent for inpatient services paid under the hospital inpatient prospective payment system (IPPS), minus the proposed multifactor productivity (MFP) adjustment of 0.4 percentage points, and minus a 0.2 percentage point adjustment required by the Affordable Care Act. Under this proposed rule, we estimate that proposed total payments for CY 2015, including beneficiary cost-sharing, to the approximate 4,000 facilities paid under the OPPS (including general acute care hospitals, children's hospitals, cancer hospitals, and community mental health centers (CMHCs)), will be approximately $56.5 billion, an increase of approximately $5.2 billion compared to CY 2014 payments, or $800 million excluding our estimated changes in enrollment, utilization, and case-mix.

We are proposing to continue to implement the statutory 2.0 percentage point reduction in payments for hospitals failing to meet the hospital outpatient quality reporting requirements, by applying a reporting factor of 0.980 to the OPPS payments and copayments for all applicable services.

- *Rural Adjustment:* We are proposing to continue the adjustment of 7.1 percent to the OPPS payments to certain rural sole community hospitals (SCHs), including essential access community hospitals (EACHs). This adjustment will apply to all services paid under the OPPS, excluding separately payable drugs and biologicals, devices paid under the pass-through payment policy, and items paid at charges reduced to cost.

- *Cancer Hospital Payment Adjustment:* For CY 2015, we are proposing to continue to provide additional payments to cancer hospitals so that the cancer hospital's payment to-cost ratio (PCR) after the additional payments is equal to the weighted average PCR for the other OPPS

hospitals using the most recently submitted or settled cost report data. Based on those data, a target PCR of 0.89 will be used to determine the proposed CY 2015 cancer hospital payment adjustment to be paid at cost report settlement. That is, the proposed payment adjustments will be the additional payments needed to result in a PCR equal to 0.89 for each cancer hospital.

• *Payment of Drugs, Biologicals, and Radiopharmaceuticals:* For CY 2015, proposed payment for the acquisition and pharmacy overhead costs of separately payable drugs and biologicals that do not have pass-through status would be set at the statutory default of average sales price (ASP) plus 6 percent.

• *Packaging Policies:* We are proposing to conditionally package certain ancillary services when they are integral, ancillary, supportive, dependent, or adjunctive to a primary service. The initial set of services proposed to be packaged under this ancillary service policy are the services assigned to APCs having a proposed APC geometric mean cost (prior to application of status indicator Q1) of less than or equal to $100. This proposed $100 geometric mean cost limit for the APC is part of the methodology of establishing an initial set of conditionally packaged ancillary service APCs, and is not meant to represent a threshold above which a given ancillary service would not be packaged, but as a basis for selecting an initial set of APCs that would likely be updated and expanded in future years.

• *Implementation of Comprehensive APCs:* For CY 2015, we are proposing to implement, with several modifications, the policy for comprehensive APCs that was finalized in the CY 2014 OPPS/ASC final rule with comment period effective January 1, 2015. We are proposing to continue to define the services assigned to comprehensive APCs as primary services, and to define a comprehensive APC as a classification for the provision of a primary service and all adjunctive services and supplies provided to support the delivery of the primary service. We would continue to consider the entire hospital stay, defined as all services reported on the hospital claim reporting the primary service, to be one comprehensive service for the provision of a primary service into which all other services appearing on the claim would be packaged. This would result in a single Medicare payment and a single beneficiary copayment under the OPPS for the comprehensive service based on all included charges on the claim.

We are proposing a total of 28 comprehensive APCs for CY 2015, including all of the device-dependent APCs remaining after some restructuring and consolidation of these APCs and two comprehensive APCs for other procedures that are either largely device dependent or represent single session services with multiple components (single-session cranial stereotactic radiosurgery and intraocular telescope implantation). We are proposing to modify the complexity adjustment criteria finalized last year, proposing lower volume and cost threshold criteria for complexity adjustments. Finally, we are proposing to package all add-on codes furnished as part of a comprehensive service, which is consistent with our general add-on code packaging policy. However, the add-on codes assigned to the CY 2014 device-dependent APCs would be being evaluated with a primary service for a potential complexity adjustment.

• *Ambulatory Surgical Center Payment Update:* For CY 2015, we are proposing to increase payment rates under the ASC payment system by 1.2 percent. This proposed increase is based on a projected CPI–U update of 1.7 percent minus a multifactor productivity adjustment required by the Affordable Care Act that is projected to be 0.5 percent. Based on this proposed update, we estimate that total payments to ASCs (including beneficiary cost-sharing and estimated changes in enrollment, utilization, and case-mix), for CY 2015 would be approximately $4.086 billion, an increase of approximately $243 million compared to estimated CY 2014 payments.

• *Hospital Outpatient Quality Reporting (OQR) Program:* For the Hospital OQR Program, we are proposing to add one claims-based quality measure for the CY 2017 payment determination and subsequent years. We are proposing to refine the criteria for determining when to remove a measure because it is ''topped-out'' and we are proposing to remove three measures due to ''topped-out'' status. In addition, we are updating several previously adopted measures. We are proposing to exclude one previously adopted measure from the measure set for the CY 2016 payment determination and to change this measure from required to voluntary for the CY 2017 payment determination and subsequent years. Hospitals would not be subject to payment reductions with respect to this measure. In addition, we are proposing to formalize a review and corrections period for chart-abstracted measures. We also are proposing updates to validation procedures and changes to regulation text to correct typographical errors. Finally, we are clarifying how we refer to the extraordinary circumstances extensions or exemptions process.

• *Ambulatory Surgical Center Quality Reporting (ASCQR) Program:* For the ASCQR Program, we are proposing to adopt one new quality measure for the CY 2017 payment determination and subsequent years. The measure would be computed using Medicare claims data and would not impose any additional burden on ASC facilities. We also are proposing that one measure previously adopted for the CY 2016 and subsequent years' payment determinations be excluded from the CY 2016 measure set and that this measure be voluntarily reported for the CY 2017 payment determination and subsequent years, rather than mandatorily reported. We would not subject ASCs to payment reductions with respect to this measure for the CY 2016 payment determination or during the period of voluntary reporting. In addition, we are proposing to define the data collection timeframes and submission deadlines for one previously adopted measure, noting the delayed data collection of two measures for the CY 2016 payment determination, and clarifying how we refer to the extraordinary circumstances extensions or exemptions process.

3. Summary of Costs and Benefits

In sections XXI. and XXII. of this proposed rule, we set forth a detailed analysis of the regulatory and federalism impacts that the proposed changes would have on affected entities and beneficiaries. Key estimated impacts are described below.

a. Impacts of the OPPS Update

(1) Impacts of All Proposed OPPS Changes

Table 52 in section XXI. of this proposed rule displays the distributional impact all the proposed OPPS changes on various groups of hospitals and CMHCs for CY 2015 compared to all estimated OPPS payments in CY 2014. We estimate that the proposed policies in this proposed rule would result in a 2.2 percent overall increase in OPPS payments to providers. We estimate that proposed total OPPS payments for CY 2015, including beneficiary cost-sharing, to the approximate 4,000 facilities paid under the OPPS (including general acute care hospitals, children's hospitals, cancer hospitals, and community mental health centers (CMHCs)), will be approximately $56.5 billion, an increase of approximately $5.2 billion compared to CY 2014 payments, or $800 million, excluding

our estimated changes in enrollment, utilization, and case-mix.

We estimated the isolated impact of our proposed OPPS policies on CMHCs because CMHCs are only paid for partial hospitalization services under the OPPS. Continuing the provider-specific structure that we adopted beginning in CY 2011 and basing payment fully on the type of provider furnishing the service, we estimate a −1.6 percent decrease in CY 2015 payments to CMHCs relative to their CY 2014 payments.

(2) Impacts of the Proposed Updated Wage Indexes

We estimate that our proposal to update the wage indexes and apply the frontier State wage index, including changes resulting from the proposed adoption of the new OMB labor market area delineations and the proposed transitional 1-year, 50/50 blended wage index, would have a positive impact on payments to hospitals.

(3) Impacts of the Proposed Rural Adjustment and the Cancer Hospital Payment Adjustment

There are no significant impacts of our proposed CY 2015 payment policies for hospitals that are eligible for the rural adjustment or for the cancer hospital payment adjustment. We are not proposing to make any change in policies for determining the rural and cancer hospital payment adjustments, and the proposed adjustment amounts do not significantly impact the budget neutrality adjustments for these proposed policies.

(4) Impacts of the Proposed OPD Fee Schedule Increase Factor

We estimate that, for most hospitals, the application of the proposed OPD fee schedule increase factor of 2.1 percent to the conversion factor for CY 2015 would mitigate the small negative impacts of the budget neutrality adjustments. As a result of the OPD fee schedule increase factor and other budget neutrality adjustments, we estimate that rural and urban hospitals would experience increases of approximately 2.1 percent for urban hospitals and 2.4 percent for rural hospitals. Classifying hospitals by teaching status or type of ownership suggests that these hospitals will receive similar increases.

b. Impacts of the Proposed ASC Payment Update

For impact purposes, the surgical procedures on the ASC list of covered procedures are aggregated into surgical specialty groups using CPT and HCPCS code range definitions. The proposed percentage change in estimated total payments by specialty groups under the proposed CY 2015 payment rates compared to estimated CY 2014 payment rates ranges between −3.0 percent for cardiovascular system procedures and 12 percent for hematologic and lymphatic system procedures.

c. Impacts of the Hospital OQR Program

We do not expect our proposed CY 2015 policies to significantly affect the number of hospitals that do not receive a full annual payment update.

d. Impacts of the ASCQR Program

We do not expect our proposed CY 2015 proposed policies to significantly affect the number of ASCs that do not receive a full annual payment update.

B. Legislative and Regulatory Authority for the Hospital OPPS

When Title XVIII of the Social Security Act was enacted, Medicare payment for hospital outpatient services was based on hospital-specific costs. In an effort to ensure that Medicare and its beneficiaries pay appropriately for services and to encourage more efficient delivery of care, the Congress mandated replacement of the reasonable cost-based payment methodology with a prospective payment system (PPS). The Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33) added section 1833(t) to the Act authorizing implementation of a PPS for hospital outpatient services. The OPPS was first implemented for services furnished on or after August 1, 2000. Implementing regulations for the OPPS are located at 42 CFR Parts 410 and 419.

The Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA) (Pub. L. 106–113) made major changes in the hospital OPPS. The following Acts made additional changes to the OPPS: The Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) (Pub. L. 106–554); the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173); the Deficit Reduction Act of 2005 (DRA) (Pub. L. 109–171), enacted on February 8, 2006; the Medicare Improvements and Extension Act under Division B of Title I of the Tax Relief and Health Care Act of 2006 (MIEA–TRHCA) (Pub. L. 109–432), enacted on December 20, 2006; the Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA) (Pub. L. 110–173), enacted on December 29, 2007; the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) (Pub. L. 110–275), enacted on July 15, 2008; the Patient Protection and Affordable Care Act (Pub. L. 111–148), enacted on March 23, 2010, as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152), enacted on March 30, 2010 (These two public laws are collectively known as the Affordable Care Act); the Medicare and Medicaid Extenders Act of 2010 (MMEA, Pub. L. 111–309); the Temporary Payroll Tax Cut Continuation Act of 2011 (TPTCCA, Pub. L. 112–78), enacted on December 23, 2011; the Middle Class Tax Relief and Job Creation Act of 2012 (MCTRJCA, Pub. L. 112–96), enacted on February 22, 2012; and the American Taxpayer Relief Act of 2012 (Pub. L. 112–240), enacted January 2, 2013.

Under the OPPS, we pay for hospital Part B services on a rate-per-service basis that varies according to the APC group to which the service is assigned. We use the Healthcare Common Procedure Coding System (HCPCS) (which includes certain Current Procedural Terminology (CPT) codes) to identify and group the services within each APC. The OPPS includes payment for most hospital outpatient services, except those identified in section I.C. of this final rule with comment period. Section 1833(t)(1)(B) of the Act provides for payment under the OPPS for hospital outpatient services designated by the Secretary (which includes partial hospitalization services furnished by CMHCs), and certain inpatient hospital services that are paid under Part B.

The OPPS rate is an unadjusted national payment amount that includes the Medicare payment and the beneficiary copayment. This rate is divided into a labor-related amount and a nonlabor-related amount. The labor-related amount is adjusted for area wage differences using the hospital inpatient wage index value for the locality in which the hospital or CMHC is located.

All services and items within an APC group are comparable clinically and with respect to resource use (section 1833(t)(2)(B) of the Act). In accordance with section 1833(t)(2) of the Act, subject to certain exceptions, items and services within an APC group cannot be considered comparable with respect to the use of resources if the highest median cost (or mean cost, if elected by the Secretary) for an item or service in the APC group is more than 2 times greater than the lowest median cost (or mean cost, if elected by the Secretary) for an item or service within the same APC group (referred to as the ''2 times rule''). In implementing this provision, we generally use the cost of the item or service assigned to an APC group.

For new technology items and services, special payments under the OPPS may be made in one of two ways. Section 1833(t)(6) of the Act provides for temporary additional payments, which we refer to as ''transitional pass-through payments,'' for at least 2 but not more than 3 years for certain drugs, biological agents, brachytherapy devices used for the treatment of cancer, and categories of other medical devices. For new technology services that are not eligible for transitional pass-through payments, and for which we lack sufficient clinical information and cost data to appropriately assign them to a clinical APC group, we have established special APC groups based on costs, which we refer to as New Technology APCs. These New Technology APCs are designated by cost bands which allow us to provide appropriate and consistent payment for designated new procedures that are not yet reflected in our claims data. Similar to pass-through payments, an assignment to a New Technology APC is temporary; that is, we retain a service within a New Technology APC until we acquire sufficient data to assign it to a clinically appropriate APC group.

C. Excluded OPPS Services and Hospitals

Section 1833(t)(1)(B)(i) of the Act authorizes the Secretary to designate the hospital outpatient services that are paid under the OPPS. While most hospital outpatient services are payable under the OPPS, section 1833(t)(1)(B)(iv) of the Act excludes payment for ambulance, physical and occupational therapy, and speech-language pathology services, for which payment is made under a fee schedule. It also excludes screening mammography, diagnostic mammography, and effective January 1, 2011, an annual wellness visit providing personalized prevention plan services. The Secretary exercises the authority granted under the statute to also exclude from the OPPS certain services that are paid under fee schedules or other payment systems. Such excluded services include, for example, the professional services of physicians and nonphysician practitioners paid under the Medicare Physician Fee Schedule (MPFS); certain laboratory services paid under the Clinical Laboratory Fee Schedule (CLFS); services for beneficiaries with end-stage renal disease (ESRD) that are paid under the ESRD prospective payment system; and services and procedures that require an inpatient stay that are paid under the hospital IPPS. We set forth the services that are excluded from payment under the OPPS in regulations at 42 CFR 419.22.

Under § 419.20(b) of the regulations, we specify the types of hospitals that are excluded from payment under the OPPS. These excluded hospitals include: Maryland hospitals, but only for services that are paid under a cost containment waiver in accordance with section 1814(b)(3) of the Act; critical access hospitals (CAHs); hospitals located outside of the 50 States, the District of Columbia, and Puerto Rico; and Indian Health Service (IHS) hospitals.

D. Prior Rulemaking

On April 7, 2000, we published in the **Federal Register** a final rule with comment period (65 FR 18434) to implement a prospective payment system for hospital outpatient services. The hospital OPPS was first implemented for services furnished on or after August 1, 2000. Section 1833(t)(9) of the Act requires the Secretary to review certain components of the OPPS, not less often than annually, and to revise the groups, relative payment weights, and other adjustments that take into account changes in medical practices, changes in technologies, and the addition of new services, new cost data, and other relevant information and factors.

Since initially implementing the OPPS, we have published final rules in the **Federal Register** annually to implement statutory requirements and changes arising from our continuing experience with this system. These rules can be viewed on the CMS Web site at: *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HospitalOutpatientPPS/index.html*.

E. Advisory Panel on Hospital Outpatient Payment (the HOP Panel or the Panel)

Authority of the Panel

Section 1833(t)(9)(A) of the Act, as amended by section 201(h) of Pub. L. 106–113, and redesignated by section 202(a)(2) of Pub. L. 106–113, requires that we consult with an external advisory panel of experts to annually review the clinical integrity of the payment groups and their weights under the OPPS. In CY 2000, based on section 1833(t)(9)(A) of the Act and section 222 of the Public Health Service (PHS) Act, the Secretary established the Advisory Panel on Ambulatory Payment Classification Groups (APC Panel) to fulfill this requirement. In CY 2011, based on section 222 of the PHS Act which gives discretionary authority to the Secretary to convene advisory councils and committees, the Secretary expanded the panel's scope to include the supervision of hospital outpatient therapeutic services in addition to the APC groups and weights. To reflect this new role of the panel, the Secretary changed the panel's name to the Advisory Panel on Hospital Outpatient Payment (the HOP Panel, or the Panel). The Panel is not restricted to using data compiled by CMS, and in conducting its review it may use data collected or developed by organizations outside the Department.

2. Establishment of the Panel

On November 21, 2000, the Secretary signed the initial charter establishing the HOP Panel, at that time named the APC Panel. This expert panel, which may be composed of up to 19 appropriate representatives of providers (currently employed full-time, not as consultants, in their respective areas of expertise), reviews clinical data and advises CMS about the clinical integrity of the APC groups and their payment weights. Since CY 2012, the Panel also is charged with advising the Secretary on the appropriate level of supervision for individual hospital outpatient therapeutic services. The Panel is technical in nature, and it is governed by the provisions of the Federal Advisory Committee Act (FACA). The current charter specifies, among other requirements, that: The Panel continues to be technical in nature; is governed by the provisions of the FACA; may convene up to three meetings per year; has a Designated Federal Official (DFO); and is chaired by a Federal Official designated by the Secretary. The current charter was amended on November 15, 2011 and the Panel was renamed to reflect expanding the Panel's authority to include supervision of hospital outpatient therapeutic services and therefore to add CAHs to its membership.

The current Panel membership and other information pertaining to the Panel, including its charter, **Federal Register** notices, membership, meeting dates, agenda topics, and meeting reports, can be viewed on the CMS Web site at: *http://www.cms.gov/FACA/05_AdvisoryPanelonAmbulatoryPaymentClassificationGroups.asp#TopOfPage*.

3. Panel Meetings and Organizational Structure

The Panel has held multiple meetings, with the last meeting taking place on March 10, 2014. Prior to each meeting, we publish a notice in the **Federal Register** to announce the meeting and, when necessary, to solicit nominations

for Panel membership and to announce new members.

The Panel has established an operational structure that, in part, currently includes the use of three subcommittees to facilitate its required review process. The three current subcommittees are the Data Subcommittee, the Visits and Observation Subcommittee, and the Subcommittee for APC Groups and Status Indicator (SI) Assignments.

The Data Subcommittee is responsible for studying the data issues confronting the Panel and for recommending options for resolving them. The Visits and Observation Subcommittee reviews and makes recommendations to the Panel on all technical issues pertaining to observation services and hospital outpatient visits paid under the OPPS (for example, APC configurations and APC relative payment weights). The Subcommittee for APC Groups and SI Assignments advises the Panel on the following issues: The appropriate SIs to be assigned to HCPCS codes, including but not limited to whether a HCPCS code or a category of codes should be packaged or separately paid; and the appropriate APC placement of HCPCS codes regarding services for which separate payment is made.

Each of these subcommittees was established by a majority vote from the full Panel during a scheduled Panel meeting, and the Panel recommended at the March 2014 meeting that the subcommittees continue. We accepted this recommendation.

Discussions of the other recommendations made by the Panel at the March 2014 Panel meeting are included in the sections of this proposed rule that are specific to each recommendation. For discussions of earlier Panel meetings and recommendations, we refer readers to previously published OPPS/ASC proposed and final rules, the CMS Web site mentioned earlier in this section, and the FACA database at: *http://fido.gov/facadatabase/public.asp*.

F. Public Comments Received on the CY 2014 OPPS/ASC Final Rule With Comment Period

We received 490 timely pieces of correspondence on the CY 2014 OPPS/ASC final rule with comment period that appeared in the **Federal Register** on December 10, 2013 (78 FR 74826), some of which contained comments on the interim APC assignments and/or status indicators of new or replacement HCPCS codes (identified with comment indicator ''NI'' in Addenda B, AA, and BB to that final rule). Summaries of the public comments on new or replacement codes will be set forth in the CY 2015 final rule with comment period under the appropriate subject-matter headings. However, we are summarizing the public comments on the CY 2014 OPPS/ASC final rule with comment period regarding comprehensive APCs in this proposed rule rather than the CY 2015 final rule with comment period, as we are proposing several methodological changes in response to these public comments.

II. Proposed Updates Affecting OPPS Payments

A. Proposed Recalibration of APC Relative Payment Weights

1. Database Construction

a. Database Source and Methodology

Section 1833(t)(9)(A) of the Act requires that the Secretary review not less often than annually and revise the relative payment weights for APCs. In the April 7, 2000 OPPS final rule with comment period (65 FR 18482), we explained in detail how we calculated the relative payment weights that were implemented on August 1, 2000 for each APC group.

For the CY 2015 OPPS, we are proposing to recalibrate the APC relative payment weights for services furnished on or after January 1, 2015, and before January 1, 2016 (CY 2015), using the same basic methodology that we described in the CY 2014 OPPS/ASC final rule with comment period. That is, we are proposing to recalibrate the relative payment weights for each APC based on claims and cost report data for hospital outpatient department (HOPD) services, using the most recent available data to construct a database for calculating APC group weights. Therefore, for the purpose of recalibrating the proposed APC relative payment weights for CY 2015, we used approximately 149 million final action claims (claims for which all disputes and adjustments have been resolved and payment has been made) for hospital outpatient department services furnished on or after January 1, 2013, and before January 1, 2014. For exact counts of claims used, we refer readers to the claims accounting narrative under supporting documentation for this CY 2015 OPPS/ASC proposed rule on the CMS Web site at: *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HospitalOutpatientPPS/index.html*.

Of the approximately 149 million final action claims for services provided in hospital outpatient settings used to calculate the CY 2015 OPPS payment rates for this proposed rule, approximately 119 million claims were the type of bill potentially appropriate for use in setting rates for OPPS services (but did not necessarily contain services payable under the OPPS). Of the approximately 119 million claims, approximately 5 million claims were not for services paid under the OPPS or were excluded as not appropriate for use (for example, erroneous cost-to-charge ratios (CCRs) or no HCPCS codes reported on the claim). From the remaining approximately 114 million claims, we created approximately 94 million single records, of which approximately 46 million were ''pseudo'' single or ''single session'' claims (created from approximately 21 million multiple procedure claims using the process we discuss later in this section). Approximately 1 million claims were trimmed out on cost or units in excess of ± 3 standard deviations from the geometric mean, yielding approximately 94 million single bills for ratesetting. As described in section II.A.2. of this proposed rule, our data development process is designed with the goal of using appropriate cost information in setting the APC relative payment weights. The bypass process is described in section II.A.1.b. of this proposed rule. This section discusses how we develop ''pseudo'' single procedure claims (as defined below), with the intention of using more appropriate data from the available claims. In some cases, the bypass process allows us to use some portion of the submitted claim for cost estimation purposes, while the remaining information on the claim continues to be unusable. Consistent with the goal of using appropriate information in our data development process, we only use claims (or portions of each claim) that are appropriate for ratesetting purposes.

The proposed APC relative weights and payments for CY 2015 in Addenda A and B to this proposed rule (which are available via the Internet on the CMS Web site) were calculated using claims from CY 2013 that were processed through December 31, 2013. While prior to CY 2013 we historically based the payments on median hospital costs for services in the APC groups, beginning with the CY 2013 OPPS, we established the cost-based relative payment weights for the OPPS using geometric mean costs, as discussed in the CY 2013 OPPS/ASC final rule with comment period (77 FR 68259 through 68271). For the CY 2015 OPPS, we are proposing to use this same methodology, basing payments on

geometric mean costs. Under this methodology, we select claims for services paid under the OPPS and match these claims to the most recent cost report filed by the individual hospitals represented in our claims data. We continue to believe that it is appropriate to use the most current full calendar year claims data and the most recently submitted cost reports to calculate the relative costs underpinning the APC relative payment weights and the CY 2015 payment rates.

b. Proposed Use of Single and Multiple Procedure Claims

For CY 2015, in general, we are proposing to continue to use single procedure claims to set the costs on which the APC relative payment weights are based. We generally use single procedure claims to set the estimated costs for APCs because we believe that the OPPS relative weights on which payment rates are based should be derived from the costs of furnishing one unit of one procedure and because, in many circumstances, we are unable to ensure that packaged costs can be appropriately allocated across multiple procedures performed on the same date of service.

It is generally desirable to use the data from as many claims as possible to recalibrate the APC relative payment weights, including those claims for multiple procedures. As we have for several years, we are proposing to continue to use date of service stratification and a list of codes to be bypassed to convert multiple procedure claims to ''pseudo'' single procedure claims. Through bypassing specified codes that we believe do not have significant packaged costs, we are able to use more data from multiple procedure claims. In many cases, this enables us to create multiple ''pseudo'' single procedure claims from claims that were submitted as multiple procedure claims spanning multiple dates of service, or claims that contained numerous separately paid procedures reported on the same date on one claim. We refer to these newly created single procedure claims as ''pseudo'' single procedure claims. The history of our use of a bypass list to generate ''pseudo'' single procedure claims is well documented, most recently in the CY 2014 OPPS/ASC final rule with comment period (78 FR 74849 through 74851). In addition, for CY 2008 (72 FR 66614 through 66664), we increased packaging and created the first composite APCs, and continued those policies through CY 2014. Increased packaging and creation of composite APCs also increased the number of bills that we were able to use for ratesetting by enabling us to use claims that contained multiple major procedures that previously would not have been usable. Further, for CY 2009, we expanded the composite APC model to one additional clinical area, multiple imaging services (73 FR 68559 through 68569), which also increased the number of bills we were able to use in developing the OPPS relative weights on which payments are based. We have continued the composite APCs for multiple imaging services through CY 2014, and we are proposing to continue this policy for CY 2015. We refer readers to section II.A.2.f. of the CY 2014 OPPS/ASC final rule with comment period (78 FR 74910 through 74925) for a discussion of the use of claims in modeling the costs for composite APCs and to section II.A.3. of the CY 2014 OPPS/ASC final rule with comment period (78 FR 74925 through 74948) for a discussion of our packaging policies for CY 2014. In addition, we are proposing to establish additional packaging policies for the CY 2015 OPPS, as discussed in section II.A.3. of this proposed rule.

We are proposing to continue to apply these processes to enable us to use as much claims data as possible for ratesetting for the CY 2015 OPPS. This methodology enabled us to create, for this proposed rule, approximately 46 million ''pseudo'' single procedure claims, including multiple imaging composite ''single session'' bills (we refer readers to section II.A.2.f.(5) of this proposed rule for further discussion), to add to the approximately 48 million ''natural'' single procedure claims.

For CY 2015, we are proposing to bypass 227 HCPCS codes that are identified in Addendum N to this proposed rule (which is available via the Internet on the CMS Web site). Since the inception of the bypass list, which is the list of codes to be bypassed to convert multiple procedure claims to ''pseudo'' single procedure claims, we have calculated the percent of ''natural'' single bills that contained packaging for each HCPCS code and the amount of packaging on each ''natural'' single bill for each code. Each year, we generally retain the codes on the previous year's bypass list and use the updated year's data (for CY 2015, data available for the March 10, 2014 meeting of the Advisory Panel on Hospital Outpatient Payment (the Panel) from CY 2013 claims processed through September 30, 2013, and CY 2012 claims data processed through June 30, 2013, used to model the payment rates for CY 2014) to determine whether it would be appropriate to add additional codes to the previous year's bypass list. For CY 2015, we are proposing to continue to bypass all of the HCPCS codes on the CY 2014 OPPS bypass list, with the exception of HCPCS codes that we are proposing to delete for CY 2015, which are listed in Table 1 of this proposed rule. We also are proposing to remove HCPCS codes that are not separately paid under the OPPS because the purpose of the bypass list is to obtain more data for those codes relevant to ratesetting. Some of the codes we are proposing to remove from the CY 2015 bypass list are affected by the CY 2015 proposed packaging policy, discussed in section II.A.3. of this proposed rule. In addition, we are proposing to add to the bypass list for CY 2015 HCPCS codes not on the CY 2014 bypass list that, using either the CY 2014 final rule data (CY 2012 claims) or the March 10, 2014 Panel data (first 9 months of CY 2013 claims), met the empirical criteria for the bypass list that are summarized below. Finally, to remain consistent with the CY 2015 proposal to continue to develop OPPS relative payment weights based on geometric mean costs, we also are proposing that the packaged cost criterion continue to be based on the geometric mean cost. The entire list proposed for CY 2015 (including the codes that remain on the bypass list from prior years) is open to public comment in this CY 2015 OPPS/ASC proposed rule. Because we must make some assumptions about packaging in the multiple procedure claims in order to assess a HCPCS code for addition to the bypass list, we assumed that the representation of packaging on ''natural'' single procedure claims for any given code is comparable to packaging for that code in the multiple procedure claims. The proposed criteria for the bypass list are:

- There are 100 or more ''natural'' single procedure claims for the code. This number of single procedure claims ensures that observed outcomes are sufficiently representative of packaging that might occur in the multiple claims.
- Five percent or fewer of the ''natural'' single procedure claims for the code have packaged costs on that single procedure claim for the code. This criterion results in limiting the amount of packaging being redistributed to the separately payable procedures remaining on the claim after the bypass code is removed and ensures that the costs associated with the bypass code represent the cost of the bypassed service.
- The geometric mean cost of packaging observed in the ''natural'' single procedure claims is equal to or less than $55. This criterion also limits

the amount of error in redistributed costs. During the assessment of claims against the bypass criteria, we do not know the dollar value of the packaged cost that should be appropriately attributed to the other procedures on the claim. Therefore, ensuring that redistributed costs associated with a bypass code are small in amount and volume protects the validity of cost estimates for low cost services billed with the bypassed service.

We note that, as we did for CY 2014, we are proposing to continue to establish the CY 2015 OPPS relative payment weights based on geometric mean costs. To remain consistent in the metric used for identifying cost patterns, we are proposing to use the geometric mean cost of packaging to identify potential codes to add to the bypass list.

In response to public comments on the CY 2010 OPPS/ASC proposed rule requesting that the packaged cost threshold be updated, we considered whether it would be appropriate to update the $50 packaged cost threshold for inflation when examining potential bypass list additions. As discussed in the CY 2010 OPPS/ASC final rule with comment period (74 FR 60328), the real value of this packaged cost threshold criterion has declined due to inflation, making the packaged cost threshold more restrictive over time when considering additions to the bypass list. Therefore, adjusting the threshold by the market basket increase would prevent continuing decline in the threshold's real value. Based on the same rationale described for the CY 2014 OPPS/ASC final rule with comment period (78 FR 74838), we are proposing for CY 2015 to continue to update the packaged cost threshold by the market basket increase. By applying the final CY 2014 market basket increase of 1.7 percent to the prior nonrounded dollar threshold of $54.73 (78 FR 74838), we determined that the threshold remains for CY 2015 at $55 ($55.66 rounded to $55, the nearest $5 increment). Therefore, we are proposing to set the geometric mean packaged cost threshold on the CY 2013 claims at $55 for a code to be considered for addition to the CY 2015 OPPS bypass list.

• The code is not a code for an unlisted service. Unlisted codes do not describe a specific service, and thus their costs would not be appropriate for bypass list purposes.

In addition, we are proposing to continue to include on the bypass list HCPCS codes that CMS medical advisors believe have minimal associated packaging based on their clinical assessment of the complete CY 2015 OPPS proposal. Some of these codes were identified by CMS medical advisors and some were identified in prior years by commenters with specialized knowledge of the packaging associated with specific services. We also are proposing to continue to include certain HCPCS codes on the bypass list in order to purposefully direct the assignment of packaged costs to a companion code where services always appear together and where there would otherwise be few single procedure claims available for ratesetting. For example, we have previously discussed our reasoning for adding HCPCS code G0390 (Trauma response team associated with hospital critical care service) to the bypass list (73 FR 68513).

As a result of the multiple imaging composite APCs that we established in CY 2009, the program logic for creating ''pseudo'' single procedure claims from bypassed codes that are also members of multiple imaging composite APCs changed. When creating the set of ''pseudo'' single procedure claims, claims that contain ''overlap bypass codes'' (those HCPCS codes that are both on the bypass list and are members of the multiple imaging composite APCs) were identified first. These HCPCS codes were then processed to create multiple imaging composite ''single session'' bills, that is, claims containing HCPCS codes from only one imaging family, thus suppressing the initial use of these codes as bypass codes. However, these ''overlap bypass codes'' were retained on the bypass list because, at the end of the ''pseudo'' single processing logic, we reassessed the claims without suppression of the ''overlap bypass codes'' under our longstanding ''pseudo'' single process to determine whether we could convert additional claims to ''pseudo'' single procedure claims. (We refer readers to section II.A.2.b. of this proposed rule for further discussion of the treatment of ''overlap bypass codes.'') This process also created multiple imaging composite ''single session'' bills that could be used for calculating composite APC costs. ''Overlap bypass codes'' that are members of the proposed multiple imaging composite APCs are identified by asterisks (*) in Addendum N to this proposed rule (which is available via the Internet on the CMS Web site).

Addendum N to this proposed rule (which is available via the Internet on the CMS Web site) includes the proposed list of bypass codes for CY 2015. The proposed list of bypass codes contains codes that were reported on claims for services in CY 2013 and, therefore, includes codes that were in effect in CY 2013 and used for billing but were deleted for CY 2014. We retained these deleted bypass codes on the proposed CY 2015 bypass list because these codes existed in CY 2013 and were covered OPD services in that period, and CY 2013 claims data are used to calculate CY 2015 payment rates. Keeping these deleted bypass codes on the bypass list potentially allows us to create more ''pseudo'' single procedure claims for ratesetting purposes. ''Overlap bypass codes'' that were members of the proposed multiple imaging composite APCs are identified by asterisks (*) in the third column of Addendum N to this proposed rule. HCPCS codes that we are proposing to add for CY 2015 are identified by asterisks (*) in the fourth column of Addendum N.

Table 1 below contains the list of codes that we are proposing to remove from the CY 2015 bypass list because these codes were either deleted from the HCPCS before CY 2013 (and therefore were not covered OPD services in CY 2013) or are not separately payable codes under the proposed CY 2015 OPPS because these codes are not used for ratesetting through the bypass process. The list of codes proposed for removal from the bypass list includes those that would be affected by the proposed CY 2015 OPPS packaging policy described in section II.A.3. of this proposed rule.

TABLE 1—HCPCS CODES PROPOSED TO BE REMOVED FROM THE CY 2015 BYPASS LIST

HCPCS Code	HCPCS Short descriptor
11056	Trim skin lesions 2 to 4.
11300	Shave skin lesion 0.5 cm/<.
11301	Shave skin lesion 0.6–1.0 cm.
11719	Trim nail(s) any number.
11720	Debride nail 1–5.
11721	Debride nail 6 or more.
17000	Destruct premalg lesion.
17110	Destruct b9 lesion 1–14.
29240	Strapping of shoulder.
29260	Strapping of elbow or wrist.
29280	Strapping of hand or finger.
29520	Strapping of hip.
29530	Strapping of knee.
51741	Electro-uroflowmetry first.
51798	Us urine capacity measure.
53601	Dilate urethra stricture.
53661	Dilation of urethra.
54240	Penis study.
67820	Revise eyelashes.
69210	Remove impacted ear wax uni.
69220	Clean out mastoid cavity.
70030	X-ray eye for foreign body.
70100	X-ray exam of jaw <4views.
70110	X-ray exam of jaw 4/> views.
70120	X-ray exam of mastoids.
70130	X-ray exam of mastoids.
70140	X-ray exam of facial bones.
70150	X-ray exam of facial bones.

TABLE 1—HCPCS CODES PROPOSED TO BE REMOVED FROM THE CY 2015 BYPASS LIST—Continued

HCPCS Code	HCPCS Short descriptor
70160	X-ray exam of nasal bones.
70200	X-ray exam of eye sockets.
70210	X-ray exam of sinuses.
70220	X-ray exam of sinuses.
70240	X-ray exam pituitary saddle.
70250	X-ray exam of skull.
70260	X-ray exam of skull.
70320	Full mouth x-ray of teeth.
70328	X-ray exam of jaw joint.
70330	X-ray exam of jaw joints.
70355	Panoramic x-ray of jaws.
70360	X-ray exam of neck.
71021	Chest x-ray frnt lat lordotc.
71022	Chest x-ray frnt lat oblique.
71023	Chest x-ray and fluoroscopy.
71030	Chest x-ray 4/≤ views.
71035	Chest x-ray special views.
71100	X-ray exam ribs uni 2 views.
71101	X-ray exam unilat ribs/chest.
71110	X-ray exam ribs bil 3 views.
71111	X-ray exam ribs/chest4/> vws.
71120	X-ray exam breastbone 2/>vws.
71130	X-ray strenoclavic jt 3/>vws.
72020	X-ray exam of spine 1 view.
72040	X-ray exam neck spine 2–3 vw.
72050	X-ray exam neck spine 4/5vws.
72052	X-ray exam neck spine 6/>vws.
72069	X-ray exam trunk spine stand.
72070	X-ray exam thorac spine 2vws.
72072	X-ray exam thorac spine 3vws.
72074	X-ray exam thorac spine4/>vw.
72080	X-ray exam trunk spine 2 vws.
72090	X-ray exam scloiosis erect.
72100	X-ray exam l-s spine ⅔ vws.
72110	X-ray exam l-2 spine 4/>vws.
72114	X-ray exam l-s spine bending.
72120	X-ray bend only l-s spine.
72170	X-ray exam of pelvis.
72190	X-ray exam of pelvis.
72202	X-ray exam si joints 3/< vws.
72220	X-ray exam sacrum tailbone.
73000	X-ray exam of collar bone.
73010	X-ray exam of shoulder blade.
73020	X-ray exam of shoulder.
73030	X-ray exam of shoulder.
73050	X-ray exam of shoulders.
73060	X-ray exam of humerus.
73070	X-ray exam of elbow.
73080	X-ray exam of elbow.
73090	X-ray exam of forearm.
73100	X-ray exam of wrist.
73110	X-ray exam of wrist.
73120	X-ray exam of hand.
73130	X-ray exam of hand.
73140	X-ray exam of finger(s).
73510	X-ray exam of hip.
73520	X-ray exam of hips.
73540	X-ray exam of pelvis & hips.
73550	X-ray exam of thigh.
73560	X-ray exam of knee 1 or 2.
73562	X-ray exam of knee 3.
73564	X-ray exam knee 4 or more.
73565	X-ray exam of knees.
73590	X-ray exam of lower leg.
73600	X-ray exam of ankle.
73610	X-ray exam of ankle.
73620	X-ray exam of foot.
73630	X-ray exam of foot.
73650	X-ray exam of heel.

TABLE 1—HCPCS CODES PROPOSED TO BE REMOVED FROM THE CY 2015 BYPASS LIST—Continued

HCPCS Code	HCPCS Short descriptor
73660	X-ray exam of toe(s).
74000	X-ray exam of abdomen.
74010	X-ray exam of abdomen.
74020	X-ray exam of abdomen.
74022	X-ray exam series abdomen.
76100	X-ray exam of body section.
76510	Ophth us b & quant a.
76514	Echo exam of eye thickness.
76516	Echo exam of eye.
76519	Echo exam of eye.
76645	Us exam breast(s).
76816	Ob us follow-up per fetus.
76882	Us xtr non-vasc lmtd.
76970	Ultrasound exam follow-up.
76977	Us bone density measure.
77072	X-rays for bone age.
77073	X-rays bone length studies.
77074	X-rays bone survey limited.
77076	X-rays bone survey infant.
77077	Joint survey single view.
77078	Ct bone density axial.
77079	Ct bone density peripheral.
77080	Dxa bone density axial.
77081	Dxa bone density/peripheral.
77082	Dxa bone density vert fx.
77083	Radiographic absorptiometry.
80500	Lab pathology consultation.
80502	Lab pathology consultation.
85097	Bone marrow interpretation.
86510	Histoplasmosis skin test.
86850	Rbc antibody screen.
86870	Rbc antibody identification.
86880	Coombs test direct.
86885	Coombs test indirect qual.
86886	Coombs test indirect titer.
86900	Blood typing abo.
86901	Blood typing rh (d).
86904	Blood typing patient serum.
86905	Blood typing rbc antigens.
86906	Blood typing rh phenotype.
86930	Frozen blood prep.
86970	Rbc pretx incubatj w/chemicl.
86977	Rbc serum pretx incubj/inhib.
88104	Cytopath fl nongyn smears.
88106	Cytopath fl nongyn filter.
88107	Cytopath fl nongyn sm/fltr.
88108	Cytopath concentrate tech.
88112	Cytopath cell enhance tech.
88120	Cytp urne 3–5 probes ea spec.
88160	Cytopath smear other source.
88161	Cytopath smear other source.
88162	Cytopath smear other source.
88172	Cytp dx eval fna 1st ea site.
88173	Cytopath eval fna report.
88182	Cell marker study.
88184	Flowcytometry/tc 1 marker.
88189	Flowcytometry/read 16 & >.
88300	Surgical path gross.
88302	Tissue exam by pathologist.
88304	Tissue exam by pathologist.
88305	Tissue exam by pathologist.
88307	Tissue exam by pathologist.
88312	Special stains group 1.
88313	Special stains group 2.
88321	Microslide consultation.
88323	Microslide consultation.
88325	Comprehensive review of data.
88329	Path consult introp.
88331	Path consult intraop 1 bloc.

TABLE 1—HCPCS CODES PROPOSED TO BE REMOVED FROM THE CY 2015 BYPASS LIST—Continued

HCPCS Code	HCPCS Short descriptor
88342	Immunohisto antibody slide.
88346	Immunofluorescent study.
88347	Immunofluorescent study.
88348	Electron microscopy.
88358	Analysis tumor.
88360	Tumor immunohistochem/manual.
88361	Tumor immunohistochem/comput.
88365	Insitu hybridization (fish).
88368	Insitu hybridization manual.
88385	Eval molecul probes 51–250.
88386	Eval molecul probes 251–500.
89049	Chct for mal hyperthermia.
89220	Sputum specimen collection.
89230	Collect sweat for test.
89240	Pathology lab procedure.
92020	Special eye evaluation.
92025	Corneal topography.
92060	Special eye evaluation.
92081	Visual field examination(s).
92082	Visual field examination(s).
92083	Visual field examination(s).
92133	Cmptr ophth img optic nerve.
92134	Cptr ophth dx img post segmt.
92136	Ophthalmic biometry.
92225	Special eye exam initial.
92226	Special eye exam subsequent.
92230	Eye exam with photos.
92250	Eye exam with photos.
92285	Eye photography.
92286	Internal eye photography.
92520	Laryngeal function studies.
92541	Spontaneous nystagmus test.
92542	Positional nystagmus test.
92550	Tympanometry & reflex thresh.
92552	Pure tone audiometry air.
92553	Audiometry air & bone.
92555	Speech threshold audiometry.
92556	Speech audiometry complete.
92557	Comprehensive hearing test.
92567	Tympanometry.
92570	Acoustic immitance testing.
92582	Conditioning play audiometry.
92603	Cochlear implt f/up exam 7/>.
92604	Reprogram cochlear implt 7/>.
92626	Eval aud rehab status.
93005	Electrocardiogram tracing.
93017	Cardiovascular stress test.
93225	Ecg monit/reprt up to 48 hrs.
93226	Ecg monit/reprt up to 48 hrs.
93270	Remote 30 day ecg rev/report.
93278	Ecg/signal-averaged.
93279	Pm device progr eval sngl.
93280	Pm device progr eval dual.
93281	Pm device progr eval multi.
93282	Icd device progr eval 1 sngl.
93283	Icd device progr eval dual.
93284	Icd device progr eval mult.
93285	Ilr device eval progr.
93288	Pm device eval in person.
93289	Icd device interrogate.
93290	Icm device eval.
93291	Ilr device interrogate.
93292	Wcd device interrogate.
93293	Pm phone r-strip device eval.
93296	Pm/icd remote tech serv.
93299	Icm/ilr remote tech serv.
93701	Bioimpedance cv analysis.

TABLE 1—HCPCS CODES PROPOSED TO BE REMOVED FROM THE CY 2015 BYPASS LIST—Continued

HCPCS Code	HCPCS Short descriptor
93786	Ambulatory bp recording.
93788	Ambulatory bp analysis.
93875	Extracranial study.
94015	Patient recorded spirometry.
94690	Exhaled air analysis.
95803	Actigraphy testing.
95869	Muscle test thor paraspinal.
95900	Motor nerve conduction test.
95921	Autonomic nrv parasym inervj.
95970	Analyze neurostim no prog.
96900	Ultraviolet light therapy.
96910	Photochemotherapy with uv-b.
96912	Photochemotherapy with uv-a.
96921	Laser tx skin 250–500 sq cm.
98925	Osteopath manj 1–2 regions.
98926	Osteopath manj 3–4 regions.
98927	Osteopath manj 5–6 regions.
98928	Osteopath manj 7–8 regions.
98929	Osteopath manj 9–10 regions.
98940	Chiropract manj 1–2 regions.
98941	Chiropract manj 3–4 regions.
98942	Chiropractic manj 5 regions.
G0127	Trim nail(s).
G0130	Single energy x-ray study.
G0166	Extrnl counterpulse, per tx.
G0239	Oth resp proc, group.
G0389	Ultrasound exam aaa screen.
G0404	Ekg tracing for initial prev.
G0424	Pulmonary rehab w exer.
Q0091	Obtaining screen pap smear.

c. Proposed Calculation and Use of Cost-to-Charge Ratios (CCRs)

For CY 2015, we are proposing to continue to use the hospital-specific overall ancillary and departmental cost-to-charge ratios (CCRs) to convert charges to estimated costs through application of a revenue code-to-cost center crosswalk. To calculate the APC costs on which the proposed CY 2015 APC payment rates are based, we calculated hospital-specific overall ancillary CCRs and hospital-specific departmental CCRs for each hospital for which we had CY 2013 claims data by comparing these claims data to the most recently available hospital cost reports, which, in most cases, are from CY 2012. For the CY 2015 OPPS proposed rates, we used the set of claims processed during CY 2013. We applied the hospital-specific CCR to the hospital's charges at the most detailed level possible, based on a revenue code-to-cost center crosswalk that contains a hierarchy of CCRs used to estimate costs from charges for each revenue code. That crosswalk is available for review and continuous comment on the CMS Web site at: *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HospitalOutpatientPPS/index.html*.

To ensure the completeness of the revenue code-to-cost center crosswalk, we reviewed changes to the list of revenue codes for CY 2013 (the year of claims data we used to calculate the proposed CY 2015 OPPS payment rates) and found that the National Uniform Billing Committee (NUBC) did not add any new revenue codes to the NUBC 2013 Data Specifications Manual.

In accordance with our longstanding policy, we calculated CCRs for the standard and nonstandard cost centers accepted by the electronic cost report database. In general, the most detailed level at which we calculated CCRs was the hospital-specific departmental level. For a discussion of the hospital-specific overall ancillary CCR calculation, we refer readers to the CY 2007 OPPS/ASC final rule with comment period (71 FR 67983 through 67985). The calculation of blood costs is a longstanding exception (since the CY 2005 OPPS) to this general methodology for calculation of CCRs used for converting charges to costs on each claim. This exception is discussed in detail in the CY 2007 OPPS/ASC final rule with comment period and discussed further in section II.A.2.d.(2) of this proposed rule.

For the CCR calculation process, we used the same general approach that we used in developing the final APC rates for CY 2007 and thereafter, using the revised CCR calculation that excluded the costs of paramedical education programs and weighted the outpatient charges by the volume of outpatient services furnished by the hospital. We refer readers to the CY 2007 OPPS/ASC final rule with comment period for more information (71 FR 67983 through 67985). We first limited the population of cost reports to only those hospitals that filed outpatient claims in CY 2013 before determining whether the CCRs for such hospitals were valid.

We then calculated the CCRs for each cost center and the overall ancillary CCR for each hospital for which we had claims data. We did this using hospital-specific data from the Hospital Cost Report Information System (HCRIS). We used the most recent available cost report data, which, in most cases, were from cost reports with cost reporting periods beginning in CY 2012. For this proposed rule, we used the most recently submitted cost reports to calculate the CCRs to be used to calculate costs for the proposed CY 2015 OPPS payment rates. If the most recently available cost report was submitted but not settled, we looked at the last settled cost report to determine the ratio of submitted to settled cost using the overall ancillary CCR, and we then adjusted the most recent available submitted, but not settled, cost report using that ratio. We then calculated both an overall ancillary CCR and cost center-specific CCRs for each hospital. We used the overall ancillary CCR referenced above for all purposes that require use of an overall ancillary CCR. We are proposing to continue this longstanding methodology for the calculation of costs for CY 2015.

Since the implementation of the OPPS, some commenters have raised concerns about potential bias in the OPPS cost-based weights due to ''charge compression,'' which is the practice of applying a lower charge markup to higher cost services and a higher charge markup to lower cost services. As a result, the cost-based weights may reflect some aggregation bias, undervaluing high-cost items and overvaluing low-cost items when an estimate of average markup, embodied in a single CCR, is applied to items of widely varying costs in the same cost center. This issue was evaluated in a report by the Research Triangle Institute, International (RTI). The RTI final report can be found on RTI's Web site at: *http://www.rti.org/reports/cms/HHSM-500-2005-0029I/PDF/Refining_Cost_to_Charge_ratios_200807_Final.pdf*. For a complete discussion of the RTI recommendations, public comments, and our responses, we refer readers to the CY 2009 OPPS/ASC final rule with comment period (73 FR 68519 through 68527).

We addressed the RTI finding that there was aggregation bias in both the IPPS and the OPPS cost estimation of expensive and inexpensive medical supplies in the FY 2009 IPPS final rule (73 FR 48458 through 45467). Specifically, we created one cost center for ''Medical Supplies Charged to Patients'' and one cost center for ''Implantable Devices Charged to Patients,'' essentially splitting the then current cost center for ''Medical Supplies Charged to Patients'' into one cost center for low-cost medical supplies and another cost center for high-cost implantable devices in order to mitigate some of the effects of charge compression. In determining the items that should be reported in these respective cost centers, we adopted commenters' recommendations that hospitals should use revenue codes established by the AHA's NUBC to determine the items that should be reported in the ''Medical Supplies Charged to Patients'' and the ''Implantable Devices Charged to Patients'' cost centers. For a complete discussion of the rationale for the creation of the new cost center for ''Implantable Devices Charged to

Patients,'' a summary of public comments received, and our responses to those public comments, we refer readers to the FY 2009 IPPS final rule.

The cost center for ''Implantable Devices Charged to Patients'' has been available for use for cost reporting periods beginning on or after May 1, 2009. In the CY 2013 OPPS/ASC final rule with comment period, we determined that a significant volume of hospitals were utilizing the ''Implantable Devices Charged to Patients'' cost center. Because a sufficient amount of data from which to generate a meaningful analysis was available, we established in the CY 2013 OPPS/ASC final rule with comment period a policy to create a distinct CCR using the ''Implantable Devices Charged to Patients'' cost center (77 FR 68225). We retained this policy for the CY 2014 OPPS and are proposing to continue this practice for the CY 2015 OPPS.

In the FY 2011 IPPS/LTCH PPS final rule (75 FR 50075 through 50080), we finalized our proposal to create new standard cost centers for ''Computed Tomography (CT),'' ''Magnetic Resonance Imaging (MRI),'' and ''Cardiac Catheterization,'' and to require that hospitals report the costs and charges for these services under these new cost centers on the revised Medicare cost report Form CMS 2552–10. As we discussed in the FY 2009 IPPS and CY 2009 OPPS/ASC proposed and final rules, RTI also found that the costs and charges of CT scans, MRIs, and cardiac catheterization differ significantly from the costs and charges of other services included in the standard associated cost center. RTI concluded that both the IPPS and the OPPS relative payment weights would better estimate the costs of those services if CMS were to add standard costs centers for CT scans, MRIs, and cardiac catheterization in order for hospitals to report separately the costs and charges for those services and in order for CMS to calculate unique CCRs to estimate the cost from charges on claims data. We refer readers to the FY 2011 IPPS/LTCH PPS final rule (75 FR 50075 through 50080) for a more detailed discussion on the reasons for the creation of standard cost centers for CT scans, MRIs, and cardiac catheterization. The new standard cost centers for CT scans, MRIs, and cardiac catheterization were effective for cost report periods beginning on or after May 1, 2010, on the revised cost report Form CMS–2552–10.

Using the December 2013 HCRIS update which we used to estimate costs in the CY 2015 OPPS ratesetting process, we were able to calculate a valid implantable device CCR for 2,895 hospitals, a valid MRI CCR for 1,886 hospitals, a valid CT scan CCR for 1,976 hospitals, and a valid Cardiac Catheterization CCR for 1,364 hospitals.

In our CY 2014 OPPS/ASC proposed rule discussion (78 FR 43549), we noted that, for CY 2014, the estimated changes in geometric mean estimated APC cost of using data from the new standard cost centers for CT scans and MRIs appeared consistent with RTI's analysis of cost report and claims data in the July 2008 final report (pages 5 and 6). RTI concluded that ''in hospitals that aggregate data for CT scanning, MRI, or nuclear medicine services with the standard line for Diagnostic Radiology, costs for these services all appear substantially overstated, while the costs for plain films, ultrasound and other imaging procedures are correspondingly understated.'' We also noted that there were limited additional impacts in the implantable device-related APCs from adopting the new cost report Form CMS 2552–10 because we had used data from the standard cost center for implantable medical devices beginning in CY 2013 OPPS ratesetting, as discussed above.

As we indicated in prior rulemaking (77 FR 68223 through 68225), once we determined that cost report data for the new standard cost centers were sufficiently available, we would analyze that data and, if appropriate, we would propose to use the distinct CCRs for new standard cost centers described above in the calculation of the OPPS relative payment weights. As stated in the CY 2014 OPPS/ASC proposed rule (78 FR 43550), we have conducted our analysis and concluded that we should develop distinct CCRs for each of the new cost centers and use them in ratesetting. Therefore, we began in the CY 2014 OPPS, and are proposing to continue for the CY 2015 OPPS, to calculate the OPPS relative payment weights using distinct CCRs for cardiac catheterization, CT scan, MRI, and implantable medical devices. Section XXIII. of this proposed rule includes the impacts of calculating the proposed CY 2015 OPPS relative payment weights using these new standard cost centers.

TABLE 2—CCR STATISTICAL VALUES BASED ON USE OF DIFFERENT COST ALLOCATION METHODS

Cost allocation method	CT		MRI	
	Median CCR	Mean CCR	Median CCR	Mean CCR
All Providers	0.0480	0.0620	0.0918	0.1164
Square Feet Only	0.0383	0.0503	0.0793	0.1036
Direct Assign	0.0683	0.0761	0.1069	0.1312
Dollar Value	0.0584	0.0739	0.1055	0.1299
Direct Assign and Dollar Value	0.0584	0.0738	0.1053	0.1294

In the CY 2014 OPPS/ASC final rule with comment period (78 FR 74847), we finalized a policy to remove claims from providers that use a cost allocation method of ''square feet'' to calculate CCRs used to estimate costs associated with the CT and MRI APCs. This change allows hospitals additional time to use one of the more accurate cost allocation methods, and thereby improve the accuracy of the CCRs on which the OPPS relative payment weights are developed. As part of this transitional policy to estimate the CT and MRI APC relative payment weights using only cost data from providers that do not use ''square feet'' as the cost allocation statistic, we stated in the CY 2014 OPPS/ASC final rule with comment period that we will sunset this policy in 4 years once the updated cost report data become available for ratesetting purposes. We stated that we believe that 4 years is sufficient time for hospitals that have not done so to transition to a more accurate cost allocation method and for the related data to be available for ratesetting purposes. Therefore, in CY 2018, we will estimate the CT and MRI APC relative payment weights using cost data from all providers, regardless of the cost allocation statistic employed.

TABLE 3—PERCENTAGE CHANGE IN ESTIMATED COST FOR CT AND MRI APCS WHEN EXCLUDING CLAIMS FROM PROVIDERS USING ''SQUARE FEET'' AS THE COST ALLOCATION METHOD

Proposed CY 2015 APC	Proposed CY 2015 APC descriptor	Percent change
0283	Computed Tomography with Contrast	9.3
0284	Magnetic Resonance Imaging and Magnetic Resonance Angiography with Contrast	4.2
0331	Combined Abdomen and Pelvis CT without Contrast	12.0
0332	Computed Tomography without Contrast	14.1
0333	Computed Tomography without Contrast followed by Contrast	12.1
0334	Combined Abdomen and Pelvis CT with Contrast	10.1
0336	Magnetic Resonance Imaging and Magnetic Resonance Angiography without Contrast	7.4
0337	Magnetic Resonance Imaging and Magnetic Resonance Angiography without Contrast f	6.0
0383	Cardiac Computed Tomographic Imaging	4.3
0662	CT Angiography	10.3
8005	CT and CTA without Contrast Composite	12.7
8006	CT and CTA with Contrast Composite	9.2
8007	MRI and MRA without Contrast Composite	6.3
8008	MRI and MRA with Contrast Composite	6.3

In summary, we are proposing to continue using data from the ''Implantable Devices Charged to Patients'' and ''Cardiac Catheterization'' cost centers to create distinct CCRs for use in calculating the OPPS relative payment weights for the CY 2015 OPPS. For the ''Magnetic Resonance Imaging (MRI)'' and ''Computed Tomography (CT) Scan'' APCs identified in Table 3 of this proposed rule, we are proposing to continue our policy of removing claims from cost modeling for those providers using ''square feet'' as the cost allocation statistic for the CY 2015 OPPS.

2. Proposed Data Development Process and Calculation of Costs Used for Ratesetting

In this section of this proposed rule, we discuss the use of claims to calculate the proposed OPPS payment rates for CY 2015. The Hospital OPPS page on the CMS Web site on which this proposed rule is posted (*http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HospitalOutpatientPPS/index.html*) provides an accounting of claims used in the development of the proposed payment rates. That accounting provides additional detail regarding the number of claims derived at each stage of the process. In addition, below in this section we discuss the file of claims that comprises the data set that is available for purchase under a CMS data use agreement. The CMS Web site, *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HospitalOutpatientPPS/index.html*, includes information about purchasing the ''OPPS Limited Data Set,'' which now includes the additional variables previously available only in the OPPS Identifiable Data Set, including ICD–9–CM diagnosis codes and revenue code payment amounts. This file is derived from the CY 2013 claims that were used to calculate the proposed payment rates for the CY 2015 OPPS.

In the history of the OPPS, we have traditionally established the scaled relative weights on which payments are based using APC median costs, which is a process described in the CY 2012 OPPS/ASC final rule with comment period (76 FR 74188). However, as discussed in more detail in section II.A.2.f. of the CY 2013 OPPS/ASC final rule with comment period (77 FR 68259 through 68271), we finalized the use of geometric mean costs to calculate the relative weights on which the CY 2013 OPPS payment rates were based. While this policy changed the cost metric on which the relative payments are based, the data process in general remained the same, under the methodologies that we used to obtain appropriate claims data and accurate cost information in determining estimated service cost. For CY 2015, we are proposing to continue to use geometric mean costs to calculate the relative weights on which the proposed CY 2015 OPPS payments rates are based.

We used the methodology described in sections II.A.2.a. through II.A.2.f. of this proposed rule to calculate the costs we used to establish the proposed relative weights used in calculating the proposed OPPS payment rates for CY 2015 shown in Addenda A and B to this proposed rule (which are available via the Internet on the CMS Web site). We refer readers to section II.A.4. of this proposed rule for a discussion of the conversion of APC costs to scaled payment weights.

a. Claims Preparation

For this proposed rule, we used the CY 2013 hospital outpatient claims processed through December 31, 2013, to calculate the geometric mean costs of APCs that underpin the proposed relative payment weights for CY 2015. To begin the calculation of the proposed relative payment weights for CY 2015, we pulled all claims for outpatient services furnished in CY 2013 from the national claims history file. This is not the population of claims paid under the OPPS, but all outpatient claims (including, for example, critical access hospital (CAH) claims and hospital claims for clinical laboratory tests for persons who are neither inpatients nor outpatients of the hospital).

We then excluded claims with condition codes 04, 20, 21, and 77 because these are claims that providers submitted to Medicare knowing that no payment would be made. For example, providers submit claims with a condition code 21 to elicit an official denial notice from Medicare and document that a service is not covered. We then excluded claims for services furnished in Maryland, Guam, the U.S. Virgin Islands, American Samoa, and the Northern Mariana Islands because hospitals in those geographic areas are not paid under the OPPS, and, therefore, we do not use claims for services furnished in these areas in ratesetting.

We divided the remaining claims into the three groups shown below. Groups 2 and 3 comprise the 119 million claims that contain hospital bill types paid under the OPPS.

1. Claims that were not bill types 12X (Hospital Inpatient (Medicare Part B only)), 13X (Hospital Outpatient), 14X (Hospital—Laboratory Services Provided to Nonpatients), or 76X (Clinic—Community Mental Health Center). Other bill types are not paid under the OPPS; therefore, these claims were not used to set OPPS payment.

2. Claims that were bill types 12X, 13X or 14X. Claims with bill types 12X

and 13X are hospital outpatient claims. Claims with bill type 14X are laboratory specimen claims.

3. Claims that were bill type 76X (CMHC).

To convert charges on the claims to estimated cost, we multiplied the charges on each claim by the appropriate hospital-specific CCR associated with the revenue code for the charge as discussed in section II.A.1.c. of this proposed rule. We then flagged and excluded CAH claims (which are not paid under the OPPS) and claims from hospitals with invalid CCRs. The latter included claims from hospitals without a CCR; those from hospitals paid an all-inclusive rate; those from hospitals with obviously erroneous CCRs (greater than 90 or less than 0.0001); and those from hospitals with overall ancillary CCRs that were identified as outliers (that exceeded +/−3 standard deviations from the geometric mean after removing error CCRs). In addition, we trimmed the CCRs at the cost center (that is, departmental) level by removing the CCRs for each cost center as outliers if they exceeded +/- 3 standard deviations from the geometric mean. We used a four-tiered hierarchy of cost center CCRs, which is the revenue code-to-cost center crosswalk, to match a cost center to every possible revenue code appearing in the outpatient claims that is relevant to OPPS services, with the top tier being the most common cost center and the last tier being the default CCR. If a hospital's cost center CCR was deleted by trimming, we set the CCR for that cost center to ''missing'' so that another cost center CCR in the revenue center hierarchy could apply. If no other cost center CCR could apply to the revenue code on the claim, we used the hospital's overall ancillary CCR for the revenue code in question as the default CCR. For example, if a visit was reported under the clinic revenue code but the hospital did not have a clinic cost center, we mapped the hospital-specific overall ancillary CCR to the clinic revenue code. The revenue code-to-cost center crosswalk is available for inspection on the CMS Web site at: *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HospitalOutpatientPPS/index.html*. Revenue codes that we do not use in establishing relative costs or to model impacts are identified with an ''N'' in the revenue code-to-cost center crosswalk.

We applied the CCRs as described above to claims with bill type 12X, 13X, or 14X, excluding all claims from CAHs and hospitals in Maryland, Guam, the U.S. Virgin Islands, American Samoa, and the Northern Mariana Islands and claims from all hospitals for which CCRs were flagged as invalid.

We identified claims with condition code 41 as partial hospitalization services of hospitals and moved them to another file. We note that the separate file containing partial hospitalization claims is included in the files that are available for purchase as discussed above.

We then excluded claims without a HCPCS code. We moved to another file claims that contained only influenza and pneumococcal pneumonia (PPV) vaccines. Influenza and PPV vaccines are paid at reasonable cost; therefore, these claims are not used to set OPPS rates.

We next copied line-item costs for drugs, blood, and brachytherapy sources to a separate file (the lines stay on the claim, but are copied onto another file). No claims were deleted when we copied these lines onto another file. These line-items are used to calculate a per unit arithmetic and geometric mean and median cost and a per day arithmetic and geometric mean and median cost for drugs and nonimplantable biologicals, therapeutic radiopharmaceutical agents, and brachytherapy sources, as well as other information used to set payment rates, such as a unit-to-day ratio for drugs.

Prior to CY 2013, our payment policy for nonpass-through separately paid drugs and biologicals was based on a redistribution methodology that accounted for pharmacy overhead by allocating cost from packaged drugs to separately paid drugs. This methodology typically would have required us to reduce the cost associated with packaged coded and uncoded drugs in order to allocate that cost. However, for CY 2013, we paid for separately payable drugs and biologicals under the OPPS at ASP+6 percent, based upon the statutory default described in section 1833(t)(14)(A)(iii)(II) of the Act. Under that policy, we did not redistribute the pharmacy overhead costs from packaged drugs to separately paid drugs. For the CY 2014 OPPS, we continued the CY 2013 payment policy for separately payable drugs and biologicals, and we are proposing to continue this payment policy for CY 2015. We refer readers to section V.B.3. of this proposed rule for a complete discussion of our CY 2015 proposed payment policy for separately paid drugs and biologicals.

We then removed line-items that were not paid during claim processing, presumably for a line-item rejection or denial. The number of edits for valid OPPS payment in the Integrated Outpatient Code Editor (I/OCE) and elsewhere has grown significantly in the past few years, especially with the implementation of the full spectrum of National Correct Coding Initiative (NCCI) edits. To ensure that we are using valid claims that represent the cost of payable services to set payment rates, we removed line-items with an OPPS status indicator that were not paid during claims processing in the claim year, but have a status indicator of ''S,'' ''T,'' and ''V'' in the prospective year's payment system. This logic preserves charges for services that would not have been paid in the claim year but for which some estimate of cost is needed for the prospective year, such as services newly removed from the inpatient list for CY 2014 that were assigned status indicator ''C'' in the claim year. It also preserves charges for packaged services so that the costs can be included in the cost of the services with which they are reported, even if the CPT codes for the packaged services were not paid because the service is part of another service that was reported on the same claim or the code otherwise violates claims processing edits.

For CY 2015, we are proposing to continue the policy we implemented for CY 2013 and CY 2014 to exclude line-item data for pass-through drugs and biologicals (status indicator ''G'' for CY 2013) and nonpass-through drugs and biologicals (status indicator ''K'' for CY 2013) where the charges reported on the claim for the line were either denied or rejected during claims processing. Removing lines that were eligible for payment but were not paid ensures that we are using appropriate data. The trim avoids using cost data on lines that we believe were defective or invalid because those rejected or denied lines did not meet the Medicare requirements for payment. For example, edits may reject a line for a separately paid drug because the number of units billed exceeded the number of units that would be reasonable and, therefore, is likely a billing error (for example, a line reporting 55 units of a drug for which 5 units is known to be a fatal dose). As with our trimming in the CY 2014 OPPS/ASC final rule with comment period (78 FR 74849) of line-items with a status indicator of ''S,'' ''T,'' ''V,'' or ''X,'' we believe that unpaid line-items represent services that are invalidly reported and, therefore, should not be used for ratesetting. We believe that removing lines with valid status indicators that were edited and not paid during claims processing increases the accuracy of the data used for ratesetting purposes.

For the CY 2015 OPPS, as part of our proposal to continue packaging clinical diagnostic laboratory tests, we also are proposing to apply the line item trim to these services if they did not receive payment in the claims year. Removing these lines ensures that, in establishing the CY 2015 OPPS relative payments weights, we appropriately allocate the costs associated with packaging these services.

b. Splitting Claims and Creation of ''Pseudo'' Single Procedure Claims

(1) Splitting Claims

For the CY 2015 OPPS, we then split the remaining claims into five groups: single majors; multiple majors; single minors; multiple minors; and other claims. (Specific definitions of these groups are presented below.) We note that, under the proposed CY 2015 OPPS packaging policy, we are proposing to delete status indicator ''X'' and revise the title and description of status indicator ''Q1'' to reflect that deletion, as discussed in sections II.A.3. and XI. of this proposed rule. We note that we also are proposing to create status indicator ''J1'' to reflect the comprehensive APCs discussed in section II.A.2.e. of this proposed rule. For CY 2015, we are proposing to define major procedures as any HCPCS code having a status indicator of ''J1,'' ''S,'' ''T,'' or ''V''; define minor procedures as any code having a status indicator of ''F,'' ''G,'' ''H,'' ''K,'' ''L,'' ''R,'' ''U,'' or ''N''; and classify ''other'' procedures as any code having a status indicator other than one that we have classified as major or minor. For CY 2015, we are proposing to continue to assign status indicator ''R'' to blood and blood products; status indicator ''U'' to brachytherapy sources; status indicator ''Q1'' to all ''STV-packaged codes''; status indicator ''Q2'' to all ''T-packaged codes''; and status indicator ''Q3'' to all codes that may be paid through a composite APC based on composite-specific criteria or paid separately through single code APCs when the criteria are not met.

As discussed in the CY 2009 OPPS/ASC final rule with comment period (73 FR 68709), we established status indicators ''Q1,'' ''Q2,'' and ''Q3'' to facilitate identification of the different categories of codes. We are proposing to treat these codes in the same manner for data purposes for CY 2015 as we have treated them since CY 2008. Specifically, we are continuing to evaluate whether the criteria for separate payment of codes with status indicator ''Q1'' or ''Q2'' are met in determining whether they are treated as major or minor codes. Codes with status indicator ''Q1'' or ''Q2'' are carried through the data either with status indicator ''N'' as packaged or, if they meet the criteria for separate payment, they are given the status indicator of the APC to which they are assigned and are considered as ''pseudo'' single procedure claims for major codes. Codes assigned status indicator ''Q3'' are paid under individual APCs unless they occur in the combinations that qualify for payment as composite APCs and, therefore, they carry the status indicator of the individual APC to which they are assigned through the data process and are treated as major codes during both the split and ''pseudo'' single creation process. The calculation of the geometric mean costs for composite APCs from multiple procedure major claims is discussed in section II.A.2.f. of this proposed rule.

Specifically, we are proposing to divide the remaining claims into the following five groups:

1. *Single Procedure Major Claims:* Claims with a single separately payable procedure (that is, status indicator ''S,'' ''T,'' or ''V'' which includes codes with status indicator ''Q3''); claims with status indicator ''J1,'' which receive special processing for comprehensive APCs, as discussed in section II.A.2.e. of this proposed rule; claims with one unit of a status indicator ''Q1'' code (''STV-packaged'') where there was no code with status indicator ''S,'' ''T,'' or ''V'' on the same claim on the same date; or claims with one unit of a status indicator ''Q2'' code (''T-packaged'') where there was no code with a status indicator ''T'' on the same claim on the same date.

2. *Multiple Procedure Major Claims:* Claims with more than one separately payable procedure (that is, status indicator ''S,'' ''T,'' or ''V'' which includes codes with status indicator ''Q3''), or multiple units of one payable procedure. These claims include those codes with a status indicator ''Q2'' code (''T-packaged'') where there was no procedure with a status indicator ''T'' on the same claim on the same date of service but where there was another separately paid procedure on the same claim with the same date of service (that is, another code with status indicator ''S'' or ''V''). We also include in this set claims that contained one unit of one code when the bilateral modifier was appended to the code and the code was conditionally or independently bilateral. In these cases, the claims represented more than one unit of the service described by the code, notwithstanding that only one unit was billed.

3. *Single Procedure Minor Claims:* Claims with a single HCPCS code that was assigned status indicator ''F,'' ''G,'' ''H,'' ''K,'' ''L,'' ''R,'' ''U,'' or ''N'' and not status indicator ''Q1'' (''STV-packaged'') or status indicator ''Q2'' (''T-packaged'') code.

4. *Multiple Procedure Minor Claims:* Claims with multiple HCPCS codes that are assigned status indicator ''F,'' ''G,'' ''H,'' ''K,'' ''L,'' ''R,'' ''U,'' or ''N''; claims that contain more than one code with status indicator ''Q1'' (''STV-packaged'') or more than one unit of a code with status indicator ''Q1'' but no codes with status indicator ''S,'' ''T,'' or ''V'' on the same date of service; or claims that contain more than one code with status indicator ''Q2'' (T-packaged), or ''Q2'' and ''Q1,'' or more than one unit of a code with status indicator ''Q2'' but no code with status indicator ''T'' on the same date of service.

5. *Non-OPPS Claims:* Claims that contain no services payable under the OPPS (that is, all status indicators other than those listed for major or minor status). These claims were excluded from the files used for the OPPS. Non-OPPS claims have codes paid under other fee schedules, for example, durable medical equipment, and do not contain a code for a separately payable or packaged OPPS service. Non-OPPS claims include claims for therapy services paid sometimes under the OPPS but billed, in these non-OPPS cases, with revenue codes indicating that the therapy services would be paid under the Medicare Physician Fee Schedule (MPFS).

The claims listed in numbers 1, 2, 3, and 4 above are included in the data file that can be purchased as described above. Claims that contain codes to which we have assigned status indicators ''Q1'' (''STV-packaged'') and ''Q2'' (''T-packaged'') appear in the data for the single major file, the multiple major file, and the multiple minor file used for ratesetting. Claims that contain codes to which we have assigned status indicator ''Q3'' (composite APC members) appear in both the data of the single and multiple major files used in this proposed rule, depending on the specific composite calculation.

(2) Creation of ''Pseudo'' Single Procedure Claims

To develop ''pseudo'' single procedure claims for this proposed rule, we examined both the multiple procedure major claims and the multiple procedure minor claims. We first examined the multiple major procedure claims for dates of service to determine if we could break them into ''pseudo'' single procedure claims using

the dates of service for all lines on the claim. If we could create claims with single major procedures by using dates of service, we created a single procedure claim record for each separately payable procedure on a different date of service (that is, a ''pseudo'' single procedure claim).

We also are proposing to use the bypass codes listed in Addendum N to this proposed rule (which is available via the Internet on our Web site) and discussed in section II.A.1.b. of this proposed rule to remove separately payable procedures which we determined contained limited or no packaged costs or that were otherwise suitable for inclusion on the bypass list from a multiple procedure bill. As discussed above, we ignore the ''overlap bypass codes,'' that is, those HCPCS codes that are both on the bypass list and are members of the multiple imaging composite APCs, in this initial assessment for ''pseudo'' single procedure claims. The proposed CY 2015 ''overlap bypass codes'' are listed in Addendum N to this proposed rule (which is available via the Internet on the CMS Web site). When one of the two separately payable procedures on a multiple procedure claim was on the bypass list, we split the claim into two ''pseudo'' single procedure claim records. The single procedure claim record that contained the bypass code did not retain packaged services. The single procedure claim record that contained the other separately payable procedure (but no bypass code) retained the packaged revenue code charges and the packaged HCPCS code charges. We also removed lines that contained multiple units of codes on the bypass list and treated them as ''pseudo'' single procedure claims by dividing the cost for the multiple units by the number of units on the line. If one unit of a single, separately payable procedure code remained on the claim after removal of the multiple units of the bypass code, we created a ''pseudo'' single procedure claim from that residual claim record, which retained the costs of packaged revenue codes and packaged HCPCS codes. This enabled us to use claims that would otherwise be multiple procedure claims and could not be used.

We then assessed the claims to determine if the proposed criteria for the multiple imaging composite APCs, discussed in section II.A.2.f.(5) of this proposed rule, were met. If the criteria for the imaging composite APCs were met, we created a ''single session'' claim for the applicable imaging composite service and determined whether we could use the claim in ratesetting. For HCPCS codes that are both conditionally packaged and are members of a multiple imaging composite APC, we first assessed whether the code would be packaged and, if so, the code ceased to be available for further assessment as part of the composite APC. Because the packaged code would not be a separately payable procedure, we considered it to be unavailable for use in setting the composite APC costs on which the proposed CY 2015 OPPS relative payment weights are based. Having identified ''single session'' claims for the imaging composite APCs, we reassessed the claim to determine if, after removal of all lines for bypass codes, including the ''overlap bypass codes,'' a single unit of a single separately payable code remained on the claim. If so, we attributed the packaged costs on the claim to the single unit of the single remaining separately payable code other than the bypass code to create a ''pseudo'' single procedure claim. We also identified line-items of overlap bypass codes as a ''pseudo'' single procedure claim. This allowed us to use more claims data for ratesetting purposes.

We also are proposing to examine the multiple procedure minor claims to determine whether we could create ''pseudo'' single procedure claims. Specifically, where the claim contained multiple codes with status indicator ''Q1'' (''STV-packaged'') on the same date of service or contained multiple units of a single code with status indicator ''Q1,'' we selected the status indicator ''Q1'' HCPCS code that had the highest CY 2014 relative payment weight, and set the units to one on that HCPCS code to reflect our policy of paying only one unit of a code with a status indicator of ''Q1.'' We then packaged all costs for the following into a single cost for the ''Q1'' HCPCS code that had the highest CY 2014 relative payment weight to create a ''pseudo'' single procedure claim for that code: additional units of the status indicator ''Q1'' HCPCS code with the highest CY 2014 relative payment weight; other codes with status indicator ''Q1''; and all other packaged HCPCS codes and packaged revenue code costs. We changed the status indicator for the selected code from the data status indicator of ''N'' to the status indicator of the APC to which the selected procedure was assigned for further data processing and considered this claim as a major procedure claim. We used this claim in the calculation of the APC geometric mean cost for the status indicator ''Q1'' HCPCS code.

Similarly, if a multiple procedure minor claim contained multiple codes with status indicator ''Q2'' (''T-packaged'') or multiple units of a single code with status indicator ''Q2,'' we selected the status indicator ''Q2'' HCPCS code that had the highest CY 2014 relative payment weight and set the units to one on that HCPCS code to reflect our policy of paying only one unit of a code with a status indicator of ''Q2.'' We then packaged all costs for the following into a single cost for the ''Q2'' HCPCS code that had the highest CY 2014 relative payment weight to create a ''pseudo'' single procedure claim for that code: additional units of the status indicator ''Q2'' HCPCS code with the highest CY 2014 relative payment weight; other codes with status indicator ''Q2''; and other packaged HCPCS codes and packaged revenue code costs. We changed the status indicator for the selected code from a data status indicator of ''N'' to the status indicator of the APC to which the selected code was assigned, and we considered this claim as a major procedure claim.

If a multiple procedure minor claim contained multiple codes with status indicator ''Q2'' (''T-packaged'') and status indicator ''Q1'' (''STV-packaged''), we selected the T-packaged status indicator ''Q2'' HCPCS code that had the highest relative payment weight for CY 2014 and set the units to one on that HCPCS code to reflect our policy of paying only one unit of a code with a status indicator of ''Q2.'' We then packaged all costs for the following into a single cost for the selected (''T-packaged'') HCPCS code to create a ''pseudo'' single procedure claim for that code: additional units of the status indicator ''Q2'' HCPCS code with the highest CY 2014 relative payment weight; other codes with status indicator ''Q2''; codes with status indicator ''Q1'' (''STV-packaged''); and other packaged HCPCS codes and packaged revenue code costs. We selected status indicator ''Q2'' HCPCS codes instead of ''Q1'' HCPCS codes because ''Q2'' HCPCS codes have higher CY 2014 relative payment weights. If a status indicator ''Q1'' HCPCS code had a higher CY 2014 relative payment weight, it became the primary code for the simulated single bill process. We changed the status indicator for the selected status indicator ''Q2'' (''T-packaged'') code from a data status indicator of ''N'' to the status indicator of the APC to which the selected code was assigned and we considered this claim as a major procedure claim.

We then applied our proposed process for creating ''pseudo'' single procedure claims to the conditionally packaged codes that do not meet the

criteria for packaging, which enabled us to create single procedure claims from them, if they met the criteria for single procedure claims. Conditionally packaged codes are identified using status indicators ''Q1'' and ''Q2,'' and are described in section XI.A. of this proposed rule.

Lastly, we excluded those claims that we were not able to convert to single procedure claims even after applying all of the techniques for creation of ''pseudo'' single procedure claims to multiple procedure major claims and to multiple procedure minor claims. As has been our practice in recent years, we also excluded claims that contained codes that were viewed as independently or conditionally bilateral and that contained the bilateral modifier (Modifier 50 (Bilateral procedure)) because the line-item cost for the code represented the cost of two units of the procedure, notwithstanding that hospitals billed the code with a unit of one.

We are proposing to continue to apply the methodology described above for the purpose of creating ''pseudo'' single procedure claims for the CY 2015 OPPS.

c. Completion of Claim Records and Geometric Mean Cost Calculations

(1) General Process

We then packaged the costs of packaged HCPCS codes (codes with status indicator ''N'' listed in Addendum B to this proposed rule (which is available via the Internet on the CMS Web site) and the costs of those lines for codes with status indicator ''Q1'' or ''Q2'' when they are not separately paid), and the costs of the services reported under packaged revenue codes in Table 4 below that appeared on the claim without a HCPCS code into the cost of the single major procedure remaining on the claim. For a more complete discussion of our proposed CY 2015 OPPS packaging policy, we refer readers to section II.A.3. of this proposed rule.

As noted in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66606), for the CY 2008 OPPS, we adopted an APC Panel recommendation that CMS should review the final list of packaged revenue codes for consistency with OPPS policy and ensure that future versions of the I/OCE edit accordingly. As we have in the past, we are proposing to continue to compare the final list of packaged revenue codes that we adopt for CY 2015 to the revenue codes that the I/OCE will package for CY 2015 to ensure consistency.

In the CY 2009 OPPS/ASC final rule with comment period (73 FR 68531), we replaced the NUBC standard abbreviations for the revenue codes listed in Table 2 of the CY 2009 OPPS/ASC proposed rule with the most current NUBC descriptions of the revenue code categories and subcategories to better articulate the meanings of the revenue codes without changing the list of revenue codes. In the CY 2010 OPPS/ASC final rule with comment period (74 FR 60362 through 60363), we finalized changes to the packaged revenue code list based on our examination of the updated NUBC codes and public comment on the CY 2010 proposed list of packaged revenue codes.

For CY 2015, as we did for CY 2014, we reviewed the changes to revenue codes that were effective during CY 2013 for purposes of determining the charges reported with revenue codes but without HCPCS codes that we would propose to package for CY 2015. We believe that the charges reported under the revenue codes listed in Table 4 below continue to reflect ancillary and supportive services for which hospitals report charges without HCPCS codes. Therefore, for CY 2015, we are proposing to continue to package the costs that we derive from the charges reported without HCPCS codes under the revenue codes displayed in Table 4 below for purposes of calculating the geometric mean costs on which the proposed CY 2015 OPPS/ASC payment rates are based.

TABLE 4—PROPOSED CY 2015 PACKAGED REVENUE CODES

Revenue code	Description
0250	Pharmacy; General Classification.
0251	Pharmacy; Generic Drugs.
0252	Pharmacy; Non-Generic Drugs.
0254	Pharmacy; Drugs Incident to Other Diagnostic Services.
0255	Pharmacy; Drugs Incident to Radiology.
0257	Pharmacy; Non-Prescription.
0258	Pharmacy; IV Solutions.
0259	Pharmacy; Other Pharmacy.
0260	IV Therapy; General Classification.
0261	IV Therapy; Infusion Pump.
0262	IV Therapy; IV Therapy/Pharmacy Svcs.
0263	IV Therapy; IV Therapy/Drug/Supply Delivery.
0264	IV Therapy; IV Therapy/Supplies.
0269	IV Therapy; Other IV Therapy.
0270	Medical/Surgical Supplies and Devices; General Classification.
0271	Medical/Surgical Supplies and Devices; Non-sterile Supply.
0272	Medical/Surgical Supplies and Devices; Sterile Supply.
0275	Medical/Surgical Supplies and Devices; Pacemaker.
0276	Medical/Surgical Supplies and Devices; Intraocular Lens.
0278	Medical/Surgical Supplies and Devices; Other Implants.
0279	Medical/Surgical Supplies and Devices; Other.Supplies/Devices.
0280	Oncology; General Classification.
0289	Oncology; Other Oncology.
0343	Nuclear Medicine; Diagnostic Radiopharmaceuticals.
0344	Nuclear Medicine; Therapeutic Radiopharmaceuticals.
0370	Anesthesia; General Classification.
0371	Anesthesia; Anesthesia Incident to Radiology.
0372	Anesthesia; Anesthesia Incident to Other DX Services.
0379	Anesthesia; Other Anesthesia.
0390	Administration, Processing and Storage for Blood and Blood Components; General Classification.
0392	Administration, Processing and Storage for Blood and Blood Components; Processing and Storage.

TABLE 4—PROPOSED CY 2015 PACKAGED REVENUE CODES—Continued

Revenue code	Description
0399	Administration, Processing and Storage for Blood and Blood Components; Other Blood Handling.
0621	Medical Surgical Supplies—Extension of 027X; Supplies Incident to Radiology.
0622	Medical Surgical Supplies—Extension of 027X; Supplies Incident to Other DX Services.
0623	Medical Supplies—Extension of 027X, Surgical Dressings.
0624	Medical Surgical Supplies—Extension of 027X; FDA Investigational Devices.
0630	Pharmacy—Extension of 025X; Reserved.
0631	Pharmacy—Extension of 025X; Single Source Drug.
0632	Pharmacy—Extension of 025X; Multiple Source Drug
0633	Pharmacy—Extension of 025X; Restrictive Prescription
0681	Trauma Response; Level I Trauma.
0682	Trauma Response; Level II Trauma.
0683	Trauma Response; Level III Trauma.
0684	Trauma Response; Level IV Trauma.
0689	Trauma Response; Other.
0700	Cast Room; General Classification.
0710	Recovery Room; General Classification.
0720	Labor Room/Delivery; General Classification.
0721	Labor Room/Delivery; Labor.
0732	EKG/ECG (Electrocardiogram); Telemetry.
0762	Specialty services; Observation Hours.
0801	Inpatient Renal Dialysis; Inpatient Hemodialysis.
0802	Inpatient Renal Dialysis; Inpatient Peritoneal Dialysis (Non-CAPD).
0803	Inpatient Renal Dialysis; Inpatient Continuous Ambulatory Peritoneal Dialysis (CAPD).
0804	Inpatient Renal Dialysis; Inpatient Continuous Cycling Peritoneal Dialysis (CCPD).
0809	Inpatient Renal Dialysis; Other Inpatient Dialysis.
0810	Acquisition of Body Components; General Classification.
0819	Acquisition of Body Components; Other Donor.
0821	Hemodialysis—Outpatient or Home; Hemodialysis Composite or Other Rate.
0824	Hemodialysis—Outpatient or Home; Maintenance—100%.
0825	Hemodialysis—Outpatient or Home; Support Services.
0829	Hemodialysis—Outpatient or Home; Other OP Hemodialysis.
0942	Other Therapeutic Services (also see 095X, an extension of 094x); Education/Training.
0943	Other Therapeutic Services (also see 095X, an extension of 094X), Cardiac Rehabilitation.
0948	Other Therapeutic Services (also see 095X, an extension of 094X), Pulmonary Rehabilitation.

In accordance with our longstanding policy, we are proposing to continue to exclude: (1) Claims that had zero costs after summing all costs on the claim; and (2) claims containing packaging flag number 3. Effective for services furnished after July 1, 2014, the I/OCE assigned packaging flag number 3 to claims on which hospitals submitted token charges less than $1.01 for a service with status indicator ''S'' or ''T'' (a major separately payable service under the OPPS) for which the Medicare Administrative Contractor (MAC) was required to allocate the sum of charges for services with a status indicator equaling ''S'' or ''T'' based on the relative payment weight of the APC to which each code was assigned. We do not believe that these charges, which were token charges as submitted by the hospital, are valid reflections of hospital resources. Therefore, we deleted these claims. We also deleted claims for which the charges equaled the revenue center payment (that is, the Medicare payment) on the assumption that, where the charge equaled the payment, to apply a CCR to the charge would not yield a valid estimate of relative provider cost. We are proposing to continue these processes for the CY 2015 OPPS.

For the remaining claims, we are proposing to then standardize 60 percent of the costs of the claim (which we have previously determined to be the labor-related portion) for geographic differences in labor input costs. We made this adjustment by determining the wage index that applied to the hospital that furnished the service and dividing the cost for the separately paid HCPCS code furnished by the hospital by that wage index. The claims accounting that we provide for the proposed and final rule contains the formula we use to standardize the total cost for the effects of the wage index. As has been our policy since the inception of the OPPS, we are proposing to use the pre-reclassified wage indices for standardization because we believe that they better reflect the true costs of items and services in the area in which the hospital is located than the post-reclassification wage indices and, therefore, would result in the most accurate unadjusted geometric mean costs. We are proposing to use these pre-reclassified wage indices for standardization using the new OMB labor market area delineations described in section II.C. of this proposed rule.

In accordance with our longstanding practice, we also are proposing to exclude single and ''pseudo'' single procedure claims for which the total cost on the claim was outside 3 standard deviations from the geometric mean of units for each HCPCS code on the bypass list (because, as discussed above, we used claims that contain multiple units of the bypass codes).

After removing claims for hospitals with error CCRs, claims without HCPCS codes, claims for immunizations not covered under the OPPS, and claims for services not paid under the OPPS, approximately 114 million claims were left. Using these approximately 114 million claims, we created approximately 94 million single and ''pseudo'' single procedure claims, of which we used approximately 94 million single bills (after trimming out approximately 1 million claims as discussed in section II.A.1.a. of this proposed rule) in the CY 2015 geometric mean cost development and ratesetting.

As discussed above, the OPPS has historically developed the relative weights on which APC payments are based using APC median costs. For the

CY 2013 OPPS and the CY 2014 OPPS, we calculated the APC relative payment weights using geometric mean costs, and we are proposing to do the same for CY 2015. Therefore, the following discussion of the 2 times rule violation and the development of the relative payment weight refers to geometric means. For more detail about the CY 2015 OPPS/ASC policy to calculate relative payment weights based on geometric means, we refer readers to section II.A.2.f. of this proposed rule.

We are proposing to use these claims to calculate the CY 2015 geometric mean costs for each separately payable HCPCS code and each APC. The comparison of HCPCS code-specific and APC geometric mean costs determines the applicability of the 2 times rule. Section 1833(t)(2) of the Act provides that, subject to certain exceptions, the items and services within an APC group shall not be treated as comparable with respect to the use of resources if the highest median cost (or mean cost, if elected by the Secretary) for an item or service within the group is more than 2 times greater than the lowest median cost (or mean cost, if so elected) for an item or service within the same group (the 2 times rule). While we have historically applied the 2 times rule based on median costs, in the CY 2013 OPPS/ASC final rule with comment period (77 FR 68270), as part of the CY 2013 policy to develop the OPPS relative payment weights based on geometric mean costs, we also applied the 2 times rule based on geometric mean costs. For the CY 2015 OPPS, we are proposing to continue to develop the APC relative payment weights based on geometric mean costs.

We note that, for purposes of identifying significant HCPCS codes for examination in the 2 times rule, we consider codes that have more than 1,000 single major claims or codes that have both greater than 99 single major claims and contribute at least 2 percent of the single major claims used to establish the APC geometric mean cost to be significant. This longstanding definition of when a HCPCS code is significant for purposes of the 2 times rule was selected because we believe that a subset of 1,000 claims is negligible within the set of approximately 94 million single procedure or single session claims we use for establishing geometric mean costs. Similarly, a HCPCS code for which there are fewer than 99 single bills and which comprises less than 2 percent of the single major claims within an APC will have a negligible impact on the APC geometric mean. We note that this method of identifying significant HCPCS codes within an APC for purposes of the 2 times rule was used in prior years under the median-based cost methodology. Under our proposed CY 2015 policy to continue to base the relative payment weights on geometric mean costs, we believe that this same consideration for identifying significant HCPCS codes should apply because the principles are consistent with their use in the median-based cost methodology. Unlisted codes are not used in establishing the percent of claims contributing to the APC, nor are their costs used in the calculation of the APC geometric mean. Finally, we reviewed the geometric mean costs for the services for which we are proposing to pay separately under this proposed rule, and we reassigned HCPCS codes to different APCs where it was necessary to ensure clinical and resource homogeneity within the APCs. The APC geometric means were recalculated after we reassigned the affected HCPCS codes. Both the HCPCS code-specific geometric means and the APC geometric means were weighted to account for the inclusion of multiple units of the bypass codes in the creation of ''pseudo'' single procedure claims.

As we discuss in sections II.A.2.d., II.A.2.f., and VIII.B. of this proposed rule, in some cases, APC geometric mean costs are calculated using variations of the process outlined above. Specifically, section II.A.2.d. of this proposed rule addresses the proposed calculation of single APC criteria-based geometric mean costs. Section II.A.2.f. of this proposed rule discusses the proposed calculation of composite APC criteria-based geometric mean costs. Section VIII.B. of this proposed rule addresses the methodology for calculating the proposed geometric mean costs for partial hospitalization services.

(2) Recommendations of the Panel Regarding Data Development

At the March 2014 meeting of the Panel, we discussed the claims accounting process for the CY 2014 OPPS final rule, the final CY 2014 policy of adopting the new standard cost centers for CT, MRI, and cardiac catheterization in the new Medicare cost report Form CMS–2552–10, as well as the calculation of estimated cost for those APCs.

At the March 2014 Panel meeting, the Panel made a number of recommendations related to the data process. The Panel's data-related recommendations and our responses follow.

Recommendation: The Panel recommends that the work of the Data Subcommittee continue.

CMS Response: We are accepting this recommendation.

Recommendation: The Panel recommends that CMS provide the Panel with a list of APCs for which costs fluctuate by more than 10 percent.

CMS Response: We are accepting this recommendation.

Recommendation: The Panel recommends that CMS provide the Panel with data on comprehensive APCs as well as the effect of conditional packaging on visit codes.

CMS Response: We are accepting this recommendation.

d. Proposed Calculation of Single Procedure APC Criteria-Based Costs

(1) Device-Dependent APCs

Historically, device-dependent APCs are populated by HCPCS codes that usually, but not always, require that a device be implanted or used to perform the procedure. The standard methodology for calculating device-dependent APC costs utilizes claims data that generally reflect the full cost of the required device by using only the subset of single procedure claims that pass the procedure-to-device and device-to-procedure edits; do not contain token charges (less than $1.01) for devices; and, until January 1, 2014, did not contain the ''FB'' modifier signifying that the device was furnished without cost to the provider, or where a full credit was received; and do not contain the ''FC'' modifier signifying that the hospital received partial credit for the device. For a full history of how we have calculated payment rates for device-dependent APCs in previous years and a detailed discussion of how we developed the standard device-dependent APC ratesetting methodology, we refer readers to the CY 2008 OPPS/ASC final rule with comment period (72 FR 66739 through 66742). Overviews of the procedure-to-device edits and device-to-procedure edits used in ratesetting for device-dependent APCs are available in the CY 2005 OPPS final rule with comment period (69 FR 65761 through 65763) and the CY 2007 OPPS/ASC final rule with comment period (71 FR 68070 through 68071).

In the CY 2014 OPPS/ASC final rule with comment period (78 FR 74857 through 74859), we finalized a policy to define 29 device-dependent APCs as single complete services and to assign them to comprehensive APCs that provide all-inclusive payments for those services, but we delayed

implementation of this policy until CY 2015 (78 FR 74862). This policy is a further step toward improving the prospective nature of our payments for these services where the cost of the device is relatively high compared to the other costs that contribute to the cost of the service. Table 5 of the CY 2014 OPPS/ASC final rule with comment period provided a list of the 39 APCs recognized as device-dependent APCs and identified the 29 device-dependent APCs that are converted to comprehensive APCs. In addition, in the CY 2014 OPPS/ASC final rule with comment period we finalized a policy for the treatment of the remaining 10 device-dependent APCs that applied our standard APC ratesetting methodology to calculate the CY 2014 payment rates for these APCs, but implementation of this policy was also delayed until CY 2015.

As proposed in the CY 2014 OPPS/ASC proposed rule (78 FR 43556 through 43557), for CY 2015, we are proposing to no longer implement procedure-to-device edits and device-to-procedure edits for any APC. Under this proposed policy, which was discussed but not finalized in the CY 2014 OPPS/ASC final rule with comment period (78 FR 74857 through 74858), hospitals are still expected to adhere to the guidelines of correct coding and append the correct device code to the claim, when applicable. However, claims would no longer be returned to providers when specific procedure and device code pairings do not appear on a claim. As we stated in both the CY 2014 OPPS/ASC proposed rule (78 FR 43556 through 43557) and the CY 2014 OPPS/ASC final rule with comment period (78 FR 74857 through 748598), we believe that this is appropriate because of the experience hospitals now have had in coding and reporting these claims fully and, for the more costly devices, the comprehensive APCs will reliably reflect the cost of the device if it is included anywhere on the claim. Therefore, we do not believe that the burden imposed upon hospitals to adhere to the procedure-to-device edits and device-to-procedure edits and the burden imposed upon the Medicare program to maintain those edits continued to be warranted. As with all other items and services recognized under the OPPS, we expect hospitals to code and report their costs appropriately, regardless of whether there are claims processing edits in place.

The proposed CY 2015 comprehensive APC policy consolidates and restructures the 39 current device-dependent APCs into 26 (of the total 28) comprehensive APCs, which are listed below in Table 5. The comprehensive APC policy is discussed in section II.A.2.e. of this proposed rule. As a result of the proposed CY 2015 comprehensive APC policy, device-dependent APCs would no longer exist in CY 2015 because these APCs will have all been converted to comprehensive APCs. In conjunction with the proposed termination of device-dependent APCs and as discussed in the CY 2014 OPPS/ASC final rule with comment period (78 FR 74857 through 74858), we are proposing to no longer use procedure-to-device edits and device-to-procedure edits for any APC because we continue to believe that the elimination of device-to-procedure edits and procedure-to-device edits is appropriate considering the experience that hospitals now have in coding and reporting these claims fully and, for the more costly devices, the comprehensive APCs will reliably reflect the cost of the device if it is included anywhere on the claim.

While we believe that device-to-procedure edits and procedure-to-device edits are no longer necessary, we are sensitive to the concerns raised by stakeholders in the past about the costs of devices being reported and captured. In light of these concerns, we are proposing to create claims processing edits that require *any* of the device codes used in the previous device-to-procedure edits to be present on the claim whenever a procedure code assigned to any 1 of the 26 proposed comprehensive APCs (of a total of 28 proposed comprehensive APCs) listed below in Table 5 is reported on the claim to ensure that device costs are captured by hospitals. We expect that hospitals would use an appropriate device code consistent with correct coding in order to ensure that device costs are always reported on the claim, so that costs are appropriately captured in claims that CMS uses for ratesetting.

Table 5 below provides a list of the 26 proposed CY 2015 comprehensive APCs, which we previously recognized as device-dependent APCs for CY 2014. This proposal would result in the term ''device-dependent APC'' no longer being employed beginning in CY 2015.

TABLE 5—PROPOSED APCS THAT WOULD REQUIRE A DEVICE CODE TO BE REPORTED ON A CLAIM WHEN A PROCEDURE ASSIGNED TO ONE OF THESE APCS IS REPORTED

APC	APC Title
0039.	Level III Neurostimulator.
0061	Level II Neurostimulator.

TABLE 5—PROPOSED APCS THAT WOULD REQUIRE A DEVICE CODE TO BE REPORTED ON A CLAIM WHEN A PROCEDURE ASSIGNED TO ONE OF THESE APCS IS REPORTED—Continued

APC	APC Title
0083	Level I Endovascular.
0084	Level I EP.
0085	Level II EP.
0086	Level III EP.
0089	Level III Pacemaker.
0090	Level II Pacemaker.
0107	Level I ICD.
0108	Level II ICD.
0202	Level V Female Reproductive.
0227	Implantation of Drug Infusion.
0229	Level II Endovascular.
0259	Level VII ENT Procedures.
0293	Level IV Intraocular.
0318	Level IV Neurostimulator.
0319	Level III Endovascular.
0384	GI Procedures with Stents.
0385	Level I Urogenital.
0386	Level II Urogenital.
0425	Level V Musculoskeletal.
0427	Level II Tube/Catheter.
0622	Level II Vascular Access.
0648	Level IV Breast Surgery.
0652	Insertion of IP/Pl. Cath.
0655	Level IV Pacemaker.

(2) Blood and Blood Products

Since the implementation of the OPPS in August 2000, we have made separate payments for blood and blood products through APCs rather than packaging payment for them into payments for the procedures with which they are administered. Hospital payments for the costs of blood and blood products, as well as for the costs of collecting, processing, and storing blood and blood products, are made through the OPPS payments for specific blood product APCs.

For CY 2015, we are proposing to continue to establish payment rates for blood and blood products using our blood-specific CCR methodology, which utilizes actual or simulated CCRs from the most recently available hospital cost reports to convert hospital charges for blood and blood products to costs. This methodology has been our standard ratesetting methodology for blood and blood products since CY 2005. It was developed in response to data analysis indicating that there was a significant difference in CCRs for those hospitals with and without blood-specific cost centers, and past public comments indicating that the former OPPS policy of defaulting to the overall hospital CCR for hospitals not reporting a blood-specific cost center often resulted in an underestimation of the true hospital costs for blood and blood products.

Specifically, in order to address the differences in CCRs and to better reflect hospitals' costs, we are proposing to continue to simulate blood CCRs for each hospital that does not report a blood cost center by calculating the ratio of the blood-specific CCRs to hospitals' overall CCRs for those hospitals that do report costs and charges for blood cost centers. We would apply this mean ratio to the overall CCRs of hospitals not reporting costs and charges for blood cost centers on their cost reports in order to simulate blood-specific CCRs for those hospitals. We are proposing to calculate the costs upon which the proposed CY 2015 payment rates for blood and blood products are based using the actual blood-specific CCR for hospitals that reported costs and charges for a blood cost center and a hospital-specific simulated blood-specific CCR for hospitals that did not report costs and charges for a blood cost center.

We continue to believe that the hospital-specific simulated blood-specific CCR methodology better responds to the absence of a blood-specific CCR for a hospital than alternative methodologies, such as defaulting to the overall hospital CCR or applying an average blood-specific CCR across hospitals. Because this methodology takes into account the unique charging and cost accounting structure of each hospital, we believe that it yields more accurate estimated costs for these products. We continue to believe that this methodology in CY 2015 will result in costs for blood and blood products that appropriately reflect the relative estimated costs of these products for hospitals without blood cost centers and, therefore, for these blood products in general.

We note that, as discussed in section II.A.2.e. of the CY 2014 OPPS/ASC final rule with comment period and this proposed rule, we established comprehensive APCs that will provide all-inclusive payments for certain device-dependent procedures. Under this policy, we include the costs of blood and blood products when calculating the overall costs of these comprehensive APCs. We are proposing to continue to apply the blood-specific CCR methodology described in this section when calculating the costs of the blood and blood products that appear on claims with services assigned to the comprehensive APCs. Because the costs of blood and blood products would be reflected in the overall costs of the comprehensive APCs (and, as a result, in the proposed payment rates of the comprehensive APCs), we are proposing not to make separate payments for blood and blood products when they appear on the same claims as services assigned to the comprehensive APCs.

We refer readers to Addendum B to this proposed rule (which is available via the Internet on the CMS Web site) for the proposed CY 2015 payment rates for blood and blood products (which are identified with status indicator ''R''). For a more detailed discussion of the blood-specific CCR methodology, we refer readers to the CY 2005 OPPS proposed rule (69 FR 50524 through 50525). For a full history of OPPS payment for blood and blood products, we refer readers to the CY 2008 OPPS/ASC final rule with comment period (72 FR 66807 through 66810).

(3) Brachytherapy Sources

Section 1833(t)(2)(H) of the Act mandates the creation of additional groups of covered OPD services that classify devices of brachytherapy consisting of a seed or seeds (or radioactive source) (''brachytherapy sources'') separately from other services or groups of services. The statute provides certain criteria for the additional groups. For the history of OPPS payment for brachytherapy sources, we refer readers to prior OPPS final rules, such as the CY 2012 OPPS/ASC final rule with comment period (77 FR 68240 through 68241). As we have stated in prior OPPS updates, we believe that adopting the general OPPS prospective payment methodology for brachytherapy sources is appropriate for a number of reasons (77 FR 68240). The general OPPS payment methodology uses costs based on claims data to set the relative payment weights for hospital outpatient services. This payment methodology results in more consistent, predictable, and equitable payment amounts per source across hospitals by averaging the extremely high and low values, in contrast to payment based on hospitals' charges adjusted to cost. We believe that the OPPS prospective payment methodology, as opposed to payment based on hospitals' charges adjusted to cost, would also provide hospitals with incentives for efficiency in the provision of brachytherapy services to Medicare beneficiaries. Moreover, this approach is consistent with our payment methodology for the vast majority of items and services paid under the OPPS. We refer readers to the CY 2008 OPPS/ASC final rule with comment period (72 FR 66779 through 66787), the CY 2009 OPPS/ASC final rule with comment period (73 FR 68668 through 68670), the CY 2010 OPPS/ASC final rule with comment period (74 FR 60533 through 60537), the CY 2011 OPPS/ASC final rule with comment period (75 FR 71978 through 71981), and the CY 2012 OPPS/ASC final rule with comment period (76 FR 74160 through 74163) for further discussion of the history of OPPS payment for brachytherapy sources.

For CY 2015, we are proposing to use the costs derived from CY 2013 claims data to set the proposed CY 2015 payment rates for brachytherapy sources, as we are proposing to use to set the proposed payment rates for most other items and services that would be paid under the CY 2015 OPPS. We based the proposed payment rates for brachytherapy sources on the geometric mean unit costs for each source, consistent with the methodology proposed for other items and services paid under the OPPS, as discussed in section II.A.2. of this proposed rule. We also are proposing to continue the other payment policies for brachytherapy sources that we finalized and first implemented in the CY 2010 OPPS/ASC final rule with comment period (74 FR 60537). We are proposing to pay for the stranded and non-stranded not otherwise specified (NOS) codes, HCPCS codes C2698 and C2699, at a rate equal to the lowest stranded or non-stranded prospective payment rate for such sources, respectively, on a per source basis (as opposed to, for example, a per mCi), which is based on the policy we established in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66785). We also are proposing to continue the policy we first implemented in the CY 2010 OPPS/ASC final rule with comment period (74 FR 60537) regarding payment for new brachytherapy sources for which we have no claims data, based on the same reasons we discussed in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66786; which was delayed until January 1, 2010 by section 142 of Pub. L. 110–275). That policy is intended to enable us to assign new HCPCS codes for new brachytherapy sources to their own APCs, with prospective payment rates set based on our consideration of external data and other relevant information regarding the expected costs of the sources to hospitals.

We refer readers to Addendum B to this proposed rule (which is available via the Internet on the CMS Web site) for the proposed CY 2015 payment rates for brachytherapy sources, which are identified with status indicator ''U.'' We are inviting public comments on this proposed policy and requesting recommendations for new HCPCS codes to describe new brachytherapy sources consisting of a radioactive isotope, including a detailed rationale to support recommended new sources. Such

recommendations should be directed to the Division of Outpatient Care, Mail Stop C4–05–17, Centers for Medicare and Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244. We will continue to add new brachytherapy source codes and descriptors to our systems for payment on a quarterly basis through our program transmittals.

e. Establishment of Comprehensive APCs

In the CY 2014 OPPS/ASC final rule with comment period (78 FR 74861 through 74910), effective January 1, 2015, we finalized a comprehensive payment policy that bundles or ''packages'' payment for the most costly medical device implantation procedures under the OPPS at the claim level. We defined a comprehensive APC (C–APC) as a classification for the provision of a primary service and all adjunctive services provided to support the delivery of the primary service. We established comprehensive APCs as a category broadly for OPPS payment and established 29 comprehensive APCs to prospectively pay for 167 of the most costly device-dependent services beginning in CY 2015 (78 FR 74910). Under this policy, we designated each service described by a HCPCS code assigned to a comprehensive APC as the primary service and, with few exceptions, consider all other services reported on a hospital Medicare Part B claim in combination with the primary service to be related to the delivery of the primary service (78 FR 74869). In addition, under this policy, we calculate a single payment for the entire hospital stay, defined by a single claim, regardless of the date of service span. This comprehensive APC packaging policy ''packages'' payment for all items and services typically packaged under the OPPS, but also packages payment for other items and services that are not typically packaged under the OPPS, except in the context of comprehensive APC payments (78 FR 74909).

Because of the overall complexity of this new policy and our introduction of complexity adjustments in the CY 2014 OPPS/ASC final rule with comment period, we modeled the dynamics of the policy as if we were implementing it for CY 2014, but delayed the effective date until January 1, 2015, to allow additional time for analysis, opportunity for public comment, and systems preparation. In this section of this CY 2015 OPPS/ASC proposed rule, we review the policies finalized in the CY 2014 OPPS/ASC final rule with comment period for comprehensive APCs. We then outline our proposed policy for CY 2015, which includes several clarifications and proposed modifications in response to public comments received. Finally, we summarize and respond to the public comments we received in response to the comprehensive APC policy outlined in the CY 2014 OPPS/ASC final rule with comment period. In this section, we use the terms ''service'' and ''procedure'' interchangeably.

(1) Background

In the CY 2014 OPPS/ASC final rule with comment period (78 FR 74861 through 74910), we finalized a policy with a delayed implementation date of CY 2015, whereby we designated certain covered OPD services as ''primary services'' (identified by a new OPPS status indicator of ''J1'') assigned to comprehensive APCs. When such a primary service is reported on a hospital Medicare Part B claim, taking into account the few exceptions that are discussed below, we treat all other items and services reported on the claim as integral, ancillary, supportive, dependent, and adjunctive to the primary service (hereinafter collectively referred to as ''adjunctive services'') and representing components of a comprehensive service (78 FR 74865). This results in a single prospective payment for the primary, comprehensive service based on the cost of all reported services at the claim level. We only exclude charges for services that are not payable under the OPPS, such as certain mammography and ambulance services that are never covered OPD services in accordance with section 1833(t)(1)(B)(iv) of the Act; brachytherapy seeds, which must receive separate payment under section 1833(t)(2)(H) of the Act; pass-through drugs and devices, which also require separate payment under section 1833(t)(6) of the Act; and self-administered drugs (SADs) that are not otherwise packaged as supplies because they are not covered under Medicare Part B under section 1861(s)(2)(B) of the Act (78 FR 74865).

The ratesetting process set forth in the CY 2014 OPPS/ASC final rule with comment period for the comprehensive APC payment bundle policy is summarized as follows(78 FR 74887):

APC assignment of primary (''J1'') services. During ratesetting, single claims reporting a single procedure described by a HCPCS code assigned to status indicator ''J1'' are used to establish an APC assignment for each procedure described by that HCPCS code. The geometric mean of the total estimated costs on each claim is used to establish resource similarity for each procedure code's APC assignment and is evaluated within the context of clinical similarity, with assignment starting from the APC assignments in effect for the current payment year. Claims reporting multiple procedures described by HCPCS codes assigned to status indicator ''J1'' are identified and the procedures are then assigned to a comprehensive APC based on the primary HCPCS code that has the highest APC geometric mean cost. This ensures that multiple procedures described by HCPCS codes assigned to status indicator ''J1'' reported on claims are always paid through and assigned to the comprehensive APC that would generate the highest APC payment. If multiple procedures described by HCPCS codes assigned to status indicator ''J1'' that are reported on the same claim have the same APC geometric mean estimated cost, as would be the case when two different procedures described by HCPCS codes assigned to status indicator ''J1'' are assigned to the same APC, identification of the primary service is then based on the procedure described by the HCPCS code assigned to status indicator ''J1'' with the highest HCPCS-level geometric mean cost. When there is no claims data available upon which to establish a HCPCS-level comprehensive geometric mean cost, we model a HCPCS-level geometric mean cost for the sole purpose of appropriately assigning the primary service reported on a claim. The comprehensive APC assignment of each procedure described by HCPCS codes assigned to status indicator ''J1'' is then confirmed by verifying that the APC assignment remains appropriate when considering the clinical similarity, as well as the estimated cost of all claims reporting each procedure described by HCPCS codes assigned to status indicator ''J1,'' including simple and complex claims, with multiple device-related procedures (78 FR 74887).

Complexity adjustments and determination of final comprehensive APC groupings. We then considered reassigning complex subsets of claims for each primary service described by a HCPCS code assigned to status indicator ''J1.'' All claims reporting more than one procedure described by HCPCS codes assigned to status indicator ''J1'' are evaluated for the existence of commonly occurring combinations of procedure codes reported on claims that exhibit a materially greater comprehensive geometric mean cost relative to the geometric mean cost of the claims reporting that primary service. This indicates that the subset of procedures identified by the secondary HCPCS code

has increased resource requirements relative to less complex subsets of that procedure (78 FR 74887). The CY 2014 complexity adjustment criteria are as follows:

- The comprehensive geometric mean cost of the claims reporting the combination of procedures was more than two times the comprehensive geometric mean cost of the single major claims reporting only the primary service;
- There were more than 100 claims in the data year reporting the specific code combination;
- The number of claims reporting the specific code combination exceeded 5 percent of the volume of all claims reporting the designated primary service; and
- There would be no violation of the ''2 times'' rule within the receiving comprehensive APC (78 FR 74886).

If a combination of procedure codes reported on claims is identified that meets these requirements, that is, commonly occurring and exhibiting materially greater resource requirements, the combination of procedure codes is further evaluated to confirm clinical validity as a complex subset of the primary procedure and the combination of procedure codes is then identified as complex, and primary service claims with that combination of procedure codes are subsequently reassigned as appropriate. If a combination of procedure codes does not meet the requirement for a materially greater resource requirement or does not occur commonly, the combination of procedure codes is not considered to be complex, and primary service claims with that combination of procedure codes are not reassigned. All combinations of procedures described by HCPCS codes assigned to status indicator ''J1'' for each primary service are similarly evaluated. Once all combinations of procedures described by HCPCS codes assigned to status indicator ''J1'' have been evaluated, all claims identified for reassignment for each primary service are combined and the group is assigned to a higher level comprehensive APC within a clinical family of comprehensive APCs, that is, an APC with greater estimated resource requirements than the initially assigned comprehensive APC and with appropriate clinical homogeneity. We assessed resource variation for reassigned claims within the receiving APC using the geometric mean cost for all reassigned claims for the primary service relative to other services assigned to that APC using the 2 times rule criteria (78 FR 74887).

For new HCPCS codes and codes without data, we use the best data available to us to identify combinations of procedure codes that represent a more complex form of the primary service and warrant reassignment to a higher level APC. We will reevaluate our APC assignments and identification and APC placement of complex claims once claims data become available.

(2) Proposed CY 2015 Policy for Comprehensive APCs

(a) Proposed Methodology

After consideration of the public comments we received, which are discussed in detail below, in this section we describe our proposed payment methodology for comprehensive APCs for CY 2015. The basic steps for calculating the comprehensive APC payments remain the same as those finalized in the CY 2014 OPPS/ASC final rule with comment period, except for the complexity adjustment criteria described briefly above (78 FR 74885 through 74888). For CY 2015, we are proposing to restructure and consolidate some of the current device-dependent APCs to improve both the resource and clinical homogeneity of these APCs. In addition, instead of assigning any add-on codes to status indicator ''J1'' as finalized in the CY 2014 OPPS/ASC final rule with comment period (78 FR 74873 through 74883), we are proposing to package all add-on codes, but to allow certain add-on codes to qualify a procedure code combination for a complexity adjustment.

Further, we are proposing to convert all current device-dependent APCs remaining after the proposed restructuring and consolidation of some of these APCs to comprehensive APCs. We also are proposing two new comprehensive APCs, C–APC 0067 for single-session cranial stereotactic radiosurgery (SRS) and C–APC 0351 for intraocular telescope implantation. In addition, we are proposing to reassign CPT codes 77424 and 77425 that describe intraoperative radiation therapy treatment (IORT) to C–APC 0648 (Level IV Breast and Skin Surgery). We discuss in detail below our proposed new complexity adjustment criteria and our proposal to package all add-on codes, but to allow complexity adjustments for qualifying code combinations of primary codes and add-on codes currently assigned to device-intensive comprehensive APCs. The steps are as follows:

Step 1: Select primary (''J1'') services. We continue to believe that the comprehensive packaging of adjunctive services into a primary service will further improve cost validity, payment accuracy, beneficiary transparency, and hospital efficiency (78 FR 74861). As in CY 2014, for CY 2015, we are proposing that services assigned to comprehensive APCs be designated as primary services for comprehensive APCs, using new status indicator ''J1'' as listed in Addendum J and Addendum B to this proposed rule (which are available via the Internet on the CMS Web site). We also are proposing to package all add-on codes, as discussed in detail below, and that none of these add-on codes will be considered primary services assigned to status indicator ''J1.''

Treatment of add-on codes. We are proposing to assign all add-on codes status indicator ''N'' (unconditionally packaged). Therefore, under this proposal no add-on codes will be assigned to status indicator ''J1.'' However, we are proposing to evaluate a limited set of add-on codes assigned to the current device-dependent APCs, and to establish that when these add-on codes are reported in conjunction with a primary service a potential complexity adjustment under the proposed complexity adjustment criteria may be warranted (discussed further in Step 5 below).

Step 2: Definition of the payment package (comprehensive service). We are proposing the following changes to the comprehensive APCs payment packaging policy for the services that are assigned to status indicator ''J1'' or designated as primary services assigned to a comprehensive APC:

- We are proposing to restructure and consolidate the current device-dependent APCs, including some procedure code reassignments to improve clinical and resource homogeneity;
- We are proposing to package all of the add-on procedure codes, after we review and evaluate add-on codes reported in conjunction with primary ''J1'' services under the proposed complexity adjustment criteria for a potential complexity adjustment;
- We are proposing to create more comprehensive APCs, including converting all device-dependent APCs (including those that were not included in the CY 2014 policy) and to create new comprehensive APCs for single session cranial stereotactic radiosurgery and intraocular telescope implantation.

As stated in the CY 2014 OPPS/ASC final rule with comment period, we define the comprehensive APC payment packaging policy as including all covered OPD services on a hospital Medicare Part B claim reporting a primary service that is assigned to status

indicator ''J1,'' excluding services that cannot be covered OPD services or that cannot by statute be paid under the OPPS. Services packaged for payment under the comprehensive APC payment packaging policy, that is, services that are typically integral, ancillary, supportive, dependent, or adjunctive to the primary service, provided during the delivery of the comprehensive service, include diagnostic procedures, laboratory tests and other diagnostic tests and treatments that assist in the delivery of the primary procedure; visits and evaluations performed in association with the procedure; uncoded services and supplies used during the service; outpatient department services that are similar to therapy and delivered either by therapists or non-therapists as part of the comprehensive service; durable medical equipment as well as prosthetic and orthotic items and supplies when provided as part of the outpatient service; and any other components reported by HCPCS codes that are provided during the comprehensive service, except excluded services that are described below (78 FR 74865). Items packaged for payment provided in conjunction with the primary service also include all drugs, biologicals, and radiopharmaceuticals, regardless of cost, except those drugs with pass-through payment status and those drugs that are usually self-administered (SADs), unless they function as packaged supplies (78 FR 74868 through 74869 and 74909). We refer readers to the Medicare Benefit Policy Manual, Chapter 15, Covered Medical and Other Health Services, Section 50.2.M, for a description of our policy on self-administered drugs treated as hospital outpatient supplies, including lists of SADs that function as supplies and those that do not function as supplies.

Services excluded from the comprehensive APC payment packaging policy are as follows: SADs that are not considered supplies, because they are not covered under Medicare Part B under section 1861(s)(2)(B) of the Act; services excluded from the OPPS according to section 1833(t)(1)(B) of the Act including recurring therapy services, which we considered unrelated to the comprehensive service (defined as therapy services reported on a separate facility claim for recurring services), ambulance services, diagnostic and screening mammography, the annual wellness visit providing personalized prevention plan services, and pass-through drugs and devices that are paid according to section 1833(t)(6) of the Act.

We also exclude preventive services defined in 42 CFR 410.2, ''(1) [t]he specific services listed in section 1861(ww)(2) of the Act, with the explicit exclusion of electrocardiograms; (2) [t]he Initial Preventive Physical Examination (IPPE) (as specified by section 1861(ww)(1) of the Act); and (3) Annual Wellness Visit (AWV), providing Personalized Prevention Plan Services (PPPS) (as specified by section 1861(hhh)(1) of the Act).'' These preventive services are listed by their HCPCS codes in Addendum J to this proposed rule and include: annual wellness visits providing personalized prevention plan services; initial preventive physical examinations; pneumococcal, influenza, and hepatitis B vaccines and administrations; mammography screenings; pap smear screenings and pelvic examination screenings; prostate cancer screening tests; colorectal cancer screening tests; diabetes outpatient self-management training services; bone mass measurements; glaucoma screenings; medical nutrition therapy services; cardiovascular screening blood tests; diabetes screening tests; ultrasound screenings for abdominal aortic aneurysm; and additional preventive services as defined in section 1861(ddd)(1) of the Act. We defined and discussed these services in detail for hospital billing purposes in the CY 2011 OPPS/ASC final rule with comment period pursuant to coverage and payment provisions in the Affordable Care Act (75 FR 72013 through 72020).

This proposed policy is consistent with our policy to exclude preventive services from the proposed ancillary services packaging policy, will encourage the provision of preventive services, and provide maximum flexibility to beneficiaries across different sites of service in receiving preventive services. In addition, the statute does not permit assessment of beneficiary cost-sharing for most preventive services, and some receive cost-based payment (75 FR 72013 through 72020; 78 FR 74962). While any beneficiary cost-sharing attributable to preventive services, if they were packaged, would be very small in relation to the comprehensive service overall, we believe that we should exclude these services from the OPPS beneficiary copayment calculations, as discussed in section II.I. of this proposed rule. We note that one preventive service (HCPCS code G0102 (Prostate cancer screening; digital rectal examination)) is proposed for continued packaging under the OPPS in CY 2015, both broadly and in the context of comprehensive services. Currently, this HCPCS code is packaged because it is included in evaluation and management services. We note that beneficiary cost-sharing is not waived for the service described by HCPCS code G0102.

Consistent with the policy finalized in the CY 2014 OPPS/ASC final rule with comment period, we exclude brachytherapy services and pass-through drugs, biologicals and devices that are separately payable by statute (78 FR 74868, 74909). In addition, we exclude services assigned to OPPS status indicator ''F'' that are not paid under the OPPS and are instead paid on a reasonable cost basis (certain CRNA services, Hepatitis B vaccines, and corneal tissue acquisition, which is not part of a comprehensive service for CY 2015). In Addendum J to this proposed rule, we list the HCPCS codes that describe the services proposed for exclusion from the comprehensive APC payment bundling policy.

As we discussed in the CY 2014 OPPS/ASC final rule with comment period, we did not model a budget neutrality adjustment for newly included services that would otherwise be paid under non-OPPS fee schedules (for example, therapy and DMEPOS) because the policy would not be implemented until CY 2015, and the estimated costs were very low (78 FR 74901). We reflect the inclusion of the proposed new costs (which remain very low) in our annual adjustment for CY 2015 budget neutrality (we refer readers to section XXI. of this proposed rule).

TABLE 6—PROPOSED COMPREHENSIVE APC PAYMENT BUNDLING POLICY EXCLUSIONS FOR CY 2015

Ambulance services.
Brachytherapy.
Diagnostic and mammography screenings.

TABLE 6—PROPOSED COMPREHENSIVE APC PAYMENT BUNDLING POLICY EXCLUSIONS FOR CY 2015—Continued

Physical therapy, speech-language pathology and occupational therapy services—Therapy services reported on a separate facility claim for recurring services.
Pass-through drugs, biologicals and devices.
Preventive services defined in 42 CFR 410.2: • Annual wellness visits providing personalized prevention plan services. • Initial preventive physical examinations. • Pneumococcal, influenza, and hepatitis B vaccines and administrations. • Mammography Screenings. • Pap smear screenings and pelvic examination screenings. • Prostate cancer screening tests. • Colorectal cancer screening tests. • Diabetes outpatient self-management training services. • Bone mass measurements. • Glaucoma screenings. • Medical nutrition therapy services. • Cardiovascular screening blood tests. • Diabetes screening tests. • Ultrasound screenings for abdominal aortic aneurysm. • Additional preventive services (as defined in section 1861(ddd)(1) of the Act).
Self-administered drugs—Drugs that are usually self-administered and do not function as supplies in the provision of the comprehensive service.
Services assigned to OPPS status indicator ''F'' (Certain CRNA services, Hepatitis B vaccines and corneal tissue acquisition).
Services assigned to OPPS status indicator ''L'' (Influenza and pneumococcal pneumonia vaccines).
Certain Part B inpatient services—Ancillary Part B inpatient services payable under Part B when the primary ''J1'' service for the claim is not a payable Part B inpatient service (for example, exhausted Medicare Part A benefits, beneficiaries with Part B only).

Step 3: Ranking of primary services initial comprehensive APC assignments. We are proposing to continue to define each hospital Medicare Part B claim reporting a single unit of a single primary service assigned to status indicator ''J1'' (approximately 80 percent of the CY 2013 claims) as a single major procedure claim (78 FR 74871). We would sum all line item charges for services included in the comprehensive APC payment, convert the charges to costs, and calculate the ''comprehensive'' geometric mean cost of one unit of each service assigned to status indicator ''J1.'' (We note that we use the term ''comprehensive'' to describe the geometric mean cost of a claim reporting ''J1'' service(s) or the geometric mean cost of a comprehensive APC, inclusive of all of the items and services in the comprehensive APC payment bundle). Charges for services that would otherwise have been separately payable subject to longstanding adjustments, including the multiple procedure reduction (for example, HCPCS codes assigned to status indicators ''A,'' ''S,'' ''T,'' or ''V'') would be added to the charges for the primary service. This process differs from our traditional cost accounting methodology only in that all such services on the claim are packaged (except certain services as described above). We would apply our standard data trim, excluding claims with extremely high primary units or extreme costs.

The comprehensive geometric mean costs are used to establish resource similarity and, along with clinical similarity, dictate the assignment of the primary services to the comprehensive APCs. We are proposing to establish a ranking of each primary service (single unit only) assigned to status indicator ''J1'' according to their comprehensive geometric mean costs. For CY 2015, we are proposing not to assign any add-on codes to status indicator ''J1'' because they are proposed to be packaged.

For the minority of claims reporting more than one primary service assigned to status indicator ''J1'' or units thereof (approximately 20 percent of CY 2013 claims), we are proposing to continue to identify one ''J1'' service as the primary service for the claim based on our cost-based ranking of primary services. We then assign these multiple ''J1'' procedure claims to the comprehensive APC to which the service designated as the primary service is assigned. If the reported ''J1'' services reported on a claim map to different comprehensive APCs, we designate the ''J1'' service assigned to the comprehensive APC with the highest comprehensive geometric mean cost as the primary service for that claim. If the reported multiple ''J1'' services on a claim map to the same comprehensive APC, we designate the most costly service as the primary service for that claim. This process results in initial assignments of claims for the primary services assigned to status indicator ''J1'' to the most appropriate comprehensive APCs based on both single and multiple procedure claims reporting these services and clinical and resource homogeneity.

Step 4—Complexity adjustments and determination of final comprehensive APC groupings. We are proposing to use the proposed complexity adjustments to provide increased payment for certain comprehensive services. We are proposing to apply a complexity adjustment by promoting qualifying ''J1'' service code combinations or code combinations of a ''J1'' services and certain add-on codes (as described further below) from the originating comprehensive APC (the comprehensive APC to which the designated primary service is first assigned) to a higher paying comprehensive APC in the same clinical family of comprehensive APCs, if reassignment is clinically appropriate and the reassignment would not create a 2 times rule violation in the receiving APC (the higher paying comprehensive APC in the same clinical family of comprehensive APCs). We are proposing to implement this type of complexity adjustment when the code combination represents a complex, costly form or version of the primary

service according to the following criteria:

- Frequency of 25 or more claims reporting the code combination (frequency threshold); and
- Violation of the 2 times rule, that is, the comprehensive geometric mean cost of the complex code combination exceeds the comprehensive geometric mean cost of the lowest significant HCPCS code assigned to the comprehensive APC (cost threshold).

After designating a single primary service for a claim, we are proposing to evaluate that service in combination with each of the other procedure codes reported on the claim assigned to status indicator ''J1'' (or certain add-on codes) to determine if they meet the complexity adjustment criteria. For new HCPCS codes, we are proposing to determine initial comprehensive APC assignments and complexity adjustments using the best data available, mapping the new HCPCS codes to predecessor codes wherever possible.

Once we have determined that a particular code combination of ''J1'' services (or combinations of ''J1'' services reported in conjunction with certain add-on codes) represents a complex version of the primary service because it is sufficiently costly, frequent, and a subset of the primary comprehensive service overall according to the criteria described above, we are proposing to promote the complex version of the primary service as described by the code combination to the next higher cost comprehensive APC within the clinical family, unless the APC reassignment is not clinically appropriate, the reassignment would create a 2 times rule violation in the receiving APC, or the primary service is already assigned to the highest cost APC within the comprehensive APC clinical family. We are not proposing to create new APCs with a geometric mean cost that is higher than the highest cost comprehensive APC in a clinical family just to accommodate potential complexity adjustments. Therefore, the highest payment for any code combination for services assigned to a comprehensive APC will be the highest paying comprehensive APC in the clinical family.

As discussed below, we are proposing that add-on codes reported in conjunction with a ''J1'' service would receive complexity adjustments when a qualifying add-on code is reported in conjunction with the primary service assigned to status indicator ''J1'' and satisfies the criteria described above for a complexity adjustment (≥25 claims with the code combination and no violations of the 2 times rule). Any combinations of HCPCS codes that fail to meet the proposed complexity adjustment criteria (frequency and cost thresholds) would not be identified as complex subsets of the primary procedure and would not be reassigned to a higher paying comprehensive APC within the same clinical family of comprehensive APCs. We are providing the proposed list of qualifying code combinations (including add-on codes) in Addendum J to this proposed rule (which is available via the Internet on the CMS Web site).

Complexity Test for Eligible Add-On Codes. We are proposing to package all add-on codes into the payment for the comprehensive APC. However, add-on codes that are assigned to the current device-dependent APCs listed in Table 5 of this proposed rule will be evaluated for a possible complexity adjustment when they are reported in conjunction with a designated primary service assigned to status indicator ''J1.'' We are proposing to only evaluate the add-on codes that are assigned to the current device-dependent APCs for potential complexity adjustments because we believe that, in certain cases, these procedure codes may represent services with additional medical device costs that result in significantly more complex and costly procedures. To determine which combinations of primary service codes reported in conjunction with the add-on code may qualify for a complexity adjustment for CY 2015, we are proposing to apply the proposed frequency and cost criteria discussed above (25 or more claims and no ''2 times'' rule violations), testing claims reporting one unit of a single primary service assigned to status indicator ''J1'' and any number of units of a single add-on code. If the frequency and cost criteria for a complexity adjustment are met, and reassignment to the next higher cost APC in the clinical family is appropriate, we are proposing to make a complexity adjustment for the code combination; that is, we are proposing to reassign the primary service code reported in conjunction with the add-on code combination to a higher cost comprehensive APC within the same clinical family of comprehensive APCs. If any add-on code combination reported in conjunction with the primary service code does not qualify for a complexity adjustment, payment for these services will be packaged. We are listing the complexity adjustments proposed for add-on code combinations for CY 2015, along with all of the other proposed complexity adjustments, in Addendum J to this proposed rule (which is available via the Internet on the CMS Web site). One primary service code and add-on code combination (CPT code 37225 and 37233) that satisfied the frequency and cost criteria is not being proposed for a complexity adjustment because we believe that these claims are miscoded. Of the 35 qualifying claims reporting this code combination, only three claims contained the appropriate base code (CPT code 37228) for CPT add-on code 37233.

We note that, in response to public comments received, we are providing in Addendum J to this proposed rule a breakdown of cost statistics for each code combination that would qualify for a complexity adjustment (including primary code and add-on code combinations). Addendum J to this proposed rule also contains summary cost statistics for each of the code combinations proposed to be reassigned under a given primary code. The combined statistics for all proposed reassigned complex code combinations are represented by an alphanumeric code with the last 4 digits of the designated primary service followed by ''A'' (indicating ''adjustment''). For example, the geometric mean cost listed in Addendum J for the code combination described by CPT code 33208A assigned to C–APC 0655 includes all code combinations that are proposed to be reassigned to C–APC 0655 when CPT code 33208 is the primary code. Providing the information contained in Addendum J in this proposed rule will allow stakeholders the opportunity to better assess the impact associated with the proposed reassignment of each of the code combinations eligible for a complexity adjustment.

(b) Additional Proposed Comprehensive APCs

Several commenters to the CY 2014 OPPS/ASC proposed rule questioned why we only converted a subset of the device-dependent APCs to comprehensive APCs (78 FR 74864). We responded that while we were initially adopting a subset of the most costly device-dependent services, we may extend comprehensive payments to other procedures in future years as part of a broader packaging initiative (78 FR 74864). Upon further review for CY 2015, we believe that the entire set of the currently device-dependent APCs (after the proposed reorganization and consolidation of the current device-dependent APCs) are appropriate candidates for comprehensive APC payment because the device-dependent APCs not included in last year's

comprehensive APC payment proposal are similar to the original 29 device-dependent APCs that were proposed as comprehensive APCs in CY 2014. Similar to the original 29 device-dependent APCs for CY 2014 that were converted to C–APCs, the additional device-dependent APCs that are being proposed for conversion to C–APCs contain comprehensive services primarily intended for the implantation of costly medical devices. Therefore, we are proposing to apply the comprehensive APC payment policy to the remaining device-dependent APCs for CY 2015.

In addition, since the publication of the CY 2014 OPPS/ASC final rule with comment period, stakeholders brought several services to our attention as appropriate candidates for comprehensive APC payment. Stakeholders recommended that we create comprehensive APCs for these procedures and technologies or assign them to a previously proposed comprehensive APC. We agree with the stakeholders. Similar to the other services designated as C–APCs in CY 2014, these procedures are comprehensive single-session services with high-cost implantable devices or high-cost equipment. For CY 2015, we are proposing to convert the following existing APCs into comprehensive APCs: APC 0067 (Single Session Cranial Stereotactic Radiosurgery) and APC 0351 (Level V Intraocular Surgery)). APC 0351 only contains one procedure—0308T (Insertion of ocular telescope prosthesis including removal of crystalline lens). We also are proposing to assign the CPT codes for IORT (CPT codes 77424 and 77425) to C–APC 0648 (Level IV Breast and Skin Surgery) because IORT is a single session comprehensive service that includes breast surgery combined with a special type of radiation therapy that is delivered inside the surgical cavity but is not technically brachytherapy. The HCPCS codes that we are proposing to assign to these APCs in CY 2015 would be assigned to status indicator ''J1.''

(c) Proposed Reconfiguration and Restructuring of the Comprehensive APCs

Based on further examination of the structure of the comprehensive APCs illustrated in the CY 2014 OPPS/ASC final rule with comment period and an evaluation of their comprehensive geometric mean costs (using the updated CY 2013 claims data), we are proposing to reorganize, combine, and restructure some of the comprehensive APCs. The purpose of this APC restructuring is to improve resource and clinical homogeneity among the services assigned to certain comprehensive APCs and to eliminate APCs for clinically similar services, but with overlapping geometric mean costs. The services we are proposing to assign to each of the comprehensive APCs for CY 2015, along with the relevant cost statistics, are provided in Addendum J to this proposed rule. Addendum J is available at the CMS Web site at: *http://www.cms.hhs.gov/Medicare/Medicare-Fee-for-Service-Payment/HospitalOutpatientPPS/index.html*. Table 7 below lists the additional 28 APCs proposed under the CY 2015 comprehensive APC policy.

In summary, our proposal to reorganize, combine, and restructure some of the comprehensive APCs includes the following proposed changes:

- Endovascular clinical family (renamed Vascular Procedures, VASCX). We are proposing to combine C–APCs 0082, 0083, 0104, 0229, 0319, and 0656 illustrated for CY 2014 to form three proposed levels of comprehensive endovascular procedure APCs: C–APC 0083 (Level I Endovascular Procedures); C–APC 0229 (Level II Endovascular Procedures); and C–APC 0319 (Level IV Endovascular Procedures).
- Automatic Implantable Cardiac Defibrillators, Pacemakers, and Related Devices (AICDP). We are proposing to combine C–APCs 0089, 0090, 0106, 0654, 0655, and 0680 as illustrated for CY 2014 to form three proposed levels of comprehensive APCs within a broader series of APCs for pacemaker implantation and similar procedures as follows: APC 0105 (Level I Pacemaker and Similar Procedures), a non-comprehensive APC; C–APC 0090 (Level II Pacemaker and Similar Procedures); C–APC 0089 (Level III Pacemaker and Similar Procedures); and C–APC 0655 (Level IV Pacemaker and Similar Procedures).
- We are proposing to delete the clinical family for Event Monitoring, which only had one comprehensive APC (C–APC 0680 (Insertion of Patient Activated Event)) with a single CPT code 33282 as illustrated for CY 2014. We also are proposing to reassign CPT code 33282 to C–APC 0090, which contains clinically similar procedures.
- In the urogenital family, we are proposing two levels instead of three levels for Urogenital Procedures, and to reassign several codes from APC 0195 to C–APC 0202 (Level V Female Reproductive Procedures).
- We are proposing to rename the arthroplasty family of APCs to Orthopedic Surgery. We also are proposing to reassign several codes from APC 0052 to C–APC 0425, which we are proposing to rename ''Level V Musculoskeletal Procedures Except Hand and Foot.''
- We are proposing three levels of electrophysiologic procedures, using the current inactive APC ''0086'' instead of APC 0444, to have consecutive APC grouping numbers for this clinical family and renaming APC 0086 ''Level III Electrophysiologic Procedures.'' In addition, we are proposing to replace composite APC 8000 with proposed C–APC 0086 as illustrated in the CY 2014 OPPS/ASC final rule with comment period (78 FR 74870).

We also are proposing three new clinical families: Gastrointestinal Procedures (GIXXX) for gastrointestinal stents, Tube/Catheter Changes (CATHX) for insertion of various catheters, and Radiation Oncology (RADTX), which would include C–APC 0067 for single session cranial SRS.

(3) Public Comments

We received nine public comments in response to the CY 2014 OPPS/ASC final rule with comment period regarding our policy for comprehensive APCs from device manufacturers, the hospital community, and others. The commenters generally supported broader payment bundles, as long as the payment bundles are appropriately and accurately structured and provide adequate payment. Commenters expressed continued concern regarding the data provided in support of the comprehensive APC policy, the ability to replicate the methodology, and the ability of comprehensive APCs to adequately pay for complex services for patients. The comments, which were largely provided in the context of specific devices or drugs, or in regard to a specific clinical family of comprehensive APCs, are summarized below and accompanied by our responses.

Endovascular Family

Comment: Several commenters addressed the endovascular family of comprehensive APCs. The commenters expressed difficulty replicating CMS' methodology, especially complexity reassignments for procedures in this family of services that is historically component-based and include many new codes and add-on codes. The commenters requested clarification of how CMS determined comprehensive APC assignments and complexity adjustments associated with add-on codes and other procedures.

One commenter expressed concern regarding payment levels for vascular

procedures involving multiple vessels. The commenter recommended changes to the complexity adjustment criteria in order to allow for adjustments and to provide adequate payment for seven code combinations of lower extremity endovascular revascularization procedures assigned to C–APCs 0083 (Level I Endovascular Procedures), 0229 (Level II Endovascular Procedures) and 0445 (Level III Endovascular Procedures). The code combinations identified by the commenter were CPT code 37221 and 37222; 37229 and 37232; 37230 and 37232; 37231 and 37232; 37229 and 37234; 37231 and 37233; and 37231 and 37234. Procedures described by add-on codes (CPT codes 37222, 37232, 37233 and 37234) are furnished in conjunction with each of these code combinations. The commenter stated that each of the code combinations failed to meet the CY 2014 finalized cost threshold for a complexity adjustment (for example, the comprehensive geometric mean cost of the code combination was more than two times the comprehensive geometric mean cost of the single major claims reporting only the primary ''J1'' service), but that some of the code combinations met the CY 2014 frequency of ≥100 claims and ≥5 percent of the total claims volume for the primary service, including CPT codes 37221 and 37222 (Iliac artery revascularization (multiple vessels) with stent), 37229 and 37232 (Tibial/peroneal artery revascularization (multiple vessels) with atherectomy), and 37230 and 37232 (Tibial/peroneal artery revascularization (multiple vessels) with stent). The other four code combinations met the ≥5 percent volume threshold for the claims reporting the primary service, but in the relevant data year the frequency of these code combinations ranged from 13 to 22 cases, including CPT codes 37231 and 37232 (Tibial/peroneal artery revascularization (multiple vessels) with stent and atherectomy), 37229 and 37234 (Tibial/peroneal artery revascularization with atherectomy (multiple vessels) and with stent (multiple vessels)), 37231 and 37233 (Tibial/peroneal artery revascularization with stent and atherectomy (multiple vessels)), and 37231 and 37234 (Tibial/peroneal artery revascularization with stent (multiple vessels) and atherectomy). In no case did the geometric mean cost of the code combinations exceed the geometric mean cost of the single ''J1'' claims for the primary service alone by at least two times.

To qualify these code combinations for a complexity adjustment, the commenter recommended using a 1.5 instead of 2 times rule, patterned after the 50 percent multiple procedure reduction and based on the inability of hospitals to garner 100 percent efficiency when performing multiple procedures. The commenter stated that this slightly lower cost threshold would still be significant and, therefore, would appropriately allow complexity reassignment only for cases that are meaningfully underpaid under the threshold. (We received similar inquiries from other commenters regarding our application of the statutory ''2 times'' rule that are discussed below.)

In addition, the commenter recommended that CMS omit the CY 2014 required claim frequency threshold of greater than 100 claims with the specific combination of procedure codes. The commenter believed that the frequency threshold requiring that complex claims for a particular procedure code combination exceed 5 percent of the total volume of claims reporting the primary service alone is sufficient to ensure additional payment for only higher volume cases, and that an additional frequency threshold is not necessary. The commenter believed that the threshold should not depend on the procedures' frequency in prior years, which can fluctuate significantly.

The commenter asked for clarification regarding our treatment of add-on codes, recommending that all add-on codes assigned to the endovascular comprehensive APCs be equally eligible for complexity adjustments. The commenter noted that Table 10 of the CY OPPS/ASC 2014 final rule with comment period (78 FR 74889 through 74900) listed complexity adjustments for only a small number of add-on codes (for example, certain drug-eluting stent codes), and did not list complexity adjustments for any of the add-on codes for peripheral artery revascularization associated with procedures assigned to C–APCs 0083, 0229 and 0445. The commenter could not assess whether only some add-on code combinations were considered for complexity adjustments, or whether all combinations were considered but eliminated due to not meeting the cost or frequency criteria.

Similarly, another commenter requested additional information regarding application of the complexity criteria to all of the percutaneous coronary intervention (PCI) related code combinations in Table 10 of the CY 2014 OPPS/ASC final rule with comment period. In particular, the commenter was not sure whether the C9600–C9602 code combination required intervention in an additional vessel, whether a second stent in a new vessel is required, or whether one stent and rotational atherectomy together with an additional stent in the same vessel would qualify the procedure(s) for a complexity adjustment. The commenter believed that it would not be appropriate to apply an adjustment only when the second intervention was in a separate vessel, where a procedure involving placement of a stent in one vessel and a second stent in a branch of the same vessel would not be eligible for complexity adjustment, but placement of two stents in two separate vessels would be eligible because the resources required are potentially very similar. Regarding claims with more than one unit of HCPCS code C9606, the commenter was not sure whether the second revascularization procedure must involve a second episode of acute myocardial infarction (AMI) in the same outpatient encounter, or whether the complexity adjustment would apply when there is a single episode of AMI in two separate vessels or in the same vessel. Regardless of CMS' intent, the commenter questioned why interventions involving patients with AMI or total chronic occlusions are mapped to the same APCs as those that involve patients with lower levels of complexity.

Response: We begin by clarifying how we treated add-on codes, which are particularly common in the vascular family of comprehensive APCs, in modeling the CY 2014 payments for comprehensive APCs. The CPT Editorial Panel defines add-on codes as codes that describe procedures that are commonly carried out in addition to the primary procedure performed, listing add-on codes in Appendix D of the CPT codebook (2014 CPT Codebook Professional Edition, page xiv). The CPT codebook states that add-on codes are always performed in addition to the primary or ''base'' service or procedure and must never be reported as a stand-alone code. Add-on codes can also be Level II HCPCS codes, such as HCPCS codes C9601, C9603, C9605 and C9608, which are the drug-eluting stent insertion add-on codes that parallel the non-drug eluting stent insertion add-on CPT codes 92929, 92934, 92938 and 92944, respectively. In Table 15 of the CY 2014 OPPS/ASC final rule with comment period, we listed all add-on codes that are currently assigned to device-dependent APCs (78 FR 74944).

Historically and in most cases, the OPPS assigned add-on codes to the same APC as the base code and applied a multiple procedure reduction when

these codes were reported with the base code. Because add-on codes represent an extension or continuation of or are adjunctive to a primary service, beginning in CY 2014, we unconditionally packaged add-on codes, except for drug administration services, and add-on codes assigned to device-dependent APCs due to the delayed implementation of the comprehensive APC policy until CY 2015 (78 FR 74943). We discussed in that same final rule with comment period how this policy will improve the accuracy of OPPS ratesetting, as we would no longer be reliant on incorrectly coded single add-on code claims to set OPPS payment rates for add-on codes (78 FR 74942).

In the CY 2014 OPPS/ASC proposed rule, we proposed to unconditionally package add-on codes assigned to comprehensive APCs and to assign the procedures to status indicator ''N'' (78 FR 43559). They were not proposed as primary services assigned to status indicator ''J1'' because they would always be furnished adjunctive to another primary service assigned status indicator ''J1.'' We had not proposed a complexity adjustment, so there was no need to consider whether the multiple procedure claims that correctly report an add-on code should be promoted to a higher comprehensive APC.

In the CY 2014 OPPS/ASC final rule with comment period, we designated certain especially costly add-on codes as primary services assigned to status indicator ''J1.'' (We refer readers to Table 9 in the 2014 OPPS final rule with comment period (78 FR 74873 through 74883), which provided the APC assignments for HCPCS codes proposed to be assigned to status indicator ''J1'' for CY 2014 and were displayed for illustration.) Other add-on codes assigned to the device-dependent APCs illustrated as comprehensive APCs were packaged because of the CY 2014 policy to package most add-on codes under the OPPS. Because these packaged add-on codes were not sufficiently costly, they were not designated as primary ''J1'' services. As a result, for example, CPT codes 37222, 37232, 37233, and 37234 were not assigned status indicator ''J1'' in the CY 2014 OPPS/ASC final rule with comment period and instead were packaged similar to almost all of the other add-on codes. However, for CY 2014, because the implementation of the comprehensive APC policy was delayed until CY 2015, payment for services described by add-on codes assigned to a device-dependent APC are paid separately under the OPPS (78 FR 74943).

In response to the comments we received on the CY 2014 OPPS/ASC final rule with comment period, we considered ways to refine and simplify the complexity test when add-on codes that are currently assigned to the device-dependent APCs are reported with primary services proposed to be assigned to comprehensive APCs for CY 2015 in this proposed rule. Because services described by add-on codes are by definition adjunctive and furnished in addition to primary services assigned status indicator ''J1,'' we believe that the add-on codes should not be classified as primary services themselves because they cannot serve as the primary service provided to a patient. However, we continue to believe that we should recognize the additional cost and complexity of certain cases involving procedures described by certain especially costly add-on codes that are currently assigned to a device-dependent APC in CY 2014 because like certain combinations of ''J1'' procedure codes, primary service code and add-on code combinations can represent more complex and significantly more costly variations of the primary service. Therefore, we are proposing to revert to our original CY 2014 proposal for comprehensive APCs in which we would not consider any add-on codes that are currently assigned to device-dependent APCs as primary services assigned to status indicator ''J1'' (78 FR 43559). For CY 2015, we are proposing to allow certain combinations of primary service codes and especially costly add-on codes representing a more costly, complex variation of a procedure to trigger a complexity adjustment. We refer readers to section II.A.2.e.(3)(a) of this proposed rule for a detailed description of our proposed new methodology of evaluating primary service procedures reported in conjunction with add-on codes for complexity adjustments.

Also, in evaluating the comprehensive APC assignments based on CY 2013 claims data, we are proposing to consolidate and restructure the vascular comprehensive APCs, in addition to other APCs. We refer readers to section II.A.2.e.(3)(c) of this proposed rule for a discussion of the proposed reconfiguration, and to Addendum J to this proposed rule for the updated cost statistics and proposed complexity adjustments for the services to address the commenters' concerns. We are proposing complexity adjustments for several of the services indicated by the commenters, although some of the services continue to fail one or both of the proposed complexity criteria even under the proposed relaxed frequency and cost thresholds.

We agree with the commenters that we should revise the criteria for complexity adjustments. The delay in implementation afforded additional time for CMS and commenters to further analyze and consider the cost data. After further analysis and consideration of the public comments in response to the CY 2014 OPPS/ASC final rule with comment period, we believe that the complexity adjustment criteria in that final rule with comment period were too restrictive. None of the code combinations illustrated as qualifying for complexity adjustments in the CY 2014 OPPS/ASC final rule with comment period met all of the frequency and cost thresholds set forth in the CY 2014 OPPS/ASC final rule with comment period, and no code combinations would qualify under those criteria in CY 2015 using the CY 2013 cost data. However, we believe that especially costly and sufficiently frequent code combinations should qualify for a complexity adjustment.

In calculating the geometric mean costs for comprehensive APC services using the claims data for CY 2013, we noted that many of the comprehensive APCs in the same clinical family illustrated in the CY 2014 OPPS/ASC final rule with comment period had similar or overlapping comprehensive geometric mean costs, meaning that the geometric mean costs were close to one another or that the range of costs for procedures assigned to one comprehensive APC significantly overlapped the range of costs for procedures assigned to another comprehensive APC in the same clinical family. We are proposing to restructure and consolidate these comprehensive APCs, as further described in section II.A.2.e.(3)(c) of this proposed rule, in order to better distinguish service groups having different resource requirements. The proposed restructuring and consolidation eliminates the need for many of the complexity adjustments illustrated in the CY 2014 OPPS/ASC final rule with comment period because we are proposing to promote the primary service to a higher cost comprehensive APC for CY 2015 as compared to its illustrated comprehensive APC assignment for CY 2014. For example, for CY 2014, we illustrated complexity adjustments for the CPT code combinations 37228 and 35476, 37228 and 37220, 37228 and 37224, and multiple units of CPT code 37228 from C–APC 0083, the primary service CPT code 37228 was assigned with a comprehensive geometric mean cost of

$4,230 to C–APC 0104 with a comprehensive geometric mean cost of $8,554. For CY 2015, we are proposing to consolidate C–APCs 0104 and 0229, and to retain C–APC 0229. Considering our proposed initial assignment of CPT code 37228 to C–APC 0229, CPT code 37228 has a proposed CY 2015 geometric mean cost of $7,250 and C–APC 0229 has a CY 2015 proposed comprehensive geometric mean cost of approximately $9,998.

We agree with the commenters that complexity adjustments should be based upon criteria that demonstrate that the complex combination is both sufficiently frequent and sufficiently costly such that a payment adjustment is warranted within a similar clinical family, if possible. Our reliance on clinical comparisons of each code combination in determining the complexity adjustments illustrated for CY 2014 likely contributed to the difficulty experienced by commenters in reproducing the results of the policy. Accordingly, we further analyzed the cost data in order to identify viable alternatives for complexity adjustment criteria. For CY 2015, we are proposing the following new complexity adjustment criteria to evaluate HCPCS code combinations for complexity adjustments:

- Frequency of 25 or more claims reporting the code combination (frequency threshold); and
- Violation of the ''2 times'' rule; that is, the comprehensive geometric mean cost of the ''complex'' code combination exceeds the comprehensive geometric mean cost of the lowest significant HCPCS code assigned to the originating comprehensive APC by at least 2 times (cost threshold). (''Significant'' means frequency >1000 claims, or frequency >99 claims and contributing at least 2 percent of the single major claims used to establish the originating comprehensive APC's geometric mean cost, including the claims reporting the complex code pair).

To illustrate how this second criterion is applied, for example, consider CPT code 33208 as the primary service reported in conjunction with HCPCS code C9600. CPT code 33208 is assigned to APC 0089. The lowest cost significant procedure assigned to APC 0089 is CPT code 33228, with a geometric mean cost of $8,669. There are 43 instances of the code combination of CPT code 33208 and HCPCS code C9600 in the CY 2013 claims data with a geometric mean cost of $21,914, which exceeds the geometric mean cost of CPT code 33228 ($8,669) by greater than two times ($21,914 > $17,338). Therefore, the code combination of CPT code 33208 and HCPCS code C9600 is assigned through a complexity adjustment to APC 0655, which is the next higher cost APC in the AIDCP clinical family of comprehensive APCs.

Whereas the criteria finalized in the CY 2014 OPPS/ASC final rule with comment period evaluated the marginal cost contribution of the additional procedure in comparison to the designated primary service alone (78 FR 74886), the proposed complexity adjustment criterion would employ our standard ''2 times'' rule (discussed in section III.B.2. of this proposed rule), comparing the costs associated with the code combination to the cost of other services assigned to the same comprehensive APC. We are proposing to make a complexity adjustment by reassigning a particular code combination to a higher cost comprehensive APC if there are 25 or more claims reporting the code combination in the data year and their comprehensive geometric mean cost exceeds the geometric mean cost of the lowest significant HCPCS code in the initial comprehensive APC by more than two times according to our standard ''2 times'' rule comparison. By ''significant HCPCS code,'' we mean our standard threshold for volume significance of the other codes being compared to the complex code combinations requiring a frequency >1000; or frequency >99 and contributing at least 2 percent of the single major claims used to establish the comprehensive APC geometric mean cost, including the claims reporting the complex code pair). We are proposing to apply the same test in assessing whether the complexity reassignment would create a ''2 times'' rule violation in the newly assigned comprehensive APC. However, if the claims comprise significant volume and violate the ''2 times'' rule cost differential, we are proposing to consider alternative comprehensive APC assignments, such as not making a complexity adjustment for the code combination, or not assigning the case to a higher cost APC within the same clinical family. In doing so, we also would require the complex code combination to be clinically similar to other procedures assigned to the comprehensive APC to which the complex code combination is reassigned. This is usually the case because complexity adjustments are confined to higher cost APCs within the same clinical family.

Comment: One commenter questioned the assignment of procedures within C–APCs 0083 (Level I Endovascular Procedures), 0229 (Level II Endovascular Procedures) and 0319 (Level IV Endovascular Procedures). The commenters believed that some of the procedures assigned to C–APC 0083 should be assigned to C–APC 0229, and stated that the adjunctive service rather than the primary service appeared to be driving the comprehensive APC mapping, specifically CPT code combinations 35476 and 37205, 35475 and 37205, 35471 and 37205, and 37220 and 37205.

Response: CPT code 37205 was deleted for CY 2014, and we are proposing to cross-walk CPT code 37205 to CPT code 37236 for CY 2015 based on the code descriptors. Until claims data are available for new codes, we are proposing to continue to make comprehensive APC assignments based on our best assessment of clinical and resource similarity (as we do for standard APC assignments), including examining the historical cost data for any predecessor code(s). Applying our proposed CY 2015 complexity adjustment criteria (significant volume of 25 or more complex claims and a ''2 times'' rule violation assessment relative to the lowest service within the originating comprehensive APC) would result in several complexity adjustments related to CPT code 37205, which are listed in Addendum J to this proposed rule (which is available via the Internet on the CMS Web site). We are proposing to provide these complexity adjustments when CPT code 37236 is reported in lieu of CPT code 37205 for each of these code combinations.

Comment: One commenter expressed concern regarding payment for certain anticoagulant and other drugs that are commonly furnished with services assigned to the endovascular family of comprehensive APCs, particularly Angiomax, Cleviprex, Recothrom and Agratroban. The commenter asked CMS to clarify that the proposed definition of a comprehensive APC includes adjunctive supplies, as well as adjunctive services. The commenter asserted that the proposed comprehensive APC payment methodology violates the OPPS statutory requirements for separate payment of specified covered outpatient drugs (SCODs) and the ''2 times'' rule. The commenter stated that CMS did not discuss application of the ''2 times'' rule in the statutory context, and noted that by design CMS selected primary procedures that were far more costly than the other services included in the comprehensive APC payment bundle. The commenter also asserted that the comprehensive APC policy is premature because it lacks clinical quality metrics and other safeguards for quality of outpatient care. The commenter

recommended alternative policies to incentivize cost-effectiveness, such as required data submission on hospital treatment decisions and making hospitals whole for use of cost-effective items and services including drugs. The commenter did not believe that Medicare's three hospital inpatient quality incentive programs include measures that are relevant for the comprehensive device-dependent procedures when they are furnished on an outpatient basis.

Response: In finalizing our CY 2014 policy to package drugs and biologicals that function as surgical supplies, we explained that CMS has the statutory authority to package the payment of any drugs, biologicals, and radiopharmaceuticals, including those that meet the statutory definition of a SCOD (78 FR 74931). Also, in finalizing our CY 2008 policy packaging all diagnostic radiopharmaceuticals and contrast agents, except those with pass-through status, we explained that CMS has the statutory authority to package the payment of any drugs, biologicals, and radiopharmaceuticals, including those that meet the statutory definition of a SCOD (72 FR 66766).

Our proposed definition of a comprehensive APC includes adjunctive supplies, as well as adjunctive services. In the CY 2014 OPPS/ASC final rule with comment period, we packaged all drugs, biologicals, and radiopharmaceuticals into the comprehensive APC payment, with the exception of certain drugs that are usually self-administered (SADs) and, therefore, not covered under Medicare Part B. We applied our existing policy that defines certain SADs as hospital supplies paid under the OPPS, such that these SADs would be included in the comprehensive APC payment bundle (78 FR 74868). For CY 2015, we are proposing to retain these aspects of our comprehensive APC policy. We are proposing to continue to package all drugs, biologicals, and radiopharmaceuticals into the comprehensive APC payment, including those SADs defined as hospital supplies, which are packaged in the OPPS (Medicare Benefit Policy Manual Chapter 15, Section 50.2.M, available at *http://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/bp102c15.pdf*). Therefore, beginning in CY 2015, Angiomax, Cleviprex, Recothrom, Agratroban, and any other drugs, biologicals, and radiopharmaceuticals (except for SADs that are not considered hospital supplies) would be packaged when administered to a patient receiving a comprehensive service. There would be no separate payment for these non-pass-through drugs under the OPPS regardless of cost or any other factors.

We appreciate the commenters' concerns regarding ensuring the quality of hospital outpatient care. In section XIII. of this proposed rule, we discuss the Hospital OQR Program for CY 2015. To the extent that inpatient quality measures would not apply to the comprehensive services proposed for CY 2015, stakeholders should suggest specific measures that would be relevant in response to the section of the proposed rule dealing with hospital outpatient quality measures.

Automatic Implantable Cardiac Defibrillators and Pacemakers and Related Devices (AICDP)

Comment: One commenter asked CMS to create a comprehensive APC for Cardiac Resynchronization Therapy Pacemaker (CRT–P) in the absence of defibrillation (CPT code 33225) because the comprehensive APC packaging policy decreases payment relative to the multiple procedure reduction policy. The commenter requested a complexity adjustment when CPT code 33225 is reported in combination with CPT code 33206, 33207, 33208, or 33214 because of their high mean cost relative to all other pacemaker insertion procedures assigned to C–APC 0089 (Level III Insertion/replacement of Permanent Pacemaker) and C–APC 0655 (Insertion/Replacement/Conversion of a Permanent Dual Chamber Pacemaker or Pacing Electrode).

Response: CPT code 33225 is an add-on code that was not assigned to status indicator ''J1'' in the CY 2014 OPPS/ASC final rule with comment period. For CY 2015, we are proposing to continue packaging this service, but to provide a complexity adjustment when the service is furnished in conjunction with CPT code 33207, 33208, or 33228 from C–APC 0089 to C–APC 0655 because these code combinations meet the proposed complexity adjustment criteria. The code combinations of CPT 33206 and 33225 and 33214 and 33225 meet the proposed cost threshold, but not the proposed frequency threshold and, therefore, we do not believe that we should provide complexity adjustments for these code combinations. Services that are reported fewer than 25 times a year do not comprise significant volume and are not sufficiently frequent service combinations in the context of the proposed comprehensive APC policy and proposed complexity adjustment criteria and, therefore, do not qualify for a complexity adjustment.

Neurostimulators

Comment: One commenter recommended splitting C–APC 0318 (Level II Implantation of Neurostimulator) to achieve a narrower cost range, placing vagal nerve and spinal cord stimulation in its own comprehensive APC and creating a separate comprehensive APC for other neurostimulator devices. The commenter also recommended reassigning CPT code 61886 to C–APC 0039 (Level I Implantation of Neurostimulator) to place all single generator procedures in the lower APC. In contrast, another commenter supported the complexity adjustments and the final comprehensive APC structure proposed for the neurostimulator family. The commenter stated in response to the CY 2014 OPPS/ASC final rule with comment period that appropriately differentiating payment rates for less-intensive pulse generator replacements from the more intensive initial system implants, which include placement of lead array(s), and also appropriately distinguishing payment rates between simpler less resource-intensive nerve stimulation procedures (for example, sacral nerve stimulation) and more complex resource-intensive nerve stimulation procedures (for example, spinal cord stimulation) is most appropriate. This commenter supported mapping the spinal cord stimulation system implants into C–APC 0318 because these implants have similar procedural complexity and resource utilization with the other procedures assigned to C–APC 0318.

Response: Some of the procedure codes assigned to the different neurostimulator comprehensive APCs illustrated for CY 2014 had similar or overlapping costs, in particular C–APCs 0040 and 0061, which had comprehensive geometric mean costs of $4,715 and $6,567 respectively. Having also updated the APCs based on CY 2013 cost data, for CY 2015, we are proposing to restructure the neurostimulator comprehensive APCs from four comprehensive APCs to three comprehensive APCs within a single series of APCs titled ''Neurostimulator and Related Procedures.'' We are proposing to begin this series with the non-comprehensive APC 0688 followed by the three levels of comprehensive APCs for neurostimulator procedures as follows: C–APC 0061 (Level II Neurostimulator and Related Procedures); C–APC 0039 (Level III Neurostimulator and Related Procedures); and C–APC 0318 (Level IV Neurostimulator and Related

Procedures). This proposed reconfiguration would establish groups of neurostimulator device-related services that have different and nonoverlapping cost ranges while applying the ''2 times'' rule, including several complexity adjustments for complex code combinations. We believe that the procedures proposed for assignment to C–APC 0318 for CY 2015 are clinically similar and similar in associated resources and, therefore, should be assigned to the same comprehensive APC. We also believe that CPT code 61886 more appropriately belongs in the higher level C–APC 0318 rather than C–APC 0039 based on its cost and complexity because it describes implantation of a cranial neurostimulator with connection to two or more electrode arrays. We do not believe that CPT code 61886 should be assigned to C–APC 0039 with less complex procedures.

Urogenital

Comment: Several commenters addressed the urogenital clinical family of comprehensive APCs. One commenter recommended that CMS exempt C–APC 0202 (Level VII Female Reproductive Procedures) from the comprehensive APC policy, due to the variability in geometric mean costs between cases with a single ''J1'' procedure and cases with multiple procedures furnished during the same surgical session (not otherwise specified). Alternatively, the commenter recommended different complexity criteria that would reassign the claims assigned to C–APC 0202 (Level VII Female Reproductive Procedures) to C–APC 0385 (Level I Urogenital Procedures) or C–APC 0386 (Level II Urogenital Procedures). The commenter suggested that we make a complexity adjustment for any claim with a service assigned to status indicator ''J1'' and at least two additional surgical procedures. The commenter also suggested the following possible alternative cost criteria: (1) Using percent of total device costs reported on a claim instead of the presence of a second service assigned status indicator ''J1'' to assess costliness; or (2) using a cost threshold of 1.5 instead of 2 times the cost of single claims for the primary service. The commenter also suggested a volume threshold of 50 instead of 100 claims. Finally, the commenter asked CMS to clarify how it determined uncommon clinical scenarios or extreme resource values for the complexity adjustment, and what data or information qualifies code combinations for reassignment.

Response: The commenter was not clear regarding which surgical procedures we should count or consider in determining complexity adjustments, for example specific services assigned status indicator ''J1'' that do not meet our proposed complexity criteria or surgical procedures that are not assigned to a comprehensive APC. It was not clear whether the commenters' recommendations were mutually exclusive, or recommended in some combination with one another. Also, it was not clear whether the commenter was suggesting that any two surgical procedures, even those not assigned to a comprehensive APC, should qualify a claim for complexity adjustment. As discussed above, for CY 2015, we are proposing different complexity adjustment criteria than those that were discussed in the CY 2014 OPPS/ASC final rule with comment period. As discussed above, for CY 2015, we are proposing less stringent complexity adjustment criteria—codes combinations, either two ''J1'' service codes or a ''J1'' service code and an add-on code that is eligible for a complexity adjustment must appear at least 25 times in the claims data and violate the 2 times rule. Extremely few claims involve the provision of more than two surgical procedures. Therefore, we do not believe that it is necessary or appropriate to complicate our proposed methodology by attempting to isolate marginal costs associated with other packaged surgical procedures. The complexity adjustment (both in the CY 2014 OPPS/ASC final rule with comment period and proposed in this CY 2015 OPPS/ASC proposed rule) would reassign all claims reporting a qualifying code combination, whether or not additional (third, fourth, or subsequent) services assigned to a comprehensive APC appear on the claim.

Stem Cell Transplant

Comment: One commenter recommended that CMS apply the comprehensive service concept to outpatient stem cell transplant (SCT) because the procedures occur in small volume and, due to their clinical nature, are almost always multiple procedure claims that are unusable under the standard ratesetting methodology. Specifically, the commenter requested that CMS create three comprehensive APCs for autologous outpatient SCT, where donor and recipient are the same; allogeneic-related outpatient SCT, where donor and recipient are biologically related; and allogeneic-unrelated transplants, where donor and recipient are biologically unrelated. The commenter stated that the costs associated with these three types of outpatient SCT vary significantly according to the donor search and acquisition costs, which are relatively modest for autologous outpatient SCT, $5,000 to $20,000 for allogeneic-related outpatient SCT, and $30,000 to $80,000 for allogeneic unrelated outpatient SCT. The commenter discussed how the low CCR associated with revenue code 0819 (Blood and Blood Products), which must be used to report donor search and acquisition charges, makes providers hesitant to report high donor charges and contributes to incorrectly coded claims.

Due to inaccuracies in cost reporting and exclusion of certain multiple procedure claims from ratesetting, the commenter believed that outpatient SCT payment is based on only a handful of incorrectly and incompletely coded single procedure claims. The commenter also believed that comprehensive APCs would improve payment adequacy by allowing the use of multiple procedure claims, provided CMS also create a separate and distinct CCR for donor search and acquisition charges so that they are not diluted by lower cost services. Alternatively, the commenter suggested that CMS require transplant centers to report their actual costs on outpatient claims for allogeneic SCT, and apply a default CCR of 1.0 for claims reporting the outpatient allogeneic procedure CPT code.

Response: For CY 2015, we are proposing to continue to pay separately for allogeneic transplantation procedures under APC 0111 (Blood Product Exchange) and APC 0112 (Apheresis and Stem Cell Procedures), with proposed rule geometric mean costs of approximately $1,127 and $3,064, respectively. Allogeneic harvesting procedures, which are performed not on the beneficiary but on a donor, cannot be paid separately under the OPPS because hospitals may bill and receive payment only for services provided to the Medicare beneficiary who is the recipient of the SCT and whose illness is being treated with the transplant. We stated in the CY 2010 OPPS/ASC final rule with comment period (74 FR 60575) and in section 231.11 of Chapter 4 of the Medicare Claims Processing Manual (Pub. 100–04) that payment for allogeneic stem cell acquisition services (such as harvesting procedures and donor evaluation) is packaged into the payment for the transplant procedure (either the Medicare Severity—Diagnosis Related Group (MS–DRG) when the transplant is performed inpatient, or the APC when the transplant is performed outpatient). Hospitals should report all allogeneic

outpatient SCT acquisition charges on the recipient's outpatient claim as uncoded charges under revenue code 0819.

While converting the outpatient SCT APCs to comprehensive APCs would reduce to small degree the differential between the OPPS payment rate and the costs as represented in the public comment we received, it would only provide a relatively modest increase in payment, consistent with our previous data studies on this issue. We believe that we need to further examine the costs associated with this service and how they could best be captured for payment ratesetting purposes in the OPPS. This service remains low volume in the HOPD, but we will continue to monitor this issue and the volume of outpatient allogeneic transplant services.

General Comments on Comprehensive APCs

We also received several general comments that were not related to specific comprehensive APCs, as described below.

Comment: Many of the commenters recommended continued refinement of the comprehensive APC payment methodology to better identify and recognize the costs associated with complex services and patients. Some commenters suggested developing a list similar to the IPPS listing of complications and comorbidities (CCs) and major complications and comorbidities (MCCs) to identify complications and comorbidities associated with higher acuity patients in the outpatient setting. Other commenters suggested additional reimbursement when additional services, testing, or drugs are needed for patients with certain diagnoses (for example, end stage renal disease), or patients needing extended recovery time following a procedure in order to assess or treat comorbidities and ensure safe discharge. One commenter asserted that there is a critical difference between ''complex'' patients and ''complex'' procedures. The commenter stated that because the CY 2014 complexity adjustment test is multiple procedure-based rather than patient severity-based similar to the MS–DRG system, it is incredibly difficult for two procedures to meet the complexity test, particularly the 2 times rule requirement. The commenter believed that the cost threshold for the complexity test is not commensurate with the marginal payment increase.

Response: We believe that some of these commenters misunderstood the complexity adjustment criteria described in the CY 2014 OPPS/ASC final rule with comment period (78 FR 74886). The complexity adjustment criteria for the illustrated CY 2014 payment rates compared the comprehensive cost of the complex claims to the comprehensive cost of the single major claims for the primary service, not the comprehensive geometric mean cost of the initial comprehensive APC (78 FR 74886). However, for CY 2015, we believe that it would be more appropriate to use the 2 times rule, which compares the geometric mean cost of the code combination to the geometric mean cost of the lowest cost service assigned to the comprehensive APC with significant claims volume (>1000 single claims or >99 single and at least 2 percent of the total volume of single claims assigned to the APC). For further description of the 2 times rule, we refer readers to section III.B of this proposed rule. We agree with the commenter that the CY 2014 complexity adjustment cost criterion was too high of a threshold. Therefore, we are proposing to change the cost criterion for the complexity adjustment to twice the geometric mean cost of the lowest cost service having significant claims volume (as described above) in the APC.

Section 1833(t)(2) of the Act provides a procedure-based payment methodology for the OPPS, which is unlike the IPPS that makes payments based on both diagnoses and procedures. Currently OPPS payments are not based on patient severity or diagnosis like under the IPPS. The complexity adjustment test is procedure-based because the current OPPS payment methodology is procedure-based.

Comment: Several commenters recommended alternative complexity adjustment criteria, including a cost threshold of 1.5 instead of 2 times; a numeric volume test of 50 claims instead of 100, or omitting the numeric test; or basing the complexity adjustment on the number of surgical procedures on a claim (any claim with a service assigned to status indicator ''J1'' and at least two additional surgical procedures). Some commenters asserted generally that there should be tests other than the presence of two or more ''J1'' services on a claim. In addition, most of the commenters requested further information regarding how CMS determined complexity reassignments, including treatment of add-on codes. The commenters requested that CMS provide an addendum to the OPPS rule containing this information.

Response: As discussed above, for CY 2015, we are proposing less stringent frequency and cost thresholds for complexity adjustments. In addition, in response to public comments, we are presenting the proposed complexity adjustment cost information in a more detailed format in Addendum J to this proposed rule, rather than in long tables within the preamble text.

Comment: Several commenters requested that CMS maintain the device-dependent edits to ensure accurate cost reporting and attribution. One commenter requested in particular that CMS maintain the device-dependent edits for prostate cryoablation (CPT code 55873), percutaneous renal cryoablation, and other urogenital services to ensure accurate coding and payment. The commenter believed that comprehensive groupings will exacerbate reporting error if CMS discontinued the edits.

Response: We appreciate the commenters' concerns regarding accurate coding, and we understand that providers sometimes fail to itemize costs for packaged services separately on claims for the primary service(s). Our policy for comprehensive APCs reduces the need for separate itemization of packaged services by establishing clear packaging allocation rules at the hospital claim level. However, as we have observed in attempting to assess the marginal cost attributable to add-on codes and other packaged services, it is best if CMS can reliably identify and isolate these costs using claims data. Therefore, we are continuing to require hospitals to report all charges, including packaged charges, on claims to ensure all costs are reported and enable reliable cost estimation for packaged items and services. It is important that hospitals report all HCPCS codes consistent with their descriptors, CPT and/or CMS instructions, and correct coding principles, and that they report all charges for all services they furnish. We are proposing to package all device-dependent add-on codes, although we would evaluate their additional cost for purposes of applying the proposed complexity adjustment criteria.

Instead of eliminating all device-dependent edits, beginning in CY 2015, we are proposing to continue to require the reporting of a device code for all procedures that are currently assigned to a device-dependent APC in CY 2014. However to reduce hospitals' administrative burden, we are proposing that the device claims edit would be satisfied by the reporting of any medical device C-code currently listed among the device edits for the CY 2014 device-dependent APCs. A particular device C-code or codes would no longer be required for a particular procedure. We

refer readers to section IV.B. of this proposed rule for a detailed discussion of this proposed policy.

Comment: Several commenters recommended that CMS conduct a demonstration to confirm estimated savings, or delay the comprehensive APC payment policy pending further study.

Response: The comprehensive APC payment policy was finalized in the CY 2014 OPPS/ASC final rule with comment period with delayed implementation until CY 2015, and we do not believe that further delay is necessary. We also do not believe that a demonstration is necessary. We delayed implementation until CY 2015, and the public comments we received on the CY 2014 OPPS/ASC final rule with comment period do not reflect a need for fundamental changes to the policy or further delay in implementing the policy. The comprehensive APC policy is another step towards making the OPPS more of a prospective payment system and less of a fee schedule-type payment system with separate payment for each individually coded service. The rationale and statutory authority for the comprehensive APC policy was fully explained in the CY 2014 OPPS/ASC final rule with comment period (78 FR 74861). The public comments were largely supportive of the comprehensive APC payment methodology, provided we improve the transparency and reproducibility of the methodology and refine the complexity adjustments for the most costly, complex cases. These complex cases are mostly confined to three clinical families (endovascular, pacemaker/defibrillator, and neurostimulator). In response to comments and additional analysis including the new CY 2013 claims data, we are proposing to refine the complexity adjustment criteria discussed in section II.A.2.e.(3)(a) of this proposed rule.

(4) Proposed List of CY 2015 Comprehensive APCs and Summary of Proposed Policies

In summary, we are proposing to continue to define a comprehensive service as a classification for the provision of a primary service and all adjunctive services and supplies reported on the hospital Medicare Part B claim, with few exceptions, resulting in a single beneficiary copayment per claim. The comprehensive APC payment bundle would include all hospital services reported on the claim that are covered under Medicare Part B, except for the excluded services or services requiring separate payment by statute as noted above.

We are proposing to continue to define a clinical family of comprehensive APCs as a set of clinically related comprehensive APCs that represent different resource levels of clinically comparable services. We are proposing a total of 28 comprehensive APCs within 13 clinical families for CY 2015, as described below.

TABLE 7—CY 2015 PROPOSED COMPREHENSIVE APCS

Clinical family	Proposed CY 2015 C–APC	APC Title	Proposed CY 2015 APC geometric mean cost
AICDP	0090	Level II Pacemaker and Similar Procedures	$6,961.45
AICDP	0089	Level III Pacemaker and Similar Procedures	9,923.94
AICDP	0655	Level IV Pacemaker and Similar Procedures	17,313.08
AICDP	0107	Level I ICD and Similar Procedures	24,167.80
AICDP	0108	Level II ICD and Similar Procedures	32,085.90
BREAS	0648	Level IV Breast and Skin Surgery	7,674.20
CATHX	0427	Level II Tube or Catheter Changes or Repositioning	1,522.15
CATHX	0652	Insertion of Intraperitoneal and Pleural Catheters	2,764.85
ENTXX	0259	Level VII ENT Procedures	31,273.34
EPHYS	0084	Level I Electrophysiologic Procedures	922.84
EPHYS	0085	Level II Electrophysiologic Procedures	4,807.69
EPHYS	0086	Level III Electrophysiologic Procedures	14,835.04
EYEXX	0293	Level IV Intraocular Procedures	9,049.66
EYEXX	0351	Level V Intraocular Procedures	21,056.40
GIXXX	0384	GI Procedures with Stents	3,307.90
NSTIM	0061	Level II Neurostimulator & Related Procedures	5,582.10
NSTIM	0039	Level III Neurostimulator & Related Procedures	17,697.46
NSTIM	0318	Level IV Neurostimulator & Related Procedures	27,283.10
ORTHO	0425	Level V Musculoskeletal Procedures Except Hand and Foot	10,846.49
PUMPS	0227	Implantation of Drug Infusion Device	16,419.95
RADTX	0067	Single Session Cranial Stereotactic Radiosurgery	10,227.12
UROGN	0202	Level V Female Reproductive Procedures	4,571.06
UROGN	0385	Level I Urogenital Procedures	8,019.38
UROGN	0386	Level II Urogenital Procedures	14,549.04
VASCX	0083	Level I Endovascular Procedures	4,537.95
VASCX	0229	Level II Endovascular Procedures	9,997.53
VASCX	0319	Level III Endovascular Procedures	15,452.77
VASCX	0622	Level II Vascular Access Procedures	2,635.35

Clinical Family Descriptor Key:
AICDP = Automatic Implantable Cardiac Defibrillators, Pacemakers, and Related Devices
BREAS = Breast Surgery
CATHX = Tube/Catheter Changes
ENTXX = ENT Procedures
EPHYS = Cardiac Electrophysiology
EYEXX = Ophthalmic Surgery
GIXXX = Gastrointestinal Procedures
NSTIM = Neurostimulators

ORTHO = Orthopedic Surgery
PUMPS = Implantable Drug Delivery Systems
RADTX = Radiation Oncology
UROGN = Urogenital Procedures
VASCX = Vascular Procedures

We are proposing a comprehensive APC payment methodology that adheres to the same basic principles as those finalized in the CY 2014 OPPS/ASC final rule with comment period, with the following proposed changes for CY 2015:

- We are proposing to reorganize and consolidate several of the current device-dependent APCs and CY 2014 comprehensive APCs;
- We are proposing to expand the comprehensive APC policy to include all device-dependent APCs and to create two other new comprehensive APCs (C–APC 0067 and C–APC 0351);
- We are proposing new complexity adjustment criteria:
- Frequency of 25 or more claims reporting the HCPCS code combination (the frequency threshold); and
- Violation of the ''2 times'' rule; that is, the comprehensive geometric mean cost of the complex code combination exceeds the comprehensive geometric mean cost of the lowest significant HCPCS code assigned to the comprehensive APC by more than 2 times (the cost threshold).

We are proposing to package all add-on codes, although we would evaluate claims reporting a single primary service code reported in combination with an applicable add-on code (we refer readers to Table 9 in this proposed rule for the list of applicable add-on codes) for complexity adjustments. We believe that the proposed criteria would improve transparency, reduce subjectivity in complexity assignments, reduce the beneficiary copayment for some cases, and reduce burden on other stakeholders in analyzing the comprehensive APC assignments. The proposed policies would result in 52 complexity adjustments listed in Addendum J to this proposed rule (which is available via the Internet on the CMS Web site).

f. Calculation of Composite APC Criteria-Based Costs

As discussed in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66613), we believe it is important that the OPPS enhance incentives for hospitals to provide necessary, high quality care as efficiently as possible. For CY 2008, we developed composite APCs to provide a single payment for groups of services that are typically performed together during a single clinical encounter and that result in the provision of a complete service. Combining payment for multiple, independent services into a single OPPS payment in this way enables hospitals to manage their resources with maximum flexibility by monitoring and adjusting the volume and efficiency of services themselves. An additional advantage to the composite APC model is that we can use data from correctly coded multiple procedure claims to calculate payment rates for the specified combinations of services, rather than relying upon single procedure claims which may be low in volume and/or incorrectly coded. Under the OPPS, we currently have composite policies for extended assessment and management services, low dose rate (LDR) prostate brachytherapy, cardiac electrophysiologic evaluation and ablation services, mental health services, multiple imaging services, and cardiac resynchronization therapy services. We refer readers to the CY 2008 OPPS/ASC final rule with comment period for a full discussion of the development of the composite APC methodology (72 FR 66611 through 66614 and 66650 through 66652) and the CY 2012 OPPS/ASC final rule with comment period (76 FR 74163) for more recent background.

For CY 2015, we are proposing to continue our composite APC payment policies for LDR prostate brachytherapy services, mental health services, and multiple imaging services, as discussed below. In addition, we note that we finalized a policy in the CY 2014 OPPS/ASC final rule with comment period to modify our longstanding policy to provide payment to hospitals in certain circumstances when extended assessment and management of a patient occur (78 FR 74910 through 74912). For CY 2014, we created one new composite APC, entitled ''Extended Assessment and Management (EAM) Composite'' (APC 8009), to provide payment for all qualifying extended assessment and management encounters rather than recognize two levels of EAM composite APCs (78 FR 74910 through 74912). Under this policy, we allow any visits, a Level 4 or 5 Type A ED visit or a Level 5 Type B ED visit furnished by a hospital in conjunction with observation services of substantial duration to qualify for payment through EAM composite APC 8009. For CY 2015, we are proposing to pay for qualifying extended assessment and management services through composite APC 8009. For CY 2015, we also are proposing to discontinue our composite APC payment policies for cardiac electrophysiologic evaluation and ablation services (APC 8000), and to pay for these services through comprehensive APC 0086 (Level III Electrophysiologic Procedures), as presented in a proposal included under section II.A.2.e. of this proposed rule. As such, we are proposing to delete APC 8000 for CY 2015.

We note that we finalized a policy to discontinue and supersede the cardiac resynchronization therapy composite APC with comprehensive APC 0108 (Level II Implantation of Cardioverter-Defibrillators (ICDs)), as discussed in section II.A.2.e. of the CY 2014 OPPS/ASC final rule with comment period (78 FR 74902). For CY 2014, APC 0108 is classified as a composite APC, as discussed in the CY 2014 OPPS/ASC final rule with comment period, because comprehensive APCs were not made effective until CY 2015 (78 FR 74925). For CY 2015, with the implementation of our new comprehensive APC policy, we are proposing to effectuate the policy finalized in the CY 2014 OPPS/ASC final rule with comment period, and pay for cardiac resynchronization therapy services through comprehensive APC 0108 (proposed to be renamed ''Level II ICD and Similar Procedures''), which is discussed in section II.A.2.e. of this proposed rule.

(1) Extended Assessment and Management Composite APC (APC 8009)

Beginning in CY 2008, we included composite APC 8002 (Level I Extended Assessment and Management (EAM) Composite) and composite APC 8003 (Level II Extended Assessment and Management (EAM) Composite) in the OPPS to provide payment to hospitals in certain circumstances when extended assessment and management of a patient occur (an extended visit). In most of these circumstances, observation services are furnished in conjunction with evaluation and management services as an integral part of a patient's extended encounter of care. From CY 2008 through CY 2013, in the circumstances when 8 or more hours of observation care was provided in conjunction with a high level visit, critical care, or direct referral for observation and is an integral part of a

patient's extended encounter of care, and was not furnished on the same day as surgery or post-operatively, a single OPPS payment was made for the observation and evaluation and management services through one of the two composite APCs as appropriate. We refer readers to the CY 2012 OPPS/ASC final rule with comment period (76 FR 74163 through 74165) for a full discussion of this longstanding policy for CY 2013 and prior years. In the CY 2014 OPPS/ASC final rule with comment period (78 FR 74910), we created one new composite APC, APC 8009 (Extended Assessment and Management (EAM) Composite), to provide payment for all qualifying extended assessment and management encounters rather than recognizing two levels of EAM composite services. Under the CY 2014 finalized policy, we no longer recognize composite APC 8002 or APC 8003. Beginning in CY 2014, we allowed services identified by the new single clinic visit HCPCS code G0463, a Level 4 or 5 Type A ED visit (CPT codes 99284 or 99285), a Level 5 Type B ED visit (HCPCS code G0384) or critical care (CPT code 99291) provided by a hospital in conjunction with observation services of substantial duration (8 or more hours) (provided the observation was not furnished on the same day as surgery or post-operatively) (78 FR 74910 through 74912) to qualify for payment through EAM composite APC 8009.

For CY 2015, we are proposing to continue our CY 2014 finalized policy to provide payment for all qualifying extended assessment and management encounters through composite APC 8009. As we did for CY 2014, for CY 2015, we are proposing to allow a clinic visit and certain high level ED visits furnished by a hospital in conjunction with observation services of substantial duration (8 or more hours) to qualify for payment through the EAM composite APC 8009 (provided the observation is not furnished on the same day as surgery or post-operatively). Specifically, we are proposing to continue to allow a clinic visit, a Level 4 or Level 5 Type A ED visit, or a Level 5 Type B ED visit furnished by a hospital or a direct referral for observation (identified by HCPCS code G0379) performed in conjunction with observation services of substantial duration to qualify for payment through composite APC 8009 (provided the observation is not furnished on the same day as surgery or post-operatively). We note that, for CY 2015, we are proposing to continue our current policy where one service code describes all clinic visits. We refer readers to the CY 2014 OPPS/ASC final rule with comment period (78 FR 74910 through 74912) for a full discussion of the creation of composite APC 8009.

As we noted in the CY 2014 OPPS/ASC final rule with comment period, the historical cost data used annually to calculate the geometric mean costs and payment rate for composite APC 8009 would not reflect the single clinic visit code that was new for CY 2014 (HCPCS code G0463) until our CY 2016 rulemaking cycle. We stated in the CY 2014 OPPS/ASC final rule with comment period (78 FR 74910 through 74912) that when hospital claims data for the CY 2014 clinic and ED visit codes become available, we would calculate the geometric mean cost for the EAM composite APC 8009 using CY 2014 single and ''pseudo'' single procedure claims that meet each of the following criteria:

- The claims do not contain a HCPCS code to which we have assigned status indicator ''T'' that is reported with a date of service 1 day earlier than the date of service associated with HCPCS code G0378. (By selecting these claims from single and ''pseudo'' single claims, we ensure that they would not contain a code for a service with status indicator ''T'' on the same date of service.)
- The claims contain 8 or more units of HCPCS code G0378 (Observation services, per hour.)
- The claims contain one of the following codes: HCPCS code G0379 (Direct referral of patient for hospital observation care) on the same date of service as HCPCS code G0378; or CPT code 99291 (Critical care, evaluation and management of the critically ill or critically injured patient; first 30–74 minutes); or HCPCS code G0463 (Hospital outpatient clinic visit for assessment and management of a patient) provided on the same date of service or 1 day before the date of service for HCPCS code G0378.

Because we have no available cost data for HCPCS code G0463, for CY 2015, we are proposing to calculate the geometric mean cost for procedures assigned to APC 8009 using CY 2013 single and ''pseudo'' single procedure claims that met each of the following criteria:

- The claim did not contain a HCPCS code to which we have assigned status indicator ''T'' that is reported with a date of service 1 day earlier than the date of service associated with HCPCS code G0378. (By selecting these claims from single and ''pseudo'' single claims, we assured that they would not contain a code for a service with status indicator ''T'' on the same date of service.)
- The claim contained 8 or more units of HCPCS code G0378 (Observation services, per hour.)
- The claim contained one of the following codes: HCPCS code G0379 (Direct referral of patient for hospital observation care) on the same date of service as HCPCS code G0378; or CPT code 99201 (Office or other outpatient visit for the evaluation and management of a new patient (Level 1)); CPT code 99202 (Office or other outpatient visit for the evaluation and management of a new patient (Level 2)); CPT code 99203 (Office or other outpatient visit for the evaluation and management of a new patient (Level 3)); CPT code 99204 (Office or other outpatient visit for the evaluation and management of a new patient (Level 4)); CPT code 99205 (Office or other outpatient visit for the evaluation and management of a new patient (Level 5)); CPT code 99211 (Office or other outpatient visit for the evaluation and management of an established patient (Level 1)); CPT code 99212 (Office or other outpatient visit for the evaluation and management of an established patient (Level 2)); CPT code 99213 (Office or other outpatient visit for the evaluation and management of an established patient (Level 3)); CPT code 99214 (Office or other outpatient visit for the evaluation and management of an established patient (Level 4)); CPT code 99215 (Office or other outpatient visit for the evaluation and management of an established patient (Level 5)); CPT code 99284 (Emergency department visit for the evaluation and management of a patient (Level 4)); CPT code 99285 (Emergency department visit for the evaluation and management of a patient (Level 5)); or HCPCS code G0384 (Type B emergency department visit (Level 5)); or CPT code 99291 (Critical care, evaluation and management of the critically ill or critically injured patient; first 30–74 minutes) provided on the same date of service or 1 day before the date of service for HCPCS code G0378.

The proposed CY 2015 geometric mean cost resulting from this methodology for EAM composite APC 8009 is approximately $1,287.

(2) Low Dose Rate (LDR) Prostate Brachytherapy Composite APC (APC 8001)

LDR prostate brachytherapy is a treatment for prostate cancer in which hollow needles or catheters are inserted into the prostate, followed by permanent implantation of radioactive sources into the prostate through the needles/catheters. At least two CPT codes are used to report the composite treatment service because there are separate codes that describe placement

of the needles/catheters and the application of the brachytherapy sources: CPT code 55875 (Transperineal placement of needles or catheters into prostate for interstitial radioelement application, with or without cystoscopy) and CPT code 77778 (Interstitial radiation source application; complex), which are generally present together on claims for the same date of service in the same operative session. In order to base payment on claims for the most common clinical scenario, and to further our goal of providing payment under the OPPS for a larger bundle of component services provided in a single hospital encounter, beginning in CY 2008, we began providing a single payment for LDR prostate brachytherapy when the composite service, reported as CPT codes 55875 and 77778, is furnished in a single hospital encounter. We base the payment for composite APC 8001 (LDR Prostate Brachytherapy Composite) on the geometric mean cost derived from claims for the same date of service that contain both CPT codes 55875 and 77778 and that do not contain other separately paid codes that are not on the bypass list. We refer readers to the CY 2008 OPPS/ASC final rule with comment period (72 FR 66652 through 66655) for a full history of OPPS payment for LDR prostate brachytherapy services and a detailed description of how we developed the LDR prostate brachytherapy composite APC.

For CY 2015, we are proposing to continue to pay for LDR prostate brachytherapy services using the composite APC payment methodology proposed and implemented for CY 2008 through CY 2014. That is, we are proposing to use CY 2013 claims reporting charges for both CPT codes 55875 and 77778 on the same date of service with no other separately paid procedure codes (other than those on the bypass list) to calculate the proposed payment rate for composite APC 8001. Consistent with our CY 2008 through CY 2014 practice, we are proposing not to use the claims that meet these criteria in the calculation of the geometric mean costs of procedures or services assigned to APC 0163 (Level IV Cystourethroscopy and Other Genitourinary Procedures) and APC 0651 (Complex Interstitial Radiation Source Application), the APCs to which CPT codes 55875 and 77778 are assigned, respectively. We are proposing to continue to calculate the geometric mean costs of procedures or services assigned to APCs 0163 and 0651 using single and ''pseudo'' single procedure claims. We continue to believe that this composite APC contributes to our goal of creating hospital incentives for efficiency and cost containment, while providing hospitals with the most flexibility to manage their resources. We also continue to believe that data from claims reporting both services required for LDR prostate brachytherapy provide the most accurate geometric mean cost upon which to base the proposed composite APC payment rate.

Using a partial year of CY 2013 claims data available for the CY 2015 OPPS/ASC proposed rule, we were able to use 379 claims that contained both CPT codes 55875 and 77778 to calculate the geometric mean cost of these procedures upon which the proposed CY 2015 payment rate for composite APC 8001 is based. The proposed geometric mean cost for composite APC 8001 for CY 2015 is approximately $3,669.

(3) Mental Health Services Composite APC (APC 0034)

For CY 2015, we are proposing to continue our longstanding policy of limiting the aggregate payment for specified less resource-intensive mental health services furnished on the same date to the payment for a day of partial hospitalization services provided by a hospital, which we consider to be the most resource-intensive of all outpatient mental health services. We refer readers to the April 7, 2000 OPPS final rule with comment period (65 FR 18452 through 18455) for the initial discussion of this longstanding policy and the CY 2012 OPPS/ASC final rule with comment period (76 FR 74168) for more recent background.

Specifically, we are proposing that when the aggregate payment for specified mental health services provided by one hospital to a single beneficiary on one date of service based on the payment rates associated with the APCs for the individual services exceeds the maximum per diem payment rate for partial hospitalization services provided by a hospital, those specified mental health services would be assigned to APC 0034 (Mental Health Services Composite). We are proposing to continue to set the payment rate for APC 0034 at the same payment rate that we are proposing to establish for APC 0176 (Level II Partial Hospitalization (4 or more services) for hospital-based PHPs), which is the maximum partial hospitalization per diem payment rate for a hospital, and that the hospital continue to be paid one unit of APC 0034. Under this policy, the I/OCE would continue to determine whether to pay for these specified mental health services individually, or to make a single payment at the same payment rate established for APC 0176 for all of the specified mental health services furnished by the hospital on that single date of service. We continue to believe that the costs associated with administering a partial hospitalization program at a hospital represent the most resource-intensive of all outpatient mental health services. Therefore, we do not believe that we should pay more for mental health services under the OPPS than the highest partial hospitalization per diem payment rate for hospitals.

(4) Multiple Imaging Composite APCs (APCs 8004, 8005, 8006, 8007, and 8008)

Effective January 1, 2009, we provide a single payment each time a hospital bills more than one imaging procedure within an imaging family on the same date of service, in order to reflect and promote the efficiencies hospitals can achieve when performing multiple imaging procedures during a single session (73 FR 41448 through 41450). We utilize three imaging families based on imaging modality for purposes of this methodology: (1) Ultrasound; (2) computed tomography (CT) and computed tomographic angiography (CTA); and (3) magnetic resonance imaging (MRI) and magnetic resonance angiography (MRA). The HCPCS codes subject to the multiple imaging composite policy and their respective families are listed in Table 12 of the CY 2014 OPPS/ASC final rule with comment period (78 FR 74920 through 74924).

While there are three imaging families, there are five multiple imaging composite APCs due to the statutory requirement under section 1833(t)(2)(G) of the Act that we differentiate payment for OPPS imaging services provided with and without contrast. While the ultrasound procedures included in the policy do not involve contrast, both CT/CTA and MRI/MRA scans can be provided either with or without contrast. The five multiple imaging composite APCs established in CY 2009 are:

- APC 8004 (Ultrasound Composite);
- APC 8005 (CT and CTA without Contrast Composite);
- APC 8006 (CT and CTA with Contrast Composite);
- APC 8007 (MRI and MRA without Contrast Composite); and
- APC 8008 (MRI and MRA with Contrast Composite).

We define the single imaging session for the ''with contrast'' composite APCs as having at least one or more imaging procedures from the same family performed with contrast on the same date of service. For example, if the

hospital performs an MRI without contrast during the same session as at least one other MRI with contrast, the hospital will receive payment for APC 8008, the ''with contrast'' composite APC.

We make a single payment for those imaging procedures that qualify for composite APC payment, as well as any packaged services furnished on the same date of service. The standard (noncomposite) APC assignments continue to apply for single imaging procedures and multiple imaging procedures performed across families. For a full discussion of the development of the multiple imaging composite APC methodology, we refer readers to the CY 2009 OPPS/ASC final rule with comment period (73 FR 68559 through 68569).

For CY 2015, we are proposing to continue to pay for all multiple imaging procedures within an imaging family performed on the same date of service using the multiple imaging composite APC payment methodology. We continue to believe that this policy will reflect and promote the efficiencies hospitals can achieve when performing multiple imaging procedures during a single session. The proposed CY 2015 payment rates for the five multiple imaging composite APCs (APC 8004, APC 8005, APC 8006, APC 8007, and APC 8008) are based on geometric mean costs calculated from a partial year of CY 2013 claims available for the proposed rule that qualified for composite payment under the current policy (that is, those claims with more than one procedure within the same family on a single date of service). To calculate the proposed geometric mean costs, we used the same methodology that we used to calculate the final CY 2013 and CY 2014 geometric mean costs for these composite APCs, as described in the CY 2014 OPPS/ASC final rule with comment period (78 FR 74918). The imaging HCPCS codes referred to as ''overlap bypass codes'' that we removed from the bypass list for purposes of calculating the proposed multiple imaging composite APC geometric mean costs, pursuant to our established methodology as stated in the CY 2014 OPPS/ASC final rule with comment period (78 FR 74918), are identified by asterisks in Addendum N to this proposed rule (which is available via the Internet on the CMS Web site) and are discussed in more detail in section II.A.1.b. of this proposed rule.

For this CY 2015 OPPS/ASC proposed rule, we were able to identify approximately 636,000 ''single session'' claims out of an estimated 1.6 million potential composite APC cases from our ratesetting claims data, approximately 40 percent of all eligible claims, to calculate the proposed CY 2015 geometric mean costs for the multiple imaging composite APCs.

Table 8 below lists the proposed HCPCS codes that would be subject to the multiple imaging composite APC policy and their respective families and approximate composite APC geometric mean costs for CY 2015.

TABLE 8—PROPOSED OPPS IMAGING FAMILIES AND MULTIPLE IMAGING PROCEDURE COMPOSITE APCS

Family 1—Ultrasound	
CY 2015 APC 8004 (ultrasound composite)	**CY 2015 approximate APC geometric mean cost = $299**
76604	Us exam, chest.
76700	Us exam, abdom, complete.
76705	Echo exam of abdomen.
76770	Us exam abdo back wall, comp.
76775	Us exam abdo back wall, lim.
76776	Us exam k transpl w/Doppler.
76831	Echo exam, uterus.
76856	Us exam, pelvic, complete.
76870	Us exam, scrotum.
76857	Us exam, pelvic, limited.
Family 2—CT and CTA With and Without Contrast	
CY 2015 APC 8005 (CT and CTA without contrast composite)*	**CY 2015 approximate APC geometric mean cost = $335**
70450	Ct head/brain w/o dye.
70480	Ct orbit/ear/fossa w/o dye.
70486	Ct maxillofacial w/o dye.
70490	Ct soft tissue neck w/o dye.
71250	Ct thorax w/o dye.
72125	Ct neck spine w/o dye.
72128	Ct chest spine w/o dye.
72131	Ct lumbar spine w/o dye.
72192	Ct pelvis w/o dye.
73200	Ct upper extremity w/o dye.
73700	Ct lower extremity w/o dye.
74150	Ct abdomen w/o dye.
74261	Ct colonography, w/o dye.
74176	Ct angio abd & pelvis.
CY 2015 APC 8006 (CT and CTA with contrast composite)	**CY 2015 Approximate APC geometric mean cost = $558**
70487	Ct maxillofacial w/dye.
70460	Ct head/brain w/dye.
70470	Ct head/brain w/o & w/dye.
70481	Ct orbit/ear/fossa w/dye.
70482	Ct orbit/ear/fossa w/o & w/dye.
70488	Ct maxillofacial w/o & w/dye.
70491	Ct soft tissue neck w/dye.
70492	Ct sft tsue nck w/o & w/dye.
70496	Ct angiography, head.
70498	Ct angiography, neck.
71260	Ct thorax w/dye.

TABLE 8—PROPOSED OPPS IMAGING FAMILIES AND MULTIPLE IMAGING PROCEDURE COMPOSITE APCS—Continued

71270	Ct thorax w/o & w/dye.
71275	Ct angiography, chest.
72126	Ct neck spine w/dye.
72127	Ct neck spine w/o & w/dye.
72129	Ct chest spine w/dye.
72130	Ct chest spine w/o & w/dye.
72132	Ct lumbar spine w/dye.
72133	Ct lumbar spine w/o & w/dye.
72191	Ct angiograph pelv w/o & w/dye.
72193	Ct pelvis w/dye.
72194	Ct pelvis w/o & w/dye.
73201	Ct upper extremity w/dye.
73202	Ct uppr extremity w/o & w/dye.
73206	Ct angio upr extrm w/o & w/dye.
73701	Ct lower extremity w/dye.
73702	Ct lwr extremity w/o & w/dye.
73706	Ct angio lwr extr w/o & w/dye.
74160	Ct abdomen w/dye.
74170	Ct abdomen w/o & w/dye.
74175	Ct angio abdom w/o & w/dye.
74262	Ct colonography, w/dye.
75635	Ct angio abdominal arteries.
74177	Ct angio abd & pelv w/contrast.
74178	Ct angio abd & pelv 1 + regns.

* If a ''without contrast'' CT or CTA procedure is performed during the same session as a ''with contrast'' CT or CTA procedure, the I/OCE would assign APC 8006 rather than APC 8005.

Family 3—MRI and MRA With and Without Contrast

CY 2015 APC 8007 (MRI and MRA without contrast composite) *	CY 2015 approximate APC geometric mean cost = $640
70336	Magnetic image, jaw joint.
70540	Mri orbit/face/neck w/o dye.
70544	Mr angiography head w/o dye.
70547	Mr angiography neck w/o dye.
70551	Mri brain w/o dye.
70554	Fmri brain by tech.
71550	Mri chest w/o dye.
72141	Mri neck spine w/o dye.
72146	Mri chest spine w/o dye.
72148	Mri lumbar spine w/o dye.
72195	Mri pelvis w/o dye.
73218	Mri upper extremity w/o dye.
73221	Mri joint upr extrem w/o dye.
73718	Mri lower extremity w/o dye.
73721	Mri jnt of lwr extre w/o dye.
74181	Mri abdomen w/o dye.
75557	Cardiac mri for morph.
75559	Cardiac mri w/stress img.
C8901	MRA w/o cont, abd.
C8904	MRI w/o cont, breast, uni.
C8907	MRI w/o cont, breast, bi.
C8910	MRA w/o cont, chest.
C8913	MRA w/o cont, lwr ext.
C8919	MRA w/o cont, pelvis.
C8932	MRA, w/o dye, spinal canal.
C8935	MRA, w/o dye, upper extr.
CY 2015 APC 8008 (MRI and MRA with contrast composite)	**CY 2015 Approximate APC geometric mean cost = $958**
70549	Mr angiograph neck w/o & w/dye.
70542	Mri orbit/face/neck w/dye.
70543	Mri orbt/fac/nck w/o & w/dye.
70545	Mr angiography head w/dye.
70546	Mr angiograph head w/o & w/dye.
70547	Mr angiography neck w/o dye.
70548	Mr angiography neck w/dye.
70552	Mri brain w/dye.
70553	Mri brain w/o & w/dye.
71551	Mri chest w/dye.
71552	Mri chest w/o & w/dye.
72142	Mri neck spine w/dye.
72147	Mri chest spine w/dye.
72149	Mri lumbar spine w/dye.
72156	Mri neck spine w/o & w/dye.
72157	Mri chest spine w/o & w/dye.
72158	Mri lumbar spine w/o & w/dye.
72196	Mri pelvis w/dye.
72197	Mri pelvis w/o & w/dye.
73219	Mri upper extremity w/dye.
73220	Mri uppr extremity w/o & w/dye.

TABLE 8—PROPOSED OPPS IMAGING FAMILIES AND MULTIPLE IMAGING PROCEDURE COMPOSITE APCS—Continued

73222	Mri joint upr extrem w/dye.
73223	Mri joint upr extr w/o & w/dye.
73719	Mri lower extremity w/dye.
73720	Mri lwr extremity w/o & w/dye.
73722	Mri joint of lwr extr w/dye.
73723	Mri joint lwr extr w/o & w/dye.
74182	Mri abdomen w/dye.
74183	Mri abdomen w/o & w/dye.
75561	Cardiac mri for morph w/dye.
75563	Card mri w/stress img & dye.
C8900	MRA w/cont, abd.
C8902	MRA w/o fol w/cont, abd.
C8903	MRI w/cont, breast, uni.
C8905	MRI w/o fol w/cont, brst, un.
C8906	MRI w/cont, breast, bi.
C8908	MRI w/o fol w/cont, breast,
C8909	MRA w/cont, chest.
C8911	MRA w/o fol w/cont, chest.
C8912	MRA w/cont, lwr ext.
C8914	MRA w/o fol w/cont, lwr ext.
C8918	MRA w/cont, pelvis.
C8920	MRA w/o fol w/cont, pelvis.
C8931	MRA, w/dye, spinal canal.
C8933	MRA, w/o&w/dye, spinal canal.
C8934	MRA, w/dye, upper extremity.
C8936	MRA, w/o&w/dye, upper extr.

* If a ''without contrast'' MRI or MRA procedure is performed during the same session as a ''with contrast'' MRI or MRA procedure, the I/OCE would assign APC 8008 rather than APC 8007.

3. Proposed Changes to Packaged Items and Services

a. Background and Rationale for Packaging in the OPPS

Like other prospective payment systems, the OPPS relies on the concept of averaging to establish a payment rate for services. The payment may be more or less than the estimated cost of providing a specific service or bundle of specific services for a particular patient. The OPPS packages payment for multiple interrelated items and services into a single payment to create incentives for hospitals to furnish services most efficiently and to manage their resources with maximum flexibility. Our packaging policies support our strategic goal of using larger payment bundles in the OPPS to maximize hospitals' incentives to provide care in the most efficient manner. For example, where there are a variety of devices, drugs, items, and supplies that could be used to furnish a service, some of which are more expensive than others, packaging encourages hospitals to use the most cost-efficient item that meets the patient's needs, rather than to routinely use a more expensive item, which often results if separate payment is provided for the items.

Packaging also encourages hospitals to effectively negotiate with manufacturers and suppliers to reduce the purchase price of items and services or to explore alternative group purchasing arrangements, thereby encouraging the most economical health care delivery. Similarly, packaging encourages hospitals to establish protocols that ensure that necessary services are furnished, while scrutinizing the services ordered by practitioners to maximize the efficient use of hospital resources. Packaging payments into larger payment bundles promotes the predictability and accuracy of payment for services over time. Finally, packaging may reduce the importance of refining service-specific payment because packaged payments include costs associated with higher cost cases requiring many ancillary items and services and lower cost cases requiring fewer ancillary items and services. Because packaging encourages efficiency and is an essential component of a prospective payment system, packaging payment for items and services that are typically integral, ancillary, supportive, dependent, or adjunctive to a primary service has been a fundamental part of the OPPS since its implementation in August 2000. Over the last 15 years, as we have refined our understanding of the OPPS as a prospective payment system, we have packaged numerous services that we originally paid as primary services. As we continue to develop larger payment groups that more broadly reflect services provided in an encounter or episode of care, we have expanded the OPPS packaging policies. Most, but not necessarily all, items and services currently packaged in the OPPS are listed in 42 CFR 419.2(b), including the five packaging policies that were added in CY 2014 (78 FR 74925). Our overarching goal is to make OPPS payments for all services paid under the OPPS more consistent with those of a prospective payment system and less like those of a per service fee schedule, which pays separately for each coded item. As a part of this effort, we have continued to examine the payment for items and services provided in the OPPS to determine which OPPS services can be packaged to achieve the objective of advancing the OPPS as a prospective payment system.

We have examined the items and services currently provided under the OPPS, reviewing categories of integral, ancillary, supportive, dependent, or adjunctive items and services for which we believe payment would be appropriately packaged into payment of the primary service they support. Specifically, we examined the HCPCS code definitions (including CPT code descriptors) to determine whether there were categories of codes for which packaging would be appropriate according to existing OPPS packaging policies or a logical expansion of those existing OPPS packaging policies. In general, in this CY 2015 OPPS/ASC proposed rule, we are proposing to package the costs of selected HCPCS codes into payment for services reported with other HCPCS codes where we believe that one code reported an item

or service that was integral, ancillary, supportive, dependent, or adjunctive to the provision of care that was reported by another HCPCS code. Below we discuss categories and classes of items and services that we are proposing to package beginning in CY 2015. For an extensive discussion of the history and background of the OPPS packaging policy, we refer readers to the CY 2000 OPPS final rule (65 FR 18434), the CY 2008 OPPS/ASC final rule with comment period (72 FR 66580), and the CY 2014 OPPS/ASC final rule with comment period (78 FR 74925).

b. Proposed Revisions of a Packaging Policy Established in CY 2014—Procedures Described by Add-On Codes

In the CY 2014 OPPS/ASC final rule with comment period, we packaged add-on codes in the OPPS, with the exception of add-on codes describing drug administration services (78 FR 74943; 42 CFR 419.2(b)(18)). With regard to the packaging of add-on procedures that use expensive medical devices, we stated in the CY 2014 OPPS/ASC final rule with comment period (78 FR 74943) that the most expensive medical devices used in procedures to insert or implant devices in the hospital outpatient setting are included in procedures that are assigned to comprehensive APCs. Comprehensive APCs are discussed in section II.A.2.e. of this proposed rule. In the CY 2014 OPPS/ASC final rule with comment period, we discussed the comprehensive APC policy, which we adopted, with modification, but delayed the implementation of, until CY 2015 (78 FR 74864). We stated that for CY 2014, we would continue to pay separately for only those add-on codes (except for drug administration add-on codes) that were assigned to device-dependent APCs in CY 2014, but that, after CY 2014, these device-dependent add-on codes would be paid under the comprehensive APC policy. According to the proposed changes to the comprehensive APC policy described in section II.A.2.e. of this proposed rule, we are proposing to package all of the procedures described by add-on codes that are currently assigned to device-dependent APCs, which will be replaced by comprehensive APCs. The device-dependent add-on codes that are separately paid in CY 2014 that we are proposing to package in CY 2015 are listed below in Table 9.

TABLE 9—ADD-ON CODES ASSIGNED TO DEVICE-DEPENDENT APCS FOR CY 2014 THAT ARE PROPOSED TO BE PACKAGED IN CY 2015

CY 2014 Add-on code	Short descriptor	CY 2014 APC
19297	Place breast cath for rad	0648
33225	L ventric pacing lead add-on	0655
37222	Iliac revasc add-on	0083
37223	Iliac revasc w/stent add-on	0083
37232	Tib/per revasc add-on	0083
37233	Tib/per revasc w/ather add-on	0229
37234	Revsc opn/prq tib/pero stent	0083
37235	Tib/per revasc stnt & ather	0083
37237	Open/perq place stent ea add	0083
37239	Open/perq place stent ea add	0083
49435	Insert subq exten to ip cath	0427
92921	Prq cardiac angio addl art	0083
92925	Prq card angio/athrect addl	0082
92929	Prq card stent w/angio addl	0104
92934	Prq card stent/ath/angio	0104
92938	Prq revasc byp graft addl	0104
92944	Prq card revasc chronic addl	0104
92998	Pul art balloon repr precut	0083
C9601	Perc drug-el cor stent bran	0656
C9603	Perc d-e cor stent ather br	0656
C9605	Perc d-e cor revasc t cabg b	0656
C9608	Perc d-e cor revasc chro add	0656

c. Proposed Packaging Policies for CY 2015

(1) Ancillary Services

Under the OPPS, we currently pay separately for certain ancillary services. Some of these ancillary services are currently assigned to status indicator ''X,'' which is defined as ''ancillary services,'' but some other ancillary services are currently assigned to status indicators other than ''X.'' This is because the current use of status indicator ''X'' in the OPPS is incomplete and imprecise. Some procedures and services that are ancillary, for example, a chest X-ray, are assigned to an APC with services assigned status indicator ''S.'' We reviewed all of the covered HOPD services provided in the HOPD and identified those that are commonly performed when provided with other HOPD services, and also provided as ancillary to a primary service in the HOPD. These ancillary services that we have identified are primarily minor diagnostic tests and procedures that are often performed with a primary service, although there are instances where hospitals provide such services alone and without another primary service during the same encounter.

As discussed in section II.A.3.a. of this proposed rule, our intent is that the OPPS be more of a prospective payment system with expanded packaging of items and services that are typically integral, ancillary, supportive, dependent, or adjunctive to a primary service. Given that the longstanding OPPS policy is to package items and services that are integral, ancillary, supportive, dependent, or adjunctive to a primary service, we stated in the CY 2014 OPPS/ASC final rule with comment period (78 FR 74945) that we believe that ancillary services should be packaged when they are performed with another service, but should continue to be separately paid when performed alone. We indicated that this packaging approach is most consistent with a prospective payment system and the regulation at 42 CFR 419.2(b) that packages many ancillary services into

primary services while preserving separate payment for those instances in which one of these ancillary services is provided alone (not with any other service paid under the OPPS) to a hospital outpatient. We did not finalize the ancillary packaging policy for CY 2014 because we believed that further evaluation was necessary (78 FR 74946).

In this proposed rule, we are proposing to conditionally package certain ancillary services for CY 2015. Specifically, we are proposing to limit the initial set of APCs that contain conditionally packaged services to those ancillary service APCs with a proposed geometric mean cost of less than or equal to $100 (prior to application of the conditional packaging status indicator). We are limiting this initial set of packaged ancillary service APCs to those with a proposed geometric mean cost of less than or equal to $100 in response to public comments on the CY 2014 ancillary service packaging proposal in which commenters expressed concern that certain low volume but relatively costly ancillary services would have been packaged into high volume but relatively inexpensive primary services (for example, a visit) (74 FR 74945). We note that the proposed $100 geometric mean cost limit for selecting this initial group of conditionally packaged ancillary service APCs is less than the geometric mean cost of APC 0634, which contains the single clinic visit code G0463, which is a single payment rate for clinic visits beginning in CY 2014, and has a CY 2015 OPPS/ASC proposed rule geometric mean cost of $102.68. This proposed $100 geometric mean cost limit is part of the methodology of selecting the initial set of conditionally packaged ancillary service APCs under this proposed packaging policy. It is not meant to represent a threshold above which ancillary services will not be packaged, but as a basis for selecting this initial set of APCs, which will likely be updated and expanded in future years. In future years, we may package ancillary services assigned to APCs with geometric mean costs higher than $100. In addition, geometric mean costs can change over time. A change in the geometric mean cost of any of the proposed APCs above $100 in future years would not change the conditionally packaged status of services assigned to the APCs selected in 2015 in a future year. We will continue to consider these APCs to be conditionally packaged. However, we will review the conditionally packaged status of ancillary services annually.

We are proposing to exclude certain services from this packaging policy even though they are assigned to APCs with a geometric mean cost of ≤ $100. Preventive services will continue to be paid separately, and includes the following services listed in Table 10 below that would otherwise be packaged under this policy.

TABLE 10—PREVENTIVE SERVICES EXEMPTED FROM THE ANCILLARY SERVICE PACKAGING POLICY

HCPCS Code	Short descriptor	APC
76977	Us bone density measure	0340
77078	Ct bone density axial	0260
77080	Dxa bone density axial	0261
77081	Dxa bone density/peripheral	0260
G0117	Glaucoma scrn hgh risk direc	0260
G0118	Glaucoma scrn hgh risk direc	0230
G0130	Single energy x-ray study	0230
G0389	Ultrasound exam aaa screen	0265
G0404	Ekg tracing for initial prev	0450
Q0091	Obtaining screen pap smear	0450

In addition, we are not proposing to package certain psychiatry and counseling-related services as we see similarities to a visit and, at this time, do not consider them to be ancillary services. We also are not proposing to package certain low cost drug administration services as we are examining various alternative payment policies for drug administration services, including the associated drug administration add-on codes.

Finally, we are proposing to delete status indicator ''X'' (Ancillary Services) because the majority of the services assigned to status indicator ''X'' are proposed to be assigned to status indicator ''Q1'' (STV-Packaged Codes). For the services that are currently assigned status indicator ''X'' that are not proposed to be conditionally packaged under this policy, we will assign those services status indicator ''S'' (Procedure or Service, Not Discounted When Multiple), indicating separate payment and that the services are not subject to the multiple procedure reduction. The APCs that we are proposing for conditional packaging as ancillary services in CY 2015 are listed below in Table 11.

TABLE 11—APCS FOR PROPOSED CONDITIONALLY PACKAGED ANCILLARY SERVICES FOR CY 2015

APC	Proposed CY 2015 OPPS geometric mean cost	Proposed CY 2015 OPPS SI	Group title
0012	$76.29	Q1	Level I Debridement & Destruction.
0060	20.64	Q1	Manipulation Therapy.
0077	52.08	Q1	Level I Pulmonary Treatment.
0099	81.27	Q1	Electrocardiograms/Cardiography.
0215	104.63	Q1	Level I Nerve and Muscle Services.
0230	55.00	Q1	Level I Eye Tests & Treatments.
0260	62.43	Q1	Level I Plain Film Including Bone Density Measurement.
0261	99.85	Q1	Level II Plain Film Including Bone Density Measurement.
0265	96.51	Q1	Level I Diagnostic and Screening Ultrasound.
0340	64.78	Q1	Level II Minor Procedures.

TABLE 11—APCS FOR PROPOSED CONDITIONALLY PACKAGED ANCILLARY SERVICES FOR CY 2015—Continued

APC	Proposed CY 2015 OPPS geometric mean cost	Proposed CY 2015 OPPS SI	Group title
0342	56.99	Q1	Level I Pathology.
0345	78.83	Q1	Level I Transfusion Laboratory Procedures.
0364	42.69	Q1	Level I Audiometry.
0365	123.21	Q1	Level II Audiometry.
0367	166.31	Q1	Level I Pulmonary Tests.
0420	130.93	Q1	Level III Minor Procedures.
0433	190.21	Q1	Level II Pathology.
0450	29.91	Q1	Level I Minor Procedures.
0624	83.61	Q1	Phlebotomy and Minor Vascular Access Device Procedures.
0690	37.25	Q1	Level I Electronic Analysis of Devices.
0698	106.17	Q1	Level II Eye Tests & Treatments.

The HCPCS codes that we are proposing to conditionally package as ancillary services for CY 2015 are displayed in Addendum B to this CY 2015 OPPS/ASC proposed rule. The supporting documents for the proposed rule are available at the CMS Web site at: *http://www.cms.hhs.gov/Medicare/Medicare-Fee-for-Service-Payment/HospitalOutpatientPPS/index.html*.

We also are proposing to revise the regulations at 42 CFR 419.2(b)(7) to replace the phrase ''Incidental services such as venipuncture'' with ''Ancillary services'' to more accurately reflect the proposed packaging policy discussed above.

We are inviting public comments on these proposals.

(2) Prosthetic Supplies

We have a longstanding policy of providing payment under the OPPS for implantable DME, implantable prosthetics, and medical and surgical supplies, as provided at sections 1833(t)(1)(B)(i) and (t)(1)(B)(iii) of the Act and 42 CFR 419.2(b)(4), (b)(10), and (b)(11). In the CY 2014 OPPS/ASC final rule with comment period, we clarified that medical and surgical supplies under § 419.2(b)(4) include (but are not limited to) all supplies on the DMEPOS Fee Schedule except prosthetic supplies (78 FR 74947). Under 42 CFR 419.22(j), prosthetic supplies are currently excluded from payment under the OPPS and are paid under the DMEPOS Fee Schedule, even when provided in the HOPD. However, under section 1833(t)(1)(B)(i) of the Act, the Secretary has the authority to designate prosthetic supplies provided in the hospital outpatient setting as covered OPD services payable under the OPPS.

As mentioned above, implantable prosthetic devices are packaged in the OPPS under 42 CFR 419.2(b)(11). It is common for implantable prosthetic devices to be provided as a part of a device system. Such device systems include the implantable part or parts of the overall device system and also certain nonimplantable prosthetic supplies that are integral to the overall function of the medical device, part of which is implanted and part of which is external to the patient. These prosthetic supplies are integral to the implantable prosthetic because typically shortly after the surgical procedure to implant the implantable prosthetic device in the hospital, the surgeon and/or his or her colleagues will have to attach, fit, and program certain prosthetic supplies that are not surgically implanted into the patient but are a part of a system and that are essential to the overall function of an implanted device. Because these supplies are integral to the overall function of the implanted prosthetic, and because, as mentioned above, we package in the OPPS items and services that are typically integral, ancillary, supportive, dependent, or adjunctive to a primary service, we believe that it is most consistent with a prospective payment system to package the payment of prosthetic supplies (along with the implantable prosthetic device) into the surgical procedure that implants the prosthetic device, as all of the components are typically necessary for the performance of the system and the hospital typically purchases the system as a single unit. Patients requiring replacement supplies at a time later than the initial surgical procedure and outside of the hospital would obtain them as they typically do from a DMEPOS supplier with payment for such supplies made under the DMEPOS Fee Schedule.

In addition to prosthetic supplies that are components of device systems, part of which are implanted, many other prosthetic supplies on the DMEPOS fee schedule are typical medical and surgical supplies and of the type that are packaged in the OPPS under § 419.2(b)(4). Consistent with our change from status indicator ''A'' to ''N'' for all nonprosthetic DMEPOS supplies in the CY 2014 OPPS final rule with comment period (78 FR 74947), we are proposing to package and change the status indicator from ''A'' to ''N'' for all DMEPOS prosthetic supplies. With this proposed change, all medical and surgical supplies would be packaged in the OPPS.

Therefore, we are proposing to delete ''prosthetic supplies'' from the regulations at § 419.22(j) because we are proposing that prosthetic supplies be packaged covered OPD services in the OPPS for CY 2015. Prosthetic supplies provided in the HOPD would be included in ''medical and surgical supplies'' (as are all other supplies currently provided in the HOPD) under § 419.2(b)(4). The HCPCS codes for prosthetic supplies that we are proposing to package for CY 2015 are displayed in Addendum B to this CY 2015 OPPS/ASC proposed rule. The supporting documents for the proposed rule, including but not limited to these Addenda, are available at the CMS Web site at: *http://www.cms.hhs.gov/Medicare/Medicare-Fee-for-Service-Payment/HospitalOutpatientPPS/index.html*.

We are inviting public comments on these proposals.

4. Proposed Calculation of OPPS Scaled Payment Weights

For CY 2015, we are proposing to calculate the relative payment weights for each APC shown in Addenda A and B to this proposed rule (which are available via the Internet on the CMS Web site) using the APC costs discussed in sections II.A.1. and II.A.2. of this proposed rule. Prior to CY 2007, we standardized all the relative payment weights to APC 0601 (Mid-Level Clinic Visit) because mid-level clinic visits

were among the most frequently performed services in the hospital outpatient setting. We assigned APC 0601 a relative payment weight of 1.00 and divided the median cost for each APC by the median cost for APC 0601 to derive the relative payment weight for each APC.

Beginning with the CY 2007 OPPS (71 FR 67990), we standardized all of the relative payment weights to APC 0606 (Level 3 Clinic Visits) because we deleted APC 0601 as part of the reconfiguration of the clinic visit APCs. We selected APC 0606 as the base because it was the mid-level clinic visit APC (that is, Level 3 of five levels). For the CY 2013 OPPS (77 FR 68283), we established a policy of using geometric mean-based APC costs rather than median-based APC costs to calculate relative payment weights. For CY 2015, we are proposing to continue this policy.

For the CY 2014 OPPS, we standardized all of the relative payment weights to clinic visit APC 0634 as discussed in section VII. of this proposed rule. For CY 2015, we are proposing to continue this policy to maintain consistency in calculating unscaled weights that represent the cost of some of the most frequently provided services. We are proposing to assign APC 0634 a relative payment weight of 1.00 and to divide the geometric mean cost of each APC by the proposed geometric mean cost for APC 0634 to derive the proposed unscaled relative payment weight for each APC. The choice of the APC on which to base the proposed relative payment weights does not affect payments made under the OPPS because we scale the weights for budget neutrality.

Section 1833(t)(9)(B) of the Act requires that APC reclassification and recalibration changes, wage index changes, and other adjustments be made in a budget neutral manner. Budget neutrality ensures that the estimated aggregate weight under the OPPS for CY 2015 is neither greater than nor less than the estimated aggregate weight that would have been made without the changes. To comply with this requirement concerning the APC changes, we are proposing to compare the estimated aggregate weight using the CY 2014 scaled relative payment weights to the estimated aggregate weight using the proposed CY 2015 unscaled relative payment weights.

For CY 2014, we multiplied the CY 2014 scaled APC relative payment weight applicable to a service paid under the OPPS by the volume of that service from CY 2013 claims to calculate the total relative payment weight for each service. We then added together the total relative payment weight for each of these services in order to calculate an estimated aggregate weight for the year. For CY 2015, we are proposing to apply the same process using the proposed CY 2015 unscaled relative payment weights rather than scaled relative payment weights. We are proposing to calculate the weight scaler by dividing the CY 2014 estimated aggregate weight by the proposed CY 2015 estimated aggregate weight. The service-mix is the same in the current and prospective years because we use the same set of claims for service volume in calculating the aggregate weight for each year. We note that the CY 2014 OPPS scaled relative weights incorporate the estimated payment weight from packaged laboratory tests previously paid at CLFS rates.

For a detailed discussion of the weight scaler calculation, we refer readers to the OPPS claims accounting document available on the CMS Web site at: *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HospitalOutpatientPPS/index.html.*

We are proposing to include estimated payments to CMHCs in our comparison of the estimated unscaled relative payment weights in CY 2015 to the estimated total relative payment weights in CY 2014 using CY 2013 claims data, holding all other components of the payment system constant to isolate changes in total weight. Based on this comparison, we adjusted the proposed CY 2015 unscaled relative payment weights for purposes of budget neutrality. The proposed CY 2015 unscaled relative payment weights were adjusted by multiplying them by a weight scaler of 1.3220 to ensure that the proposed CY 2015 relative payment weights are budget neutral.

Section 1833(t)(14) of the Act provides the payment rates for certain SCODs. Section 1833(t)(14)(H) of the Act states that ''Additional expenditures resulting from this paragraph shall not be taken into account in establishing the conversion factor, weighting, and other adjustment factors for 2004 and 2005 under paragraph (9), but shall be taken into account for subsequent years.'' Therefore, the cost of those SCODs (as discussed in section V.B.3. of this proposed rule) is included in the budget neutrality calculations for the CY 2015 OPPS.

The proposed CY 2015 unscaled relative payment weights listed in Addenda A and B to this proposed rule (which are available via the Internet on the CMS Web site) incorporate the proposed recalibration adjustments discussed in sections II.A.1. and II.A.2. of this proposed rule.

B. Proposed Conversion Factor Update

Section 1833(t)(3)(C)(ii) of the Act requires the Secretary to update the conversion factor used to determine the payment rates under the OPPS on an annual basis by applying the OPD fee schedule increase factor. For purposes of section 1833(t)(3)(C)(iv) of the Act, subject to sections 1833(t)(17) and 1833(t)(3)(F) of the Act, the OPD fee schedule increase factor is equal to the hospital inpatient market basket percentage increase applicable to hospital discharges under section 1886(b)(3)(B)(iii) of the Act. In the FY 2015 IPPS/LTCH PPS proposed rule (79 FR 28087), consistent with current law, based on IHS Global Insight, Inc.'s first quarter 2014 forecast of the FY 2015 market basket increase, the proposed FY 2015 IPPS market basket update is 2.7 percent. However, sections 1833(t)(3)(F) and 1833(t)(3)(G)(iv) of the Act, as added by section 3401(i) of the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111–148) and as amended by section 10319(g) of that law and further amended by section 1105(e) of the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152), provide adjustments to the OPD fee schedule increase factor for CY 2015.

Specifically, section 1833(t)(3)(F)(i) of the Act requires that, for 2012 and subsequent years, the OPD fee schedule increase factor under subparagraph (C)(iv) be reduced by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act. Section 1886(b)(3)(B)(xi)(II) of the Act defines the productivity adjustment as equal to the 10-year moving average of changes in annual economy-wide, private nonfarm business multifactor productivity (MFP) (as projected by the Secretary for the 10-year period ending with the applicable fiscal year, year, cost reporting period, or other annual period) (the ''MFP adjustment''). In the FY 2012 IPPS/LTCH PPS final rule (76 FR 51689 through 51692), we finalized our methodology for calculating and applying the MFP adjustment. In the FY 2015 IPPS/LTCH PPS proposed rule (79 FR 28087), we discussed the calculation of the proposed MFP adjustment for FY 2015, which is 0.4 percentage point.

We are proposing that if more recent data become subsequently available after the publication of this proposed rule (for example, a more recent estimate of the market basket increase and the MFP adjustment), we would use such data, if appropriate, to determine the CY 2015 market basket update and the MFP adjustment, components in

calculating the OPD fee schedule increase factor under sections 1833(t)(3)(C)(iv) and 1833(t)(3)(F) of the Act, in the CY 2015 OPPS/ASC final rule with comment period.

In addition, section 1833(t)(3)(F)(ii) of the Act requires that, for each of years 2010 through 2019, the OPD fee schedule increase factor under section 1833(t)(3)(C)(iv) of the Act be reduced by the adjustment described in section 1833(t)(3)(G) of the Act. For CY 2015, section 1833(t)(3)(G)(iv) of the Act provides a 0.2 percentage point reduction to the OPD fee schedule increase factor under section 1833(t)(3)(C)(iv) of the Act. Therefore, in accordance with sections 1833(t)(3)(F)(ii) and 1833(t)(3)(G)(iv) of the Act, we are proposing to apply a 0.2 percentage point reduction to the OPD fee schedule increase factor for CY 2015.

We note that section 1833(t)(3)(F) of the Act provides that application of this subparagraph may result in the OPD fee schedule increase factor under section 1833(t)(3)(C)(iv) of the Act being less than 0.0 percent for a year, and may result in OPPS payment rates being less than rates for the preceding year. As described in further detail below, we are proposing to apply an OPD fee schedule increase factor of 2.1 percent for the CY 2015 OPPS (which is 2.7 percent, the proposed estimate of the hospital inpatient market basket percentage increase, less the proposed 0.4 percentage point MFP adjustment, and less the 0.2 percentage point additional adjustment).

Hospitals that fail to meet the Hospital OQR Program reporting requirements are subject to an additional reduction of 2.0 percentage points from the OPD fee schedule increase factor adjustment to the conversion factor that would be used to calculate the OPPS payment rates for their services, as required by section 1833(t)(17) of the Act. For further discussion of the Hospital OQR Program, we refer readers to section XIII. of this proposed rule.

In this proposed rule, we are proposing to amend 42 CFR 419.32(b)(1)(iv)(B) by adding a new paragraph (*6*) to reflect the requirement in section 1833(t)(3)(F)(i) of the Act that, for CY 2015, we reduce the OPD fee schedule increase factor by the MFP adjustment as determined by CMS, and to reflect the requirement in section 1833(t)(3)(G)(iv) of the Act, as required by section 1833(t)(3)(F)(ii) of the Act, that we reduce the OPD fee schedule increase factor by an additional 0.2 percentage point for CY 2015.

To set the OPPS conversion factor for CY 2015, we are proposing to increase the CY 2014 conversion factor of $72.672 by 2.1 percent. In accordance with section 1833(t)(9)(B) of the Act, we are proposing to further adjust the conversion factor for CY 2015 to ensure that any revisions made to the wage index and rural adjustment are made on a budget neutral basis. We are proposing to calculate an overall proposed budget neutrality factor of 0.9998 for wage index changes by comparing proposed total estimated payments from our simulation model using the proposed FY 2015 IPPS wage indexes to those payments using the FY 2014 IPPS wage indexes, as adopted on a calendar year basis for the OPPS.

For CY 2015, we are proposing to maintain the current rural adjustment policy, as discussed in section II.E. of this proposed rule. Therefore, the proposed budget neutrality factor for the rural adjustment is 1.0000.

For CY 2015, we are proposing to continue previously established policies for implementing the cancer hospital payment adjustment described in section 1833(t)(18) of the Act, as discussed in section II.F. of this proposed rule. We are proposing to calculate a CY 2015 budget neutrality adjustment factor for the cancer hospital payment adjustment by comparing estimated total CY 2015 payments under section 1833(t) of the Act, including the proposed CY 2015 cancer hospital payment adjustment, to estimated CY 2015 total payments using the CY 2014 final cancer hospital payment adjustment as required under section 1833(t)(18)(B) of the Act. The CY 2015 estimated payments applying the proposed CY 2015 cancer hospital payment adjustment are identical to estimated payments applying the CY 2014 final cancer hospital payment adjustment. Therefore, we are proposing to apply a budget neutrality adjustment factor of 1.0000 to the conversion factor for the cancer hospital payment adjustment.

For this proposed rule, we estimate that pass-through spending for drugs, biologicals, and devices for CY 2015 would equal approximately $15.5 million, which represents 0.03 percent of total projected CY 2015 OPPS spending. Therefore, the proposed conversion factor would be adjusted by the difference between the 0.02 percent estimate of pass-through spending for CY 2014 and the 0.03 percent estimate of pass-through spending for CY 2015, resulting in a proposed adjustment for CY 2015 of 0.01 percent. Finally, estimated payments for outliers would remain at 1.0 percent of total OPPS payments for CY 2015.

The proposed OPD fee schedule increase factor of 2.1 percent for CY 2015 (that is, the estimate of the hospital inpatient market basket percentage increase of 2.7 percent less the proposed 0.4 percentage point MFP adjustment and less the 0.2 percentage point required under section 1833(t)(3)(F)(ii) of the Act), the required proposed wage index budget neutrality adjustment of approximately 0.9998, the proposed cancer hospital payment adjustment of 1.0000, and the proposed adjustment of 0.01 percent of projected OPPS spending for the difference in the pass-through spending result in a proposed conversion factor for CY 2015 of $74.176.

Hospitals that fail to meet the reporting requirements of the Hospital OQR Program would continue to be subject to a further reduction of 2.0 percentage points to the OPD fee schedule increase factor. For hospitals that fail to meet the requirements of the Hospital OQR Program, we are proposing to make all other adjustments discussed above, but using a reduced OPD fee schedule update factor of 0.1 percent (that is, the proposed OPD fee schedule increase factor of 2.1 percent further reduced by 2.0 percentage points). This results in a proposed reduced conversion factor for CY 2015 of $72.692 for hospitals that fail to meet the Hospital OQR requirements (a difference of −$1.484 in the conversion factor relative to hospitals that met the requirements).

In summary, for CY 2015, we are proposing to use a conversion factor of $74.176 in the calculation of the national unadjusted payment rates for those items and services for which payment rates are calculated using geometric mean costs. We are proposing to amend § 419.32(b)(1)(iv)(B) by adding a new paragraph (*6*) to reflect the reductions to the OPD fee schedule increase factor that are required for CY 2015 to satisfy the statutory requirements of sections 1833(t)(3)(F) and (t)(3)(G)(iv) of the Act. We are proposing to use a reduced conversion factor of $72.692 in the calculation of payments for hospitals that fail to meet the Hospital OQR Program requirements.

C. Proposed Wage Index Changes

Section 1833(t)(2)(D) of the Act requires the Secretary to ''determine a wage adjustment factor to adjust the portion of payment and coinsurance attributable to labor-related costs for relative differences in labor and labor-related costs across geographic regions in a budget neutral manner'' (codified at 42 CFR 419.43(a)). This portion of the

OPPS payment rate is called the OPPS labor-related share. Budget neutrality is discussed in section II.B. of this proposed rule.

The OPPS labor-related share is 60 percent of the national OPPS payment. This labor-related share is based on a regression analysis that determined that, for all hospitals, approximately 60 percent of the costs of services paid under the OPPS were attributable to wage costs. We confirmed that this labor-related share for outpatient services is appropriate during our regression analysis for the payment adjustment for rural hospitals in the CY 2006 OPPS final rule with comment period (70 FR 68553). Therefore, we are proposing to continue this policy for the CY 2015 OPPS. We refer readers to section II.H. of this proposed rule for a description and example of how the wage index for a particular hospital is used to determine payment for the hospital.

As discussed in section II.A.2.c. of this proposed rule, for estimating APC costs, we standardize 60 percent of estimated claims costs for geographic area wage variation using the same proposed FY 2015 pre-reclassified wage index that the IPPS uses to standardize costs. This standardization process removes the effects of differences in area wage levels from the determination of a national unadjusted OPPS payment rate and copayment amount.

Under 42 CFR 419.41(c)(1) and 419.43(c) (published in the original OPPS April 7, 2000 final rule with comment period (65 FR 18495 and 18545)), the OPPS adopted the final fiscal year IPPS wage index as the calendar year wage index for adjusting the OPPS standard payment amounts for labor market differences. Thus, the wage index that applies to a particular acute care short-stay hospital under the IPPS also applies to that hospital under the OPPS. As initially explained in the September 8, 1998 OPPS proposed rule (63 FR 47576), we believe that using the IPPS wage index as the source of an adjustment factor for the OPPS is reasonable and logical, given the inseparable, subordinate status of the HOPD within the hospital overall. In accordance with section 1886(d)(3)(E) of the Act, the IPPS wage index is updated annually.

The Affordable Care Act contained several provisions affecting the wage index. These provisions were discussed in the CY 2012 OPPS/ASC final rule with comment period (76 FR 74191). As discussed in that final rule with comment period, section 10324 of the Affordable Care Act added section 1886(d)(3)(E)(iii)(II) to the Act, which defines a ''frontier State,'' and amended section 1833(t) of the Act to add new paragraph (19), which requires a ''frontier State'' wage index floor of 1.00 in certain cases, and states that the frontier State floor shall not be applied in a budget neutral manner. We codified these requirements in § 419.43(c)(2) and (c)(3) of our regulations. For the CY 2015 OPPS, we are proposing to implement this provision in the same manner as we have since CY 2011. That is, frontier State hospitals would receive a wage index of 1.00 if the otherwise applicable wage index (including reclassification, rural and imputed floor, and rural floor budget neutrality) is less than 1.00. Similar to our current policy for HOPDs that are affiliated with multi-campus hospital systems, the HOPD would receive a wage index based on the geographic location of the specific inpatient hospital with which it is associated. Therefore, if the associated hospital is located in a frontier State, the wage index adjustment applicable for the hospital would also apply for the affiliated HOPD. We refer readers to the following sections in the FY 2011 through FY 2014 IPPS/LTCH PPS final rules for discussions regarding this provision, including our methodology for identifying which areas meet the definition of frontier States as provided for in section 1886(d)(3)(E)(iii)(II) of the Act: For FY 2011, 75 FR 50160 through 50161; for FY 2012, 76 FR 51793, 51795, and 51825; for FY 2013, 77 FR 53369 through 53370; and for FY 2014, 78 FR 50590 through 50591. We also refer readers to the FY 2015 IPPS/LTCH PPS proposed rule (79 FR 28069) for discussion regarding this provision.

In addition to the changes required by the Affordable Care Act, we note that the proposed FY 2015 IPPS wage indexes continue to reflect a number of adjustments implemented over the past few years, including, but not limited to, reclassification of hospitals to different geographic areas, the rural and imputed floor provisions, an adjustment for occupational mix, and an adjustment to the wage index based on commuting patterns of employees (the out-migration adjustment). We refer readers to the FY 2015 IPPS/LTCH PPS proposed rule (79 FR 28054 through 28084) for a detailed discussion of all proposed changes to the FY 2015 IPPS wage indices. In addition, we refer readers to the CY 2005 OPPS final rule with comment period (69 FR 65842 through 65844) and subsequent OPPS rules for a detailed discussion of the history of these wage index adjustments as applied under the OPPS.

As discussed in the FY 2015 IPPS/LTCH PPS proposed rule (79 FR 28054 through 28055), the Office of Management and Budget (OMB) issued revisions to the current labor market area delineations on February 28, 2013, that included a number of significant changes such as new Core Based Statistical Areas (CBSAs), urban counties that become rural, rural counties that become urban, and existing CBSAs that are split apart (OMB Bulletin 13–01). This bulletin can be found at: *http://www.whitehouse.gov/sites/default/files/omb/bulletins/2013/b13–01.pdf*. As we stated in the FY 2014 IPPS/LTCH PPS final rule (78 FR 50586), in order to allow for sufficient time to assess the new revisions and their ramifications, we intended to propose changes to the IPPS wage index based on the newest CBSA delineations in the FY 2015 IPPS/LTCH PPS proposed rule. Similarly, in the CY 2014 OPPS/ASC final rule with comment period (78 FR 74951), we stated that we intended to propose changes in the OPPS, which uses the IPPS wage index, based on the new OMB delineations in this CY 2015 OPPS/ASC proposed rule, consistent with any proposals in the FY 2015 IPPS/LTCH PPS proposed rule. We refer readers to proposed changes based on the new OMB delineations in the FY 2015 IPPS/LTCH proposed rule at 79 FR 28054 through 28084.

In this proposed rule, we are proposing to use the proposed FY 2015 hospital IPPS wage index for urban and rural areas as the wage index for the OPPS hospital to determine the wage adjustments for the OPPS payment rate and the copayment standardized amount for CY 2015. (We refer readers to the FY 2015 IPPS/LTCH PPS proposed rule (79 FR 28054) and the proposed FY 2015 hospital wage index files posted on the CMS Web site.) We note that the proposed FY 2015 IPPS wage indexes reflect a number of proposed changes as a result of the new OMB delineations as well as a proposed 1-year extension of the imputed rural floor. The CY 2015 OPPS wage index (for hospitals paid under the IPPS and OPPS) would be the final FY 2015 IPPS wage index. Thus, any proposed adjustments, including the adjustments related to the new OMB delineations, that are finalized for the IPPS wage index would be reflected in the OPPS wage index. As stated earlier in this section, we continue to believe that using the IPPS wage index as the source of an adjustment factor for the OPPS is reasonable and logical, given the inseparable, subordinate status of the HOPD within the hospital overall. Therefore, we are not proposing to

change our current regulations, which require that we use the FY 2015 IPPS wage indexes for calculating OPPS payments in CY 2015.

Hospitals that are paid under the OPPS but not under the IPPS do not have a hospital wage index under the IPPS. Therefore, for non-IPPS hospitals paid under the OPPS, we assign the wage index that would be applicable if the hospital were paid under the IPPS, based on its geographic location and any applicable wage index adjustments. We are proposing to adopt the proposed wage index changes from the FY 2015 IPPS/LTCH PPS proposed rule for these hospitals. The following is a brief summary of the major proposed changes in the FY 2015 IPPS wage indexes and any adjustments that we are proposing to apply to these hospitals under the OPPS for CY 2015. We refer the reader to the FY 2015 IPPS/LTCH PPS proposed rule (79 FR 28054 through 28084) for a detailed discussion of the proposed changes to the wage indexes.

For CY 2015, we are proposing to continue our policy of allowing non-IPPS hospitals paid under the OPPS to qualify for the out-migration adjustment if they are located in a section 505 out-migration county (section 505 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173)). Applying this adjustment is consistent with our proposed policy of adopting IPPS wage index policies for hospitals paid under the OPPS. We note that, because non-IPPS hospitals cannot reclassify, they are eligible for the out-migration wage adjustment if they are located in a section 505 out-migration county. This is the same proposed out-migration adjustment policy that would apply if the hospital were paid under the IPPS. Table 4J from the FY 2015 IPPS/LTCH PPS proposed rule (available via the Internet on the CMS Web site at: *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/index.html*) identifies counties eligible for the out-migration adjustment and IPPS hospitals that would receive the adjustment for FY 2015.

As we have done in prior years, we are including Table 4J from the FY 2015 IPPS/LTCH PPS proposed rule as Addendum L to this proposed rule with the addition of non-IPPS hospitals that would receive the section 505 out-migration adjustment under the CY 2015 OPPS. Addendum L is available via the Internet on the CMS Web site.

In the FY 2015 IPPS/LTCH PPS proposed rule, we proposed to adopt the new OMB labor market area delineations issued by OMB in OMB Bulletin No. 13–01 on February 28, 2013, based on standards published on June 28, 2010 (75 FR 37246 through 37252) and the 2010 Census data to delineate labor market areas for purposes of the IPPS wage index. For IPPS wage index purposes, for hospitals that would be designated as rural under the new OMB labor market area delineations that currently are located in urban CBSAs, we generally proposed to assign them the urban wage index value of the CBSA in which they are physically located for FY 2014 for a period of 3 fiscal years (79 FR 28060 through 28061). To be consistent, we are proposing to apply the same policy to hospitals paid under the OPPS but not under the IPPS so that such hospitals would maintain the wage index of the CBSA in which they are physically located for FY 2014 for the next 3 calendar years. This proposed policy would impact six hospitals for purposes of OPPS payment.

We believe that adopting the new OMB labor market area delineations would create a more accurate wage index system, but we also recognize that implementing the new OMB delineations may cause some short-term instability in hospital payments. Therefore, similar to the policy we adopted in the FY 2005 IPPS final rule (69 FR 49033), in the FY 2015 IPPS/LTCH PPS proposed rule (79 FR 28062), we proposed a 1-year blended wage index for all hospitals that would experience any decrease in their actual payment wage index exclusively due to the proposed implementation of the new OMB delineations. We proposed that a post-reclassified wage index with the rural and imputed floors applied would be computed based on the hospital's FY 2014 CBSA (that is, using all of its FY 2014 constituent county/ies), and another post-reclassified wage index with the rural and imputed floors applied would be computed based on the hospital's new FY 2015 CBSA (that is, the FY 2015 constituent county/ies). We proposed to compare these two wage indexes. If the proposed FY 2015 wage index with FY 2015 CBSAs would be lower than the proposed FY 2015 wage index with FY 2014 CBSAs, we proposed that a blended wage index would be computed, consisting of 50 percent of each of the two wage indexes added together. We proposed that this blended wage index would be the hospital's wage index for FY 2015. For purposes of the OPPS, we also are proposing to apply this 50-percent transition blend to hospitals paid under the OPPS but not under the IPPS. We believe a 1-year, 50/50 blended wage index would mitigate the short-term instability and negative payment impacts due to the proposed implementation of the new OMB delineations, providing hospitals with a transition period during which they may adjust to their new geographic CBSA. We believe that a longer transition period would reduce the accuracy of the overall labor market area wage index system, and generally would not be warranted for hospitals moving from one urban geographic labor market area to another.

In addition, for the FY 2015 IPPS, we proposed to continue the extension of the imputed floor policy (both the original methodology and alternative methodology) for another year, through September 30, 2015 (79 FR 28068 through 28069). For purposes of the CY 2015 OPPS, we are also proposing to apply the imputed floor policy to hospitals paid under the OPPS but not under the IPPS.

For CMHCs, we are proposing to continue to calculate the wage index by using the post-reclassification IPPS wage index based on the CBSA where the CMHC is located. As with OPPS hospitals and for the same reasons, we are proposing to apply a 1-year, 50/50 blended wage index to CMHCs that would receive a lower wage index due to the new CBSA delineations. In addition, as with OPPS hospitals and for the same reasons, for CMHCs currently located in urban CBSAs that would be designated as rural under the new OMB labor market area delineations, we are proposing to maintain the urban wage index value of the CBSA in which they are physically located for CY 2014 for the next 3 calendar years. Consistent with our current policy, the wage index that applies to CMHCs includes both the imputed floor adjustment and the rural floor adjustment, but does not include the out-migration adjustment because that adjustment only applies to hospitals.

With the exception of the proposed out-migration wage adjustment table (Addendum L to this proposed rule, which is available via the Internet on the CMS Web site), which includes non-IPPS hospitals paid under the OPPS, we are not reprinting the proposed FY 2015 IPPS wage indexes referenced in this discussion of the wage index. We refer readers to the CMS Web site for the OPPS at: *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HospitalOutpatientPPS/index.html*. At this link, readers will find a link to the proposed FY 2015 IPPS wage index tables.

D. Proposed Statewide Average Default CCRs

In addition to using CCRs to estimate costs from charges on claims for ratesetting, CMS uses overall hospital-specific CCRs calculated from the hospital's most recent cost report to determine outlier payments, payments for pass-through devices, and monthly interim transitional corridor payments under the OPPS during the PPS year. MACs cannot calculate a CCR for some hospitals because there is no cost report available. For these hospitals, CMS uses the statewide average default CCRs to determine the payments mentioned above until a hospital's MAC is able to calculate the hospital's actual CCR from its most recently submitted Medicare cost report. These hospitals include, but are not limited to, hospitals that are new, have not accepted assignment of an existing hospital's provider agreement, and have not yet submitted a cost report. CMS also uses the statewide average default CCRs to determine payments for hospitals that appear to have a biased CCR (that is, the CCR falls outside the predetermined ceiling threshold for a valid CCR) or for hospitals in which the most recent cost report reflects an all-inclusive rate status (Medicare Claims Processing Manual (Pub. 100–04), Chapter 4, Section 10.11). In this proposed rule, we are proposing to update the default ratios for CY 2015 using the most recent cost report data. We discuss our policy for using default CCRs, including setting the ceiling threshold for a valid CCR, in the CY 2009 OPPS/ASC final rule with comment period (73 FR 68594 through 68599) in the context of our adoption of an outlier reconciliation policy for cost reports beginning on or after January 1, 2009.

For CY 2015, we are proposing to continue to use our standard methodology of calculating the statewide average default CCRs using the same hospital overall CCRs that we use to adjust charges to costs on claims data for setting the proposed CY 2015 OPPS relative payment weights. Table 12 below lists the proposed CY 2015 default urban and rural CCRs by State and compares them to last year's default CCRs. These proposed CCRs represent the ratio of total costs to total charges for those cost centers relevant to outpatient services from each hospital's most recently submitted cost report, weighted by Medicare Part B charges. We also are proposing to adjust ratios from submitted cost reports to reflect the final settled status by applying the differential between settled to submitted overall CCRs for the cost centers relevant to outpatient services from the most recent pair of final settled and submitted cost reports. We then are proposing to weight each hospital's CCR by the volume of separately paid line-items on hospital claims corresponding to the year of the majority of cost reports used to calculate the overall CCRs. We refer readers to the CY 2008 OPPS/ASC final rule with comment period (72 FR 66680 through 66682) and prior OPPS rules for a more detailed discussion of our established methodology for calculating the statewide average default CCRs, including the hospitals used in our calculations and our trimming criteria.

For Maryland, we used an overall weighted average CCR for all hospitals in the Nation as a substitute for Maryland CCRs. Few hospitals in Maryland are eligible to receive payment under the OPPS, which limits the data available to calculate an accurate and representative CCR. The weighted CCR is used for Maryland because it takes into account each hospital's volume, rather than treating each hospital equally. We refer readers to the CY 2005 OPPS final rule with comment period (69 FR 65822) for further discussion and the rationale for our longstanding policy of using the national average CCR for Maryland. In general, observed changes in the statewide average default CCRs between CY 2014 and CY 2015 are modest and the few significant changes are associated with areas that have a small number of hospitals.

Table 12 below lists the proposed statewide average default CCRs for OPPS services furnished on or after January 1, 2015.

TABLE 12—PROPOSED CY 2015 STATEWIDE AVERAGE CCRS

State	Urban/rural	Proposed CY 2015 default CCR	Previous default CCR (CY 2014 OPPS final rule)
ALASKA	RURAL	0.463	0.473
ALASKA	URBAN	0.301	0.302
ALABAMA	RURAL	0.246	0.229
ALABAMA	URBAN	0.189	0.188
ARKANSAS	RURAL	0.233	0.244
ARKANSAS	URBAN	0.237	0.220
ARIZONA	RURAL	0.232	0.254
ARIZONA	URBAN	0.186	0.182
CALIFORNIA	RURAL	0.192	0.190
CALIFORNIA	URBAN	0.203	0.206
COLORADO	RURAL	0.426	0.393
COLORADO	URBAN	0.223	0.221
CONNECTICUT	RURAL	0.356	0.343
CONNECTICUT	URBAN	0.277	0.276
DISTRICT OF COLUMBIA	URBAN	0.295	0.279
DELAWARE	URBAN	0.314	0.356
FLORIDA	RURAL	0.185	0.160
FLORIDA	URBAN	0.160	0.160
GEORGIA	RURAL	0.254	0.260
GEORGIA	URBAN	0.211	0.205
HAWAII	RURAL	0.341	0.345
HAWAII	URBAN	0.300	0.298
IOWA	RURAL	0.323	0.308
IOWA	URBAN	0.270	0.266
IDAHO	RURAL	0.361	0.359

TABLE 12—PROPOSED CY 2015 STATEWIDE AVERAGE CCRs—Continued

State	Urban/rural	Proposed CY 2015 default CCR	Previous default CCR (CY 2014 OPPS final rule)
IDAHO	URBAN	0.488	0.478
ILLINOIS	RURAL	0.259	0.252
ILLINOIS	URBAN	0.218	0.222
INDIANA	RURAL	0.348	0.326
INDIANA	URBAN	0.284	0.288
KANSAS	RURAL	0.308	0.313
KANSAS	URBAN	0.233	0.239
KENTUCKY	RURAL	0.231	0.221
KENTUCKY	URBAN	0.220	0.225
LOUISIANA	RURAL	0.271	0.257
LOUISIANA	URBAN	0.212	0.222
MARYLAND	RURAL	0.292	0.283
MARYLAND	URBAN	0.249	0.248
MASSACHUSETTS	RURAL	0.300	0.395
MASSACHUSETTS	URBAN	0.330	0.336
MAINE	RURAL	0.434	0.452
MAINE	URBAN	0.426	0.438
MICHIGAN	RURAL	0.339	0.341
MICHIGAN	URBAN	0.322	0.322
MINNESOTA	RURAL	0.469	0.462
MINNESOTA	URBAN	0.357	0.349
MISSOURI	RURAL	0.277	0.263
MISSOURI	URBAN	0.274	0.280
MISSISSIPPI	RURAL	0.237	0.233
MISSISSIPPI	URBAN	0.188	0.200
MONTANA	RURAL	0.520	0.481
MONTANA	URBAN	0.379	0.384
NORTH CAROLINA	RURAL	0.255	0.258
NORTH CAROLINA	URBAN	0.256	0.256
NORTH DAKOTA	RURAL	0.660	0.661
NORTH DAKOTA	URBAN	0.400	0.400
NEBRASKA	RURAL	0.308	0.323
NEBRASKA	URBAN	0.257	0.243
NEW HAMPSHIRE	RURAL	0.272	0.326
NEW HAMPSHIRE	URBAN	0.288	0.287
NEW JERSEY	URBAN	0.207	0.213
NEW MEXICO	RURAL	0.307	0.291
NEW MEXICO	URBAN	0.300	0.304
NEVADA	RURAL	0.244	0.220
NEVADA	URBAN	0.172	0.154
NEW YORK	RURAL	0.332	0.345
NEW YORK	URBAN	0.348	0.351
OHIO	RURAL	0.317	0.327
OHIO	URBAN	0.227	0.232
OKLAHOMA	RURAL	0.281	0.258
OKLAHOMA	URBAN	0.210	0.205
OREGON	RURAL	0.299	0.311
OREGON	URBAN	0.358	0.357
PENNSYLVANIA	RURAL	0.285	0.257
PENNSYLVANIA	URBAN	0.198	0.198
PUERTO RICO	URBAN	0.583	0.614
RHODE ISLAND	URBAN	0.292	0.295
SOUTH CAROLINA	RURAL	0.195	0.190
SOUTH CAROLINA	URBAN	0.199	0.203
SOUTH DAKOTA	RURAL	0.288	0.287
SOUTH DAKOTA	URBAN	0.214	0.219
TENNESSEE	RURAL	0.207	0.207
TENNESSEE	URBAN	0.189	0.190
TEXAS	RURAL	0.247	0.235
TEXAS	URBAN	0.206	0.197
UTAH	RURAL	0.474	0.474
UTAH	URBAN	0.340	0.334
VIRGINIA	RURAL	0.216	0.226
VIRGINIA	URBAN	0.241	0.238
VERMONT	RURAL	0.446	0.456
VERMONT	URBAN	0.401	0.397
WASHINGTON	RURAL	0.300	0.330
WASHINGTON	URBAN	0.365	0.360

TABLE 12—PROPOSED CY 2015 STATEWIDE AVERAGE CCRs—Continued

State	Urban/rural	Proposed CY 2015 default CCR	Previous default CCR (CY 2014 OPPS final rule)
WISCONSIN	RURAL	0.335	0.344
WISCONSIN	URBAN	0.298	0.291
WEST VIRGINIA	RURAL	0.320	0.283
WEST VIRGINIA	URBAN	0.319	0.319
WYOMING	RURAL	0.403	0.400
WYOMING	URBAN	0.262	0.269

E. Proposed Adjustment for Rural SCHs and EACHs Under Section 1833(t)(13)(B) of the Act

In the CY 2006 OPPS final rule with comment period (70 FR 68556), we finalized a payment increase for rural SCHs of 7.1 percent for all services and procedures paid under the OPPS, excluding drugs, biologicals, brachytherapy sources, and devices paid under the pass-through payment policy in accordance with section 1833(t)(13)(B) of the Act, as added by section 411 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173). Section 1833(t)(13) of the Act provided the Secretary the authority to make an adjustment to OPPS payments for rural hospitals, effective January 1, 2006, if justified by a study of the difference in costs by APC between hospitals in rural areas and hospitals in urban areas. Our analysis showed a difference in costs for rural SCHs. Therefore, for the CY 2006 OPPS, we finalized a payment adjustment for rural SCHs of 7.1 percent for all services and procedures paid under the OPPS, excluding separately payable drugs and biologicals, brachytherapy sources, and devices paid under the pass-through payment policy, in accordance with section 1833(t)(13)(B) of the Act.

In the CY 2007 OPPS/ASC final rule with comment period (71 FR 68010 and 68227), for purposes of receiving this rural adjustment, we revised § 419.43(g) of the regulations to clarify that EACHs also are eligible to receive the rural SCH adjustment, assuming these entities otherwise meet the rural adjustment criteria. Currently, two hospitals are classified as EACHs, and as of CY 1998, under section 4201(c) of Public Law 105–33, a hospital can no longer become newly classified as an EACH.

This adjustment for rural SCHs is budget neutral and applied before calculating outlier payments and copayments. We stated in the CY 2006 OPPS final rule with comment period (70 FR 68560) that we would not reestablish the adjustment amount on an annual basis, but we may review the adjustment in the future and, if appropriate, would revise the adjustment. We provided the same 7.1 percent adjustment to rural SCHs, including EACHs, again in CYs 2008 through 2014. Further, in the CY 2009 OPPS/ASC final rule with comment period (73 FR 68590), we updated the regulations at § 419.43(g)(4) to specify, in general terms, that items paid at charges adjusted to costs by application of a hospital-specific CCR are excluded from the 7.1 percent payment adjustment.

For the CY 2015 OPPS, we are proposing to continue our policy of a 7.1 percent payment adjustment that is done in a budget neutral manner for rural SCHs, including EACHs, for all services and procedures paid under the OPPS, excluding separately payable drugs and biologicals, devices paid under the pass-through payment policy, and items paid at charges reduced to costs.

F. Proposed OPPS Payment to Certain Cancer Hospitals Described by Section 1886(d)(1)(B)(v) of the Act

1. Background

Since the inception of the OPPS, which was authorized by the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33), Medicare has paid the 11 hospitals that meet the criteria for cancer hospitals identified in section 1886(d)(1)(B)(v) of the Act under the OPPS for covered outpatient hospital services. These cancer hospitals are exempted from payment under the IPPS. With the Medicare, Medicaid and SCHIP Balanced Budget Refinement Act of 1999 (Pub. L. 106–113), Congress established section 1833(t)(7) of the Act, ''Transitional Adjustment to Limit Decline in Payment,'' to determine cancer and children's hospitals OPPS payments based on their pre-BBA payment amount (often referred to as ''held harmless'').

As required under section 1833(t)(7)(D)(ii) of the Act, a cancer hospital receives the full amount of the difference between payments for covered outpatient services under the OPPS and a ''pre-BBA amount.'' That is, cancer hospitals are permanently held harmless to their ''pre-BBA amount,'' and they receive transitional outpatient payments (TOPs) or hold harmless payments to ensure that they do not receive a payment that is lower under the OPPS than the payment they would have received before implementation of the OPPS, as set forth in section 1833(t)(7)(F) of the Act. The ''pre-BBA amount'' is the product of the hospital's reasonable costs for covered outpatient services occurring in the current year and the base payment-to-cost ratio (PCR) for the hospital defined in section 1833(t)(7)(F)(ii) of the Act. The ''pre-BBA amount,'' including the determination of the base PCR, are defined at 42 CFR 419.70(f). TOPs are calculated on Worksheet E, Part B, of the Hospital Cost Report or the Hospital Health Care Complex Cost Report (Form CMS–2552–96 and Form CMS–2552–10, respectively) as applicable each year. Section 1833(t)(7)(I) of the Act exempts TOPs from budget neutrality calculations.

Section 3138 of the Affordable Care Act amended section 1833(t) of the Act by adding a new paragraph (18), which instructs the Secretary to conduct a study to determine if, under the OPPS, outpatient costs incurred by cancer hospitals described in section 1886(d)(1)(B)(v) of the Act with respect to APC groups exceed outpatient costs incurred by other hospitals furnishing services under section 1833(t) of the Act, as determined appropriate by the Secretary. Section 1833(t)(18)(A) of the Act requires the Secretary to take into consideration the cost of drugs and biologicals incurred by cancer and other hospitals. Section 1833(t)(18)(B) of the Act provides that if the Secretary determines that cancer hospitals' costs are greater than other hospitals' costs, the Secretary shall provide an

appropriate adjustment under section 1833(t)(2)(E) of the Act to reflect these higher costs. In 2011, after conducting the study required by section 1833(t)(18)(A) of the Act, we determined that outpatient costs incurred by the 11 specified cancer hospitals were greater than the costs incurred by other OPPS hospitals. For a complete discussion regarding the cancer hospital cost study, we refer readers to the CY 2012 OPPS/ASC final rule with comment period (76 FR 74200 through 74201).

Based on these findings, we finalized a policy to provide a payment adjustment to the 11 specified cancer hospitals that reflects their higher outpatient costs as discussed in the CY 2012 OPPS/ASC final rule with comment period (76 FR 74202 through 74206). Specifically, we adopted a policy to provide additional payments to the cancer hospitals so that each cancer hospital's final PCR for services provided in a given calendar year is equal to the weighted average PCR (which we refer to as the ''target PCR'') for other hospitals paid under the OPPS. The target PCR is set in advance of the calendar year and is calculated using the most recent submitted or settled cost report data that are available at the time of final rulemaking for the calendar year. The amount of the payment adjustment is made on an aggregate basis at cost report settlement. We note that the changes made by section 1833(t)(18) of the Act do not affect the existing statutory provisions that provide for TOPs for cancer hospitals. The TOPs are assessed as usual after all payments, including the cancer hospital payment adjustment, have been made for a cost reporting period. For CYs 2012 and 2013, the target PCR for purposes of the cancer hospital payment adjustment was 0.91. For CY 2014, the target PCR for purposes of the cancer hospital payment adjustment was 0.89.

2. Proposed Payment Adjustment for Certain Cancer Hospitals for CY 2015

For CY 2015, we are proposing to continue our policy to provide additional payments to cancer hospitals so that each cancer hospital's final PCR is equal to the weighted average PCR (or ''target PCR'') for the other OPPS hospitals using the most recent submitted or settled cost report data that are available at the time of the development of this proposed rule. To calculate the proposed CY 2015 target PCR, we used the same extract of cost report data from HCRIS, as discussed in section II.A. of this proposed rule, used to estimate costs for the CY 2015 OPPS. Using these cost report data, we included data from Worksheet E, Part B, for each hospital, using data from each hospital's most recent cost report, whether as submitted or settled.

We then limited the dataset to the hospitals with CY 2013 claims data that we used to model the impact of the proposed CY 2015 APC relative payment weights (3,881 hospitals) because it is appropriate to use the same set of hospitals that we are using to calibrate the modeled CY 2015 OPPS. The cost report data for the hospitals in this dataset were from cost report periods with fiscal year ends ranging from 2012 to 2013. We then removed the cost report data of the 47 hospitals located in Puerto Rico from our dataset because we do not believe that their cost structure reflects the costs of most hospitals paid under the OPPS and, therefore, their inclusion may bias the calculation of hospital-weighted statistics. We also removed the cost report data of 27 hospitals because these hospitals had cost report data that were not complete (missing aggregate OPPS payments, missing aggregate cost data, or missing both), so that all cost reports in the study would have both the payment and cost data necessary to calculate a PCR for each hospital, leading to a proposed analytic file of 3,807 hospitals with cost report data.

Using this smaller dataset of cost report data, we estimated that, on average, the OPPS payments to other hospitals furnishing services under the OPPS are approximately 89 percent of reasonable cost (weighted average PCR of 0.89). Therefore, we are proposing that the payment amount associated with the cancer hospital payment adjustment to be determined at cost report settlement would be the additional payment needed to result in a proposed target PCR equal to 0.89 for each cancer hospital.

Table 13 below indicates the estimated percentage increase in OPPS payments to each cancer hospital for CY 2015 due to the cancer hospital payment adjustment policy. The actual amount of the CY 2015 cancer hospital payment adjustment for each cancer hospital will be determined at cost report settlement and will depend on each hospital's CY 2015 payments and costs. We note that the changes made by section 1833(t)(18) of the Act do not affect the existing statutory provisions that provide for TOPs for cancer hospitals. The TOPs will be assessed as usual after all payments, including the cancer hospital payment adjustment, have been made for a cost reporting period.

TABLE 13—ESTIMATED CY 2015 HOSPITAL-SPECIFIC PAYMENT ADJUSTMENT FOR CANCER HOSPITALS TO BE PROVIDED AT COST REPORT SETTLEMENT

Provider No.	Hospital name	Estimated percentage increase in OPPS payments for CY 2015
050146	City of Hope Comprehensive Cancer Center	15.5
050660	USC Norris Cancer Hospital	22.0
100079	Sylvester Comprehensive Cancer Center	15.8
100271	H. Lee Moffitt Cancer Center & Research Institute	19.9
220162	Dana-Farber Cancer Institute	47.6
330154	Memorial Sloan-Kettering Cancer Center	45.7
330354	Roswell Park Cancer Institute	16.6
360242	James Cancer Hospital & Solove Research Institute	35.1
390196	Fox Chase Cancer Center	18.5
450076	M.D. Anderson Cancer Center	60.1
500138	Seattle Cancer Care Alliance	53.3

G. Proposed Hospital Outpatient Outlier Payments

1. Background

The OPPS provides outlier payments to hospitals to help mitigate the financial risk associated with high-cost and complex procedures, where a very costly service could present a hospital with significant financial loss. As explained in the CY 2014 OPPS/ASC final rule with comment period (78 FR 74958 through 74960), we set our projected target for aggregate outlier payments at 1.0 percent of the estimated aggregate total payments under the OPPS for the prospective year. Outlier payments are provided on a service-by-service basis when the cost of a service exceeds the APC payment amount multiplier threshold (the APC payment amount multiplied by a certain amount) as well as the APC payment amount plus a fixed-dollar amount threshold (the APC payment plus a certain amount of dollars). In CY 2014, the outlier threshold was met when the hospital's cost of furnishing a service exceeded 1.75 times (the multiplier threshold) the APC payment amount and exceeded the APC payment amount plus $2,900 (the fixed-dollar amount threshold). If the cost of a service exceeds both the multiplier threshold and the fixed-dollar threshold, the outlier payment is calculated as 50 percent of the amount by which the cost of furnishing the service exceeds 1.75 times the APC payment amount. Beginning with CY 2009 payments, outlier payments are subject to a reconciliation process similar to the IPPS outlier reconciliation process for cost reports, as discussed in the CY 2009 OPPS/ASC final rule with comment period (73 FR 68594 through 68599).

It has been our policy to report the actual amount of outlier payments as a percent of total spending in the claims being used to model the proposed OPPS. Our current estimate of total outlier payments as a percent of total CY 2013 OPPS payment, using available CY 2013 claims and the revised OPPS expenditure estimate for the FY 2015 President's Budget, is approximately 1.2 percent of the total aggregated OPPS payments. Therefore, for CY 2013, we estimate that we paid 0.2 percent above the CY 2013 outlier target of 1.0 percent of total aggregated OPPS payments.

Using CY 2013 claims data and CY 2014 payment rates, we currently estimate that the aggregate outlier payments for CY 2014 will be approximately 0.9 percent of the total CY 2014 OPPS payments. The difference between 0.9 percent and the 1.0 percent target is reflected in the regulatory impact analysis in section XXII. of this proposed rule. We provide estimated CY 2015 outlier payments for hospitals and CMHCs with claims included in the claims data that we used to model impacts in the Hospital–Specific Impacts—Provider-Specific Data file on the CMS Web site at: *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HospitalOutpatientPPS/index.html*.

2. Proposed Outlier Calculation

For CY 2015, we are proposing to continue our policy of estimating outlier payments to be 1.0 percent of the estimated aggregate total payments under the OPPS. We are proposing that a portion of that 1.0 percent, an amount equal to 0.47 percent of outlier payments (or 0.0047 percent of total OPPS payments) would be allocated to CMHCs for PHP outlier payments. This is the amount of estimated outlier payments that would result from the proposed CMHC outlier threshold as a proportion of total estimated OPPS outlier payments. As discussed in section VIII.D. of this proposed rule, for CMHCs, we are proposing to continue our longstanding policy that if a CMHC's cost for partial hospitalization services, paid under either APC 0172 (Level I Partial Hospitalization (3 services) for CMHCs) or APC 0173 (Level II Partial Hospitalization (4 or more services) for CMHCs), exceeds 3.40 times the payment rate for APC 0173, the outlier payment would be calculated as 50 percent of the amount by which the cost exceeds 3.40 times the APC 0173 payment rate. For further discussion of CMHC outlier payments, we refer readers to section VIII.D. of this proposed rule.

To ensure that the estimated CY 2015 aggregate outlier payments would equal 1.0 percent of estimated aggregate total payments under the OPPS, we are proposing that the hospital outlier threshold be set so that outlier payments would be triggered when a hospital's cost of furnishing a service exceeds 1.75 times the APC payment amount and exceeds the APC payment amount plus $3,100.

We calculated the proposed fixed-dollar threshold of $3,100 using the standard methodology most recently used for CY 2014 (78 FR 74959 through 74960). For purposes of estimating outlier payments for this proposed rule, we used the hospital-specific overall ancillary CCRs available in the April 2014 update to the Outpatient Provider-Specific File (OPSF). The OPSF contains provider-specific data, such as the most current CCRs, which are maintained by the Medicare contractors and used by the OPPS Pricer to pay claims. The claims that we use to model each OPPS update lag by 2 years.

In order to estimate the CY 2015 hospital outlier payments for this proposed rule, we inflated the charges on the CY 2013 claims using the same inflation factor of 1.1146 that we used to estimate the IPPS fixed-dollar outlier threshold for the FY 2015 IPPS/LTCH PPS proposed rule (79 FR 28321). We used an inflation factor of 1.0557 to estimate CY 2014 charges from the CY 2013 charges reported on CY 2013 claims. The methodology for determining this charge inflation factor is discussed in the FY 2015 IPPS/LTCH PPS proposed rule (79 FR 28321). As we stated in the CY 2005 OPPS final rule with comment period (69 FR 65845), we believe that the use of these charge inflation factors are appropriate for the OPPS because, with the exception of the inpatient routine service cost centers, hospitals use the same ancillary and outpatient cost centers to capture costs and charges for inpatient and outpatient services.

As noted in the CY 2007 OPPS/ASC final rule with comment period (71 FR 68011), we are concerned that we could systematically overestimate the OPPS hospital outlier threshold if we did not apply a CCR inflation adjustment factor. Therefore, we are proposing to apply the same CCR inflation adjustment factor that we are proposing to apply for the FY 2015 IPPS outlier calculation to the CCRs used to simulate the proposed CY 2015 OPPS outlier payments to determine the fixed-dollar threshold. Specifically, for CY 2015, we are proposing to apply an adjustment factor of 0.9813 to the CCRs that were in the April 2014 OPSF to trend them forward from CY 2014 to CY 2015. The methodology for calculating this proposed adjustment was discussed in the FY 2015 IPPS/LTCH PPS proposed rule (79 FR 28321).

To model hospital outlier payments for this proposed rule, we applied the overall CCRs from the April 2014 OPSF file after adjustment (using the proposed CCR inflation adjustment factor of 0.9813 to approximate CY 2015 CCRs) to charges on CY 2013 claims that were adjusted (using the proposed charge inflation factor of 1.1146 to approximate CY 2015 charges). We simulated aggregated CY 2015 hospital outlier payments using these costs for several different fixed-dollar thresholds, holding the 1.75 multiple threshold constant and assuming that outlier payments would continue to be made at 50 percent of the amount by which the cost of furnishing the service would exceed 1.75 times the APC payment

amount, until the total outlier payments equaled 1.0 percent of aggregated estimated total CY 2015 OPPS payments. We estimated that a proposed fixed-dollar threshold of $3,100, combined with the proposed multiple threshold of 1.75 times the APC payment rate, would allocate 1.0 percent of aggregated total OPPS payments to outlier payments. For CMHCs, we are proposing that, if a CMHC's cost for partial hospitalization services, paid under either APC 0172 or APC 0173, exceeds 3.40 times the payment rate for APC 0173, the outlier payment would be calculated as 50 percent of the amount by which the cost exceeds 3.40 times the APC 0173 payment rate.

Section 1833(t)(17)(A) of the Act, which applies to hospitals as defined under section 1886(d)(1)(B) of the Act, requires that hospitals that fail to report data required for the quality measures selected by the Secretary, in the form and manner required by the Secretary under 1833(t)(17)(B) of the Act, incur a 2.0 percentage point reduction to their OPD fee schedule increase factor, that is, the annual payment update factor. The application of a reduced OPD fee schedule increase factor results in reduced national unadjusted payment rates that will apply to certain outpatient items and services furnished by hospitals that are required to report outpatient quality data and that fail to meet the Hospital OQR Program requirements. For hospitals that fail to meet the Hospital OQR Program requirements, we are proposing to continue the policy that we implemented in CY 2010 that the hospitals' costs will be compared to the reduced payments for purposes of outlier eligibility and payment calculation. For more information on the Hospital OQR Program, we refer readers to section XIII. of this proposed rule.

H. Proposed Calculation of an Adjusted Medicare Payment from the National Unadjusted Medicare Payment

The basic methodology for determining prospective payment rates for HOPD services under the OPPS is set forth in existing regulations at 42 CFR Part 419, Subparts C and D. For this CY 2015 OPPS/ASC proposed rule, the payment rate for most services and procedures for which payment is made under the OPPS is the product of the conversion factor calculated in accordance with section II.B. of this proposed rule and the relative payment weight determined under section II.A. of this proposed rule. Therefore, the proposed national unadjusted payment rate for most APCs contained in Addendum A to this proposed rule (which is available via the Internet on the CMS Web site) and for most HCPCS codes to which separate payment under the OPPS has been assigned in Addendum B to this proposed rule (which is available via the Internet on the CMS Web site) was calculated by multiplying the proposed CY 2015 scaled weight for the APC by the proposed CY 2015 conversion factor.

We note that section 1833(t)(17) of the Act, which applies to hospitals as defined under section 1886(d)(1)(B) of the Act, requires that hospitals that fail to submit data required to be submitted on quality measures selected by the Secretary, in the form and manner and at a time specified by the Secretary, incur a reduction of 2.0 percentage points to their OPD fee schedule increase factor, that is, the annual payment update factor. The application of a reduced OPD fee schedule increase factor results in reduced national unadjusted payment rates that apply to certain outpatient items and services provided by hospitals that are required to report outpatient quality data and that fail to meet the Hospital OQR Program (formerly referred to as the Hospital Outpatient Quality Data Reporting Program (HOP QDRP)) requirements. For further discussion of the payment reduction for hospitals that fail to meet the requirements of the Hospital OQR Program, we refer readers to section XIII. of this proposed rule.

We demonstrate in the steps below how to determine the APC payments that will be made in a calendar year under the OPPS to a hospital that fulfills the Hospital OQR Program requirements and to a hospital that fails to meet the Hospital OQR Program requirements for a service that has any of the following status indicator assignments: ''J1,'' ''P,'' ''Q1,'' ''Q2,'' ''Q3,'' ''R,'' ''S,'' ''T,'' ''U,'' or ''V,'' (as defined in Addendum D1 to this proposed rule), in a circumstance in which the multiple procedure discount does not apply, the procedure is not bilateral, and conditionally packaged services (status indicator of ''Q1'' and ''Q2'') qualify for separate payment. We note that, although blood and blood products with status indicator ''R'' and brachytherapy sources with status indicator ''U'' are not subject to wage adjustment, they are subject to reduced payments when a hospital fails to meet the Hospital OQR Program requirements. We note that we are also proposing to create new status indicator ''J1'' to reflect the proposed comprehensive APCs discussed in section II.A.2.e. of this proposed rule. We also note that we are proposing to delete status indicator ''X'' as part of the CY 2015 packaging proposal for ancillary services, discussed in section II.A.3. of this proposed rule.

Individual providers interested in calculating the payment amount that they would receive for a specific service from the national unadjusted payment rates presented in Addenda A and B to this proposed rule (which are available via the Internet on the CMS Web site) should follow the formulas presented in the following steps. For purposes of the payment calculations below, we refer to the proposed national unadjusted payment rate for hospitals that meet the requirements of the Hospital OQR Program as the ''full'' national unadjusted payment rate. We refer to the proposed national unadjusted payment rate for hospitals that fail to meet the requirements of the Hospital OQR Program as the ''reduced'' national unadjusted payment rate. The reduced national unadjusted payment rate is calculated by multiplying the proposed reporting ratio of 0.980 times the ''full'' national unadjusted payment rate. The national unadjusted payment rate used in the calculations below is either the full national unadjusted payment rate or the reduced national unadjusted payment rate, depending on whether the hospital met its Hospital OQR Program requirements in order to receive the proposed full CY 2015 OPPS fee schedule increase factor of 2.1 percent.

Step 1. Calculate 60 percent (the labor-related portion) of the national unadjusted payment rate. Since the initial implementation of the OPPS, we have used 60 percent to represent our estimate of that portion of costs attributable, on average, to labor. We refer readers to the April 7, 2000 OPPS final rule with comment period (65 FR 18496 through 18497) for a detailed discussion of how we derived this percentage. During our regression analysis for the payment adjustment for rural hospitals in the CY 2006 OPPS final rule with comment period (70 FR 68553), we confirmed that this labor-related share for hospital outpatient services is appropriate.

The formula below is a mathematical representation of Step 1 and identifies the labor-related portion of a specific payment rate for a specific service.

X is the labor-related portion of the national unadjusted payment rate.

$X = .60 * (\text{national unadjusted payment rate})$.

Step 2. Determine the wage index area in which the hospital is located and identify the wage index level that applies to the specific hospital. We note that under the proposed CY 2015 OPPS policy for transitioning wage indexes

into the new OMB labor market area delineations, a hold harmless policy for the wage index may apply, as discussed in section II.C. of this proposed rule. The wage index values assigned to each area reflect the geographic statistical areas (which are based upon OMB standards) to which hospitals are assigned for FY 2015 under the IPPS, reclassifications through the MGCRB, section 1886(d)(8)(B) ''Lugar'' hospitals, reclassifications under section 1886(d)(8)(E) of the Act, as defined in § 412.103 of the regulations, and hospitals designated as urban under section 601(g) of Pub. L. 98–21. (For further discussion of the proposed changes to the FY 2015 IPPS wage indices, as applied to the CY 2015 OPPS, we refer readers to section II.C. of this proposed rule.) We are proposing to continue to apply a wage index floor of 1.00 to frontier States, in accordance with section 10324 of the Affordable Care Act of 2010.

Step 3. Adjust the wage index of hospitals located in certain qualifying counties that have a relatively high percentage of hospital employees who reside in the county, but who work in a different county with a higher wage index, in accordance with section 505 of Public Law 108–173. Addendum L to this proposed rule (which is available via the Internet on the CMS Web site) contains the qualifying counties and the proposed associated wage index increase developed for the FY 2015 IPPS and listed as Table 4J in the FY 2015 IPPS/LTCH PPS proposed rule and available via the Internet on the CMS Web site at: *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/index.html*. This step is to be followed only if the hospital is not reclassified or redesignated under section 1886(d)(8) or section 1886(d)(10) of the Act.

Step 4. Multiply the applicable wage index determined under Steps 2 and 3 by the amount determined under Step 1 that represents the labor-related portion of the national unadjusted payment rate.

The formula below is a mathematical representation of Step 4 and adjusts the labor-related portion of the national unadjusted payment rate for the specific service by the wage index.

X_a is the labor-related portion of the national unadjusted payment rate (wage adjusted).

X_a = .60 * (national unadjusted payment rate) * applicable wage index.

Step 5. Calculate 40 percent (the nonlabor-related portion) of the national unadjusted payment rate and add that amount to the resulting product of Step 4. The result is the wage index adjusted payment rate for the relevant wage index area.

The formula below is a mathematical representation of Step 5 and calculates the remaining portion of the national payment rate, the amount not attributable to labor, and the adjusted payment for the specific service.

Y is the nonlabor-related portion of the national unadjusted payment rate.

Y = .40 * (national unadjusted payment rate).

Adjusted Medicare Payment = $Y + X_a$

Step 6. If a provider is an SCH, set forth in the regulations at § 412.92, or an EACH, which is considered to be an SCH under section 1886(d)(5)(D)(iii)(III) of the Act, and located in a rural area, as defined in § 412.64(b), or is treated as being located in a rural area under § 412.103, multiply the wage index adjusted payment rate by 1.071 to calculate the total payment.

The formula below is a mathematical representation of Step 6 and applies the rural adjustment for rural SCHs.

Adjusted Medicare Payment (SCH or EACH) = Adjusted Medicare Payment * 1.071.

We have provided examples below of the calculation of both the proposed full and reduced national unadjusted payment rates that would apply to certain outpatient items and services performed by hospitals that meet and that fail to meet the Hospital OQR Program requirements, using the steps outlined above. For purposes of this example, we used a provider that is located in Brooklyn, New York that is assigned to CBSA 35614. This provider bills one service that is assigned to APC 0019 (Level I Excision/Biopsy). The proposed CY 2015 full national unadjusted payment rate for APC 0019 is approximately $380.32. The proposed reduced national unadjusted payment rate for APC 0019 for a hospital that fails to meet the Hospital OQR Program requirements is approximately $372.71. This proposed reduced rate is calculated by multiplying the proposed reporting ratio of 0.980 by the full unadjusted payment rate for APC 0019.

The proposed FY 2015 wage index for a provider located in CBSA 35614 in New York is 1.3014. This is based on the proposed 1-year 50/50 transition blend between the wage index under the old CBSA 35644 (1.3147) and the wage index under the new CBSA 35614 (1.2881). The labor-related portion of the proposed full national unadjusted payment is approximately $296.97 (.60 * $380.32 * 1.3014). The labor-related portion of the proposed reduced national unadjusted payment is approximately $291.03 (.60 * $372.71 * 1.3014). The nonlabor-related portion of the proposed full national unadjusted payment is approximately $152.13 (.40 * $380.32). The nonlabor-related portion of the proposed reduced national unadjusted payment is approximately $149.08 (40 * $372.71). The sum of the labor-related and nonlabor-related portions of the proposed full national adjusted payment is approximately $449.10 ($296.97 + $152.13). The sum of the proposed reduced national adjusted payment is approximately $440.11 ($291.03 + $149.08).

I. Proposed Beneficiary Copayments

1. Background

Section 1833(t)(3)(B) of the Act requires the Secretary to set rules for determining the unadjusted copayment amounts to be paid by beneficiaries for covered OPD services. Section 1833(t)(8)(C)(ii) of the Act specifies that the Secretary must reduce the national unadjusted copayment amount for a covered OPD service (or group of such services) furnished in a year in a manner so that the effective copayment rate (determined on a national unadjusted basis) for that service in the year does not exceed a specified percentage. As specified in section 1833(t)(8)(C)(ii)(V) of the Act, the effective copayment rate for a covered OPD service paid under the OPPS in CY 2006, and in calendar years thereafter, shall not exceed 40 percent of the APC payment rate.

Section 1833(t)(3)(B)(ii) of the Act provides that, for a covered OPD service (or group of such services) furnished in a year, the national unadjusted copayment amount cannot be less than 20 percent of the OPD fee schedule amount. However, section 1833(t)(8)(C)(i) of the Act limits the amount of beneficiary copayment that may be collected for a procedure performed in a year to the amount of the inpatient hospital deductible for that year.

Section 4104 of the Affordable Care Act eliminated the Part B coinsurance for preventive services furnished on and after January 1, 2011, that meet certain requirements, including flexible sigmoidoscopies and screening colonoscopies, and waived the Part B deductible for screening colonoscopies that become diagnostic during the procedure. Our discussion of the changes made by the Affordable Care Act with regard to copayments for preventive services furnished on and after January 1, 2011, may be found in section XII.B. of the CY 2011 OPPS/ASC final rule with comment period (75 FR 72013).

2. Proposed OPPS Copayment Policy

For CY 2015, we are proposing to determine copayment amounts for new and revised APCs using the same methodology that we implemented beginning in CY 2004. (We refer readers to the November 7, 2003 OPPS final rule with comment period (68 FR 63458).) In addition, we are proposing to use the same standard rounding principles that we have historically used in instances where the application of our standard copayment methodology would result in a copayment amount that is less than 20 percent and cannot be rounded, under standard rounding principles, to 20 percent. (We refer readers to the CY 2008 OPPS/ASC final rule with comment period (72 FR 66687) in which we discuss our rationale for applying these rounding principles.) The proposed national unadjusted copayment amounts for services payable under the OPPS that would be effective January 1, 2015, are shown in Addenda A and B to this proposed rule (which are available via the Internet on the CMS Web site). As discussed in section XII.G. of this proposed rule, for CY 2015, the proposed Medicare beneficiary's minimum unadjusted copayment and national unadjusted copayment for a service to which a reduced national unadjusted payment rate applies will equal the product of the reporting ratio and the national unadjusted copayment, or the product of the reporting ratio and the minimum unadjusted copayment, respectively, for the service.

We note that OPPS copayments may increase or decrease each year based on changes in the calculated APC payment rates due to updated cost report and claims data, and any changes to the OPPS cost modeling process. However, as described in the CY 2004 OPPS/ASC final rule with comment period, the development of the copayment methodology generally moves beneficiary copayments closer to 20 percent of OPPS APC payments (68 FR 63458 through 63459).

3. Proposed Calculation of an Adjusted Copayment Amount for an APC Group

Individuals interested in calculating the national copayment liability for a Medicare beneficiary for a given service provided by a hospital that met or failed to meet its Hospital OQR Program requirements should follow the formulas presented in the following steps.

Step 1. Calculate the beneficiary payment percentage for the APC by dividing the APC's national unadjusted copayment by its payment rate. For example, using APC 0019, approximately $76.07 is 20 percent of the proposed full national unadjusted payment rate of approximately $380.32. For APCs with only a minimum unadjusted copayment in Addenda A and B to this proposed rule (which are available via the Internet on the CMS Web site), the beneficiary payment percentage is 20 percent.

The formula below is a mathematical representation of Step 1 and calculates the national copayment as a percentage of national payment for a given service.

B is the beneficiary payment percentage.

B = National unadjusted copayment for APC/ national unadjusted payment rate for APC.

Step 2. Calculate the appropriate wage-adjusted payment rate for the APC for the provider in question, as indicated in Steps 2 through 4 under section II.H. of this proposed rule. Calculate the rural adjustment for eligible providers as indicated in Step 6 under section II.H. of this proposed rule.

Step 3. Multiply the percentage calculated in Step 1 by the payment rate calculated in Step 2. The result is the wage-adjusted copayment amount for the APC.

The formula below is a mathematical representation of Step 3 and applies the beneficiary payment percentage to the adjusted payment rate for a service calculated under section II.H. of this proposed rule, with and without the rural adjustment, to calculate the adjusted beneficiary copayment for a given service.

Wage-adjusted copayment amount for the APC = Adjusted Medicare Payment * *B.*

Wage-adjusted copayment amount for the APC (SCH or EACH) = (Adjusted Medicare Payment * 1.071) * *B.*

Step 4. For a hospital that failed to meet its Hospital OQR Program requirements, multiply the copayment calculated in Step 3 by the proposed reporting ratio of 0.980.

The proposed unadjusted copayments for services payable under the OPPS that would be effective January 1, 2015, are shown in Addenda A and B to this proposed rule (which are available via the Internet on the CMS Web site). We note that the proposed national unadjusted payment rates and copayment rates shown in Addenda A and B to this proposed rule reflect the proposed full CY 2015 OPD fee schedule increase factor discussed in section II.B. of this proposed rule.

In addition, as noted above, section 1833(t)(8)(C)(i) of the Act limits the amount of beneficiary copayment that may be collected for a procedure performed in a year to the amount of the inpatient hospital deductible for that year.

III. Proposed OPPS Ambulatory Payment Classification (APC) Group Policies

A. OPPS Treatment of New CPT and Level II HCPCS Codes

CPT and Level II HCPCS codes are used to report procedures, services, items, and supplies under the hospital OPPS. Specifically, CMS recognizes the following codes on OPPS claims:

- Category I CPT codes, which describe surgical procedures and medical services;
- Category III CPT codes, which describe new and emerging technologies, services, and procedures; and
- Level II HCPCS codes, which are used primarily to identify products, supplies, temporary procedures, and services not described by CPT codes.

CPT codes are established by the American Medical Association (AMA) and the Level II HCPCS codes are established by the CMS HCPCS Workgroup. These codes are updated and changed throughout the year. CPT and HCPCS code changes that affect the OPPS are published both through the annual rulemaking cycle and through the OPPS quarterly update Change Requests (CRs). CMS releases new Level II HCPCS codes to the public or recognizes the release of new CPT codes by the AMA and makes these codes effective (that is, the codes can be reported on Medicare claims) outside of the formal rulemaking process via OPPS quarterly update CRs. Based on our review, we assign the new CPT and Level II HCPCS codes to interim status indicator (SI) and APC assignments. These interim assignments are finalized in the OPPS/ASC final rules. This quarterly process offers hospitals access to codes that may more accurately describe items or services furnished and provides payment or more accurate payment for these items or services in a timelier manner than if we waited for the annual rulemaking process. We solicit public comments on these new codes and finalize our proposals related to these codes through our annual rulemaking process.

We note that, under the OPPS, the APC assignment determines the payment rate for an item, procedure, or service. For those items, procedures, or services not paid separately under the hospital OPPS, they are assigned to appropriate status indicators. Section XI. of this proposed rule provides a

discussion of the various status indicators used under the OPPS. Certain payment indicators provide separate payment while others do not.

In Table 14 below, we summarize our current process for updating codes through our OPPS quarterly update CRs, seeking public comments, and finalizing the treatment of these new codes under the OPPS. We note that because the payment rates associated with codes that are effective July 1 are not available to us in time for incorporation into the Addenda of this proposed rule, the Level II HCPCS codes and the Category III CPT codes implemented through the July 2014 OPPS quarterly update CR could not be included in Addendum B to this proposed rule (which is available via the Internet on the CMS Web site). New and revised codes that were implemented through the April 2014 OPPS quarterly update are included in Addendum B. Nevertheless, we are requesting public comments on the codes included in the July 2014 OPPS quarterly update and including these codes in the preamble of this proposed rule (we refer readers to Table 16 for the July 2014 HCPCS codes).

TABLE 14—COMMENT TIMEFRAME FOR NEW OR REVISED HCPCS CODES

OPPS Quarterly update CR	Type of code	Effective date	Comments sought	When finalized
April I, 2014	Level II HCPCS Codes	April 1, 2014	CY 2015 OPPS/ASC proposed rule.	CY 2015 OPPS/ASC final rule with comment period.
July 1, 2014	Level II HCPCS Codes	July 1, 2014	CY 2015 OPPS/ASC proposed rule.	CY 2015 OPPS/ASC final rule with comment period.
	Category I (certain vaccine codes) and III CPT codes.	July 1, 2014	CY 2015 OPPS/ASC proposed rule.	CY 2015 OPPS/ASC final rule with comment period.
October 1, 2014	Level II HCPCS Codes	October 1, 2014	CY 2015 OPPS/ASC final rule with comment period.	CY 2016 OPPS/ASC final rule with comment period.
January 1, 2015	Level II HCPCS Codes	January 1, 2015	CY 2015 OPPS/ASC final rule with comment period.	CY 2016 OPPS/ASC final rule with comment period.
	Category I and III CPT Codes.	January 1, 2015	CY 2015 OPPS/ASC final rule with comment period.	CY 2016 OPPS/ASC final rule with comment period.

This process is discussed in detail below. We have separated our discussion into two sections based on whether we are soliciting public comments in this CY 2015 OPPS/ASC proposed rule or whether we will be soliciting public comments in the CY 2015 OPPS/ASC final rule with comment period. We note that we sought public comments in the CY 2014 OPPS/ASC final rule with comment period on the interim APC and status assignments for new CPT and Level II HCPCS codes that were effective January 1, 2014. We also sought public comments in the CY 2014 OPPS/ASC final rule with comment period on the interim APC and status assignments for new Level II HCPCS codes that became effective October 1, 2013. These new and revised codes, with an effective date of October 1, 2013, or January 1, 2014, were flagged with comment indicator ''NI'' (New code, interim APC assignment; comments will be accepted on the interim APC assignment for the new code) in Addendum B to the CY 2014 OPPS/ASC final rule with comment period to indicate that we were assigning them an interim payment status and an APC and payment rate, if applicable, and were subject to public comment following publication of the CY 2014 OPPS/ASC final rule with comment period. We will respond to public comments and finalize our interim OPPS treatment of these codes in the CY 2015 OPPS/ASC final rule with comment period.

1. Proposed Treatment of New CY 2014 Level II HCPCS and CPT Codes Effective April 1, 2014 and July 1, 2014 for Which We Are Soliciting Public Comments in This CY 2015 OPPS/ASC Proposed Rule

Through the April 2014 OPPS quarterly update CR (Transmittal 2903, Change Request 8653, dated March 11, 2014), and the July 2014 OPPS quarterly update CR (Transmittal 2971, Change Request 8776, dated May 23, 2014), we recognized several new HCPCS codes for separate payment under the OPPS.

Effective April 1, 2014, we made effective four new Level II HCPCS codes and also assigned them to appropriate interim OPPS status indicators and APCs. Through the April 2014 OPPS quarterly update CR, we allowed separate payment for three of the four new Level II HCPCS codes. Specifically, as displayed in Table 15 below, we provided separate payment for HCPCS codes C9021, C9739, and C9740. HCPCS code Q2052 was assigned to status indicator ''N'' to indicate that this service is packaged under the OPPS.

TABLE 15—NEW LEVEL II HCPCS CODES IMPLEMENTED IN APRIL 2014

CY 2014 HCPCS Code	CY 2014 Long descriptor	Proposed CY 2015 status indicator	Proposed CY 2015 APC
C9021*	Injection, obinutuzumab, 10 mg	G	1476
C9739	Cystourethroscopy, with insertion of transprostatic implant; 1 to 3 implants	T	0162
C9740	Cystourethroscopy, with insertion of transprostatic implant; 4 or more implants	T	1564

TABLE 15—NEW LEVEL II HCPCS CODES IMPLEMENTED IN APRIL 2014—Continued

CY 2014 HCPCS Code	CY 2014 Long descriptor	Proposed CY 2015 status indicator	Proposed CY 2015 APC
Q2052	Services, supplies and accessories used in the home under the Medicare intravenous immune globulin (ivig) demonstration.	N	N/A

* The proposed payment rate for HCPCS code C9021 is based on published wholesale acquisition cost (PWAC) +6 percent.

In this CY 2015 OPPS/ASC proposed rule, we are soliciting public comments on the proposed APC and status indicator assignments, where applicable, for the Level II HCPCS codes listed in Table 15 of this proposed rule. The proposed payment rates for these codes, where applicable, can be found in Addendum B to this proposed rule (which is available via the Internet on the CMS Web site).

Effective July 1, 2014, we made effective several new CPT and Level II HCPCS codes and also assigned them to appropriate interim OPPS status indicators and APCs. Through the July 2014 OPPS quarterly update CR, we allowed separate payment under the OPPS for four new Level II HCPCS codes and 17 new Category III CPT codes effective July 1, 2014. Specifically, as displayed in Table 16 below, we allowed separate payment for HCPCS codes C2644, C9022, C9134, and Q9970. We note that HCPCS code Q9970 replaced HCPCS code C9441 (Injection, ferric carboxymaltose, 1 mg), beginning July 1, 2014. HCPCS code C9441 was made effective January 1, 2014, but the code was deleted June 30, 2014, because it was replaced with HCPCS code Q9970. HCPCS code C9441 was granted pass-through payment status when the code was implemented on January 1, 2014. Because HCPCS code Q9970 describes the same drug as HCPCS code C9441, we are proposing to continue the pass-through payment status for HCPCS code Q9970, and assign the HCPCS Q-code to the same APC and status indicator as its predecessor HCPCS C-code, as shown in Table 16. Specifically, we are proposing to assign HCPCS code Q9970 to APC 9441 (Inj, Ferric Carboxymaltose) and status indicator ''G.''

In addition, the HCPCS Workgroup established HCPCS code Q9974, effective July 1, 2014, to replace HCPCS codes J2271 (Injection, morphine sulfate, 100mg) and J2275 (Injection, morphine sulfate (preservative-free sterile solution), per 10 mg). Both of these HCPCS J-codes were assigned to status indicator ''N'' (Packaged Services). As a result of the establishment of new HCPCS code Q9974 as a replacement for HCPCS codes J2271 and J2275, the payment indicator for HCPCS codes J2271 and J2275 was changed to ''E'' (Not Payable by Medicare), effective July 1, 2014. Also, because HCPCS code Q9974 describes the same services that were described by HCPCS codes J2271 and J2275, we are proposing to continue to assign HCPCS code Q9974 to the same status indicator as its predecessor HCPCS J-codes. Specifically, we are proposing to assign HCPCS code Q9974 to status indicator ''N,'' effective July 1, 2014.

We are proposing to assign the Level II HCPCS codes listed in Table 16 to the specified proposed APCs and status indicators set forth in Table 16 of this proposed rule. This table, presented below, includes a complete list of the Level II HCPCS codes that were made effective July 1, 2014. The codes that were made effective July 1, 2014, do not appear in Addendum B to this proposed rule, and as a result, the proposed payment rates along with the proposed status indicators and proposed APC assignments, where applicable, for CY 2015 are provided in Table 16.

TABLE 16—NEW LEVEL II HCPCS CODES IMPLEMENTED IN JULY 2014

CY 2014 HCPCS Code	CY 2014 Long descriptor	Proposed CY 2015 status indicator	Proposed CY 2015 APC	Proposed CY 2015 payment rate
C2644	Brachytherapy source, cesium-131 chloride solution, per millicurie	U	2644	$18.97
C9022 *	Injection, elosulfase alfa, 1 mg	G	1480	226.42
C9134 *	Factor XIII (antihemophilic factor, recombinant), Tretten, per 10 i.u	G	1481	14.10
Q9970 **	Injection, ferric carboxymaltose, 1 mg	G	9441	1.06
Q9974 ***	Injection, morphine sulfate, preservative-free for epidural or intrathecal use, 10 mg.	N	N/A	N/A

* The proposed payment rates for HCPCS code C9022 and C9134 are based on ASP+6 percent.

** HCPCS code C9441 (Injection, ferric carboxymaltose, 1 mg) was deleted June 30, 2014, and replaced with HCPCS code Q9970, effective July 1, 2014.

*** HCPCS codes J2271 (Injection, morphine sulfate, 100mg) and J2275 (Injection, morphine sulfate (preservative-free sterile solution), per 10 mg) were replaced with HCPCS code Q9974, effective July 1, 2014. Consequently, the payment indicator assignment for HCPCS codes J2271 and J2275 was changed to ''E'' (Not Payable by Medicare), effective July 1, 2014.

For CY 2015, we are proposing to continue our established policy of recognizing Category I CPT vaccine codes for which FDA approval is imminent and Category III CPT codes that the AMA releases in January of each year for implementation in July through the OPPS quarterly update process. Under the OPPS, Category I CPT vaccine codes and Category III CPT codes that are released on the AMA Web site in January are made effective in July of the same year through the July quarterly update CR, consistent with the AMA's implementation date for the codes. For the July 2014 update, there were no new Category I CPT vaccine codes.

Through the July 2014 OPPS quarterly update CR (Transmittal 2971, Change Request 8776, dated May 23, 2014), we assigned interim OPPS status indicators and APCs for 17 of 27 new Category III CPT codes that were made effective July 1, 2014. Specifically, as displayed in Table 17 below, we made interim OPPS status indicators and APC assignments for Category III CPT codes 0347T, 0348T, 0349T, 0350T, 0355T, 0356T, 0358T, 0359T, 0360T, 0362T, 0364T,

0366T, 0368T, 0370T, 0371T, 0372T, and 0373T. Table 17 below lists the Category III CPT codes that were implemented on July 1, 2014, along with the proposed status indicators, proposed APC assignments, and proposed payment rates, where applicable, for CY 2015.

TABLE 17—NEW CATEGORY III CPT CODES IMPLEMENTED IN JULY 2014

CY 2014 CPT Code	CY 2014 Long descriptor	Proposed CY 2015 status indicator	Proposed CY 2015 APC	Proposed CY 2015 payment rate
0347T	Placement of interstitial device(s) in bone for radiostereometric analysis (RSA).	Q2	0420	$125.05
0348T	Radiologic examination, radiostereometric analysis (RSA); spine, (includes, cervical, thoracic and lumbosacral, when performed).	S	0261	95.36
0349T	Radiologic examination, radiostereometric analysis (RSA); upper extremity(ies), (includes shoulder, elbow and wrist, when performed).	S	0261	95.36
0350T	Radiologic examination, radiostereometric analysis (RSA); lower extremity(ies), (includes hip, proximal femur, knee and ankle, when performed).	S	0261	95.36
0351T	Optical coherence tomography of breast or axillary lymph node, excised tissue, each specimen; real time intraoperative.	N	N/A	N/A
0352T	Optical coherence tomography of breast or axillary lymph node, excised tissue, each specimen; interpretation and report, real time or referred.	B	N/A	N/A
0353T	Optical coherence tomography of breast, surgical cavity; real time intraoperative.	N	N/A	N/A
0354T	Optical coherence tomography of breast, surgical cavity; interpretation and report, real time or referred.	B	N/A	N/A
0355T	Gastrointestinal tract imaging, intraluminal (eg, capsule endoscopy), colon, with interpretation and report.	T	0142	857.73
0356T	Insertion of drug-eluting implant (including punctal dilation and implant removal when performed) into lacrimal canaliculus, each.	Q1	0698	101.41
0358T	Bioelectrical impedance analysis whole body composition assessment, supine position, with interpretation and report.	Q1	0340	61.88
0359T	Behavior identification assessment, by the physician or other qualified health care professional, face-to-face with patient and caregiver(s), includes administration of standardized and non-standardized tests, detailed behavioral history, patient observation and caregiver interview, interpretation of test results, discussion of findings and recommendations with the primary guardian(s)/caregiver(s), and preparation of report.	V	0632	107.98
0360T	Observational behavioral follow-up assessment, includes physician or other qualified health care professional direction with interpretation and report, administered by one technician; first 30 minutes of technician time, face-to-face with the patient.	V	0632	107.98
0361T	Observational behavioral follow-up assessment, includes physician or other qualified health care professional direction with interpretation and report, administered by one technician; each additional 30 minutes of technician time, face-to-face with the patient (List separately in addition to code for primary service).	N	N/A	N/A
0362T	Exposure behavioral follow-up assessment, includes physician or other qualified health care professional direction with interpretation and report, administered by physician or other qualified health care professional with the assistance of one or more technicians; first 30 minutes of technician(s) time, face-to-face with the patient.	V	0632	107.98
0363T	Exposure behavioral follow-up assessment, includes physician or other qualified health care professional direction with interpretation and report, administered by physician or other qualified health care professional with the assistance of one or more technicians; each additional 30 minutes of technician(s) time, face-to-face with the patient (List separately in addition to code for primary procedure).	N	N/A	N/A
0364T	Adaptive behavior treatment by protocol, administered by technician, face-to-face with one patient; first 30 minutes of technician time.	S	0322	92.61
0365T	Adaptive behavior treatment by protocol, administered by technician, face-to-face with one patient; each additional 30 minutes of technician time (List separately in addition to code for primary procedure).	N	N/A	N/A
0366T	Group adaptive behavior treatment by protocol, administered by technician, face-to-face with two or more patients; first 30 minutes of technician time.	S	0325	65.91
0367T	Group adaptive behavior treatment by protocol, administered by technician, face-to-face with two or more patients; each additional 30 minutes of technician time (List separately in addition to code for primary procedure).	N	N/A	N/A
0368T	Adaptive behavior treatment with protocol modification administered by physician or other qualified health care professional with one patient; first 30 minutes of patient face-to-face time.	S	0322	92.61

TABLE 17—NEW CATEGORY III CPT CODES IMPLEMENTED IN JULY 2014—Continued

CY 2014 CPT Code	CY 2014 Long descriptor	Proposed CY 2015 status indicator	Proposed CY 2015 APC	Proposed CY 2015 payment rate
0369T	Adaptive behavior treatment with protocol modification administered by physician or other qualified health care professional with one patient; each additional 30 minutes of patient face-to-face time (List separately in addition to code for primary procedure).	N	N/A	N/A
0370T	Family adaptive behavior treatment guidance, administered by physician or other qualified health care professional (without the patient present).	S	0324	130.28
0371T	Multiple-family group adaptive behavior treatment guidance, administered by physician or other qualified health care professional (without the patient present).	S	0324	130.28
0372T	Adaptive behavior treatment social skills group, administered by physician or other qualified health care professional face-to-face with multiple patients.	S	0325	65.91
0373T	Exposure adaptive behavior treatment with protocol modification requiring two or more technicians for severe maladaptive behavior(s); first 60 minutes of technicians' time, face-to-face with patient.	S	0323	117.36
0374T	Exposure adaptive behavior treatment with protocol modification requiring two or more technicians for severe maladaptive behavior(s); each additional 30 minutes of technicians' time face-to-face with patient (List separately in addition to code for primary procedure).	N	N/A	N/A

We are soliciting public comments on the proposed CY 2015 status indicators, APC assignments, and payment rates for the Level II HCPCS codes and the Category III CPT codes that were made effective April 1, 2014, and July 1, 2014. These codes are listed in Tables 15, 16, and 17 of this proposed rule. We also are proposing to finalize the status indicator and APC assignments and payment rates for these codes, if applicable, in the CY 2015 OPPS/ASC final rule with comment period. Because the new Category III CPT and Level II HCPCS codes that become effective for July are not available to us in time for incorporation into the Addenda to this proposed rule, our policy is to include the codes, the proposed status indicators, proposed APCs (where applicable), and proposed payment rates (where applicable) in the preamble of the proposed rule, but not in the Addenda to this proposed rule. These codes are listed in Tables 16 and 17, respectively, of this proposed rule. We are proposing to incorporate these codes into Addendum B to the CY 2015 OPPS/ASC final rule with comment period, which is consistent with our annual OPPS update policy. The Level II HCPCS codes implemented or modified through the April 2014 OPPS update CR and displayed in Table 15 are included in Addendum B to this proposed rule (which is available via the Internet on the CMS Web site), where the proposed CY 2015 payment rates for these codes are also shown.

2. Proposed Process for New Level II HCPCS Codes That Will Be Effective October 1, 2014 and New CPT and Level II HCPCS Codes That Will Be Effective January 1, 2015 for Which We Will Be Soliciting Public Comments in the CY 2015 OPPS/ASC Final Rule With Comment Period

As has been our practice in the past, we incorporate those new Category I and III CPT codes and new Level II HCPCS codes that are effective January 1 in the final rule with comment period updating the OPPS for the following calendar year. These codes are released to the public via the CMS HCPCS (for Level II HCPCS codes) and AMA Web sites (for CPT codes), and also through the January OPPS quarterly update CRs. In the past, we also have released new Level II HCPCS codes that are effective October 1 through the October OPPS quarterly update CRs and incorporated these new codes in the final rule with comment period updating the OPPS for the following calendar year. For CY 2015, these codes will be flagged with comment indicator ''NI'' in Addendum B to the OPPS/ASC final rule with comment period to indicate that we are assigning them an interim payment status which is subject to public comment. In addition, the CPT and Level II HCPCS codes that will be effective January 1, 2015, will be flagged with comment indicator ''NI'' in Addendum B to the CY 2015 OPPS/ASC final rule with comment period. Specifically, the status indicator and the APC assignment and payment rate, if applicable, for all such codes flagged with comment indicator ''NI'' are open to public comment in the final rule with comment period, and we respond to these public comments in the OPPS/ASC final rule with comment period for the next calendar year's OPPS/ASC update. We are proposing to continue this process for CY 2015. Specifically, for CY 2015, we are proposing to include in Addendum B to the CY 2015 OPPS/ASC final rule with comment period the following new HCPCS codes:

- New Level II HCPCS codes effective October 1, 2014 that would be incorporated in the October 2014 OPPS quarterly update CR;
- New Category I and III CPT codes effective January 1, 2015 that would be incorporated in the January 2015 OPPS quarterly update CR; and
- New Level II HCPCS codes effective January 1, 2015 that would be incorporated in the January 2015 OPPS quarterly update CR.

As stated above, the October 1, 2014 and January 1, 2015 codes would be flagged with comment indicator ''NI'' in Addendum B to the CY 2015 OPPS/ASC final rule with comment period to indicate that we have assigned the codes an interim OPPS payment status for CY 2015. We will be inviting public comments on the proposed status indicator and APC assignments and payment rates for these codes, if applicable, that would be finalized in the CY 2016 OPPS/ASC final rule with comment period.

3. Proposed Process for Soliciting Public Comments for New and Revised CPT Codes That Would Be Released by AMA Before the January 1 Effective Date

We generally incorporate the new CPT codes that are effective January 1 in the OPPS/ASC final rule with comment

period. We establish interim APC and status indicator assignments for the coming year, and request comments on the interim assignments. Similarly, in the OPPS/ASC final rule with comment period, we establish interim APC and status indicator assignments for existing CPT codes that have substantial revision to their code descriptors, which may include grammatical changes to the code descriptors that necessitate a change in the current APC assignments. In both cases, we assign these new and revised codes to OPPS comment indicator ''NI'' (New code for the next calendar year or existing code with substantial revision to its code descriptor in the next calendar year as compared to current calendar year, interim APC assignment; comments will be accepted on the interim APC assignment for the new code.) in the OPPS/ASC final rule with comment period. We respond to comments and finalize the APC and status indicator assignments for these CPT codes in the following year's OPPS/ASC final rule with comment period.

a. Current Process for Accepting Comments on New and Revised CPT Codes That Are Effective January 1

Currently, under the hospital OPPS, new CPT codes that are effective January 1 are flagged with comment indicator ''NI'' in Addendum B to the OPPS/ASC final rule with comment period to indicate that the codes are new for the calendar year and have been assigned interim APCs and status indicators, and that we are accepting public comments on the treatment of these new codes. We address public comments in the next year's OPPS/ASC final rule with comment period and finalize the APC and status indicator assignments for the codes. For example, the new CPT codes that were effective January 1, 2013, were assigned to comment indicator ''NI'' in Addendum B to the CY 2013 OPPS/ASC final rule with comment period. We responded to public comments received on the CY 2013 OPPS/ASC final rule with comment period and finalized the APC and status indicator assignments for these codes in the CY 2014 OPPS/ASC final rule with comment period; and we included the final APC and status indicator assignments in Addendum B to that rule.

Similarly, existing CPT codes with substantial revisions to the code descriptors are flagged with comment indicator ''NI'' in Addendum B to the OPPS/ASC final rule with comment period to indicate that these codes are assigned interim APC and status indicators on which we are accepting public comments. Public comments regarding these revised CPT codes are also addressed, and APC and status indicator assignments finalized, in the next year's OPPS/ASC final rule with comment period.

Several stakeholders, including consultants, device manufacturers, drug manufacturers, as well as specialty societies and hospitals, have expressed concern with the process we use to recognize new and revised CPT codes. They believe that CMS should publish proposed APCs and status indicators for the new and revised CPT codes that will be effective January 1 in the OPPS/ASC proposed rule, and request public comments prior to finalizing them for the January 1 implementation date. Further, the stakeholders believe that seeking public input on the APC and status indicator assignments for these new and revised codes would assist CMS in assigning the CPT codes to appropriate APCs. We have been informed of similar concerns regarding our process for assigning interim payment values for revalued, and new and revised codes, under the Medicare Physician Fee Schedule (MPFS), and include proposed policies to address those concerns in the CY 2015 MPFS proposed rule.

Like the MPFS, the OPPS and the ASC payment system rely principally upon the Current Procedural Terminology (CPT®) coding system maintained by the AMA for billing. CPT® is the standard code set adopted under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) for outpatient services. The AMA CPT Editorial Panel's coding cycle occurs concurrently with our calendar year rulemaking cycle for the OPPS and the ASC payment system. The OPPS/ASC proposed rules are published prior to the publication of the CPT codes that are generally made public in the Fall, with a January 1 effective date, and we are currently unable to include these codes in the OPPS/ASC proposed rules. Consequently, we establish interim APC and status indicator assignments for new and revised CPT codes that have an effective date of January 1, and we make payment based on those interim designations for one year.

b. Proposal To Modify the Current Process for Accepting Comments on New and Revised CPT Codes That Are Effective January 1

In this CY 2015 OPPS/ASC proposed rule, we are proposing to make changes in the process we use to establish APC assignments and status indicators for new and revised codes. We are proposing to make similar revisions under the MPFS to our current process for establishing values (work and malpractice relative value units and practice expense inputs) for new and revised CPT codes that take effect each January 1.

For instance, we are proposing that, for new and revised CPT codes that we receive from the AMA CPT Editorial Panel too late for inclusion in the proposed rule for a year, we would delay adoption of the new and revised codes for that year, and instead, adopt coding policies and payment rates that conform, to the extent possible, to the policies and payment rates in place for the previous year. We are proposing to adopt these conforming coding and payment policies on an interim basis pending the result of our specific proposals for status indicator and APC assignments for these new and revised codes through notice and comment rulemaking in the OPPS/ASC proposed rule for the following year. Because the changes in CPT codes are effective on January 1 of each year, and CMS would not have established status indicator or APC assignments for these new or revised codes, it would not be practicable for Medicare to use those CPT codes. In this circumstance, we are proposing to create HCPCS G-codes to describe the predecessor codes for any codes that were revised or deleted as part of the annual CPT coding changes. However, if certain CPT codes are revised in a manner that would not affect the cost of inputs (for example, a grammatical change to CPT code descriptors), we would use these revised codes and continue to assign those codes to their current APC. For example, under this proposed process, if a single CPT code was separated into two codes and we did not receive those codes until May 2015, we would assign each of those codes to status indicator ''B'' in the final rule with comment period, to indicate that an alternate code is recognized under the OPPS. Hospitals could not use those two new CPT codes to bill Medicare for outpatient services the first year after the effective date of the codes. Instead, we would create a HCPCS G-code with the same description as the single predecessor CPT code, and continue to use the same APC and status indicator assignment for that code during the year. We would propose status indicator and APC assignments for the two new CPT codes during rulemaking in CY 2016 for payment beginning in CY 2017.

For new codes that describe wholly new services, as opposed to new or revised codes that describe services for which APC and status indicator assignments are already established, we

would make every effort to work with the AMA CPT Editorial Panel to ensure that we received the codes in time to propose payment rates in the proposed rule. However, if we do not receive the code for a wholly new service in time to include proposed APC and status indicator assignments in the proposed rule for a year, we would need to establish interim APC and status indicator assignments for the initial year. We are proposing to establish the initial APC and status indicator assignments for new services as interim final assignments, and to follow our current process to solicit and respond to public comments and finalize the APC and status indicator assignments in the subsequent year.

We recognize that the use of HCPCS G-codes may place an administrative burden on those providers that bill for services under the OPPS and the ASC payment system. We are hopeful that the AMA CPT Editorial Panel ultimately will be able to adjust its timelines and processes so that most, if not all, of the annual coding changes can be addressed in the proposed rule. We are proposing to implement the revised CMS process for establishing APC and status indicator assignments for new and revised codes for CY 2016. However, we will consider alternative implementation dates to allow time for the AMA CPT Editorial Panel to adjust its schedule in order to avoid the necessity to use numerous HCPCS G-codes.

In summary, in conjunction with the proposals presented in the CY 2015 MPFS proposed rule to revise the process used to address new, revised, and potentially misvalued codes under the MPFS, we are proposing to include in the OPPS/ASC proposed rule for a year proposed APC and status indicator assignments for the new and revised CPT codes that are effective January 1. We would follow this revised process except in the case of a code that describes a wholly new service (such as a new technology or new surgical procedure) that has not previously been addressed under the OPPS. For codes that describe new services, we would establish interim APC and status indicator assignments in the OPPS/ASC final rules with comment period, as is our current process. The proposed revised process would eliminate our current practice of assigning interim APC and status indicators for the new and revised CPT codes that take effect on January 1 each year. Instead, when we do not receive new and revised codes early enough in our ratesetting process to propose APC and status indicator assignments in the OPPS/ASC proposed rule for a year, we would create and use HCPCS G-codes that mirror the predecessor CPT codes and retain the current APC and status indicator assignments for a year until we could include proposed assignments in the following year's proposed rule. After proposing APC and status indicator assignments for the new and revised codes in a proposed rule, we would accept comments on the proposed assignments, and respond to the comments and assign the final APC and status indicator assignments in the OPPS/ASC final rules with comment period. We are inviting public comments on this proposal. We are specifically interested in receiving public comments on the following topics:

- Is this proposal preferable to the present process? Are there other alternatives?
- If we were to implement this proposal, is it better to move forward with the changes or is more time needed to make the transition and, therefore, implementation should be delayed beyond CY 2016?
- Are there alternatives other than the use of HCPCS G-codes that would allow us to address the annual CPT code changes through notice and comment rather than interim final rulemaking?
- Is the process we have proposed for wholly new services appropriate? How should we define new services?
- Are there any classes of services, other than new services, that should remain on an interim final schedule?

B. Proposed OPPS Changes—Variations Within APCs

1. Background

Section 1833(t)(2)(A) of the Act requires the Secretary to develop a classification system for covered hospital outpatient department services. Section 1833(t)(2)(B) of the Act provides that the Secretary may establish groups of covered OPD services within this classification system, so that services classified within each group are comparable clinically and with respect to the use of resources. In accordance with these provisions, we developed a grouping classification system, referred to as Ambulatory Payment Classifications (APCs), as set forth in § 419.31 of the regulations. We use Level I and Level II HCPCS codes to identify and group the services within each APC. The APCs are organized such that each group is homogeneous both clinically and in terms of resource use. Using this classification system, we have established distinct groups of similar services. We also have developed separate APC groups for certain medical devices, drugs, biologicals, therapeutic radiopharmaceuticals, and brachytherapy devices that are not packaged into the payment for the procedure.

We have packaged into the payment for each procedure or service within an APC group the costs associated with those items and services that are typically ancillary and supportive to a primary diagnostic or therapeutic modality and, in those cases, are an integral part of the primary service they support. Therefore, we do not make separate payment for these packaged items or services. In general, packaged items and services include, but are not limited to the items and services listed in 419.2(b) of the regulations. Further discussion of packaged services is included in section II.A.3. of this proposed rule.

In CY 2008, we implemented composite APCs to provide a single payment for groups of services that are typically performed together during a single clinical encounter and that result in the provision of a complete service (72 FR 66650 through 66652). For CY 2014, we provided composite APC payments for nine categories of services:

- Mental Health Services Composite (APC 0034).
- Cardiac Electrophysiologic Evaluation and Ablation Composite (APC 8000).
- Low Dose Rate (LDR) Prostate Brachytherapy Composite (APC 8001).
- Ultrasound Composite (APC 8004).
- CT and CTA without Contrast Composite (APC 8005).
- CT and CTA with Contrast Composite (APC 8006).
- MRI and MRA without Contrast Composite (APC 8007).
- MRI and MRA with Contrast Composite (APC 8008).
- Extended Assessment & Management Composite (APC 8009).

A further discussion of composite APCs is included in section II.A.2.f. of this proposed rule.

Under the OPPS, we generally pay for hospital outpatient services on a rate-per-service basis, where the service may be reported with one or more HCPCS codes. Payment varies according to the APC group to which the independent service or combination of services is assigned. Each APC relative payment weight represents the hospital cost of the services included in that APC, relative to the hospital cost of the services included in APC 0634 (Hospital Clinic Visits). The APC relative payment weights are scaled to APC 0634 because it is the hospital clinic visit APC and

clinic visits are among the most frequently furnished services in the hospital outpatient setting.

Section 1833(t)(9)(A) of the Act requires the Secretary to review, on a recurring basis occurring no less than annually, and revise the groups, the relative payment weights, and the wage and other adjustments to take into account changes in medical practice, changes in technology, the addition of new services, new cost data, and other relevant information and factors. Section 1833(t)(9)(A) of the Act also requires the Secretary to consult with an expert outside advisory panel composed of an appropriate selection of representatives of providers to review (and advise the Secretary concerning) the clinical integrity of the APC groups and the relative payment weights (the Panel recommendations for specific services for the CY 2015 OPPS and our responses to them are discussed in the relevant specific sections throughout this proposed rule).

Finally, section 1833(t)(2) of the Act provides that, subject to certain exceptions, the items and services within an APC group cannot be considered comparable with respect to the use of resources if the highest cost for an item or service in the group is more than 2 times greater than the lowest cost for an item or service within the same group (referred to as the ''2 times rule''). The statute authorizes the Secretary to make exceptions to the 2 times rule in unusual cases, such as low-volume items and services (but the Secretary may not make such an exception in the case of a drug or biological that has been designated as an orphan drug under section 526 of the Federal Food, Drug, and Cosmetic Act).

2. Application of the 2 Times Rule

In accordance with section 1833(t)(2) of the Act and § 419.31 of the regulations, we annually review the items and services within an APC group to determine, with respect to comparability of the use of resources, if the cost of the highest cost item or service within an APC group is more than 2 times greater than the cost of the lowest cost item or service within that same group. In making this determination, we consider only those HCPCS codes that are significant based on the number of claims. We note that, for purposes of identifying significant procedure codes for examination under the 2 times rule, we consider procedure codes that have more than 1,000 single major claims or procedure codes that have both greater than 99 single major claims and contribute at least 2 percent of the single major claims used to establish the APC cost to be significant (75 FR 71832). This longstanding definition of when a procedure code is significant for purposes of the 2 times rule was selected because we believe that a subset of 1,000 claims (or less than 1,000 claims) is negligible within the set of approximately 100 million single procedure or single session claims we use for establishing costs. Similarly, a procedure code for which there are fewer than 99 single bills and which comprises less than 2 percent of the single major claims within an APC will have a negligible impact on the APC cost. In this proposed rule, for CY 2015, we are proposing to make exceptions to this limit on the variation of costs within each APC group in unusual cases, such as low-volume items and services.

We have identified the APCs with 2 times rule violations for CY 2015. Therefore, we are proposing changes to the procedure codes assigned to these APCs assignments in Addendum B to this proposed rule. We note that Addendum B does not appear in the printed version of the **Federal Register** as part of the CY 2015 OPPS/ASC proposed rule. Rather, it is published and made available via the Internet on the CMS Web site at: *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HospitalOutpatientPPS/index.html.* In these cases, to eliminate a 2 times rule violation or to improve clinical and resource homogeneity, we are proposing to reassign these procedure codes to new APCs that contain services that are similar with regard to both their clinical and resource characteristics. In many cases, the proposed procedure code reassignments and associated APC reconfigurations for CY 2015 included in this proposed rule are related to changes in costs of services that were observed in the CY 2013 claims data newly available for CY 2015 ratesetting. We also are proposing changes to the status indicators for some procedure codes that are not specifically and separately discussed in this proposed rule. In these cases, we are proposing to change the status indicators for these procedure codes because we believe that another status indicator would more accurately describe their payment status from an OPPS perspective based on the policies that we are proposing for CY 2015. In addition, we are proposing to rename existing APCs or create new clinical APCs to complement the proposed procedure code reassignments. Addendum B to this CY 2015 OPPS/ASC proposed rule identifies with a comment indicator ''CH'' those procedure codes for which we are proposing a change to the APC assignment or status indicator, or both, that were initially assigned in the April 2014 Addendum B Update (available via the Internet on the CMS Web site at: *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HospitalOutpatientPPS/index.html*).

3. Proposed Exceptions to the 2 Times Rule

As discussed earlier, we may make exceptions to the 2 times rule limit on the variation of costs within each APC group in unusual cases such as low-volume items and services. Taking into account the APC changes that we are proposing for CY 2015, we reviewed all of the APCs to determine which APCs would not meet the requirements of the 2 times rule. We used the following criteria to evaluate whether to propose exceptions to the 2 times rule for affected APCs:

- Resource homogeneity;
- Clinical homogeneity;
- Hospital outpatient setting utilization;
- Frequency of service (volume); and
- Opportunity for upcoding and code fragments.

Based on the CY 2013 claims data available for this proposed rule, we found 9 APCs with 2 times rule violations. We applied the criteria as described above to identify the APCs that we are proposing to make exceptions for under the 2 times rule for CY 2015, and identified 9 APCs that met the criteria for an exception to the 2 times rule based on the CY 2013 claims data available for this proposed rule. We have not included in this determination those APCs where a 2 times rule violation was not a relevant concept, such as APC 0375 (Ancillary Outpatient Services when Patient Expires), which has an APC cost set based on multiple procedure claims. Therefore, we have only identified those APCs, including those with criteria-based costs, such as device-dependent APCs, with 2 times rule violations. For a detailed discussion of these criteria, we refer readers to the April 7, 2000 OPPS final rule with comment period (65 FR 18457 and 18458).

We note that, for cases in which a recommendation by the Panel appears to result in or allow a violation of the 2 times rule, we generally accept the Panel's recommendation because those recommendations are based on explicit consideration (that is, a review of the latest OPPS claims data and group discussion of the issue) of resource use, clinical homogeneity, site of service,

and the quality of the claims data used to determine the APC payment rates.

Table 18 of this proposed rule lists the 9 APCs that we are proposing to make exceptions for under the 2 times rule for CY 2015 based on the criteria cited above and claims data processed from January 1, 2013, through December 31, 2013. For the final rule with comment period, we intend to use claims data for dates of service between January 1, 2013, and December 31, 2013, that were processed on or before June 30, 2014, and updated CCRs, if available.

TABLE 18—PROPOSED APC EXCEPTIONS TO THE 2 TIMES RULE FOR CY 2015

Proposed CY 2015 APC	Proposed CY 2015 APC title
0012	Level I Debridement & Destruction.
0015	Level II Debridement & Destruction.
0057	Bunion Procedures.
0066	Level V Radiation Therapy.
0330	Dental Procedures.
0433	Level II Pathology.
0450	Level I Minor Procedures.
0634	Hospital Clinic Visits.
0661	Level III Pathology.

The proposed costs for hospital outpatient services for these and all other APCs that were used in the development of this proposed rule can be found on the CMS Web site at: *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HospitalOutpatientPPS/index.html.*

C. Proposed OPPS APC-Specific Policies

Section 1833(t)(9) of the Act requires that we annually review and revise, if necessary, the APCs and the procedure code assignments. Therefore, every year we evaluate and revise, if necessary, the APC assignments for procedure codes based on evaluation of the latest hospital outpatient claims data. Although we do not discuss every APC revision and procedure code reassignment in the proposed and final rules with comment period, these revisions and/or reassignments are listed in the OPPS Addendum B to the proposed and final rules with comment period. Specifically, procedure codes proposed for reassignment to new APCs and/or status indicators are assigned to comment indicator ''CH'' (Active HCPCS code in current year and next calendar year, status indicator and/or APC assignment has changed) in the OPPS Addendum B to the proposed and final rules with comment period.

In accordance with section 1833(t)(2) of the Act, we annually review all APC assignments to determine if any 2 times rule violations exist. That is, we review the items and services within an APC group to determine, with respect to comparability of the use of resources, if the cost of the highest cost item or service within an APC group is more than 2 times the cost of the lowest cost item or service within that same group. In making this determination, we consider only those HCPCS codes that are significant based on the number of claims.

As stated in section III.B. of this proposed rule, for purposes of identifying significant procedure codes for examination of possible 2 times rule violations within an APC, we consider procedure codes that have either more than 1,000 single major claims, or (if less than 1,000 single major claims) procedure codes that have more than 99 single major claims and contribute at least 2 percent of the single major claims. This longstanding criterion to determine when a procedure code is significant for purposes of evaluation of a possible 2 times rule violation was established because we believe that a subset of 1,000 claims is negligible within the set of approximately 100 million single procedure or single session claims we use for establishing costs. Similarly, a procedure code for which there are fewer than 99 single bills and which comprises less than 2 percent of the single major claims within an APC will have a negligible impact on the APC cost.

1. Ophthalmic Procedures and Services

For the CY 2015 OPPS update, based on our evaluation of the latest hospital outpatient claims data available for this proposed rule, we are proposing to restructure all of the ophthalmic-related APCs to better reflect the costs and clinical characteristics of the procedures within each APC. This proposed restructuring results in the use of 13 APCs for the ophthalmology-related procedures for the CY 2015 OPPS update, as compared to the 24 APCs used for the CY 2014 OPPS update. We believe this major restructuring and consolidation of APCs more appropriately categorizes all of the ophthalmology-related procedures and services within an APC group, such that the services within each newly-configured APC are more comparable clinically and with respect to resource use. Tables 19 and 20 below show the current CY 2014 and proposed CY 2015 ophthalmology-related APCs. Specifically, Table 19 shows the ophthalmology-related APCs and status indicator assignments used for CY 2014, while Table 20 shows the proposed ophthalmology-related APCs and their status indicator assignments for CY 2015. The proposed payment rates for the ophthalmology-related procedure codes can be found in Addendum B to this proposed rule (which is available via the Internet on the CMS Web site).

TABLE 19—CY 2014 OPHTHALMOLOGY-RELATED APCS

CY 2014 APC	APC Title description	CY 2014 status indicator
0035	Vascular Puncture and Minor Diagnostic Procedures	X
0230	Level I Eye Tests & Treatments	S
0231	Level III Eye Tests & Treatments	S
0232	Level I Anterior Segment Eye Procedures	T
0233	Level III Anterior Segment Eye Procedures	T
0234	Level IV Anterior Segment Eye Procedures	T
0235	Level I Posterior Segment Eye Procedures	T
0237	Level II Posterior Segment Eye Procedures	T
0238	Level I Repair and Plastic Eye Procedures	T
0239	Level II Repair and Plastic Eye Procedures	T
0240	Level III Repair and Plastic Eye Procedures	T
0241	Level IV Repair and Plastic Eye Procedures	T
0242	Level V Repair and Plastic Eye Procedures	T
0243	Strabismus/Muscle Procedures	T
0244	Corneal and Amniotic Membrane Transplant	T
0246	Cataract Procedures with IOL Insert	T

TABLE 19—CY 2014 OPHTHALMOLOGY-RELATED APCS—Continued

CY 2014 APC	APC Title description	CY 2014 status indicator
0247	Laser Eye Procedures	T
0249	Cataract Procedures without IOL Insert	T
0255	Level II Anterior Segment Eye Procedures	T
0293	Level VI Anterior Segment Eye Procedures	T
0672	Level III Posterior Segment Eye Procedures	T
0673	Level V Anterior Segment Eye Procedures	T
0698	Level II Eye Tests & Treatments	S
0699	Level IV Eye Tests & Treatments	T

TABLE 20—PROPOSED CY 2015 OPHTHALMOLOGY-RELATED APCS

Proposed CY 2015 APC	APC Title description	Proposed CY 2015 status indicator
0230	Level I Eye Tests & Treatments	S
0231	Level III Eye Tests & Treatments	S
0233	Level II Intraocular Procedures	T
0238	Level I Extraocular, Repair, and Plastic Eye Procedures	T
0239	Level II Extraocular, Repair, and Plastic Eye Procedures	T
0240	Level III Extraocular, Repair, and Plastic Eye Procedures	T
0242	Level IV Extraocular, Repair, and Plastic Eye Procedures	T
0247	Laser Eye Procedures	T
0255	Level I Intraocular Procedures	T
0293	Level IV Intraocular Procedures	J1
0351	Level V Intraocular Procedures	J1
0673	Level III Intraocular Procedures	T
0698	Level II Eye Tests & Treatments	S

We intend to propose similar major restructures of the APC and procedure code assignments for other clinical areas in future rulemakings. We are inviting public comments on this proposal.

2. Female Reproductive Procedures (APCs 0188, 0189, 0192, 0193, and 0202)

At the Panel's March 10, 2014 meeting, a presenter expressed concern regarding the reassignment of the female reproductive procedures within existing APCs 0192 (Level IV Female Reproductive Procedures), 0193 (Level V Female Reproductive Procedures), and 0195 (Level VI Female Reproductive Procedures) that were made effective for the CY 2014 OPPS update, and stated that the changes would compromise beneficiary access to pelvic floor repair procedures. The commenter urged the Panel to request that CMS revisit its packaging policy for APCs 0193 and 0195 and allow stakeholders the opportunity to work with CMS to appropriately reassign these procedures in a manner that better accounts for clinical complexity. In addition, this presenter requested that CMS postpone converting existing APC 0202 (Level VII Female Reproductive Procedures) into a comprehensive APC to allow for further study of the complexity of pelvic floor repair procedures. After review of the information provided by the presenter and examination of the latest hospital outpatient claims data available for this proposed rule, the Panel made no recommendation for any of the female reproductive APCs.

For the CY 2014 OPPS update, we made several APC changes, which included changes to the female reproductive APCs 0192, 0193, and 0195. These changes were listed in Addendum B to the CY 2014 OPPS/ASC proposed rule. Of these three APCs, only APC 0193 showed a 2 times rule violation. We note that, under the OPPS, we may make exceptions to the 2 times rule based on the variation of costs within each APC group in unusual cases such as low-volume items and services. In the case of APC 0193, we believed that it was necessary to make an exception to the 2 times rule for APC 0193 for the CY 2014 OPPS update because this APC sufficiently reflected the clinical and resource coherence of the Level V female reproductive procedures.

For the CY 2015 OPPS update, based on our review of the latest hospital outpatient claims data available for this proposed rule, there are no 2 times rule violations for any of the female reproductive APCs. In addition, based on our evaluation of the latest hospital outpatient claims data, we are proposing to restructure the female reproductive APCs to more appropriately reflect the resource and clinical characteristics of the procedures within each APC. This proposed restructuring results in the use of five APCs for the CY 2015 OPPS update, as compared to the seven APCs used for the CY 2014 OPPS update. We believe that this proposed five-level APC structure will provide more accurate payments for the female reproductive procedures furnished to Medicare beneficiaries.

In summary, we are proposing to restructure the female reproductive APCs based on a review of our latest hospital outpatient claims data available for this proposed rule, which results in the use of five levels of APCs for CY 2015, as compared to the seven APCs used in CY 2014. Tables 21 and 22 below show the current CY 2014 and proposed CY 2015 female reproductive APCs. Specifically, Table 21 shows the female reproductive APCs, APC titles, and their status indicator assignments for CY 2014, while Table 22 shows the proposed female reproductive APCs, APC titles, and their status indicator assignments for CY 2015. The proposed payment rates for the female

reproductive procedure codes can be found in Addendum B to this proposed rule (which is available via the Internet on the CMS Web site). We note that one of the five levels of the female reproductive APCs, APC 0202, is a comprehensive APC. We refer readers to section II.A.2.e. of this proposed rule for further discussion of our comprehensive APC policy.

TABLE 21—CY 2014 FEMALE REPRODUCTIVE APCS

CY 2014 APC	APC Title description	CY 2014 Status indicator
0188	Level II Female Reproductive Proc	T
0189	Level III Female Reproductive Proc	T
0191	Level I Female Reproductive Proc	T
0192	Level IV Female Reproductive Proc	T
0193	Level V Female Reproductive Proc	T
0195	Level VI Female Reproductive Procedures	T
0202	Level VII Female Reproductive Procedures	T

TABLE 22—PROPOSED CY 2015 FEMALE REPRODUCTIVE APCS

Proposed CY 2015 APC	APC Title description	Proposed CY 2015 status indicator
0188	Level I Female Reproductive Procedures	T
0189	Level II Female Reproductive Procedures	T
0192	Level III Female Reproductive Procedures	T
0193	Level IV Female Reproductive Procedures	T
0202	Level V Female Reproductive Procedures	J1

3. Image-Guided Breast Biopsy Procedures (APC 0005)

For the CY 2014 OPPS update, the AMA CPT Editorial Panel deleted the image-guided breast biopsy CPT codes 19102 and 19103 and replaced these specific procedure codes with six new CPT codes that ''bundled'' associated imaging services, effective January 1, 2014. As shown in Table 23 below, CPT codes 19102 and 19103 described percutaneous image-guided breast biopsies using specific devices. Specifically, CPT code 19102 described a breast biopsy performed using a core needle, and CPT code 19103 described a breast biopsy performed using either a vacuum-assisted or rotating device.

In CY 2013, to appropriately report the procedure code for an image-guided breast biopsy using a core needle, an automated vacuum-assisted device, or a rotating biopsy device, multiple procedure codes were required to identify the service performed. That is, a procedure code describing the device-related breast biopsy procedure was required to be reported in combination with the procedure code describing the localization device used during the procedures, as well as the specific image-guidance procedure codes describing the imaging service. Table 23 below shows how image-guided breast biopsy procedures were reported prior to CY 2014. Table 23 also shows the CY 2013 OPPS status indicators, APC assignments, and payment rates for the breast biopsy procedure codes, the localization devices used during the procedures and the specific image-guidance procedure codes describing the imaging service.

TABLE 23—HOW IMAGE-GUIDED BREAST BIOPSY PROCEDURES WERE REPORTED IN CY 2013

CY 2013 CPT code	Long descriptor	CY 2013 SI	CY 2013 APC	CY 2013 Payment
Device-Related Breast Biopsy CPT Codes				
19102	Biopsy of breast; percutaneous, needle core, using imaging guidance	T	0005	$625.24
19103	Biopsy of breast; percutaneous, automated vacuum assisted or rotating biopsy device, using imaging guidance.	T	0037	1,118.54
Localization Device CPT Codes Reported with CPT Codes 19102 and 19103				
19290	Preoperative placement of needle localization wire, breast	Q1	0340	49.64
19291	Preoperative placement of needle localization wire, breast; each additional lesion (List separately in addition to code for primary procedure).	N	N/A	N/A
19295	Image guided placement, metallic localization clip, percutaneous, during breast biopsy/aspiration (List separately in addition to code for primary procedure).	Q1	0340	49.64
Image Guidance CPT Codes Reported with CPT Codes 19102 and 19103				
76942	Ultrasonic guidance for needle placement (eg, biopsy, aspiration, injection, localization device), imaging supervision and interpretation.	N	N/A	N/A

TABLE 23—HOW IMAGE-GUIDED BREAST BIOPSY PROCEDURES WERE REPORTED IN CY 2013—Continued

CY 2013 CPT code	Long descriptor	CY 2013 SI	CY 2013 APC	CY 2013 Payment
77021	Magnetic resonance guidance for needle placement (eg, for biopsy, needle aspiration, injection, or placement of localization device) radiological supervision and interpretation.	N	N/A	N/A
77031	Stereotactic localization guidance for breast biopsy or needle placement (eg, for wire localization or for injection), each lesion, radiological supervision and interpretation.	N	N/A	N/A
77032	Mammographic guidance for needle placement, breast (eg, for wire localization or for injection), each lesion, radiological supervision and interpretation.	N	N/A	N/A

For the CY 2014 OPPS update, the AMA CPT Editorial Panel grouped these multiple procedures that describe these imaging services into single comprehensive service codes; specifically, CPT codes 19081, 19082, 19083, 19084, 19085, and 19086. Table 24 below shows the six new CPT codes that replaced obsolete CPT codes 19102 and 19103. These comprehensive breast biopsy procedure codes are differentiated based on the use of specific imaging-guidance devices—specifically imaging services performed using stereotactic guidance, ultrasound guidance, or magnetic-resonance guidance.

As has been our practice since the implementation of the OPPS in 2000, we review all new procedure codes before assigning the codes to an APC. Based on our understanding of the resources required to furnish the service as defined in the code descriptor, as well as input from our medical advisors, we assigned replacement CPT codes 19081, 19083, and 19085 to APC 0005 (Level II Needle Biopsy/Aspiration Except Bone Marrow) for the CY 2014 OPPS update. We note that, for the CY 2014 OPPS update, we finalized our policy to package all add-on codes (except those for drug administration), effective January 1, 2014. Consequently, payment for replacement CPT codes 19082, 19084, and 19086, which describe add-on procedures, were packaged for CY 2014.

In addition, consistent with our longstanding policy for the treatment of new codes, we assigned these new replacement CPT codes to interim APCs for CY 2014. Specifically, we assigned new CPT codes 19081, 19083, and 19085 to comment indicator ''NI'' in Addendum B to the CY 2014 OPPS/ASC final rule with comment period (which is available via the CMS Web site) to indicate that the codes were new with an interim APC assignment that was subject to public comment.

At the Panel's March 10, 2014 meeting, a presenter requested the reassignment of comprehensive CPT codes 19081, 19083, and 19085 from APC 0005 (Level II Needle Biopsy/Aspiration Except Bone Marrow), which has a CY 2014 OPPS payment rate of $702.08, to APC 0037 (Level IV Needle Biopsy/Aspiration Except Bone Marrow), which has a CY 2014 OPPS payment rate of $1,223.25. The presenter indicated that it is inappropriate to combine all of the new replacement CPT codes into one APC without regard for the imaging modality or device used to perform the procedure. This same presenter also requested that CMS maintain the historic assignment of the predecessor CPT codes cost data.

The Panel recommended that CMS reassign the APC assignments for the new replacement CPT codes. Specifically, the Panel recommended the reassignment of CPT codes 19081, 19083, and 19085 from APC 0005 to APC 0037.

In light of the public presentation and the Panel's recommendation, and our longstanding policy of reviewing, on an annual basis, the APC assignments for all services and items paid under the OPPS, we evaluated the geometric mean costs associated with all of the procedures assigned to the existing four needle biopsy APCs, specifically, APCs 0004 (Level I Needle Biopsy/Aspiration Except Bone Marrow), 0005, 0685 (Level III Needle Biopsy/Aspiration Except Bone Marrow), and 0037. For this CY 2015 OPPS/ASC proposed rule, based on our review of the latest hospital outpatient claims data available for the proposed rule, we are proposing to reassign all of the procedures assigned to APCs 0685 and 0037 to either APC 0004 or APC 0005 based on clinical and resource homogeneity. With this proposed revision, there would be no procedures assigned to APCs 0685 or 0037. Therefore, we are proposing to delete APCs 0685 and 0037 for CY 2015. Consequently, for the CY 2015 OPPS update, we are proposing to use only two needle biopsy APCs, specifically, APCs 0004 and 0005. The proposed reassignment of the procedures assigned to APCs 0685 and 0037 would result in increased payment rates for both APCs 0004 and 0005. For CY 2015, the proposed payment rate for APC 0004 is approximately $494, which is 20 percent higher than the CY 2014 OPPS payment rate of approximately $411. Similarly, the proposed payment rate for APC 0005 is approximately $ 1,062, which is 51 percent higher than the CY 2014 OPPS payment rate of approximately $702. With this proposed reassignment, CPT codes 19081, 19083, and 19085 will continue to be assigned to APC 0005.

In summary, we are proposing to continue to assign CPT codes 19081, 19083, and 19085 to APC 0005, which has a proposed payment rate of approximately $1,062. In addition, we are proposing to continue to package payment for add-on CPT codes 19082, 19084, and 19086 under the OPPS for CY 2015, consistent with our packaging policy for add-on codes that was implemented on January 1, 2014. Because we are proposing to delete APC 0037 as obsolete for CY 2015, we believe that the proposed increased payment rate for APC 0005 is consistent with the Panel's recommendation to reassign CPT codes 19081, 19083, and 19085 to an appropriate APC based on resource utilization and clinical coherence. Table 24 below shows the proposed status indicators, APC assignments, and payment rates for the image-guided breast biopsy CPT codes 19081 through 19086 for the CY 2015 OPPS update.

TABLE 24—PROPOSED APCS TO WHICH IMAGE-GUIDED BREAST BIOPSY PROCEDURE CODES WOULD BE ASSIGNED FOR CY 2015

CY 2014 CPT code	Long descriptor	CY 2014 SI	CY 2014 APC	CY 2014 payment rate	Proposed CY 2015 SI	Proposed CY 2015 APC	Proposed CY 2015 payment rate
19081	Biopsy, breast, with placement of breast localization device(s) (eg, clip, metallic pellet), when performed, and imaging of the biopsy specimen, when performed, percutaneous; first lesion, including stereotactic guidance.	T	0005	$702.08	T	0005	$1,062.28
19082	Biopsy, breast, with placement of breast localization device(s) (eg, clip, metallic pellet), when performed, and imaging of the biopsy specimen, when performed, percutaneous; each additional lesion, including stereotactic guidance (List separately in addition to code for primary procedure).	N	N/A	N/A	N	N/A	N/A
19083	Biopsy, breast, with placement of breast localization device(s) (eg, clip, metallic pellet), when performed, and imaging of the biopsy specimen, when performed, percutaneous; first lesion, including ultrasound guidance.	T	0005	702.08	T	0005	1,062.28
19084	Biopsy, breast, with placement of breast localization device(s) (eg, clip, metallic pellet), when performed, and imaging of the biopsy specimen, when performed, percutaneous; each additional lesion, including ultrasound guidance (List separately in addition to code for primary procedure).	N	N/A	N/A	N	N/A	N/A
19085	Biopsy, breast, with placement of breast localization device(s) (eg, clip, metallic pellet), when performed, and imaging of the biopsy specimen, when performed, percutaneous; first lesion, including magnetic resonance guidance.	T	0005	702.08	T	0005	1,062.28
19086	Biopsy, breast, with placement of breast localization device(s) (eg, clip, metallic pellet), when performed, and imaging of the biopsy specimen, when performed, percutaneous; each additional lesion, including magnetic resonance guidance (List separately in addition to code for primary procedure).	N	N/A	N/A	N	N/A	N/A

4. Image-Guided Abscess Drainage Procedures (APCs 0005 and 0007)

For the CY 2014 OPPS update, the AMA CPT Editorial Panel established CPT code 10030 to report the bundled service of image-guided fluid collection drainage by catheter for percutaneous soft tissue, and CPT code 49407 to report the bundled service of image-guided fluid collection drainage by catheter for peritoneal, retroperitoneal, transvaginal or transrectal collections, effective January 1, 2014. As shown in Table 25, which shows the long descriptors for CPT codes 10030 and 49407, and as listed in Addendum B to the CY 2014 OPPS/ASC final rule with comment period, we assigned CPT code 10030 to APC 0006 (Level I Incision & Drainage), with a payment rate of $159.66, and assigned CPT code 49407 to APC 0685 (Level III Needle Biopsy/Aspiration Except Bone Marrow), with a payment rate of $757.76. In addition, as listed in Addendum B to the CY 2014 OPPS/ASC final rule with comment period, both procedure codes were assigned to comment indicator ''NI'' to indicate that the codes were new codes and assigned interim APC and status indicator assignments that were subject to comment.

At the Panel's March 10, 2014 meeting, a presenter requested the reassignment of both CPT codes 10030 and 49407 to APC 0037 (Level IV Needle Biopsy/Aspiration Except Bone Marrow), which has a CY 2014 OPPS payment rate of $1,223.25 and where similar procedures are assigned. Specifically, the presenter indicated that all the image-guided fluid collection drainage procedures should be treated as one clinically cohesive group and should be assigned to APC 0037.

Based on the request, the Panel agreed with the presenter and recommended that CMS reassign CPT code 49407 to APC 0037. However, the Panel did not agree with the reassignment of CPT code 10030 to APC 0037. Rather, the Panel

believed that CPT code 10030 would be more appropriately assigned to APC 0007 (Level II Incision and Drainage).

We agree with the Panel's recommendation to reassign CPT code 10030 to APC 007. Therefore, we are proposing to reassign CPT code 10030 from APC 0006 to APC 0007 for the CY 2015 OPPS update. In light of the Panel's recommendation to reassign CPT code 49407 and the image-guided breast biopsy procedures to APC 0037, and our longstanding policy of reviewing, on an annual basis, the APC assignments for all services and items paid under the OPPS, we evaluated the geometric mean costs associated with the procedures assigned to the existing four needle biopsy APCs, specifically, APCs 0004 (Level I Needle Biopsy/Aspiration Except Bone Marrow), 0005, 0685 (Level III Needle Biopsy/Aspiration Except Bone Marrow), and 0037. Based on our review of the latest hospital outpatient claims data available for the proposed rule, we are proposing to reassign the procedures assigned to APCs 0685 and 0037 to either APC 0004 or APC 0005 based on clinical and resource homogeneity. With this proposed revision, there would be no procedures assigned to APCs 0685 or 0037. Therefore, we are proposing to delete APCs 0685 and 0037 for CY 2015. Consequently, for the CY 2015 OPPS update, we are proposing to use only two levels of needle biopsy APCs, specifically, APCs 0004 and 0005. Based on the proposal to reassign all of the procedures assigned to APCs 0685 and 0037 to either APC 0004 or APC 0005, we are proposing to reassign CPT code 49407 from APC 0685 to APC 0005 for CY 2015. Table 25 below shows the long descriptors for CPT codes 10030 and 49407, and their proposed status indicator and APC assignments for the CY 2015 OPPS update. The proposed CY 2015 payment rate for CPT codes 10030 and 49407 can be found in Addendum B to this CY 2015 OPPS/ASC proposed rule (which is available via the Internet on the CMS Web site).

TABLE 25—PROPOSED CY 2015 APC ASSIGNMENTS FOR CPT CODES 10030 AND 49407

CPT Code	Long descriptor	CY 2014 OPPS SI	CY 2014 OPPS APC	Proposed CY 2015 OPPS SI	Proposed CY 2015 OPPS APC
10030	Image-guided fluid collection drainage by catheter (eg, abscess, hematoma, seroma, lymphocele, cyst), soft tissue (eg, extremity, abdominal wall, neck), percutaneous.	T	0006	T	0007
49407	Image-guided fluid collection drainage by catheter (eg, abscess, hematoma, seroma, lymphocele, cyst); peritoneal or retroperitoneal, transvaginal or transrectal.	T	0685	T	0005

5. Cystourethroscopy and Other Genitourinary Procedures (APCs 0160, 0161, 0162, and 0163)

Every year we revise, if necessary, the APC assignments for procedure codes based on our analysis of the latest hospital outpatient claims data. Although we do not discuss every APC change in the proposed and final rules with comment period, these changes are listed in Addendum B to the proposed and final rules with comment period. Specifically, procedure codes with proposed revisions to the APC and/or status indicator assignments are assigned to comment indicator ''CH'' (Active HCPCS code in current year and next calendar year, status indicator and/or APC assignment has changed) in Addendum B to this proposed rule.

For the CY 2014 OPPS update, there are five levels of APCs that contain cystourethroscopy and genitourinary procedures. These APCs are listed in Table 26, along with their status indicator assignments for CY 2014.

TABLE 26—CY 2014 APCS CONTAINING CYSTOURETHROSCOPY AND GENITOURINARY PROCEDURES

CY 2014 APC	APC Title description	CY 2014 Status indicator
0160	Level I Cystourethroscopy and other Genitourinary Procedures	T
0161	Level II Cystourethroscopy and other Genitourinary Procedures	T
0162	Level III Cystourethroscopy and other Genitourinary Procedures	T
0163	Level IV Cystourethroscopy and other Genitourinary Procedures	T
0429	Level V Cystourethroscopy and other Genitourinary Procedures	T

For the CY 2015 OPPS update, based on our review of the latest hospital outpatient claims data available for this proposed rule, we are proposing to restructure the APCs containing cystourethroscopy and other genitourinary procedures to better reflect the resource costs and clinical characteristics of the procedures within each APC. This proposed restructuring results in the use of four APCs for the CY 2015 OPPS update, as compared to the five APCs used for the CY 2014 OPPS update. Specifically, based on our review and evaluation of the procedures assigned to these APCs and the latest hospital outpatient claims data, we are proposing to delete APC 0429 (Level V Cystourethroscopy and Other Genitourinary Procedures). We are proposing to reassign the procedures that were previously assigned to APC 0429 to either APC 0161 (Level I Cystourethroscopy and Other Genitourinary Procedures) or APC 0163 (Level IV Cystourethroscopy and other Genitourinary Procedures) for the CY 2015 OPPS update because we believe that these procedures would be more appropriately assigned to either APC based on their geometric mean costs. Further, we believe this proposed restructuring appropriately categorizes all of the cystourethroscopy and other genitourinary procedures that are comparable clinically and with respect to resource use within an APC group. In addition, we are proposing to delete APC 0169 (Lithotripsy) because the one

procedure, specifically the procedure described by CPT code 50590 (Lithotripsy, extracorporeal shock wave) that was assigned to this APC is proposed for reassignment to APC 0163.

In summary, we are proposing to restructure the APCs containing cystourethroscopy and other genitourinary procedures, and to use a four-level APC grouping to classify the procedures based on our analysis of the latest hospital outpatient claims data available for this proposed rule. In addition, we are proposing to delete APC 0169 and reassign CPT code 50590 to APC 0163 where it is more appropriately assigned based on resource costs and the similarity to the other procedures assigned to APC 0163. Table 27 shows the proposed APCs that contain cystourethroscopy and other genitourinary procedures, the APC titles, and the status indicator assignments for CY 2015. The proposed payment rates for the specific APCs listed in Table 27 can be found in Addendum A to this proposed rule, while the proposed payment rates for the specific cystourethroscopy and other genitourinary procedure codes can be found in Addendum B to this proposed rule (which are available via the Internet on the CMS Web site).

TABLE 27—PROPOSED CY 2015 APCS CONTAINING CYSTOURETHROSCOPY AND GENITOURINARY PROCEDURES

Proposed CY 2015 APC	APC Title description	Proposed CY 2015 Status indicator
0160	Level I Cystourethroscopy and other Genitourinary Procedures	T
0161	Level II Cystourethroscopy and other Genitourinary Procedures	T
0162	Level III Cystourethroscopy and other Genitourinary Procedures	T
0163	Level IV Cystourethroscopy and other Genitourinary Procedures	T

6. Wound Treatments and Services (APCs 0015 and 0327)

a. Epidermal Autograft (APC 0327)

In the CY 2014 OPPS/ASC final rule with comment period, we assigned CPT code 15110 to APC 0329 (Level IV Skin Repair), with a payment rate of approximately $2,260. This payment rate was derived from the latest hospital outpatient claims data used for CY 2014 ratesetting, which showed a geometric mean cost of approximately $2,174 based on 10 single claims (out of 29 total claims) for CPT code 15110.

As stated in section III.B. of this proposed rule, we review, on an annual basis, the APC assignments for all services and items paid under the OPPS. Analysis of the latest hospital outpatient claims data available for this CY 2015 proposed rule showed a geometric mean cost of approximately $774 based on 90 single claims (out of 122 total claims) for CPT code 15110. Based on these recent data, we are proposing to reassign CPT code 15110 from APC 0329 to APC 0327 (Level II Skin Procedures), which has a geometric mean cost of approximately $451. We believe that APC 0327 is the most appropriate assignment for CPT code 15110 when considering its similarity to the other procedures in this APC.

In addition, we are proposing to revise the APC titles for the four skin repair APCs. Specifically, we are proposing to rename APC 0326 from ''Level I Skin Repair'' to ''Level I Skin Procedures,'' APC 0327 from ''Level II Skin Repair'' to ''Level II Skin Procedures,'' APC 0328 from ''Level III Skin Repair'' to ''Level III Skin Procedures,'' and APC 0329 from ''Level IV Skin Repair'' to ''Level IV Skin Procedures.''

Table 28 below shows the long descriptor, as well as the proposed CY 2015 APC and status indicator assignment, for CPT code 15110. The proposed CY 2015 payment rate for CPT code 15110 can be found in Addendum B to this proposed rule (which is available via the Internet on the CMS Web site).

TABLE 28–PROPOSED CY 2015 APC AND STATUS INDICATOR FOR CPT CODE 15110

Procedure code	Long descriptor	CY 2014 SI	CY 2014 APC	Proposed CY 2015 SI	Proposed CY 2015 APC
15110	Epidermal autograft, trunk, arms, legs; first 100 sq cm or less, or 1% of body area of infants and children.	T	0329	T	0327

b. Negative Pressure Wound Therapy (NPWT) (APC 0015)

We stated in the CY 2014 OPPS/ASC final rule with comment period (78 FR 75001) that some commenters requested the reassignment of HCPCS codes G0456 and G0457 to a higher paying APC, specifically within the range of $450 to $500 because this range in amounts would adequately pay for the cost of providing negative pressure wound therapy (NPWT). We further stated in that same final rule with comment period that because HCPCS codes G0456 and G0457 were new codes for the CY 2013 OPPS update, we expected to have claims data available for these codes during the CY 2015 rulemaking cycle, and at which time we would reevaluate the APC assignments for these services in preparation for the CY 2015 rulemaking cycle.

We established HCPCS code G0456 and HCPCS code G0457 effective January 1, 2013, to provide a payment mechanism for NPWT services furnished through a disposable device. For the CY 2013 OPPS update, we assigned these services to APC 0016 (Level IV Debridement & Destruction), which had a CY 2013 payment rate of approximately $210. For the CY 2014 OPPS update, we continued to assign HCPCS codes G0456 and G0457 to APC 0016, which has a payment rate of approximately $275.

For the CY 2015 OPPS update, our analysis of the latest hospital outpatient claims data available for this proposed rule, which is based on claims submitted from January 1, 2013 through December 31, 2013, indicates that the geometric mean cost of APC 0013 is close to the geometric mean cost of APC 0015. Therefore, we are proposing to

combine these APCs by deleting APC 0013 and reassigning all of the procedures from APC 0013 to APC 0015, thereby retaining APC 0015. We are proposing to retitle the Debridement and Destruction APC series (excluding the title of APC 0012) as follows: APC 0015 (Level II Debridement and Destruction), APC 0016 (Level III Debridement and Destruction), and APC 0017 (Level IV Debridement and Destruction). The CY 2013 claims data available for this proposed rule also indicate that the resource costs for the services described by HCPCS codes G0456 and G0457 range between $152 and $193. Specifically, the geometric mean cost for HCPCS code G0456 is approximately $152 based on 4,509 single claims (out of 5,772 total claims), and approximately $193 for HCPCS code G0457 based on 386 single claims (out of 591 total claims). Based on our most recent claims data, we believe that a reassignment of HCPCS codes G0456 and G0457 from APC 0016 to APC 0015 (Level III Debridement & Destruction), which has a geometric mean cost of approximately $148, is most appropriate. Therefore, we are proposing to reassign HCPCS codes G0456 and G0457 from APC 0016 to APC 0015 for the CY 2015 OPPS update. Table 29 below shows the long descriptors as well as the proposed CY 2015 APC and status indicator assignments for HCPCS codes G0456 and G0457. The proposed CY 2015 payment rates for HCPCS codes G0456 and G0457 can be found in Addendum B to this proposed rule (which is available via the Internet on the CMS Web site).

TABLE 29—PROPOSED CY 2015 APCS AND STATUS INDICATOR FOR HCPCS CODES G0456 AND G0457

HCPCS Code	Long descriptor	CY 2014 SI	CY 2014 APC	Proposed CY 2015 SI	Proposed CY 2015 APC
G0456	Negative pressure wound therapy, (eg, vacuum assisted drainage collection) using a mechanically-powered device, not durable medical equipment, including provision of cartridge and dressing(s), topical application(s), wound assessment, and instructions for ongoing care, per session; total wounds(s) surface area less than or equal to 50 square centimeters.	T	0016	T	0015
G0457	Negative pressure wound therapy, (eg, vacuum assisted drainage collection) using a mechanically-powered device, not durable medical equipment, including provision of cartridge and dressing(s), topical application(s), wound assessment, and instructions for ongoing care, per session; total wounds(s) surface area greater than 50 square centimeters.	T	0016	T	0015

7. Endoscopic Retrograde Cholangiopancreatography (ERCP) With Stent (APC 0384)

For the CY 2014 OPPS update, the AMA CPT Editorial Panel deleted CPT codes 43268 and 43269 describing an endoscopic retrograde cholangiopancreatography (ERCP) with stent placement into the biliary or pancreatic duct. New CPT codes 43274 and 43276 replaced deleted CPT codes 43268 and 43269, effective January 1, 2014. New CPT codes 43274 and 43276 describe an ERCP with stent placement into the biliary or pancreatic duct including dilation, guide wire passage, and sphincterotomy, when performed. As shown in Table 30, and as listed in Addendum B to the CY 2014 OPPS/ASC final rule with comment period, we assigned CPT codes 43274 and 43276 to APC 0151 (Endoscopic Retrograde Cholangio-Pancreatography (ERCP)), with a payment rate of $1,933.69 for CY 2014. In addition, as listed in Addendum B, both procedure codes were assigned to comment indicator ''NI'' to indicate that these codes were assigned interim APC and status indicator assignments that were subject to comment.

At the Panel's March 10, 2014 meeting, the Panel recommended that CMS reassign CPT codes 43274 and 43276 to APC 0384 (GI Procedures with Stents) at the earliest opportunity. We agree with the Panel's recommendation that CPT codes 43274 and 43276 should be reassigned to APC 0384. Therefore, we are proposing to reassign CPT codes 43274 and 43276 from APC 0151 to APC 0384 for the CY 2015 OPPS update. Table 30 below shows the long descriptors for CPT codes 43274 and 43276, and their proposed APC and status indicator assignments for the CY 2015 OPPS update. We note that APC 0384 is proposed as a comprehensive APC for CY 2015. We refer readers to section II.A.2.e. of this proposed rule for additional information on our comprehensive APC policy. The proposed CY 2015 payment rate for CPT codes 43274 and 43276 can be found in Addendum B to this CY 2015 OPPS/ASC proposed rule (which is available via the Internet on the CMS Web site).

TABLE 30—PROPOSED CY 2015 APC AND STATUS INDICATOR ASSIGNMENTS FOR CPT CODES 43274 AND 43276

CPT code	Long descriptor	CY 2014 OPPS SI	CY 2014 OPPS APC	Proposed CY 2015 OPPS SI	Proposed CY 2015 OPPS APC
43274	Endoscopic retrograde cholangiopancreatography (ERCP); with placement of endoscopic stent into biliary or pancreatic duct, including pre- and post-dilation and guide wire passage, when performed, including sphincterotomy, when performed, each stent.	T	0151	J1	0384

TABLE 30—PROPOSED CY 2015 APC AND STATUS INDICATOR ASSIGNMENTS FOR CPT CODES 43274 AND 43276—Continued

CPT code	Long descriptor	CY 2014 OPPS SI	CY 2014 OPPS APC	Proposed CY 2015 OPPS SI	Proposed CY 2015 OPPS APC
43276	Endoscopic retrograde cholangiopancreatography (ERCP); with removal and exchange of stent(s), biliary or pancreatic duct, including pre- and post-dilation and guide wire passage, when performed, including sphincterotomy, when performed, each stent exchanged.	T	0151	J1	0384

8. Radiation Therapy (APCs 0066, 0067, 0412, 0446, 0648, and 0667)

We are proposing several changes to the radiation therapy APCs for CY 2015. To correct a violation of the 2 times rule within APC 0664 (Level I Proton Beam Radiation Therapy), we are proposing to reassign CPT code 77520 from APC 0664 to APC 0412 (Level III Radiation Therapy). We believe that CPT code 77520 is both clinically similar and comparable in geometric mean cost to the other services assigned to APC 0412. We also are proposing to reassign CPT code 77522 from APC 0664 to proposed newly renamed APC 0667 (Level IV Radiation Therapy) because we believe that the procedure described by CPT code 77522 is both clinically similar and comparable in geometric mean cost to the other services assigned to APC 0667. Because there would be no other codes assigned to APC 0664 if these proposed reassignments are finalized, we also are proposing to delete APC 0664 for CY 2015. In addition, we are proposing to rename existing APC 0667 to ''Level IV Radiation Therapy'' (instead of using the existing title of ''Level II Proton Beam Radiation Therapy''), to make the title consistent with other APCs in the radiation therapy series. In conjunction with this proposed change, we are proposing to reassign the following three services to proposed newly renamed APC 0667 for CY 2015: CPT codes 77522, 77523, and 77525.

We also are proposing to delete APC 0065 (IORT, MRgFUS, and MEG) because we are proposing to reassign the services assigned to this APC to more appropriate APCs based on clinical similarities and comparable geometric mean cost. Specifically, we are proposing to reassign the Magnetoencephalography (MEG) CPT codes 95965 and 95966 from APC 0065 to APC 0446 (Level IV Nerve and Muscle Services), which would only contain MEG services. We are proposing to reassign Intraoperative Radiation Therapy (IORT) CPT codes 77424 and 77425 to comprehensive APC 0648 (Level IV Breast and Skin Surgery). We refer readers to section II.A.2.e. of this proposed rule for a discussion of comprehensive APCs and the APC assignment of IORT services. In addition, we are proposing to reassign the Magnetic Resonance-Guided Focused Ultrasound Surgery (MRgFUS) HCPCS codes C9734, 0071T, and 0072T, and CPT code 0301T from APC 0065 to APC 0066, which we are proposing to rename ''Level V Radiation Therapy.'' We understand that the MRgFUS services are not the same as radiation therapy, but assigning these services to APC 0066 aligns with the assignment of certain stereotactic radiosurgery services (namely the procedure described by HCPCS code G0339 and successor CPT code 77373) that were grouped with MRgFUS services prior to CY 2014. Finally, we are proposing to rename APC 0067 from ''Level II Stereotactic Radiosurgery'' to ''Single Session Cranial Stereotactic Radiosurgery'', which we are proposing as a comprehensive APC. For a further discussion regarding the services assigned to APC 0067, we refer readers to section II.A.2.e. of this proposed rule.

IV. Proposed OPPS Payment for Devices

A. Proposed Pass-Through Payments for Devices

1. Expiration of Transitional Pass-Through Payments for Certain Devices

a. Background

Section 1833(t)(6)(B)(iii) of the Act requires that, under the OPPS, a category of devices be eligible for transitional pass-through payments for at least 2, but not more than 3 years. This pass-through payment eligibility period begins with the first date on which transitional pass-through payments may be made for any medical device that is described by the category. We may establish a new device category for pass-through payment in any quarter. Under our established policy, we base the pass-through status expiration date for a device category on the date on which pass-through payment is effective for the category, which is the first date on which pass-through payment may be made for any medical device that is described by such category. We propose and finalize the dates for expiration of pass-through status for device categories as part of the OPPS annual update.

We also have an established policy to package the costs of the devices that are no longer eligible for pass-through payments into the costs of the procedures with which the devices are reported in the claims data used to set the payment rates (67 FR 66763). Brachytherapy sources, which are now separately paid in accordance with section 1833(t)(2)(H) of the Act, are an exception to this established policy.

There currently is one device category eligible for pass-through payment. This device category is described by HCPCS code C1841 (Retinal prosthesis, includes all internal and external components), which we made effective for pass-through payment as of October 1, 2013.

b. Proposed CY 2015 Policy

As indicated earlier, a category of devices may be eligible for transitional pass-through payments for at least 2 years, but not more than 3 years. There is one device category eligible for pass-through payment at this time, described by HCPCS code C1841, which we made effective for pass-through payment as of October 1, 2013. At the end of CY 2015, the device category described by HCPCS code C1841 will have been eligible for pass-through payment for more than 2 years. Therefore, we are proposing an expiration date for pass-through payment for HCPCS code C1841 of December 31, 2015. We are proposing that, effective January 1, 2016, HCPCS code C1841 will no longer be eligible for pass-through payment status. In accordance with our established policy, we are proposing to package the cost of HCPCS code C1841 after December 31, 2015, into the costs related to the

procedures with which it is reported in our claims data.

If we create new device categories for pass-through payment status during the remainder of CY 2014 or during CY 2015, we will propose future expiration dates in accordance with the statutory requirement that they be eligible for pass-through payments for at least 2 years, but not more than 3 years, from the date on which pass-through payment for any medical device described by the category may first be made.

2. Proposed Provisions for Reducing Transitional Pass-Through Payments To Offset Costs Packaged Into APC Groups

a. Background

Section 1833(t)(6)(D)(ii) of the Act sets the amount of additional pass-through payment for an eligible device as the amount by which the hospital's charges for a device, adjusted to cost (the cost of the device) exceeds the portion of the otherwise applicable Medicare outpatient department fee schedule amount (the APC payment amount) associated with the device. We have an established policy to estimate the portion of each APC payment rate that could reasonably be attributed to the cost of the associated devices that are eligible for pass-through payments (66 FR 59904) for purposes of estimating the portion of the otherwise applicable APC payment amount associated with pass-through devices. For eligible device categories, we deduct an amount that reflects the portion of the APC payment amount that we determine is associated with the cost of the device, defined as the device APC offset amount, from the charges adjusted to cost for the device, as provided by section 1833(t)(6)(D)(ii) of the Act, to determine the eligible device's pass-through payment amount. We have consistently used an established methodology to estimate the portion of each APC payment rate that could reasonably be attributed to the cost of an associated device eligible for pass-through payment, using claims data from the period used for the most recent recalibration of the APC rates (72 FR 66751 through 66752). We establish and update the applicable device APC offset amounts for newly eligible pass-through device categories through the transmittals that implement the quarterly OPPS updates.

Currently, we have published a list of all procedural APCs with the CY 2014 portions (both percentages and dollar amounts) of the APC payment amounts that we determine are associated with the cost of devices on the CMS Web site at: *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HospitalOutpatientPPS/index.html*. The dollar amounts are used as the device APC offset amounts. In addition, in accordance with our established practice, the device APC offset amounts in related APCs are used in order to evaluate whether the cost of a device in an application for a new device category for pass-through payment is not insignificant in relation to the APC payment amount for the service related to the category of devices, as specified in our regulations at § 419.66(d).

Beginning in CY 2010, we include packaged costs related to implantable biologicals in the device offset calculations in accordance with our policy that the pass-through evaluation process and payment methodology for implantable biologicals that are surgically inserted or implanted (through a surgical incision or a natural orifice) and that are newly approved for pass-through status beginning on or after January 1, 2010, be the device pass-through process and payment methodology only (74 FR 60476).

b. Proposed CY 2015 Policy

We are proposing to continue, for CY 2015, our established methodology to estimate the portion of each APC payment rate that could reasonably be attributed to (that is, reflect) the cost of an associated device eligible for pass-through payment, using claims data from the period used for the most recent recalibration of the APC payment rates. We are proposing to continue our policy, for CY 2015, that the pass-through evaluation process and pass-through payment methodology for implantable biologicals that are surgically inserted or implanted (through a surgical incision or a natural orifice) and that are newly approved for pass-through status beginning on or after January 1, 2010, be the device pass-through process and payment methodology only. The rationale for this policy is provided in the CY 2010 OPPS/ASC final rule with comment period (74 FR 60471 through 60477). We also are proposing to continue our established policies for calculating and setting the device APC offset amounts for each device category eligible for pass-through payment. In addition, we are proposing to continue our established policy to review each new device category on a case-by-case basis to determine whether device costs associated with the new category are already packaged into the existing APC structure. If device costs packaged into the existing APC structure are associated with the new category, we are proposing to deduct the device APC offset amount from the pass-through payment for the device category. As stated earlier, these device APC offset amounts also would be used in order to evaluate whether the cost of a device in an application for a new device category for pass-through payment is not insignificant in relation to the APC payment amount for the service related to the category of devices (§ 419.66(d)).

For CY 2015, we also are proposing to continue our policy established in CY 2010 to include implantable biologicals in our calculation of the device APC offset amounts. In addition, we are proposing to continue to calculate and set any device APC offset amount for any new device pass-through category that includes a newly eligible implantable biological beginning in CY 2015 using the same methodology we have historically used to calculate and set device APC offset amounts for device categories eligible for pass-through payment, and to include the costs of implantable biologicals in the calculation of the device APC offset amounts (78 FR 43596).

In addition, we are proposing to update the list of all procedural APCs with the final CY 2015 portions of the APC payment amounts that we determine are associated with the cost of devices on the CMS Web site at: *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HospitalOutpatientPPS/index.html* so that this information is available for use by the public in developing potential CY 2015 device pass-through payment applications and by CMS in reviewing those applications.

B. Proposed Adjustment to OPPS Payment for No Cost/Full Credit and Partial Credit Devices

1. Background

To ensure equitable payment when the hospital receives a device without cost or with full credit, in CY 2007, we implemented a policy to reduce the payment for specified device-dependent APCs by the estimated portion of the APC payment attributable to device costs (that is, the device offset) when the hospital receives a specified device at no cost or with full credit (71 FR 68071 through 68077). Hospitals are instructed to report no cost/full credit cases using the ''FB'' modifier on the line with the procedure code in which the no cost/full credit device is used. In cases in which the device is furnished without cost or with full credit, the hospital is instructed to report a token device charge of less than $1.01. In cases in which the device being inserted is an upgrade (either of the same type of

device or to a different type of device) with a full credit for the device being replaced, the hospital is instructed to report as the device charge the difference between its usual charge for the device being implanted and its usual charge for the device for which it received full credit. In CY 2008, we expanded this payment adjustment policy to include cases in which hospitals receive partial credit of 50 percent or more of the cost of a specified device. Hospitals are instructed to append the ''FC'' modifier to the procedure code that reports the service provided to furnish the device when they receive a partial credit of 50 percent or more of the cost of the new device. We refer readers to the CY 2008 OPPS/ASC final rule with comment period for more background information on the ''FB'' and ''FC'' payment adjustment policies (72 FR 66743 through 66749).

In the CY 2014 OPPS/ASC final rule with comment period (78 FR 75005 through 75007), beginning in CY 2014, we modified our policy of reducing OPPS payment for specified APCs when a hospital furnishes a specified device without cost or with a full or partial credit. For CY 2013 and prior years, our policy had been to reduce OPPS payment by 100 percent of the device offset amount when a hospital furnishes a specified device without cost or with a full credit and by 50 percent of the device offset amount when the hospital receives partial credit in the amount of 50 percent or more of the cost for the specified device. For CY 2014, we reduce OPPS payment, for the applicable APCs, by the full or partial credit a hospital receives for a replaced device. Specifically, under this modified policy, hospitals are required to report the amount of the credit in the amount portion for value code ''FD'' (Credit Received from the Manufacturer for a Replaced Medical Device) when the hospital receives a credit for a replaced device that is 50 percent or greater than the cost of the device. For CY 2014, we also limit the OPPS payment deduction for the applicable APCs to the total amount of the device offset when the ''FD'' value code appears on a claim.

2. Proposed Policy for CY 2015

For CY 2015, we are proposing to continue our existing policy of reducing OPPS payment for specified APCs when a hospital furnishes a specified device without cost or with a full or partial credit. Specifically, for CY 2015, we are proposing to continue to reduce the OPPS payment, for the applicable APCs listed below in Table 31, by the full or partial credit a provider receives for a replaced device. Under this proposed policy, hospitals would continue to be required to report the amount of the credit in the amount portion for ''FD'' when the hospital receives a credit for a replaced device listed in Table 32 that is 50 percent or greater than the cost of the device.

For CY 2015, we also are proposing to continue using the three criteria established in the CY 2007 OPPS/ASC final rule with comment period for determining the APCs to which our proposed CY 2015 policy would apply (71 FR 68072 through 68077). Specifically: (1) All procedures assigned to the selected APCs must involve implantable devices that would be reported if device insertion procedures were performed; (2) the required devices must be surgically inserted or implanted devices that remain in the patient's body after the conclusion of the procedure (at least temporarily); and (3) the device offset amount must be significant, which, for purposes of this policy, is defined as exceeding 40 percent of the APC cost. We also are proposing to continue to restrict the devices to which the APC payment adjustment would apply to a specific set of costly devices to ensure that the adjustment would not be triggered by the implantation of an inexpensive device whose cost would not constitute a significant proportion of the total payment rate for an APC. We continue to believe these criteria are appropriate because no cost devices and device credits are likely to be associated with particular cases only when the device must be reported on the claim and is of a type that is implanted and remains in the body when the beneficiary leaves the hospital. We believe that the reduction in payment is appropriate only when the cost of the device is a significant part of the total cost of the APC into which the device cost is packaged, and that the 40-percent threshold is a reasonable definition of a significant cost.

We examined the offset amounts calculated from the CY 2015 proposed rule data and the clinical characteristics of the proposed CY 2015 APCs to determine which APCs meet the criteria for CY 2015. Table 31 below lists the proposed APCs to which the proposed payment adjustment policy for no cost/full credit and partial credit devices would apply in CY 2015. Table 32 below lists the proposed devices to which the proposed payment adjustment policy for no cost/full credit and partial credit devices would apply in CY 2015.

We are proposing to update the lists of APCs and devices to which the proposed no cost/full credit and partial credit device adjustment policy would apply for CY 2015, consistent with the three criteria discussed earlier in this section, based on the final CY 2013 claims data available for the CY 2015 OPPS/ASC final rule with comment period.

TABLE 31—PROPOSED APCS TO WHICH THE PROPOSED NO COST/FULL CREDIT AND PARTIAL CREDIT DEVICE PAYMENT ADJUSTMENT POLICY WOULD APPLY IN CY 2015

Proposed CY 2015 APC	Proposed CY 2015 APC title
0039	Level III Neurostimulator & Related Procedures.
0061	Level II Neurostimulator & Related Procedures.
0064	Level III Treatment Fracture/Dislocation.
0089	Level III Pacemaker and Similar Procedures.
0090	Level II Pacemaker and Similar Procedures.
0107	Level I ICD and Similar Procedures.
0108	Level II ICD and Similar Procedures.
0227	Implantation of Drug Infusion Device.
0229	Level II Endovascular Procedures.
0259	Level VII ENT Procedures.
0293	Level IV Intraocular Procedures.
0318	Level IV Neurostimulator & Related Procedures.
0319	Level III Endovascular Procedures.
0351	Level V Intraocular Procedures.
0385	Level I Urogenital Procedures.
0386	Level II Urogenital Procedures.
0425	Level V Musculoskeletal Procedures Except Hand and Foot.
0434	Cardiac Defect Repair.
0655	Level IV Pacemaker and Similar Procedures.

TABLE 32—PROPOSED DEVICES TO WHICH THE PROPOSED NO COST/FULL CREDIT AND PARTIAL CREDIT DEVICE PAYMENT ADJUSTMENT POLICY WOULD APPLY IN CY 2015

Proposed CY 2015 device HCPCS code	Proposed CY 2015 short descriptor
C1721	AICD, dual chamber.
C1722	AICD, single chamber.
C1728	Cath, brachytx seed adm.
C1764	Event recorder, cardiac.
C1767	Generator, neurostim, imp.
C1771	Rep dev, urinary, w/sling.
C1772	Infusion pump, programmable.

TABLE 32—PROPOSED DEVICES TO WHICH THE PROPOSED NO COST/FULL CREDIT AND PARTIAL CREDIT DEVICE PAYMENT ADJUSTMENT POLICY WOULD APPLY IN CY 2015—Continued

Proposed CY 2015 device HCPCS code	Proposed CY 2015 short descriptor
C1776	Joint device (implantable).
C1777	Lead, AICD, endo single coil.
C1778	Lead, neurostimulator.
C1779	Lead, pmkr, transvenous VDD.
C1785	Pmkr, dual, rate-resp.
C1786	Pmkr, single, rate-resp.
C1789	Prosthesis, breast, imp.
C1813	Prosthesis, penile, inflatab.
C1815	Pros, urinary sph, imp.
C1818	Integrated keratoprosthesis.
C1820	Generator, neuro rechg bat sys.
C1840	Lens, intraocular (telescopic).
C1881	Dialysis access system.
C1882	AICD, other than sing/dual.
C1891	Infusion pump, non-prog, perm.
C1895	Lead, AICD, endo dual coil.
C1896	Lead, AICD, non sing/dual.
C1897	Lead, neurostim, test kit.
C1898	Lead, pmkr, other than trans.
C1899	Lead, pmkr/AICD combination.
C1900	Lead coronary venous.
C2619	Pmkr, dual, non rate-resp.
C2620	Pmkr, single, non rate-resp.
C2621	Pmkr, other than sing/dual.
C2622	Prosthesis, penile, non-inf.
C2626	Infusion pump, non-prog, temp.
C2631	Rep dev, urinary, w/o sling.

V. Proposed OPPS Payment Changes for Drugs, Biologicals, and Radiopharmaceuticals

A. Proposed OPPS Transitional Pass-Through Payment for Additional Costs of Drugs, Biologicals, and Radiopharmaceuticals

1. Background

Section 1833(t)(6) of the Act provides for temporary additional payments or ''transitional pass-through payments'' for certain drugs and biologicals. Throughout this proposed rule, the term ''biological'' is used because this is the term that appears in section 1861(t) of the Act. ''Biological'' as used in this proposed rule includes ''biological product'' or ''biologic'' as defined in the Public Health Service Act. As enacted by the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA) (Pub. L. 106–113), this provision requires the Secretary to make additional payments to hospitals for: Current orphan drugs, as designated under section 526 of the Federal Food, Drug, and Cosmetic Act; urrent drugs and biologicals and brachytherapy sources used in cancer therapy; and current radiopharmaceutical drugs and biologicals. ''Current'' refers to drugs or biologicals that are outpatient hospital services under Part B for which payment was made on the first date the hospital OPPS was implemented.

Transitional pass-through payments also are provided for certain ''new'' drugs and biologicals that were not being paid for as an HOPD service as of December 31, 1996 and whose cost is ''not insignificant'' in relation to the OPPS payments for the procedures or services associated with the new drug or biological. For pass-through payment purposes, radiopharmaceuticals are included as ''drugs.'' As required by statute, transitional pass-through payments for a drug or biological described in section 1833(t)(6)(C)(i)(II) of the Act can be made for a period of at least 2 years, but not more than 3 years, after the payment was first made for the product as a hospital outpatient service under Medicare Part B. Proposed CY 2015 pass-through drugs and biologicals and their designated APCs are assigned status indicator ''G'' in Addenda A and B to this proposed rule, which are available via the Internet on the CMS Web site.

Section 1833(t)(6)(D)(i) of the Act specifies that the pass-through payment amount, in the case of a drug or biological, is the amount by which the amount determined under section 1842(o) of the Act for the drug or biological exceeds the portion of the otherwise applicable Medicare OPD fee schedule that the Secretary determines is associated with the drug or biological. If the drug or biological is covered under a competitive acquisition contract under section 1847B of the Act, the pass-through payment amount is determined by the Secretary to be equal to the average price for the drug or biological for all competitive acquisition areas and the year established under such section as calculated and adjusted by the Secretary. However, we note that the Part B drug competitive acquisition program (CAP) has been postponed since CY 2009, and such a program has not been reinstated for CY 2015.

This methodology for determining the pass-through payment amount is set forth in regulations at 42 CFR 419.64. These regulations specify that the pass-through payment equals the amount determined under section 1842(o) of the Act minus the portion of the APC payment that CMS determines is associated with the drug or biological. Section 1847A of the Act establishes the average sales price (ASP) methodology, which is used for payment for drugs and biologicals described in section 1842(o)(1)(C) of the Act furnished on or after January 1, 2005. The ASP methodology, as applied under the OPPS, uses several sources of data as a basis for payment, including the ASP, the wholesale acquisition cost (WAC), and the average wholesale price (AWP). In this proposed rule, the term ''ASP methodology'' and ''ASP-based'' are inclusive of all data sources and methodologies described therein. Additional information on the ASP methodology can be found on the CMS Web site at: *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Part-B-Drugs/McrPartBDrugAvgSalesPrice/index.html*.

The pass-through application and review process for drugs and biologicals is explained on the CMS Web site at: *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HospitalOutpatientPPS/passthrough_payment.html*.

2. Proposed Drugs and Biologicals With Expiring Pass-Through Status in CY 2014

We are proposing that the pass-through status of 9 drugs and biologicals would expire on December 31, 2014, as listed in Table 33 below. All of these drugs and biologicals will have received OPPS pass-through payment for at least 2 years and no more than 3 years by December 31, 2014. These drugs and biologicals were approved for pass-through status on or before January 1, 2013. With the exception of those groups of drugs and biologicals that are always packaged when they do not have pass-through status (specifically, diagnostic radiopharmaceuticals; contrast agents; anesthesia drugs; drugs, biologicals, and radiopharmaceuticals that function as supplies when used in a diagnostic test or procedure; and drugs and biologicals that function as supplies when used in a surgical procedure), our standard methodology for providing payment for drugs and biologicals with expiring pass-through status in an upcoming calendar year is to determine the product's estimated per day cost and compare it with the OPPS drug packaging threshold for that calendar year (which is proposed at $90 for CY 2015), as discussed further in section V.B.2. of this proposed rule. If the estimated per day cost for the drug or biological is less than or equal to the applicable OPPS drug packaging threshold, we would package payment for the drug or biological into the payment for the associated procedure in the upcoming calendar year. If the estimated per day cost of the drug or biological is greater than the OPPS drug packaging threshold, we would provide separate payment at the applicable

relative ASP-based payment amount (which is proposed at ASP+6 percent for CY 2015, as discussed further in section V.B.3. of this proposed rule).

TABLE 33—PROPOSED DRUGS AND BIOLOGICALS FOR WHICH PASS-THROUGH STATUS WILL EXPIRE DECEMBER 31, 2014

Proposed CY 2015 HCPCS Code	Proposed CY 2015 long descriptor	Proposed CY 2015 SI	Proposed CY 2015 APC
C9290	Injection, bupivicaine liposome, 1 mg	N	N/A
C9293	Injection, glucarpidase, 10 units	K	9293
J0178	Injection, aflibercept, 1 mg vial	K	1420
J0716	Injection, centruroides (scorpion) immune f(ab)2, up to 120 milligrams	K	1431
J9019	Injection, asparaginase (erwinaze), 1,000 iu	K	9289
J9306	Injection, pertuzumab, 1 mg	K	1471
Q4131	EpiFix, per square centimeter	N	N/A
Q4132	Grafix core, per square centimeter	N	N/A
Q4133	Grafix prime, per square centimeter	N	N/A

3. Proposed Drugs, Biologicals, and Radiopharmaceuticals With New or Continuing Pass-Through Status in CY 2015

We are proposing to continue pass-through status in CY 2015 for 22 drugs and biologicals. None of these drugs and biologicals will have received OPPS pass-through payment for at least 2 years and no more than 3 years by December 31, 2014. These drugs and biologicals, which were approved for pass-through status between January 1, 2013 and July 1, 2014, are listed in Table 34 below. The APCs and HCPCS codes for these drugs and biologicals approved for pass-through status through April 1, 2014 are assigned status indicator ''G'' in Addenda A and B to this proposed rule. Addenda A and B to this proposed rule are available via the Internet on the CMS Web site.

Section 1833(t)(6)(D)(i) of the Act sets the amount of pass-through payment for pass-through drugs and biologicals (the pass-through payment amount) as the difference between the amount authorized under section 1842(o) of the Act and the portion of the otherwise applicable OPD fee schedule that the Secretary determines is associated with the drug or biological. Payment for drugs and biologicals with pass-through status under the OPPS is currently made at the physician's office payment rate of ASP+6 percent. We believe it is consistent with the statute to propose to continue to provide payment for drugs and biologicals with pass-through status at a rate of ASP+6 percent in CY 2015, which is the amount that drugs and biologicals receive under section 1842(o) of the Act.

Therefore, for CY 2015, we are proposing to pay for pass-through drugs and biologicals at ASP+6 percent, equivalent to the rate these drugs and biologicals would receive in the physician's office setting in CY 2015. We are proposing that a $0.00 pass-through payment amount would be paid for most pass-through drugs and biologicals under the CY 2015 OPPS because the difference between the amount authorized under section 1842(o) of the Act, which is ASP+6 percent, and the portion of the otherwise applicable OPD fee schedule that the Secretary determines is appropriate, proposed at ASP+6 percent, is $0.

In the case of policy-packaged drugs (which include the following: Contrast agents; diagnostic radiopharmaceuticals; anesthesia drugs; drugs, biologicals, and radiopharmaceuticals that function as supplies when used in a diagnostic test or procedure and drugs; and biologicals that function as supplies when used in a surgical procedure), we are proposing that their pass-through payment amount would be equal to ASP+6 percent for CY 2015 because, if not on pass-through status, payment for these products would be packaged into the associated procedure.

In addition, we are proposing to continue to update pass-through payment rates on a quarterly basis on the CMS Web site during CY 2015 if later quarter ASP submissions (or more recent WAC or AWP information, as applicable) indicate that adjustments to the payment rates for these pass-through drugs or biologicals are necessary. For a full description of this policy, we refer readers to the CY 2006 OPPS/ASC final rule with comment period (70 FR 68632 through 68635).

In CY 2015, as is consistent with our CY 2014 policy for diagnostic and therapeutic radiopharmaceuticals, we are proposing to provide payment for both diagnostic and therapeutic radiopharmaceuticals that are granted pass-through status based on the ASP methodology. As stated above, for purposes of pass-through payment, we consider radiopharmaceuticals to be drugs under the OPPS. Therefore, if a diagnostic or therapeutic radiopharmaceutical receives pass-through status during CY 2015, we are proposing to follow the standard ASP methodology to determine the pass-through payment rate that drugs receive under section 1842(o) of the Act, which is ASP+6 percent. If ASP data are not available for a radiopharmaceutical, we are proposing to provide pass-through payment at WAC+6 percent, the equivalent payment provided to pass-through drugs and biologicals without ASP information. If WAC information is also not available, we are proposing to provide payment for the pass-through radiopharmaceutical at 95 percent of its most recent AWP.

As discussed in more detail in section II.A.3. of this proposed rule, we implemented a policy whereby payment for the following nonpass-through items is packaged into payment for the associated procedure: Diagnostic radiopharmaceuticals; contrast agents; anesthesia drugs; drugs, biologicals, and radiopharmaceuticals that function as supplies when used in a diagnostic test or procedure; and drugs and biologicals that function as supplies when used in a surgical procedure. We are proposing to continue the packaging of these items, regardless of their per day cost, in CY 2015. As stated earlier, pass-through payment is the difference between the amount authorized under section 1842(o) of the Act and the portion of the otherwise applicable OPD fee schedule that the Secretary determines is associated with the drug or biological. Because payment for a drug that is policy-packaged would otherwise be packaged if the product did not have pass-through status, we believe the otherwise applicable OPPS payment amount would be equal to the policy-packaged drug APC offset amount for the associated clinical APC in which the drug or biological is

utilized. The proposed calculation of the policy-packaged drug APC offset amounts is described in more detail in section V.A.4. of this proposed rule. It follows that the copayment for the nonpass-through payment portion (the otherwise applicable fee schedule amount that we would also offset from payment for the drug or biological if a payment offset applies) of the total OPPS payment for those drugs and biologicals would, therefore, be accounted for in the copayment for the associated clinical APC in which the drug or biological is used.

According to section 1833(t)(8)(E) of the Act, the amount of copayment associated with pass-through items is equal to the amount of copayment that would be applicable if the pass-through adjustment was not applied. Therefore, as we did in CY 2014, we are proposing to continue to set the associated copayment amount to zero for CY 2015 for pass-through drugs and biologicals that would otherwise be packaged if the item did not have pass-through status.

The 22 drugs and biologicals that we are proposing to continue to have pass-through status for CY 2015 or have been granted pass-through status as of July 2014 are shown in Table 34 below.

TABLE 34—PROPOSED DRUGS AND BIOLOGICALS WITH PASS-THROUGH STATUS IN CY 2015

Proposed CY 2015 HCPCS code	CY 2015 Long descriptor	Proposed CY 2015 SI	Proposed CY 2015 APC
A9520	Technetium Tc 99m tilmanocept, diagnostic, up to 0.5 millicuries	G	1463
C9021	Injection, obinutuzumab, 10 mg	G	1476
C9022	Injection, elosulfase alfa, 1mg	G	1480
C9132	Prothrombin complex concentrate (human), Kcentra, per i.u. of Factor IX activity	G	9132
C9133	Factor ix (antihemophilic factor, recombinant), Rixubus, per i.u.	G	1467
C9134	Injection, Factor XIII A-subunit, (recombinant), per 10 i.u.	G	1481
C9441	Injection, ferric carboxymaltose, 1 mg	G	9441
C9497	Loxapine, inhalation powder, 10 mg	G	9497
J1446	Injection, tbo-filgrastim, 5 micrograms	G	1447
J1556	Injection, immune globulin (Bivigam), 500 mg	G	9130
J3060	Injection, taliglucerase alfa, 10 units	G	9294
J7315	Mitomycin, ophthalmic, 0.2 mg	G	1448
J7316	Injection, Ocriplasmin, 0.125mg	G	9298
J7508	Tacrolimus, Extended Release, Oral, 0.1 mg	G	1465
J9047	Injection, carfilzomib, 1 mg	G	9295
J9262	Injection, omacetaxine mepesuccinate, 0.01 mg	G	9297
J9354	Injection, ado-trastuzumab emtansine, 1 mg	G	9131
J9371	Injection, Vincristine Sulfate Liposome, 1 mg	G	1466
J9400	Injection, Ziv-Aflibercept, 1 mg	G	9296
Q4121	Theraskin, per square centimeter	G	1479
Q4122	Dermacell, per square centimeter	G	1419
Q4127	Talymed, per square centimeter	G	1449

Note: Because the payment rates associated with these codes effective July 1, 2014, are not available to us in time for incorporation into the Addenda to this proposed rule, the Level II HCPCS codes and the Category III CPT codes implemented through the July 2014 OPPS quarterly update CR could not be included in Addendum B to this proposed rule.

4. Proposed Provisions for Reducing Transitional Pass-Through Payments for Policy-Packaged Drugs and Biologicals To Offset Costs Packaged Into APC Groups

a. Background

Prior to CY 2008, diagnostic radiopharmaceuticals and contrast agents were paid separately under the OPPS if their mean per day costs were greater than the applicable year's drug packaging threshold. In CY 2008 (72 FR 66768), we began a policy of packaging payment for all nonpass-through diagnostic radiopharmaceuticals and contrast agents as ancillary and supportive items and services into their associated nuclear medicine procedures. Therefore, beginning in CY 2008, nonpass-through diagnostic radiopharmaceuticals and contrast agents were not subject to the annual OPPS drug packaging threshold to determine their packaged or separately payable payment status, and instead all nonpass-through diagnostic radiopharmaceuticals and contrast agents were packaged as a matter of policy.

For CY 2014, in the CY 2014 OPPS/ASC final rule with comment period (78 FR 74925), we continued to package payment for all nonpass-through diagnostic radiopharmaceuticals, contrast agents, and anesthesia drugs and we began packaging all nonpass-through drugs, biologicals, and radiopharmaceuticals that function as supplies when used in a diagnostic test or procedure and drugs and biologicals that function as supplies when used in a surgical procedure. These packaging policies were codified at 42 CFR 419.2(b) in CY 2014.

b. Proposed Payment Offset Policy for Diagnostic Radiopharmaceuticals

As previously noted, radiopharmaceuticals are considered to be drugs for OPPS pass-through payment purposes. As described above, section 1833(t)(6)(D)(i) of the Act specifies that the transitional pass-through payment amount for pass-through drugs and biologicals is the difference between the amount paid under section 1842(o) of the Act and the otherwise applicable OPD fee schedule amount. Because a payment offset is necessary in order to provide an appropriate transitional pass-through payment, we deduct from the pass-through payment for diagnostic radiopharmaceuticals an amount reflecting the portion of the APC payment associated with predecessor radiopharmaceuticals in order to ensure no duplicate radiopharmaceutical payment is made.

In CY 2009, we established a policy to estimate the portion of each APC payment rate that could reasonably be attributed to the cost of predecessor diagnostic radiopharmaceuticals when considering a new diagnostic radiopharmaceutical for pass-through payment (73 FR 68638 through 68641). Specifically, we use the policy-packaged drug offset fraction for APCs containing

nuclear medicine procedures, calculated as 1 minus the following: The cost from single procedure claims in the APC after removing the cost for policy-packaged drugs divided by the cost from single procedure claims in the APC. To determine the actual APC offset amount for pass-through diagnostic radiopharmaceuticals that takes into consideration the otherwise applicable OPPS payment amount, we multiply the policy-packaged drug offset fraction by the APC payment amount for the nuclear medicine procedure with which the pass-through diagnostic radiopharmaceutical is used and, accordingly, reduce the separate OPPS payment for the pass-through diagnostic radiopharmaceutical by this amount. For CY 2015, as we did in CY 2014, we are proposing to continue to apply the diagnostic radiopharmaceutical offset policy to payment for pass-through diagnostic radiopharmaceuticals.

There is currently one diagnostic radiopharmaceutical with pass-through status under the OPPS. HCPCS code A9520 (Technetium Tc 99m tilmanocept, diagnostic, up to 0.5 millicuries) was granted pass-through status beginning October 1, 2013. We currently apply the established radiopharmaceutical payment offset policy to pass-through payment for this product.

Table 35 below displays the proposed APCs to which nuclear medicine procedures would be assigned in CY 2015 and for which we expect that an APC offset could be applicable in the case of diagnostic radiopharmaceuticals with pass-through status.

TABLE 35—PROPOSED APCS TO WHICH A DIAGNOSTIC RADIOPHARMACEUTICAL OFFSET MAY BE APPLICABLE IN CY 2015

Proposed CY 2015 APC	Proposed CY 2015 APC title
0308	Positron Emission Tomography (PET) Imaging.
0377	Level II Cardiac Imaging.
0378	Level II Pulmonary Imaging.
0389	Level I Non-imaging Nuclear Medicine.
0390	Level I Endocrine Imaging.
0391	Level II Endocrine Imaging.
0392	Level II Non-imaging Nuclear Medicine.
0393	Hematologic Processing & Studies.
0394	Hepatobiliary Imaging.
0395	GI Tract Imaging.
0396	Bone Imaging.
0398	Level I Cardiac Imaging.
0400	Hematopoietic Imaging.
0401	Level I Pulmonary Imaging.
0402	Level II Nervous System Imaging.
0403	Level I Nervous System Imaging.
0404	Renal and Genitourinary Studies.
0406	Level I Tumor/Infection Imaging.
0408	Level III Tumor/Infection Imaging.
0414	Level II Tumor/Infection Imaging.

c. Proposed Payment Offset Policy for Contrast Agents

Section 1833(t)(6)(D)(i) of the Act specifies that the transitional pass-through payment amount for pass-through drugs and biologicals is the difference between the amount paid under section 1842(o) of the Act and the otherwise applicable OPD fee schedule amount. Because a payment offset is necessary in order to provide an appropriate transitional pass-through payment, we deduct from the pass-through payment for contrast agents an amount reflecting the portion of the APC payment associated with predecessor contrast agents in order to ensure no duplicate contrast agent payment is made.

In CY 2010, we established a policy to estimate the portion of each APC payment rate that could reasonably be attributed to the cost of predecessor contrast agents when considering new contrast agents for pass-through payment (74 FR 60482 through 60484). Specifically, we use the policy-packaged drug offset fraction for procedural APCs, calculated as 1 minus the following: The cost from single procedure claims in the APC after removing the cost for policy packaged drugs divided by the cost from single procedure claims in the APC. To determine the actual APC offset amount for pass-through contrast agents that takes into consideration the otherwise applicable OPPS payment amount, we are proposing to multiply the policy packaged drug offset fraction by the APC payment amount for the procedure with which the pass-through contrast agent is used and, accordingly, reduce the separate OPPS payment for the pass-through contrast agent by this amount. For CY 2015, as we did in CY 2014, we are proposing to continue to apply our standard contrast agents offset policy to payment for pass-through contrast agents (78 FR 75017).

Although there are currently no contrast agents with pass-through status under the OPPS, we believe that a payment offset is necessary in the event that a new contrast agent is approved for pass-through status during CY 2015 in order to provide an appropriate transitional pass-through payment for new contrast agents. We are proposing to identify procedural APCs for which we expect a contrast offset could be applicable in the case of a pass-through contrast agent as any procedural APC with a policy-packaged drug amount greater than $20 that is not a nuclear medicine APC identified in Table 35 above, and these APCs are displayed in Table 36 below. The methodology used to determine a proposed threshold cost for application of a contrast agent offset policy is described in detail in the CY 2010 OPPS/ASC final rule with comment period (74 FR 60483 through 60484). For CY 2015, we are proposing to continue to recognize that when a contrast agent with pass-through status is billed with any procedural APC listed in Table 36 of this proposed rule, a specific offset based on the procedural APC would be applied to payment for the contrast agent to ensure that duplicate payment is not made for the contrast agent.

TABLE 36—PROPOSED APCS TO WHICH A CONTRAST AGENT OFFSET MAY BE APPLICABLE FOR CY 2015

Proposed CY 2015 APC	Proposed CY 2015 APC title
0080	Diagnostic Cardiac Catheterization.
0082	Coronary or Non-Coronary Atherectomy.
0083	Coronary Angioplasty, Valvuloplasty, and Level I Endovascular Revascularization.
0093	Vascular Reconstruction/Fistula Repair.
0104	Transcatheter Placement of Intracoronary Stents.
0152	Level I Percutaneous Abdominal and Biliary Procedures.
0177	Level I Echocardiogram With Contrast.
0178	Level II Echocardiogram With Contrast.
0229	Level II Endovascular Revascularization of the Lower Extremity.
0278	Diagnostic Urography.
0279	Level II Angiography and Venography.
0280	Level III Angiography and Venography.
0283	Computed Tomography with Contrast.

TABLE 36—PROPOSED APCS TO WHICH A CONTRAST AGENT OFFSET MAY BE APPLICABLE FOR CY 2015—Continued

Proposed CY 2015 APC	Proposed CY 2015 APC title
0284	Magnetic Resonance Imaging and Magnetic Resonance Angiography with Contrast.
0333	Computed Tomography without Contrast followed by Contrast.
0334	Combined Abdomen and Pelvis CT with Contrast.
0337	Magnetic Resonance Imaging and Magnetic Resonance Angiography without Contrast followed by Contrast.
0375	Ancillary Outpatient Services When Patient Expires.
0383	Cardiac Computed Tomographic Imaging.
0388	Discography.
0442	Dosimetric Drug Administration.
0653	Vascular Reconstruction/Fistula Repair with Device.
0656	Transcatheter Placement of Intracoronary Drug-Eluting Stents.
0662	CT Angiography.
0668	Level I Angiography and Venography.
8006	CT and CTA with Contrast Composite.
8008	MRI and MRA with Contrast Composite.

d. Proposed Payment Offset Policy for Drugs, Biologicals, and Radiopharmaceuticals That Function as Supplies When Used in a Diagnostic Test or Procedure and Drugs and Biologicals That Function as Supplies When Used in a Surgical Procedure

Section 1833(t)(6)(D)(i) of the Act specifies that the transitional pass-through payment amount for pass-through drugs and biologicals is the difference between the amount paid under section 1842(o) of the Act and the otherwise applicable OPD fee schedule amount. In the CY 2014 OPPS/ASC final rule with comment period (78 FR 74925), we finalized our policy to package drugs, biologicals, and radiopharmaceuticals that function as supplies when used in a diagnostic test or procedure and drugs and biologicals that function as supplies when used in a surgical procedure. As a part of this policy, we specifically finalized that skin substitutes and stress agents used in myocardial perfusion imaging (MPI) be policy packaged in CY 2014, in addition to diagnostic radiopharmaceuticals, contrast agents, and anesthesia drugs (78 FR 75019). Because a payment offset is necessary in order to provide an appropriate transitional pass-through payment, we finalized a policy for CY 2014 to deduct from the pass-through payment for skin substitutes and stress agents an amount reflecting the portion of the APC payment associated with predecessor skin substitutes and stress agents in order to ensure no duplicate skin substitute or stress agent payment is made (78 FR 75019).

In CY 2014, we established a policy to estimate the portion of each APC payment rate that could reasonably be attributed to the cost of predecessor skin substitutes or stress agents when considering a new skin substitute or stress agent for pass-through payment (78 FR 75019). Specifically, in the case of pass-through skin substitutes, we use the policy-packaged drug offset fraction for skin substitute procedural APCs, calculated as 1 minus the following: the cost from single procedure claims in the APC after removing the cost for policy-packaged drugs divided by the cost from single procedure claims in the APC. Because policy packaged radiopharmaceuticals also would be included in the drug offset fraction for the APC to which MPI procedures are assigned, in the case of pass-through stress agents, we use the policy-packaged drug offset fraction for the procedural APC, calculated as 1 minus the following: the cost from single procedure claims in the APC after removing the cost for policy-packaged drugs excluding policy-packaged diagnostic radiopharmaceuticals divided by the cost from single procedure claims in the APC. To determine the actual APC offset amount for pass-through skin substitutes and pass-through stress agents that takes into consideration the otherwise applicable OPPS payment amount, we multiply the policy-packaged drug offset fraction by the APC payment amount for the procedure with which the pass-through skin substitute or pass-through stress agent is used and, accordingly, reduce the separate OPPS payment for the pass-through skin substitute or pass-through stress agent by this amount (78 FR 75019). For CY 2015, as we did in CY 2014, we are proposing to continue to apply the skin substitute and stress agent offset policy to payment for pass-through skin substitutes and stress agents.

There are currently six skin substitutes (HCPCS codes Q4121, Q4122, Q4127, Q4131, Q4132, and Q4133) with pass-through status under the OPPS. We currently apply the established skin substitute payment offset policy to pass-through payment for these products. Table 37 below displays the proposed APCs to which skin substitute procedures would be assigned in CY 2015 and for which we expect that an APC offset could be applicable in the case of skin substitutes with pass-through status.

Although there are currently no stress agents with pass-through status under the OPPS, we believe that a payment offset is necessary in the event that a new stress agent is approved for pass-through status during CY 2015 in order to provide an appropriate transitional pass through payment for new stress agents. Table 38 below displays the proposed APCs to which MPI procedures would be assigned in CY 2015 and for which we expect that an APC offset could be applicable in the case of a stress agent with pass-through status.

We are proposing to continue to post annually on the CMS Web site at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HospitalOutpatientPPS/index.html* a file that contains the APC offset amounts that will be used for that year for purposes of both evaluating cost significance for candidate pass-through device categories and drugs and biologicals and establishing any appropriate APC offset amounts. Specifically, the file will continue to provide the amounts and percentages of APC payment associated with packaged implantable devices, policy-packaged drugs, and threshold packaged drugs and biologicals for every OPPS clinical APC.

TABLE 37—PROPOSED APCS TO WHICH A SKIN SUBSTITUTE OFFSET MAY BE APPLICABLE FOR CY 2015

Proposed CY 2015 APC	Proposed CY 2015 APC Title
0328	Level III Skin Repair.
0329	Level IV Skin Repair.

TABLE 38—PROPOSED APCS TO WHICH A STRESS AGENT OFFSET MAY BE APPLICABLE FOR CY 2015

Proposed CY 2015 APC	Proposed CY 2015 APC Title
0100	Cardiac Stress Tests.
0377	Level II Cardiac Imaging.

B. Proposed OPPS Payment for Drugs, Biologicals, and Radiopharmaceuticals Without Pass-Through Status

1. Background

Under the CY 2013 OPPS, we currently pay for drugs, biologicals, and

radiopharmaceuticals that do not have pass-through status in one of two ways: As a packaged payment included in the payment for the associated service, or as a separate payment (individual APCs). We explained in the April 7, 2000 OPPS final rule with comment period (65 FR 18450) that we generally package the cost of drugs and radiopharmaceuticals into the APC payment rate for the procedure or treatment with which the products are usually furnished. Hospitals do not receive separate payment for packaged items and supplies, and hospitals may not bill beneficiaries separately for any packaged items and supplies whose costs are recognized and paid within the national OPPS payment rate for the associated procedure or service.

Packaging costs into a single aggregate payment for a service, procedure, or episode-of-care is a fundamental principle that distinguishes a prospective payment system from a fee schedule. In general, packaging the costs of items and services into the payment for the primary procedure or service with which they are associated encourages hospital efficiencies and also enables hospitals to manage their resources with maximum flexibility.

2. Proposed Criteria for Packaging Payment for Drugs, Biologicals, and Radiopharmaceuticals

a. Background

As indicated in section V.B.1. of this proposed rule, in accordance with section 1833(t)(16)(B) of the Act, the threshold for establishing separate APCs for payment of drugs and biologicals was set to $50 per administration during CYs 2005 and 2006. In CY 2007, we used the four quarter moving average Producer Price Index (PPI) levels for Pharmaceutical Preparations (Prescription) to trend the $50 threshold forward from the third quarter of CY 2005 (when the Pub. L. 108–173 mandated threshold became effective) to the third quarter of CY 2007. We then rounded the resulting dollar amount to the nearest $5 increment in order to determine the CY 2007 threshold amount of $55. Using the same methodology as that used in CY 2007 (which is discussed in more detail in the CY 2007 OPPS/ASC final rule with comment period (71 FR 68085 through 68086)), we set the packaging threshold for establishing separate APCs for drugs and biologicals at $90 for CY 2014.

Following the CY 2007 methodology, for this CY 2015 OPPS/ASC proposed rule, we used the most recently available four quarter moving average PPI levels to trend the $50 threshold forward from the third quarter of CY 2005 to the third quarter of CY 2015 and rounded the resulting dollar amount ($91.46) to the nearest $5 increment, which yielded a figure of $90. In performing this calculation, we used the most recent forecast of the quarterly index levels for the PPI for Pharmaceuticals for Human Use (Prescription) (Bureau of Labor Statistics (BLS) series code WPUSI07003) from CMS' Office of the Actuary (OACT). We refer below to this series generally as the PPI for Prescription Drugs.

Based on the calculations described above, we are proposing a packaging threshold for CY 2015 of $90. (For a more detailed discussion of the OPPS drug packaging threshold and the use of the PPI for Prescription Drugs, we refer readers to the CY 2007 OPPS/ASC final rule with comment period (71 FR 68085 through 68086).)

b. Proposed Cost Threshold for Packaging of Payment for HCPCS Codes That Describe Certain Drugs, Certain Biologicals, and Therapeutic Radiopharmaceuticals (''Threshold-Packaged Drugs'')

To determine the proposed CY 2015 packaging status for all nonpass-through drugs and biologicals that are not policy packaged, we calculated, on a HCPCS code-specific basis, the per day cost of all drugs, biologicals, and therapeutic radiopharmaceuticals (collectively called ''threshold-packaged'' drugs) that had a HCPCS code in CY 2013 and were paid (via packaged or separate payment) under the OPPS. We used data from CY 2013 claims processed before January 1, 2014 for this calculation. However, we did not perform this calculation for those drugs and biologicals with multiple HCPCS codes that include different dosages, as described in section V.B.2.c. of this proposed rule, or for the following policy-packaged items that we are proposing to continue to package in CY 2015: Diagnostic radiopharmaceuticals; contrast agents; anesthesia drugs; drugs, biologicals, and radiopharmaceuticals that function as supplies when used in a diagnostic test or procedure; and drugs and biologicals that function as supplies when used in a surgical procedure.

In order to calculate the per day costs for drugs, biologicals, and therapeutic radiopharmaceuticals to determine their proposed packaging status in CY 2015, we used the methodology that was described in detail in the CY 2006 OPPS proposed rule (70 FR 42723 through 42724) and finalized in the CY 2006 OPPS final rule with comment period (70 FR 68636 through 70 FR 68638). For each drug and biological HCPCS code, we used an estimated payment rate of ASP+6 percent (which is the payment rate we are proposing for separately payable drugs and biologicals for CY 2015, as discussed in more detail in section V.B.3.b. of this proposed rule) to calculate the CY 2015 proposed rule per day costs. We used the manufacturer submitted ASP data from the fourth quarter of CY 2013 (data that were used for payment purposes in the physician's office setting, effective April 1, 2014) to determine the proposed rule per day cost.

As is our standard methodology, for CY 2015, we are proposing to use payment rates based on the ASP data from the fourth quarter of CY 2013 for budget neutrality estimates, packaging determinations, impact analyses, and completion of Addenda A and B to this proposed rule (which are available via the Internet on the CMS Web site) because these are the most recent data available for use at the time of development of this proposed rule. These data also were the basis for drug payments in the physician's office setting, effective April 1, 2014. For items that did not have an ASP-based payment rate, such as some therapeutic radiopharmaceuticals, we used their mean unit cost derived from the CY 2013 hospital claims data to determine their per day cost.

We are proposing to package items with a per day cost less than or equal to $90, and identify items with a per day cost greater than $90 as separately payable. Consistent with our past practice, we crosswalked historical OPPS claims data from the CY 2013 HCPCS codes that were reported to the CY 2014 HCPCS codes that we display in Addendum B to this proposed rule (which is available via the Internet on the CMS Web site) for payment in CY 2015.

Our policy during previous cycles of the OPPS has been to use updated ASP and claims data to make final determinations of the packaging status of HCPCS codes for drugs, biologicals, and therapeutic radiopharmaceuticals for the OPPS/ASC final rule with comment period. We note that it is also our policy to make an annual packaging determination for a HCPCS code only when we develop the OPPS/ASC final rule with comment period for the update year. Only HCPCS codes that are identified as separately payable in the final rule with comment period are subject to quarterly updates. For our calculation of per day costs of HCPCS codes for drugs and biologicals in the CY 2015 OPPS/ASC final rule with comment period, we are proposing to use ASP data from the first quarter of

CY 2014, which is the basis for calculating payment rates for drugs and biologicals in the physician's office setting using the ASP methodology, effective July 1, 2014, along with updated hospital claims data from CY 2013. We note that we also are proposing to use these data for budget neutrality estimates and impact analyses for the CY 2015 OPPS/ASC final rule with comment period.

Payment rates for HCPCS codes for separately payable drugs and biologicals included in Addenda A and B to the final rule with comment period will be based on ASP data from the second quarter of CY 2014. These data will be the basis for calculating payment rates for drugs and biologicals in the physician's office setting using the ASP methodology, effective October 1, 2014. These payment rates would then be updated in the January 2015 OPPS update, based on the most recent ASP data to be used for physician's office and OPPS payment as of January 1, 2015. For items that do not currently have an ASP-based payment rate, we are proposing to recalculate their mean unit cost from all of the CY 2013 claims data and updated cost report information available for the CY 2015 final rule with comment period to determine their final per day cost.

Consequently, the packaging status of some HCPCS codes for drugs, biologicals, and therapeutic radiopharmaceuticals in this CY 2015 OPPS/ASC proposed rule may be different from the same drug HCPCS code's packaging status determined based on the data used for the CY 2015 OPPS/ASC final rule with comment period. Under such circumstances, we are proposing to continue to follow the established policies initially adopted for the CY 2005 OPPS (69 FR 65780) in order to more equitably pay for those drugs whose cost fluctuates relative to the proposed CY 2015 OPPS drug packaging threshold and the drug's payment status (packaged or separately payable) in CY 2014. Specifically, for CY 2015, consistent with our historical practice, we are proposing to apply the following policies to these HCPCS codes for drugs, biologicals, and therapeutic radiopharmaceuticals whose relationship to the drug packaging threshold changes based on the updated drug packaging threshold and on the final updated data:

- HCPCS codes for drugs and biologicals that were paid separately in CY 2014 and that are proposed for separate payment in CY 2015, and that then have per day costs equal to or less than the CY 2015 final rule drug packaging threshold, based on the updated ASPs and hospital claims data used for the CY 2015 final rule, would continue to receive separate payment in CY 2015.
- HCPCS codes for drugs and biologicals that were packaged in CY 2014 and that are proposed for separate payment in CY 2015, and that then have per day costs equal to or less than the CY 2015 final rule drug packaging threshold, based on the updated ASPs and hospital claims data used for the CY 2015 final rule, would remain packaged in CY 2015.
- HCPCS codes for drugs and biologicals for which we are proposing packaged payment in CY 2015 but then have per day costs greater than the CY 2015 final rule drug packaging threshold, based on the updated ASPs and hospital claims data used for the CY 2015 final rule, would receive separate payment in CY 2015.

c. Proposed High/Low Cost Threshold for Packaged Skin Substitutes

In the CY 2014 OPPS/ASC final rule, we unconditionally packaged skin substitute products into their associated surgical procedures as part of a broader policy to package drugs and biologicals that function as supplies when used in a surgical procedure (78 FR 74938). We also finalized a methodology that divides the skin substitutes into a high cost group and a low cost group, for packaging purposes, in order to ensure adequate resource homogeneity among APC assignments for the skin substitute application procedures (78 FR 74933). For CY 2014, assignment to the high cost or low cost skin substitute group depended upon a comparison of the July 2013 ASP + 6 percent payment amount for each skin substitute to the weighted average payment per unit for all skin substitutes (weighted average was calculated using the skin substitute utilization from the CY 2012 claims data and the July 2013 ASP + 6 percent payment amounts, which are also the payment amounts in Addendum B to the CY 2014 OPPS/ASC final rule with comment period). The high/low cost skin substitute threshold for CY 2014 is $32 per cm². Skin substitutes that had a July 2013 ASP + 6 percent amount above $32 per cm² were classified in the high cost group and those with a July 2013 ASP + 6 percent amount at or below $32 per cm² were classified in the low cost group. Any new skin substitutes without pricing information are assigned to the low cost category until pricing information is available to compare to the $32 per cm² threshold for CY 2014. Skin substitutes with pass-through status are assigned to the high cost category, with an offset applied as described in section II.C.6. of this proposed rule.

After the effective date of the CY 2014 packaging policy, some skin substitute manufacturers brought the following issues to our attention regarding the current methodology for determining the high cost/low cost threshold:

- Using ASP to determine a product's placement in the high or low cost category may unfairly disadvantage the limited number of skin substitute products that are sold in large sizes (that is, above 150 cm²). Large size skin substitute products are primarily used for burns that are treated on an inpatient basis. These manufacturers contend that non-linear pricing for skin substitute products sold in both large and small sizes results in lower per cm² prices for large sizes. Therefore, the use of ASP data to categorize products into high and low cost categories can result in placement of products that have significant inpatient use of the large, lower-priced (per cm²) sizes into the low cost category, even though these large size products are not often used in the hospital outpatient department.
- Using a weighted average ASP to establish the high/low cost categories, combined with the drug pass-through policy, will lead to unstable high/low cost skin substitute categories in the future. According to one manufacturer, under our current policy manufacturers with products on pass-through have an incentive to set a very high price because hospitals are price-insensitive to products paid with pass-through payments. As these new high priced pass-through skin substitutes capture more market share, the weighted average ASP high/low cost threshold could escalate rapidly resulting in a shift in the assignment of many skin substitutes from the high cost category to the low cost category.

We agree with stakeholder concerns regarding the potential instability of the high/low cost categories associated with the drug pass-through policy, as well as stakeholder concerns about the inclusion of large-sized products that are primarily used for inpatients in the ASP calculation, when ASP is used to establish the high/low cost categories. As an alternative to using ASP data, we believe that establishing the high/low cost threshold using the weighted average mean unit cost (MUC) for all skin substitute products from claims data may provide more stable high/low cost categories and will resolve the issue associated with large sized products because the MUC will be derived from outpatient claims only. The threshold would be based on costs from outpatient claims data instead of manufacturer

reported sales prices that would not include larger sizes primarily used for inpatient burn cases.

Therefore, we are proposing to maintain the high/low cost APC structure for skin substitute procedures in CY 2015 but we are proposing to revise the current methodology used to establish the high/low cost threshold. For CY 2015, we are proposing to establish the high/low cost threshold based on the weighted average MUC for all skin substitutes using CY 2013 claims (which is proposed to be $27 per cm²). Skin substitutes with a MUC above $27 per cm² using CY 2013 claims are proposed to be classified in the high cost group and those with a MUC at or below $27 per cm² are proposed to be classified in the low cost group. Table 39 below shows the current high/low cost status for each skin substitute product and the proposed 2015 high/low cost status based on the weighted average MUC threshold of $27. We are proposing to continue the current policy that skin substitutes with pass-through status will be assigned to the high cost category for CY 2015. Skin substitutes with pricing information but without claims data to calculate a MUC will be assigned to either the high or low cost category based on the product's ASP + 6 percent payment rate. If ASP is not available then we will use WAC + 6 percent or 95 percent of AWP to assign a product to either the high or low cost category. We are also proposing that any new skin substitute without pricing information be assigned to the low cost category until pricing information is available to compare to the proposed $27 per cm² threshold for CY 2015.

TABLE 39—PROPOSED SKIN SUBSTITUTE ASSIGNMENTS TO HIGH COST AND LOW COST GROUPS

CY 2014 HCPCS Code	CY 2014 Short descriptor	Proposed CY 2015 SI	CY 2014 High/low status based on weighted ASP	Proposed CY 2015 High/low status based on weighted MUC
C9358	SurgiMend, fetal	N	Low	Low
C9360	SurgiMend, neonatal	N	Low	Low
C9363	Integra Meshed Bil Wound Mat	N	Low	High
Q4101	Apligraf	N	High	High
Q4102	Oasis wound matrix	N	Low	Low
Q4103	Oasis burn matrix	N	Low	Low
Q4104	Integra BMWD	N	Low	High
Q4105	Integra DRT	N	Low	High
Q4106	Dermagraft	N	High	High
Q4107	Graftjacket	N	High	High
Q4108	Integra matrix	N	Low	High
Q4110	Primatrix	N	High	High
Q4111	Gammagraft	N	Low	Low
Q4115	Alloskin	N	Low	Low
Q4116	Alloderm	N	High	High
Q4117	Hyalomatrix	N	Low	Low
Q4119	Matristem wound matrix	N	Low	Low
Q4120	Matristem burn matrix	N	Low	Low
Q4121	Theraskin	G	High	High
Q4122	Dermacell	G	High	High
Q4123	Alloskin	N	Low	Low
Q4124	Oasis tri-layer wound matrix	N	Low	Low
Q4125	Arthroflex	N	High	High
Q4126	Memoderm/derma/tranz/integup	N	High	High
Q4127	Talymed	G	High	High
Q4128	Flexhd/Allopatchhd/matrixhd	N	Low	High
Q4129	Unite biomatrix	N	Low	Low
Q4131	Epifix	N	High	High
Q4132	Grafix core	N	High	High
Q4133	Grafix prime	N	High	High
Q4134	hMatrix	N	High	High
Q4135	Mediskin	N	Low	High
Q4136	EZderm	N	Low	Low
Q4137	Amnioexcel or biodexcel, 1cm	N	Low	Low
Q4138	BioDfence DryFlex, 1cm	N	Low	Low
Q4140	Biodfence 1cm	N	Low	Low
Q4141	Alloskin ac, 1 cm	N	Low	Low
Q4142	Xcm biologic tiss matrix 1cm	N	Low	Low
Q4143	Repriza, 1cm	N	Low	Low
Q4146	Tensix, 1cm	N	Low	Low
Q4147	Architect ecm, 1cm	N	High	High
Q4148	Neox 1k, 1cm	N	High	High

d. Proposed Pass-Through Evaluation Process for Skin Substitutes

At the beginning of the OPPS, skin substitutes were originally evaluated for pass-through status using the medical device pass-through process. Since 2001, skin substitutes have been evaluated for pass-through status through the drug, biological, and radiopharmaceutical pass-through process. There are currently 50 distinct HCPCS codes describing skin

substitutes, and of these 50 products 17 products that are listed in Table 40 have had or currently have pass-through status.

TABLE 40—SKIN SUBSTITUTES THAT HAVE HAD OR CURRENTLY HAVE PASS-THROUGH STATUS

CY 2014 HCPCS	CY 2014 Short descriptor	Pass-through expiration date
C9358	SurgiMend, fetal	12/31/2010
C9360	SurgiMend, neonatal	12/31/2011
C9363	Integra Meshed Bil Wound Mat	12/31/2011
Q4101	Apligraf	12/31/2002
Q4104	Integra BMWD	12/31/2006
Q4105	Integra DRT	12/31/2006
Q4106	Dermagraft	03/31/2005
Q4107	Graftjacket	12/31/2006
Q4108	Integra matrix	12/31/2010
Q4110	Primatrix	12/31/2008
Q4121	Theraskin	12/31/2016
Q4122	Dermacell	12/31/2015
Q4124	Oasis tri-layer wound matrix	12/31/2013
Q4127	Talymed	12/31/2015
Q4131	Epifix	12/31/2014
Q4132	Grafix core	12/31/2014
Q4133	Grafix prime	12/31/2014

As discussed above, in CY 2014 we packaged all skin substitutes under the policy that packages all drugs and biologicals that function as supplies when used in a surgical procedure (78 FR 74938). Therefore, we consider skin substitutes to be a type of surgical supply in the HOPD. This packaging policy was partly based on a comparison to implantable biologicals, which are similar in composition and clinical use to skin substitutes (78 FR 74931). In CY 2009, we finalized a policy to package payment for implantable biologicals into the payment for the associated surgical procedure (73 FR 68635). In CY 2010, we finalized a policy to evaluate implantable biologicals that are surgically inserted or implanted (through a surgical incision or a natural orifice) for pass-through payment through the medical device pass-through evaluation process, as implantable biologicals function as implantable devices (74 FR 60473). Implantable devices are considered supplies in the OPPS (65 FR 18443), and as noted above, we finalized a packaging policy in the CY 2014 OPPS/ASC final rule with comment period that considers skin substitutes a type of surgical supply. Many skin substitutes are FDA-approved or cleared as devices. The similarities between implantable biologicals and skin substitutes were a key factor in packaging (like we did beginning in 2009 with implantable biologicals) skin substitutes into the associated surgical procedure (78 FR 74932). These similarities between these classes of products also support similar treatment under the OPPS device pass-through process, which has been the evaluation methodology for implantable biologicals since 2010.

In view of these considerations, we are proposing that applications for pass-through payment for skin substitutes be evaluated using the medical device pass-through process and payment methodology. As a result of this proposal, we are proposing that the last skin substitute pass-through applications evaluated using the drug and biological pass-through evaluation process would be those with an application deadline of September 1, 2014, and an earliest effective date of January 1, 2015. Therefore, in light of this proposal, we would change the December 1, 2014 pass-through application deadline (for an earliest effective date of April 1, 2015) for both drugs and biologicals and devices to January 15, 2015, in order to provide sufficient time for applicants to adjust to the new policies and procedures in effect as of January 1, 2015. We believe that this approach is more appropriate because, although skin substitutes have characteristics of both surgical supplies and biologicals, we believe that, for pass-through purposes, skin substitutes are best characterized as surgical supplies or devices because of their required surgical application and because they share significant clinical similarity with other surgical supplies, including implantable biologicals. Thus, if this proposal is finalized, beginning on and after January 1, 2015, new skin substitutes would no longer be eligible to submit biological pass-through applications; rather, such applications for pass-through payment would be evaluated using the medical device pass-through evaluation process, for which payment is based on charges reduced to cost from claims. We refer readers to the CMS Web site at: *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HospitalOutpatientPPS/* to view the device pass-through application requirements and review criteria that would apply to the evaluation of all skin substitute product applications for pass-through status beginning on or after January 1, 2015. Those skin substitutes that are approved for pass-through status as biologicals effective on or before January 1, 2015, would continue to be considered pass-through biologicals for the duration of their period of pass-through payment.

We also are proposing to revise our regulations at §§ 419.64 and 419.66 to reflect this proposed new policy. Specifically, we are proposing to revise § 419.64 by deleting the existing paragraph (a)(4)(iv) text because it is currently outdated and adding new text at paragraph (a)(4)(iv) to exclude skin substitutes from consideration for drug and biological pass-through payment unless pass-through payment for a product as a biological is made on or before January 1, 2015, to allow these products to complete their period of pass-through payment as biologicals. We are proposing to modify the regulation at § 419.66(b)(3) to add that a pass-through device may be applied in or on a wound or other skin lesion, and we are simplifying the language that

''whether or not it remains with the patient when the patient is released from the hospital'' to read ''either permanently or temporarily.'' We also are proposing to delete the current example in § 419.66(b)(4)(iii) of the regulations regarding the exclusion of materials, for example, biological or synthetic materials, that may be used to replace human skin from device pass-through payment eligibility.

We invite public comment on these proposals.

e. Proposed Packaging Determination for HCPCS Codes That Describe the Same Drug or Biological But Different Dosages

In the CY 2008 OPPS/ASC final rule with comment period (72 FR 66776), we began recognizing, for OPPS payment purposes, multiple HCPCS codes reporting different dosages for the same covered Part B drugs or biologicals in order to reduce hospitals' administrative burden by permitting them to report all HCPCS codes for drugs and biologicals. In general, prior to CY 2008, the OPPS recognized for payment only the HCPCS code that described the lowest dosage of a drug or biological. During CYs 2008 and 2009, we applied a policy that assigned the status indicator of the previously recognized HCPCS code to the associated newly recognized code(s), reflecting the packaged or separately payable status of the new code(s).

In the CY 2010 OPPS/ASC final rule with comment period (74 FR 60490 through 60491), we finalized a policy to make a single packaging determination for a drug, rather than an individual HCPCS code, when a drug has multiple HCPCS codes describing different dosages because we believed that adopting the standard HCPCS code-specific packaging determinations for these codes could lead to inappropriate payment incentives for hospitals to report certain HCPCS codes instead of others. We continue to believe that making packaging determinations on a drug-specific basis eliminates payment incentives for hospitals to report certain HCPCS codes for drugs and allows hospitals flexibility in choosing to report all HCPCS codes for different dosages of the same drug or only the lowest dosage HCPCS code. Therefore, we are proposing to continue our policy to make packaging determinations on a drug-specific basis, rather than a HCPCS code-specific basis, for those HCPCS codes that describe the same drug or biological but different dosages in CY 2015.

For CY 2015, in order to propose a packaging determination that is consistent across all HCPCS codes that describe different dosages of the same drug or biological, we aggregated both our CY 2013 claims data and our pricing information at ASP+6 percent across all of the HCPCS codes that describe each distinct drug or biological in order to determine the mean units per day of the drug or biological in terms of the HCPCS code with the lowest dosage descriptor. The following drugs did not have pricing information available for the ASP methodology for this CY 2015 OPPS/ASC proposed rule and, as is our current policy for determining the packaging status of other drugs, we used the mean unit cost available from the CY 2013 claims data to make the packaging determinations for these drugs: HCPCS code J3471 (Injection, hyaluronidase, ovine, preservative free, per 1 usp unit (up to 999 usp units)) and HCPCS code J3472 (Injection, hyaluronidase, ovine, preservative free, per 1000 usp units).

For all other drugs and biologicals that have HCPCS codes describing different doses, we then multiplied the weighted average ASP+6 percent per unit payment amount across all dosage levels of a specific drug or biological by the estimated units per day for all HCPCS codes that describe each drug or biological from our claims data to determine the estimated per day cost of each drug or biological at less than or equal to $90 (so that all HCPCS codes for the same drug or biological would be packaged) or greater than $90 (so that all HCPCS codes for the same drug or biological would be separately payable).

The proposed packaging status of each drug and biological HCPCS code to which this methodology would apply is displayed in Table 41 below.

TABLE 41—PROPOSED HCPCS CODES TO WHICH THE CY 2015 DRUG-SPECIFIC PACKAGING DETERMINATION METHODOLOGY WOULD APPLY

Proposed CY 2015 HCPCS code	Proposed CY 2015 long descriptor	Proposed CY 2015 SI
C9257	Injection, bevacizumab, 0.25 mg	K
J9035	Injection, bevacizumab, 10 mg	K
J1020	Injection, methylprednisolone acetate, 20 mg	N
J1030	Injection, methylprednisolone acetate, 40 mg	N
J1040	Injection, methylprednisolone acetate, 80 mg	N
J1070	Injection, testosterone cypionate, up to 100 mg	N
J1080	Injection, testosterone cypionate, 1 cc, 200 mg	N
J1460	Injection, gamma globulin, intramuscular, 1 cc	N
J1560	Injection, gamma globulin, intramuscular over 10 cc	N
J1642	Injection, heparin sodium, (heparin lock flush), per 10 units	N
J1644	Injection, heparin sodium, per 1000 units	N
J1850	Injection, kanamycin sulfate, up to 75 mg	N
J1840	Injection, kanamycin sulfate, up to 500 mg	N
J2270	Injection, morphine sulfate, up to 10 mg	N
J2271	Injection, morphine sulfate, 100 mg	N
J2788	Injection, rho d immune globulin, human, minidose, 50 micrograms (250 i.u.)	N
J2790	Injection, rho d immune globulin, human, full dose, 300 micrograms (1500 i.u.)	N
J2920	Injection, methylprednisolone sodium succinate, up to 40 mg	N
J2930	Injection, methylprednisolone sodium succinate, up to 125 mg	N
J3120	Injection, testosterone enanthate, up to 100 mg	N
J3130	Injection, testosterone enanthate, up to 200 mg	N
J3471	Injection, hyaluronidase, ovine, preservative free, per 1 usp unit (up to 999 usp units)	N
J3472	Injection, hyaluronidase, ovine, preservative free, per 1000 usp units	N
J7050	Infusion, normal saline solution, 250 cc	N
J7040	Infusion, normal saline solution, sterile (500 ml = 1 unit)	N
J7030	Infusion, normal saline solution, 1000 cc	N

TABLE 41—PROPOSED HCPCS CODES TO WHICH THE CY 2015 DRUG-SPECIFIC PACKAGING DETERMINATION METHODOLOGY WOULD APPLY—Continued

Proposed CY 2015 HCPCS code	Proposed CY 2015 long descriptor	Proposed CY 2015 SI
J7515	Cyclosporine, oral, 25 mg	N
J7502	Cyclosporine, oral, 100 mg	N
J8520	Capecitabine, oral, 150 mg	K
J8521	Capecitabine, oral, 500 mg	K
J9250	Methotrexate sodium, 5 mg	N
J9260	Methotrexate sodium, 50 mg	N

3. Proposed Payment for Drugs and Biologicals Without Pass-Through Status That Are Not Packaged

a. Proposed Payment for Specified Covered Outpatient Drugs (SCODs) and Other Separately Payable and Packaged Drugs and Biologicals

Section 1833(t)(14) of the Act defines certain separately payable radiopharmaceuticals, drugs, and biologicals and mandates specific payments for these items. Under section 1833(t)(14)(B)(i) of the Act, a ''specified covered outpatient drug'' (known as a SCOD) is defined as a covered outpatient drug, as defined in section 1927(k)(2) of the Act, for which a separate APC has been established and that either is a radiopharmaceutical agent or is a drug or biological for which payment was made on a pass-through basis on or before December 31, 2002.

Under section 1833(t)(14)(B)(ii) of the Act, certain drugs and biologicals are designated as exceptions and are not included in the definition of SCODs. These exceptions are—

- A drug or biological for which payment is first made on or after January 1, 2003, under the transitional pass-through payment provision in section 1833(t)(6) of the Act.
- A drug or biological for which a temporary HCPCS code has not been assigned.
- During CYs 2004 and 2005, an orphan drug (as designated by the Secretary).

Section 1833(t)(14)(A)(iii) of the Act requires that payment for SCODs in CY 2006 and subsequent years be equal to the average acquisition cost for the drug for that year as determined by the Secretary, subject to any adjustment for overhead costs and taking into account the hospital acquisition cost survey data collected by the Government Accountability Office (GAO) in CYs 2004 and 2005, and later periodic surveys conducted by the Secretary as set forth in the statute. If hospital acquisition cost data are not available, the law requires that payment be equal to payment rates established under the methodology described in section 1842(o), section 1847A, or section 1847B of the Act, as calculated and adjusted by the Secretary as necessary. Most physician Part B drugs are paid at ASP+6 percent pursuant to section 1842(o) and section 1847A of the Act.

Section 1833(t)(14)(E)(ii) of the Act provides for an adjustment in OPPS payment rates for SCODs to take into account overhead and related expenses, such as pharmacy services and handling costs. Section 1833(t)(14)(E)(i) of the Act required MedPAC to study pharmacy overhead and related expenses and to make recommendations to the Secretary regarding whether, and if so how, a payment adjustment should be made to compensate hospitals for overhead and related expenses. Section 1833(t)(14)(E)(ii) of the Act authorizes the Secretary to adjust the weights for ambulatory procedure classifications for SCODs to take into account the findings of the MedPAC study.

It has been our longstanding policy to apply the same treatment to all separately payable drugs and biologicals, which include SCODs, and drugs and biologicals that are not SCODs. Therefore, we apply the payment methodology in section 1833(t)(14)(A)(iii) of the Act to SCODs, as required by statute, but we also apply it to separately payable drugs and biologicals that are not SCODs, which is a policy determination rather than a statutory requirement. In this CY 2015 OPPS/ASC proposed rule, we are proposing to apply section 1833(t)(14)(A)(iii)(II) of the Act to all separately payable drugs and biologicals, including SCODs. Although we do not distinguish SCODs in this discussion, we note that we are required to apply section 1833(t)(14)(A)(iii)(II) of the Act to SCODs, but we also are applying this provision to other separately payable drugs and biologicals, consistent with our history of using the same payment methodology for all separately payable drugs and biologicals.

Since CY 2006, we have attempted to establish a drug payment methodology that reflects hospitals' acquisition costs for drugs and biologicals while taking into account relevant pharmacy overhead and related handling expenses. We have attempted to collect more data on hospital overhead charges for drugs and biologicals by making several proposals that would require hospitals to change the way they report the cost and charges for drugs. None of these proposals were adopted due to significant stakeholder concern, including that hospitals stated that it would be administratively burdensome to report hospital overhead charges. We established a payment policy for separately payable drugs and biologicals, authorized by section 1833(t)(14)(A)(iii)(I) of the Act, based on an ASP+X amount that is calculated by comparing the estimated aggregate cost of separately payable drugs and biologicals in our claims data to the estimated aggregate ASP dollars for separately payable drugs and biologicals, using the ASP as a proxy for average acquisition cost (70 FR 68642 through 68643). We referred to this methodology as our standard drug payment methodology. Taking into consideration comments made by the pharmacy stakeholders and acknowledging the limitations of the reported data due to charge compression and hospitals' reporting practices, we added an ''overhead adjustment'' in CY 2010 (an internal adjustment of the data) by redistributing cost from coded and uncoded packaged drugs and biologicals to separately payable drugs in order to provide more appropriate payments for drugs and biologicals in the HOPD. We continued this methodology, and we further refined it in CY 2012 by finalizing a policy to update the redistribution amount for inflation and to keep the redistribution ration constant between the proposed rule and the final rule. For a detailed discussion of our OPPS drug payment policies from CY 2006 to CY 2012, we refer readers to the CY 2013 OPPS/ASC final rule with

comment period (77 FR 68383 through 68385).

Because of continuing uncertainty about the full cost of pharmacy overhead and acquisition cost, based in large part on the limitations of the submitted hospital charge and claims data for drugs, in the CY 2013 OPPS/ASC final rule with comment period (77 FR 68386) we indicated our concern that the continued use of the standard drug payment methodology (including the overhead adjustment) still may not appropriately account for average acquisition and pharmacy overhead cost and, therefore, may result in payment rates that are not as predictable, accurate, or appropriate as they could be. Section 1833(t)(14)(A)(iii)(II) of the Act requires an alternative methodology for determining payment rates for SCODS wherein, if hospital acquisition cost data are not available, payment shall be equal (subject to any adjustment for overhead costs) to payment rates established under the methodology described in section 1842(o), 1847A, or 1847B of the Act. We refer to this alternative methodology as the ''statutory default.'' In the CY 2013 OPPS/ASC final rule with comment period (77 FR 68386), we noted that section 1833(t)(14)(A)(iii)(II) of the Act authorizes the Secretary to calculate and adjust, as necessary, the average price for a drug in the year established under section 1842(o), 1847A, or 1847B of the Act, as the case may be, in determining payment for SCODs. Pursuant to sections 1842(o) and 1847A of the Act, Part B drugs are paid at ASP+6 percent when furnished in physicians' offices. We indicated that we believe that establishing the payment rates based on the statutory default of ASP+6 percent is appropriate as it yields increased predictability in payment for separately payable drugs and biologicals under the OPPS and, therefore, we finalized our proposal for CY 2013 to pay for separately payable drugs and biologicals at ASP+6 percent based on section 1833(t)(14)(A)(iii)(II) of the Act, referred to as the statutory default. We also finalized our proposal that the ASP+6 percent payment amount for separately payable drugs and biologicals requires no further adjustment and represents the combined acquisition and pharmacy overhead payment for drugs and biologicals, that payments for separately payable drugs and biologicals are included in the budget neutrality adjustments under the requirements in section 1833(t)(9)(B) of the Act, and that the budget neutral weight scaler is not applied in determining payments for these separately paid drugs and biologicals for CY 2013 (77 FR 68389).

b. Proposed CY 2015 Payment Policy

For CY 2015, we are proposing to continue our CY 2014 policy and pay for separately payable drugs and biologicals at ASP+6 percent pursuant to section 1833(t)(14)(A)(iii)(II) of the Act, referred to as the ''statutory default.'' We are proposing that the ASP+6 percent payment amount for separately payable drugs and biologicals requires no further adjustment and represents the combined acquisition and pharmacy overhead payment for drugs and biologicals. We also are proposing that payments for separately payable drugs and biologicals are included in the budget neutrality adjustments, under the requirements in section 1833(t)(9)(B) of the Act, and that the budget neutral weight scaler is not applied in determining payments for these separately paid drugs and biologicals.

4. Proposed Payment Policy for Therapeutic Radiopharmaceuticals

Beginning in CY 2010 and continuing for CY 2014, we established a policy to pay for separately paid therapeutic radiopharmaceuticals under the ASP methodology adopted for separately payable drugs and biologicals. If ASP information is unavailable for a therapeutic radiopharmaceutical, we base therapeutic radiopharmaceutical payment on mean unit cost data derived from hospital claims. We believe that the rationale outlined in the CY 2010 OPPS/ASC final rule with comment period (74 FR 60524 through 60525) for applying the principles of separately payable drug pricing to therapeutic radiopharmaceuticals continues to be appropriate for nonpass-through separately payable therapeutic radiopharmaceuticals in CY 2015. Therefore, we are proposing for CY 2015 to pay all nonpass-through, separately payable therapeutic radiopharmaceuticals at ASP+6 percent, based on the statutory default described in section 1833(t)(14)(A)(iii)(II) of the Act. For a full discussion of ASP-based payment for therapeutic radiopharmaceuticals, we refer readers to the CY 2010 OPPS/ASC final rule with comment period (74 FR 60520 through 60521). We also are proposing to rely on CY 2013 mean unit cost data derived from hospital claims data for payment rates for therapeutic radiopharmaceuticals for which ASP data are unavailable and to update the payment rates for separately payable therapeutic radiopharmaceuticals, according to our usual process for updating the payment rates for separately payable drugs and biologicals, on a quarterly basis if updated ASP information is available. For a complete history of the OPPS payment policy for therapeutic radiopharmaceuticals, we refer readers to the CY 2005 OPPS final rule with comment period (69 FR 65811), the CY 2006 OPPS final rule with comment period (70 FR 68655), and the CY 2010 OPPS/ASC final rule with comment period (74 FR 60524).

The proposed CY 2015 payment rates for nonpass-through separately payable therapeutic radiopharmaceuticals are included in Addenda A and B to this proposed rule (which are available via the Internet on the CMS Web site).

5. Proposed Payment for Blood Clotting Factors

For CY 2014, we provided payment for blood clotting factors under the same methodology as other nonpass-through separately payable drugs and biologicals under the OPPS and continued paying an updated furnishing fee. That is, for CY 2014, we provided payment for blood clotting factors under the OPPS at ASP+6 percent, plus an additional payment for the furnishing fee. We note that when blood clotting factors are provided in physicians' offices under Medicare Part B and in other Medicare settings, a furnishing fee is also applied to the payment. The CY 2014 updated furnishing fee was $0.192 per unit.

For CY 2015, we are proposing to pay for blood clotting factors at ASP+6 percent, consistent with our proposed payment policy for other nonpass-through separately payable drugs and biologicals, and to continue our policy for payment of the furnishing fee using an updated amount. Our policy to pay for a furnishing fee for blood clotting factors under the OPPS is consistent with the methodology applied in the physician office and inpatient hospital setting, and first articulated in the CY 2006 OPPS final rule with comment period (70 FR 68661) and later discussed in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66765). The proposed furnishing fee update is based on the percentage increase in the Consumer Price Index (CPI) for medical care for the 12-month period ending with June of the previous year. Because the Bureau of Labor Statistics releases the applicable CPI data after the MPFS and OPPS/ASC proposed rules are published, we are not able to include the actual updated furnishing fee in the proposed rules. Therefore, in accordance with our policy, as finalized in the CY 2008 OPPS/ASC final rule with comment

period (72 FR 66765), we are proposing to announce the actual figure for the percent change in the applicable CPI and the updated furnishing fee calculated based on that figure through applicable program instructions and posting on the CMS Web site at: *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Part-B-Drugs/McrPartBDrugAvgSalesPrice/index.html*.

6. Proposed Payment for Nonpass-Through Drugs, Biologicals, and Radiopharmaceuticals With HCPCS Codes But Without OPPS Hospital Claims Data

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108–173) did not address the OPPS payment in CY 2005 and subsequent years for drugs, biologicals, and radiopharmaceuticals that have assigned HCPCS codes, but that do not have a reference AWP or approval for payment as pass-through drugs or biologicals. Because there was no statutory provision that dictated payment for such drugs, biologicals, and radiopharmaceuticals in CY 2005, and because we had no hospital claims data to use in establishing a payment rate for them, we investigated several payment options for CY 2005 and discussed them in detail in the CY 2005 OPPS final rule with comment period (69 FR 65797 through 65799).

For CYs 2005 to 2007, we implemented a policy to provide separate payment for new drugs, biologicals, and radiopharmaceuticals with HCPCS codes (specifically those new drug, biological, and radiopharmaceutical HCPCS codes in each of those calendar years that did not crosswalk to predecessor HCPCS codes) but which did not have pass-through status, at a rate that was equivalent to the payment they received in the physician's office setting, established in accordance with the ASP methodology for drugs and biologicals, and based on charges adjusted to cost for radiopharmaceuticals. Beginning in CY 2008 and continuing through CY 2014, we implemented a policy to provide payment for new drugs and biologicals with HCPCS codes (except those that are policy-packaged), but which did not have pass-through status and were without OPPS hospital claims data, at an amount consistent with the final OPPS payment methodology for other separately payable nonpass-through drugs and biologicals for the given year.

For CY 2015, we are proposing to continue this policy and provide payment for new drugs, biologicals, and therapeutic radiopharmaceuticals that do not have pass-through status at ASP+6 percent, consistent with the proposed CY 2015 payment methodology for other separately payable nonpass-through drugs, biologicals, and therapeutic radiopharmaceuticals, which is proposed to be ASP+6 percent. We believe this proposed policy would ensure that new nonpass-through drugs, biologicals, and therapeutic radiopharmaceuticals would be treated like other drugs, biologicals, and therapeutic radiopharmaceuticals under the OPPS.

For CY 2015, we also are proposing to package payment for all new nonpass-through policy-packaged products (diagnostic radiopharmaceuticals, contrast agents, anesthesia drugs, drugs, biologicals, and radiopharmaceuticals that function as supplies when used in a diagnostic test or procedure, and drugs and biologicals that function as supplies when used in a surgical procedure) with HCPCS codes but without claims data (those new CY 2015 HCPCS codes that do not crosswalk to predecessor HCPCS codes). This is consistent with the proposed policy packaging of all existing nonpass-through diagnostic radiopharmaceuticals, contrast agents, anesthesia drugs, drugs, biologicals, and radiopharmaceuticals that function as supplies when used in a diagnostic test or procedure, and drugs and biologicals that function as supplies when used in a surgical procedure, as discussed in more detail in section II.A.3. of this proposed rule.

In accordance with the OPPS ASP methodology, in the absence of ASP data, for CY 2015, we are proposing to continue our policy of using the WAC for the product to establish the initial payment rate for new nonpass-through drugs and biologicals with HCPCS codes, but which are without OPPS claims data. However, we note that if the WAC is also unavailable, we would make payment at 95 percent of the product's most recent AWP. We also are proposing to assign status indicator ''K'' (Separately paid nonpass-through drugs and biologicals, including therapeutic radiopharmaceuticals) to HCPCS codes for new drugs and biologicals without OPPS claims data and for which we have not granted pass-through status. With respect to new nonpass-through drugs and biologicals for which we do not have ASP data, we are proposing that once their ASP data become available in later quarterly submissions, their payment rates under the OPPS would be adjusted so that the rates would be based on the ASP methodology and set to the proposed ASP-based amount (proposed for CY 2015 at ASP+6 percent) for items that have not been granted pass-through status. This proposed policy, which utilizes the ASP methodology for new nonpass-through drugs and biologicals with an ASP, is consistent with prior years' policies for these items and would ensure that new nonpass-through drugs and biologicals would be treated like other drugs and biologicals under the OPPS, unless they are granted pass-through status.

Similarly, we are proposing to continue to base the initial payment for new therapeutic radiopharmaceuticals with HCPCS codes, but which do not have pass-through status and are without claims data, on the WACs for these products if ASP data for these therapeutic radiopharmaceuticals are not available. If the WACs are also unavailable, we are proposing to make payment for new therapeutic radiopharmaceuticals at 95 percent of the products' most recent AWP because we would not have mean costs from hospital claims data upon which to base payment. As we are proposing with new drugs and biologicals, we are proposing to continue our policy of assigning status indicator ''K'' to HCPCS codes for new therapeutic radiopharmaceuticals without OPPS claims data for which we have not granted pass-through status.

Consistent with other ASP-based payment, for CY 2015, we are proposing to announce any changes to the payment amounts for new drugs and biologicals in the CY 2015 OPPS/ASC final rule with comment period and also on a quarterly basis on the CMS Web site during CY 2015 if later quarter ASP submissions (or more recent WACs or AWPs) indicate that changes to the payment rates for these drugs and biologicals are necessary. The payment rates for new therapeutic radiopharmaceuticals also would be changed accordingly based on later quarter ASP submissions. We note that the new CY 2015 HCPCS codes for drugs, biologicals, and therapeutic radiopharmaceuticals were not available at the time of development of this proposed rule. However, these agents will be included in Addendum B to the CY 2015 OPPS/ASC final rule with comment period (which will be available via the Internet on the CMS Web site), where they will be assigned comment indicator ''NI.'' This comment indicator reflects that their interim final OPPS treatment will be open to public comment in the CY 2015 OPPS/ASC final rule with comment period.

There are several nonpass-through drugs and biologicals that were payable in CY 2013 and/or CY 2014 for which we did not have CY 2013 hospital

claims data available for this proposed rule and for which there are no other HCPCS codes that describe different doses of the same drug, but which have pricing information available for the ASP methodology. In order to determine the packaging status of these products for CY 2015, we are proposing to continue our policy to calculate an estimate of the per day cost of each of these items by multiplying the payment rate of each product based on ASP+6 percent, similar to other nonpass-through drugs and biologicals paid separately under the OPPS, by an estimated average number of units of each product that would typically be furnished to a patient during one day in the hospital outpatient setting. This rationale was first adopted in the CY 2006 OPPS/ASC final rule with comment period (70 FR 68666 through 68667).

We are proposing to package items for which we estimated the per day administration cost to be less than or equal to $90 and to pay separately for items for which we estimated the per day administration cost to be greater than $90 (with the exception of diagnostic radiopharmaceuticals, contrast agents, anesthesia drugs, drugs, biologicals, and radiopharmaceuticals that function as supplies when used in a diagnostic test or procedure, and drugs and biologicals that function as supplies when used in a surgical procedure, which we are proposing to continue to package regardless of cost) in CY 2015. We also are proposing that the CY 2015 payment for separately payable items without CY 2013 claims data would be ASP+6 percent, similar to payment for other separately payable nonpass-through drugs and biologicals under the OPPS. In accordance with the ASP methodology paid in the physician's office setting, in the absence of ASP data, we are proposing to use the WAC for the product to establish the initial payment rate and, if the WAC is also unavailable, we would make payment at 95 percent of the most recent AWP available. The proposed estimated units per day and status indicators for these items are displayed in Table 42 of this proposed rule.

Finally, there are 35 drugs and biologicals, shown in Table 43 of this proposed rule that were payable in CY 2013 but for which we lacked CY 2013 claims data and any other pricing information for the ASP methodology for this proposed rule. For CY 2010, we finalized a policy to assign status indicator ''E'' (Not paid by Medicare when submitted on outpatient claims (any outpatient bill type)) whenever we lacked claims data and pricing information and were unable to determine the per day cost of a drug or biological. In addition, we noted that we would provide separate payment for these drugs and biologicals if pricing information reflecting recent sales became available mid-year for the ASP methodology.

For CY 2015, as we finalized in CY 2014 (78 FR 75031), we are proposing to continue to assign status indicator ''E'' to drugs and biologicals that lack CY 2013 claims data and pricing information for the ASP methodology. All drugs and biologicals without CY 2013 hospital claims data or data based on the ASP methodology that are assigned status indicator ''E'' on this basis at the time of this proposed rule for CY 2015 are displayed in Table 43 of this proposed rule. We also are proposing to continue our policy to assign the products status indicator ''K'' and pay for them separately for the remainder of CY 2015 if pricing information becomes available.

TABLE 42—DRUGS AND BIOLOGICALS WITHOUT CY 2013 CLAIMS DATA

CY 2015 HCPCS Code	CY 2015 Long descriptor	Estimated average number of units per day	Proposed CY 2015 SI	Proposed CY 2015 APC
90581	Anthrax vaccine, for subcutaneous or intramuscular use	1	K	1422
J0215	Injection, alefacept, 0.5 mg	29	K	1633
J0364	Injection, apomorphine hydrochloride, 1 mg	1	N	N/A
J0630	Injection, calcitonin salmon, up to 400 units	2	K	1433
J0638	Injection, canakinumab, 1 mg	180	K	1311
J3355	Injection, urofollitropin, 75 iu	2	K	1741
J7196	Injection, antithrombin recombinant, 50 i. U.	268	K	1332
J8650	Nabilone, oral, 1 mg	4	K	1424
J9151	Injection, daunorubicin citrate, liposomal formulation, 10 mg	10	K	0821
J9215	Injection, interferon, alfa-n3, (human leukocyte derived), 250,000 iu	1	N	N/A
J9300	Injection, gemtuzumab ozogamicin, 5 mg	1	K	9004

TABLE 43—DRUGS AND BIOLOGICALS WITHOUT CY 2013 CLAIMS DATA AND WITHOUT PRICING INFORMATION FOR THE ASP METHODOLOGY

CY 2015 HCPCS Code	CY 2015 Long descriptor	Proposed CY 2015 SI
90296	Diphtheria antitoxin, equine, any route	E
90393	Vaccina immune globulin, human, for intramuscular use	E
90477	Adenovirus vaccine, type 7, live, for oral use	E
90644	Meningococcal conjugate vaccine, serogroups c & y and hemophilus influenza b vaccine (hib-mency), 4 dose schedule, when administered to children 2–15 months of age, for intramuscular use.	E
90681	Rotavirus vaccine, human, attenuated, 2 dose schedule, live, for oral use	E
90727	Plague vaccine, for intramuscular use	E
J0190	Injection, biperiden lactate, per 5 mg	E
J0205	Injection, alglucerase, per 10 units	E
J0350	Injection, anistreplase, per 30 units	E
J0365	Injection, aprotonin, 10,000 kiu	E
J0395	Injection, arbutamine hcl, 1 mg	E

TABLE 43—DRUGS AND BIOLOGICALS WITHOUT CY 2013 CLAIMS DATA AND WITHOUT PRICING INFORMATION FOR THE ASP METHODOLOGY—Continued

CY 2015 HCPCS Code	CY 2015 Long descriptor	Proposed CY 2015 SI
J0710	Injection, cephapirin sodium, up to 1 gm	E
J1180	Injection, dyphylline, up to 500 mg	E
J1435	Injection estrone per 1 MG	E
J1562	Injection, immune globulin (vivaglobin), 100 mg	E
J1620	Injection, gonadorelin hydrochloride, per 100 mcg	E
J1655	Injection, tinzaparin sodium, 1000 iu	E
J1730	Injection, diazoxide, up to 300 mg	E
J1835	Injection, itraconazole, 50 mg	E
J2460	Injection, oxytetracycline hcl, up to 50 mg	E
J2513	Injection, pentastarch, 10% solution, 100 ml	E
J2670	Injection, tolazoline hcl, up to 25 mg	E
J2725	Injection, protirelin, per 250 mcg	E
J2940	Injection, somatrem, 1 mg	E
J3305	Injection, trimetrexate glucuronate, per 25 mg	E
J3365	Injection, iv, urokinase, 250,000 i.u. vial	E
J3400	Injection, triflupromazine hcl, up to 20 mg	E
J7505	Muromonab-cd3, parenteral, 5 mg	E
J7513	Daclizumab, parenteral, 25 mg	E
J8562	Fludarabine phosphate, oral, 10 mg	E
J9165	Injection, diethylstilbestrol diphosphate, 250 mg	E
J9212	Injection, interferon alfacon-1, recombinant, 1 microgram	E
J9219	Leuprolide acetate implant, 65 mg	E
Q0174	Thiethylperazine maleate, 10 mg, oral, fda approved prescription anti-emetic, for use as a complete therapeutic substitute for an iv anti-emetic at the time of chemotherapy treatment, not to exceed a 48 hour dosage regimen.	E
Q0515	Injection, sermorelin acetate, 1 microgram	E

VI. Proposed Estimate of OPPS Transitional Pass-Through Spending for Drugs, Biologicals, Radiopharmaceuticals, and Devices

A. Background

Section 1833(t)(6)(E) of the Act limits the total projected amount of transitional pass-through payments for drugs, biologicals, radiopharmaceuticals, and categories of devices for a given year to an ''applicable percentage,'' currently not to exceed 2.0 percent of total program payments estimated to be made for all covered services under the OPPS furnished for that year. If we estimate before the beginning of the calendar year that the total amount of pass-through payments in that year would exceed the applicable percentage, section 1833(t)(6)(E)(iii) of the Act requires a uniform prospective reduction in the amount of each of the transitional pass-through payments made in that year to ensure that the limit is not exceeded. We estimate the pass-through spending to determine whether payments exceed the applicable percentage and the appropriate prorata reduction to the conversion factor for the projected level of pass-through spending in the following year to ensure that total estimated pass-through spending for the prospective payment year is budget neutral, as required by section 1833(t)(6)(E) of the Act.

For devices, developing an estimate of pass-through spending in CY 2015 entails estimating spending for two groups of items. The first group of items consists of device categories that were recently made eligible for pass-through payment and that will continue to be eligible for pass-through payment in CY 2015. The CY 2008 OPPS/ASC final rule with comment period (72 FR 66778) describes the methodology we have used in previous years to develop the pass-through spending estimate for known device categories continuing into the applicable update year. The second group of items consists of items that we know are newly eligible, or project may be newly eligible, for device pass-through payment in the remaining quarters of CY 2014 or beginning in CY 2015. The sum of the CY 2015 pass-through estimates for these two groups of device categories equals the total CY 2015 pass-through spending estimate for device categories with pass-through status. We base the device pass-through estimated payments for each device category on the amount of payment as established in section 1833(t)(6)(D)(ii) of the Act, and as outlined in previous rules, including the CY 2014 OPPS/ASC final rule with comment period (78 FR 75034 through 75036). We note that, beginning in CY 2010, the pass-through evaluation process and pass-through payment for implantable biologicals newly approved for pass-through payment beginning on or after January 1, 2010, that are surgically inserted or implanted (through a surgical incision or a natural orifice) is the device pass-through process and payment methodology (74 FR 60476). As has been our past practice (76 FR 74335), for CY 2015, we are proposing to include an estimate of any implantable biologicals eligible for pass-through payment in our estimate of pass-through spending for devices. We also are proposing that, beginning in CY 2015, applications for pass-through payment for skin substitutes and similar products be evaluated using the medical device pass-through process and payment methodology. As a result of this proposal, we are proposing that the last skin substitute pass-through applications evaluated using the drugs and biologicals pass-through evaluation process would be those with an application deadline of September 1, 2014, and an earliest effective date of January 1, 2015. Therefore, in light of this proposal, we would change the December 1, 2014, pass-through application deadline (for an earliest effective date of April 1, 2015) for both drugs and biologicals and devices to January 15, 2015 in order to provide sufficient time for applicants to adjust to

the new policies and procedures in effect as of January 1, 2015. We refer readers to section V.B.2.d of this proposed rule for further discussion of our proposal to change the pass-through evaluation process for skin substitutes. If we finalize this proposal, beginning in CY 2015 and in future years we would include an estimate of any skin substitutes eligible for pass-through payment in our estimate of pass-through spending for devices. We refer readers to section V.B.2.d of this proposed rule for details of the proposal to apply the device pass-through evaluation process and payment methodology to skin substitutes and similar products for applications submitted on or after January 1.

For drugs and biologicals eligible for pass-through payment, section 1833(t)(6)(D)(i) of the Act establishes the pass-through payment amount as the amount by which the amount authorized under section 1842(o) of the Act (or, if the drug or biological is covered under a competitive acquisition contract under section 1847B of the Act, an amount determined by the Secretary equal to the average price for the drug or biological for all competitive acquisition areas and year established under such section as calculated and adjusted by the Secretary) exceeds the portion of the otherwise applicable fee schedule amount that the Secretary determines is associated with the drug or biological. We note that the Part B drug CAP program has been postponed since CY 2009, and such a program has not been proposed to be reinstated for CY 2015. Because we are proposing to pay for most nonpass-through separately payable drugs and biologicals under the CY 2015 OPPS at ASP+6 percent, as we discussed in section V.B.3. of this proposed rule, which represents the otherwise applicable fee schedule amount associated with most pass-through drugs and biologicals, and because we are proposing to pay for CY 2015 pass-through drugs and biologicals at ASP+6 percent, as we discussed in section V.A. of this proposed rule, our estimate of drug and biological pass-through payment for CY 2015 for this group of items is $0, as discussed below.

Furthermore, payment for certain drugs, specifically diagnostic radiopharmaceuticals and contrast agents, without pass-through status will always be packaged into payment for the associated procedures and these products will not be separately paid. In addition, we policy-package all nonpass-through drugs, biologicals, and radiopharmaceuticals that function as supplies when used in a diagnostic test or procedure and drugs and biologicals that function as supplies when used in a surgical procedure, as discussed in section II.A.3. of this proposed rule. We are proposing that all of these policy-packaged drugs and biologicals with pass-through status would be paid at ASP+6 percent, like other pass-through drugs and biologicals, for CY 2015. Therefore, our estimate of pass-through payment for policy-packaged drugs and biologicals with pass-through status approved prior to CY 2015 is not $0. In section V.A.4. of this proposed rule, we discuss our policy to determine if the costs of certain policy-packaged drugs or biologicals are already packaged into the existing APC structure. If we determine that a policy-packaged drug or biological approved for pass-through payment resembles predecessor drugs or biologicals already included in the costs of the APCs that are associated with the drug receiving pass-through payment, we are proposing to offset the amount of pass-through payment for the policy-packaged drug or biological. For these drugs or biologicals, the APC offset amount is the portion of the APC payment for the specific procedure performed with the pass-through drug or biological, which we refer to as the policy-packaged drug APC offset amount. If we determine that an offset is appropriate for a specific policy-packaged drug or biological receiving pass-through payment, we are proposing to reduce our estimate of pass-through payments for these drugs or biologicals by this amount.

Similar to pass-through estimates for devices, the first group of drugs and biologicals requiring a pass-through payment estimate consists of those products that were recently made eligible for pass-through payment and that will continue to be eligible for pass-through payment in CY 2015. The second group contains drugs and biologicals that we know are newly eligible, or project will be newly eligible, in the remaining quarters of CY 2014 or beginning in CY 2015. The sum of the CY 2015 pass-through estimates for these two groups of drugs and biologicals equals the total CY 2015 pass-through spending estimate for drugs and biologicals with pass-through status.

B. Proposed Estimate of Pass-Through Spending

We are proposing to set the applicable pass-through payment percentage limit at 2.0 percent of the total projected OPPS payments for CY 2015, consistent with section 1833(t)(6)(E)(ii)(II) of the Act, and our OPPS policy from CY 2004 through CY 2014 (78 FR 75034 through 75036).

For the first group of devices for pass-through payment estimation purposes, there is one device category, HCPCS code C1841 (Retinal prosthesis, includes all internal and external components), eligible for pass-through payment as of October 1, 2013, continuing to be eligible for CY 2014, and that will continue to be eligible for pass-through payment for CY 2015. We estimate that CY 2015 pass-through expenditures for the first group of pass-through device categories to be $0.5 million. In estimating our CY 2015 pass-through spending for device categories in the second group, we include: Device categories that we knew at the time of the development of this proposed rule will be newly eligible for pass-through payment in CY 2015 (of which there are none); additional device categories that we estimate could be approved for pass-through status subsequent to the development of the proposed rule and before January 1, 2015; and contingent projections for new device categories established in the second through fourth quarters of CY 2015. We are proposing to use the general methodology described in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66778), while also taking into account recent OPPS experience in approving new pass-through device categories. For this proposed rule, the estimate of CY 2015 pass-through spending for this second group of device categories is $10.0 million.

To estimate CY 2015 pass-through spending for drugs and biologicals in the first group, specifically those drugs and biologicals recently made eligible for pass-through payment and continuing on pass-through status for CY 2015, we are proposing to utilize the most recent Medicare physician's office data regarding their utilization, information provided in the respective pass-through applications, historical hospital claims data, pharmaceutical industry information, and clinical information regarding those drugs or biologicals to project the CY 2015 OPPS utilization of the products.

For the known drugs and biologicals (excluding policy-packaged diagnostic radiopharmaceuticals, contrast agents, drugs, biologicals, and radiopharmaceuticals that function as supplies when used in a diagnostic test or procedure, and drugs and biologicals that function as supplies when used in a surgical procedure) that will be continuing on pass-through status in CY 2015, we estimate the pass-through payment amount as the difference between ASP+6 percent and the payment rate for nonpass-through drugs and biologicals that will be separately

paid at ASP+6 percent, which is zero for this group of drugs. Because payment for policy-packaged drugs and biologicals is packaged if the product was not paid separately due to its pass-through status, we are proposing to include in the CY 2015 pass-through estimate the difference between payment for the policy-packaged drug or biological at ASP+6 percent (or WAC+6 percent, or 95 percent of AWP, if ASP or WAC information is not available) and the policy-packaged drug APC offset amount, if we determine that the policy-packaged drug or biological approved for pass-through payment resembles a predecessor drug or biological already included in the costs of the APCs that are associated with the drug receiving pass-through payment. For this proposed rule, using the proposed methodology described above, we calculated a CY 2015 proposed spending estimate for this first group of drugs and biologicals of approximately $2.8 million.

To estimate proposed CY 2015 pass-through spending for drugs and biologicals in the second group (that is, drugs and biologicals that we knew at the time of development of this proposed rule are newly eligible for pass-through payment in CY 2015, additional drugs and biologicals that we estimate could be approved for pass-through status subsequent to the development of the proposed rule and before January 1, 2015, and projections for new drugs and biologicals that could be initially eligible for pass-through payment in the second through fourth quarters of CY 2015), we are proposing to use utilization estimates from pass-through applicants, pharmaceutical industry data, clinical information, recent trends in the per unit ASPs of hospital outpatient drugs, and projected annual changes in service volume and intensity as our basis for making the CY 2015 pass-through payment estimate. We also are proposing to consider the most recent OPPS experience in approving new pass-through drugs and biologicals. Using our proposed methodology for estimating CY 2015 pass-through payments for this second group of drugs, we calculated a proposed spending estimate for this second group of drugs and biologicals of approximately $2.2 million.

As discussed in section V.A. of this proposed rule, radiopharmaceuticals are considered drugs for pass-through payment purposes. Therefore, we include radiopharmaceuticals in our proposed CY 2015 pass-through spending estimate for drugs and biologicals. Our proposed CY 2015 estimate for total pass-through spending for drugs and biologicals (spending for the first group of drugs and biologicals ($2.8 million) plus spending for the second group of drugs and biologicals ($2.2 million)) equals $5.0 million.

In summary, in accordance with the methodology described above in this section, for this proposed rule, we estimate that total pass-through spending for the device categories and the drugs and biologicals that are continuing to receive pass-through payment in CY 2015 and those device categories, drugs, and biologicals that first become eligible for pass-through payment during CY 2015 would be approximately $15.5 million (approximately $10.5 million for device categories and approximately $5.0 million for drugs and biologicals), which represents 0.03 percent of total projected OPPS payments for CY 2015. Therefore, we estimate that pass-through spending in CY 2015 would not amount to 2.0 percent of total projected OPPS CY 2015 program spending.

VII. Proposed OPPS Payment for Hospital Outpatient Visits

A. Proposed Payment for Hospital Outpatient Clinic and Emergency Department Visits

Since April 7, 2000, we have instructed hospitals to report facility resources for clinic and ED hospital outpatient visits using the CPT E/M codes and to develop internal hospital guidelines for reporting the appropriate visit level (65 FR 18451). Because a national set of hospital-specific codes and guidelines do not currently exist, we have advised hospitals that each hospital's internal guidelines that determine the levels of clinic and ED visits to be reported should follow the intent of the CPT code descriptors, in that the guidelines should be designed to reasonably relate the intensity of hospital resources to the different levels of effort represented by the codes.

While many hospitals have advocated for hospital-specific national guidelines for visit billing since the OPPS started in 2000, and we have signaled in past rulemaking our intent to develop guidelines, this complex undertaking has proven challenging. Our work with interested stakeholders, such as hospital associations, along with a contractor, has confirmed that no single approach could consistently and accurately capture hospitals' relative costs. Public comments received on this issue, as well as our own knowledge of how clinics operate, have led us to conclude that it is not feasible to adopt a set of national guidelines for reporting hospital clinic visits that can accommodate the enormous variety of patient populations and service-mix provided by hospitals of all types and sizes throughout the country. Moreover, no single approach has been broadly endorsed by the stakeholder community.

After consideration of public comments we received on the CY 2014 OPPS/ASC proposed rule, in the CY 2014 OPPS/ASC final rule with comment period (78 FR 75036 through 75045), we finalized a new policy which created an alphanumeric HCPCS code, G0463 (Hospital outpatient clinic visit for assessment and management of a patient), for hospital use only representing any and all clinic visits under the OPPS and assigned HCPCS code G0463 to new APC 0634. We also finalized a policy to use CY 2012 claims data to develop the CY 2014 OPPS payment rates for HCPCS code G0463 based on the total geometric mean cost of the levels one through five CPT E/M codes for clinic visits previously recognized under the OPPS (CPT codes 99201 through 99205 and 99211 through 99215). In addition, we finalized a policy to no longer recognize a distinction between new and established patient clinic visits.

In the CY 2014 OPPS/ASC final rule with comment period, we also stated our policy that we would continue to use our existing methodology to recognize the existing CPT codes for Type A ED visits as well as the five HCPCS codes that apply to Type B ED visits, and to establish the OPPS payment under our established standard process (78 FR 75036 through 75043). We refer readers to the CY 2014 OPPS/ASC final rule with comment period for a detailed discussion of the public comments and our rationale for the CY 2014 policies.

For CY 2015, we are proposing to continue the current policy, adopted in CY 2014, for clinic and ED visits. HCPCS code G0463 for hospital use only will represent any and all clinic visits under the OPPS. We are proposing to continue to assign HCPCS code G0463 to APC 0634. We are proposing to use CY 2013 claims data to develop the proposed CY 2015 OPPS payment rates for HCPCS code G0463 based on the total geometric mean cost of the levels one through five CPT E/M codes for clinic visits currently recognized under the OPPS (CPT codes 99201 through 99205 and 99211 through 99215). Finally, as we established in the CY 2014 OPPS/ASC final rule with comment period, there is no longer a policy to recognize a distinction between new and established patient clinic visits.

At the time of publication of the CY 2014 OPPS/ASC final rule with comment period, we stated that additional study was needed to fully assess the most suitable payment structure for ED visits, including the particular number of visit levels that would not underrepresent resources required to treat the most complex patients, such as trauma patients and that we believed it was best to delay any change in ED visit coding while we reevaluate the most appropriate payment structure for Type A and Type B ED visits (78 FR 75040). At this time, we continue to believe that additional study is needed to assess the most suitable payment structure for ED visits. We are not proposing any change in ED visit coding, but rather, for CY 2015, we are proposing to continue to use our existing methodology to recognize the existing CPT codes for Type A ED visits as well as the five HCPCS codes that apply to Type B ED visits, and to establish the CY 2015 proposed OPPS payment rates using our established standard process. We intend to further explore the issues described above related to ED visits, including concerns about excessively costly patients, such as trauma patients. We may propose changes to the coding and APC assignments for ED visits in future rulemaking.

B. Proposed Payment for Critical Care Services

For the history of the payment policy for critical care services, we refer readers to the CY 2014 OPPS/ASC final rule with comment period (78 FR 75043). In the CY 2014 OPPS/ASC final rule with comment period, we continued to use the methodology established in the CY 2011 OPPS/ASC final rule with comment period for calculating a payment rate for critical care services that includes packaged payment of ancillary services, for example electrocardiograms, chest X-rays, and pulse oximetry. Critical care services are described by CPT codes 99291 (Critical care, evaluation and management of the critically ill or critically injured patient; first 30–74 minutes) and 99292 (Critical care, evaluation and management of the critically ill or critically injured patient; each additional 30 minutes (List separately in addition to code for primary service)).

Compared to the CY 2012 hospital claims data used for the CY 2014 OPPS ratesetting, the CY 2013 hospital claims data used for the CY 2015 OPPS ratesetting again show increases in the geometric mean line item costs as well as the geometric mean line item charges for CPT code 99291, which continue to suggest that hospitals' billing practices for CPT code 99291 have remained the same. Because the CY 2013 claims data do not support any significant change in hospital billing practices for critical care services, we continue to believe that it would be inappropriate to pay separately the ancillary services that hospitals typically report in addition to CPT codes for critical care services. Therefore, for CY 2015, we are proposing to continue our policy (that has been in place since CY 2011) to recognize the existing CPT codes for critical care services and establish a payment rate based on historical claims data. We also are proposing to continue to implement claims processing edits that conditionally package payment for the ancillary services that are reported on the same date of service as critical care services in order to avoid overpayment. We will continue to monitor the hospital claims data for CPT code 99291 in order to determine whether revisions to this policy are warranted based on changes in hospitals' billing practices.

VIII. Proposed Payment for Partial Hospitalization Services

A. Background

Partial hospitalization is an intensive outpatient program of psychiatric services provided to patients as an alternative to inpatient psychiatric care for individuals who have an acute mental illness. Section 1861(ff)(1) of the Act defines partial hospitalization services as ''the items and services described in paragraph (2) prescribed by a physician and provided under a program described in paragraph (3) under the supervision of a physician pursuant to an individualized, written plan of treatment established and periodically reviewed by a physician (in consultation with appropriate staff participating in such program), which sets forth the physician's diagnosis, the type, amount, frequency, and duration of the items and services provided under the plan, and the goals for treatment under the plan.'' Section 1861(ff)(2) of the Act describes the items and services included in partial hospitalization services. Section 1861(ff)(3)(A) of the Act specifies that a partial hospitalization program (PHP) is a program furnished by a hospital to its outpatients or by a community mental health center (CMHC) (as defined in subparagraph (B)), and ''which is a distinct and organized intensive ambulatory treatment service offering less than 24-hour-daily care other than in an individual's home or in an inpatient or residential setting.'' Section 1861(ff)(3)(B) of the Act defines a community mental health center for purposes of this benefit.

Section 1833(t)(1)(B)(i) of the Act provides the Secretary with the authority to designate the OPD services to be covered under the OPPS. The Medicare regulations that implement this provision specify, under 42 CFR 419.21, that payments under the OPPS will be made for partial hospitalization services furnished by CMHCs as well as Medicare Part B services furnished to hospital outpatients designated by the Secretary, which include partial hospitalization services (65 FR 18444 through 18445).

Section 1833(t)(2)(C) of the Act, in pertinent part, requires the Secretary to ''establish relative payment weights for covered OPD services (and any groups of such services described in subparagraph (B)) based on median (or, at the election of the Secretary, mean) hospital costs'' using data on claims from 1996 and data from the most recent available cost reports. In pertinent part, subparagraph (B) provides that the Secretary may establish groups of covered OPD services, within a classification system developed by the Secretary for covered OPD services, so that services classified within each group are comparable clinically and with respect to the use of resources. In accordance with these provisions, we have developed the PHP APCs. Section 1833(t)(9)(A) of the Act requires the Secretary to ''review not less often than annually and revise the groups, the relative payment weights, and the wage and other adjustments described in paragraph (2) to take into account changes in medical practice, changes in technology, the addition of new services, new cost data, and other relevant information and factors.''

Because a day of care is the unit that defines the structure and scheduling of partial hospitalization services, we established a per diem payment methodology for the PHP APCs, effective for services furnished on or after July 1, 2000 (65 FR 18452 through 18455). Under this methodology, the median per diem costs have been used to calculate the relative payment weights for PHP APCs.

From CY 2003 through CY 2006, the median per diem costs for CMHCs fluctuated significantly from year to year, while the median per diem costs for hospital-based PHPs remained relatively constant. We were concerned that CMHCs may have increased and decreased their charges in response to Medicare payment policies. Therefore, we began efforts to strengthen the PHP

benefit through extensive data analysis and policy and payment changes finalized in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66670 through 66676). We made two refinements to the methodology for computing the PHP median: The first remapped 10 revenue codes that are common among hospital-based PHP claims to the most appropriate cost centers; and the second refined our methodology for computing the PHP median per diem cost by computing a separate per diem cost for each day rather than for each bill. We refer readers to a complete discussion of these refinements in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66670 through 66676).

In CY 2009, we implemented several regulatory, policy, and payment changes, including a two-tiered payment approach for PHP services under which we paid one amount for days with 3 services (APC 0172 Level I Partial Hospitalization) and a higher amount for days with 4 or more services (APC 0173 Level II Partial Hospitalization). We refer readers to section X.B. of the CY 2009 OPPS/ASC final rule with comment period (73 FR 68688 through 68693) for a full discussion of the two-tiered payment system. In addition, for CY 2009, we finalized our policy to deny payment for any PHP claims submitted for days when fewer than 3 units of therapeutic services are provided (73 FR 68694).

Furthermore, for CY 2009, we revised the regulations at 42 CFR 410.43 to codify existing basic PHP patient eligibility criteria and to add a reference to current physician certification requirements under 42 CFR 424.24 to conform our regulations to our longstanding policy (73 FR 68694 through 68695). These changes have helped to strengthen the PHP benefit. We also revised the partial hospitalization benefit to include several coding updates. We refer readers to section X.C.3. of the CY 2009 OPPS/ASC final rule with comment period (73 FR 68695 through 68697) for a full discussion of these requirements.

For CY 2010, we retained the two-tiered payment approach for PHP services and used only hospital-based PHP data in computing the APC per diem payment rates. We used only hospital-based PHP data because we were concerned about further reducing both PHP APC per diem payment rates without knowing the impact of the policy and payment changes we made in CY 2009. Because of the 2-year lag between data collection and rulemaking, the changes we made in CY 2009 were reflected for the first time in the claims data that we used to determine payment rates for the CY 2011 rulemaking (74 FR 60556 through 60559).

In CY 2011, in accordance with section 1301(b) of the Health Care and Education Reconciliation Act of 2010 (HCERA 2010), we amended the description of a PHP in our regulations to specify that a PHP must be a distinct and organized intensive ambulatory treatment program offering less than 24-hour daily care ''other than in an individual's home or in an inpatient or residential setting.'' In addition, in accordance with section 1301(a) of HCERA 2010, we revised the definition of a CMHC in the regulations to conform to the revised definition now set forth under section 1861(ff)(3)(B) of the Act. We discussed our finalized policies for these two provisions of HCERA 2010 in section X.C. of the CY 2011 OPPS/ASC final rule with comment period (75 FR 71990).

In the CY 2011 OPPS/ASC final rule with comment period (75 FR 71994), we also established four separate PHP APC per diem payment rates, two for CMHCs (for Level I and Level II services) and two for hospital-based PHPs (for Level I and Level II services), based on each provider's own unique data. As stated in the CY 2011 OPPS/ASC proposed rule (75 FR 46300) and the final rule with comment period (75 FR 71991), for CY 2011, using CY 2009 claims data, CMHC costs had significantly decreased again. We attributed the decrease to the lower cost structure of CMHCs compared to hospital-based PHP providers, and not the impact of the CY 2009 policies. CMHCs have a lower cost structure than hospital-based PHP providers, in part, because the data showed that CMHCs generally provide fewer PHP services in a day and use less costly staff than hospital-based PHPs. Therefore, it was inappropriate to continue to treat CMHCs and hospital-based providers in the same manner regarding payment, particularly in light of such disparate differences in costs. We also were concerned that paying hospital-based PHPs at a lower rate than their cost structure reflects could lead to hospital-based PHP closures and possible access problems for Medicare beneficiaries because hospital-based PHPs are located throughout the country and, therefore, offer the widest access to PHP services. Creating the four payment rates (two for CMHCs and two for hospital-based PHPs) based on each provider's data supported continued access to the PHP benefit, while also providing appropriate payment based on the unique cost structures of CMHCs and hospital-based PHPs. In addition, separation of data by provider type was supported by several hospital-based PHP commenters who responded to the CY 2011 OPPS/ASC proposed rule (75 FR 71992).

For CY 2011, we instituted a 2-year transition period for CMHCs to the CMHC APC per diem payment rates based solely on CMHC data. For CY 2011, under the transition methodology, CMHC PHP APCs Level I and Level II per diem costs were calculated by taking 50 percent of the difference between the CY 2010 final hospital-based PHP median costs and the CY 2011 final CMHC median and then adding that number to the CY 2011 final CMHC median. A 2-year transition under this methodology moved us in the direction of our goal, which is to pay appropriately for PHP services based on each provider type's data, while at the same time allowing providers time to adjust their business operations and protect access to care for beneficiaries. We also stated that we would review and analyze the data during the CY 2012 rulemaking cycle and, based on these analyses, we might further refine the payment mechanism. We refer readers to section X.B. of the CY 2011 OPPS/ASC final rule with comment period (75 FR 71991 through 71994) for a full discussion.

After publication of the CY 2011 OPPS/ASC final rule with comment period, a CMHC and one of its patients filed an application for a preliminary injunction, challenging the OPPS payment rates for PHP services provided by CMHCs in CY 2011 as adopted in the CY 2011 OPPS/ASC final rule with comment period (75 FR 71995). We refer readers to the court case, *Paladin Cmty. Mental Health Ctr.* v. *Sebelius,* 2011 WL 3102049 (W.D.Tex. 2011), *aff'd,* 684 F.3d 527 (5th Cir. 2012) (*Paladin*). The plaintiffs in the *Paladin* case challenged the agency's use of cost data derived from both hospitals and CMHCs in determining the relative payment weights for the OPPS payment rates for PHP services furnished by CMHCs, alleging that section 1833(t)(2)(C) of the Act requires that such relative payment weights be based on cost data derived solely from hospitals. As discussed above, section 1833(t)(2)(C) of the Act requires CMS to ''establish relative payment weights for covered OPD services (and any groups of such services . . .) . . . based on . . . hospital costs.'' Numerous courts have held that ''based on'' does not mean ''based exclusively on.'' On July 25, 2011, the District Court dismissed the plaintiffs' complaint and application for a preliminary injunction for lack of subject-matter jurisdiction, which the plaintiffs appealed to the United States

Court of Appeals for the Fifth Circuit. On June 15, 2012, the Court of Appeals affirmed the District Court's dismissal for lack of subject-matter jurisdiction and found that the Secretary's payment rate determinations for PHP services are not a facial violation of a clear statutory mandate (*Paladin,* 684 F.3d at 533).

For CY 2012, as discussed in the CY 2012 OPPS/ASC final rule with comment period (76 FR 74348 through 74352), we determined the relative payment weights for PHP services provided by CMHCs based on data derived solely from CMHCs and the relative payment weights for hospital-based PHP services based exclusively on hospital data. The statute is reasonably interpreted to allow the relative payment weights for the OPPS payment rates for PHP services provided by CMHCs to be based solely on CMHC data and relative payment weights for hospital-based PHP services to be based exclusively on hospital data. Section 1833(t)(2)(C) of the Act requires the Secretary to ''establish relative payment weights for covered OPD services (and any groups of such services described in subparagraph (B)) based on . . . hospital costs.'' In pertinent part, subparagraph (B) provides that ''the Secretary may establish groups of covered OPD services . . . so that services classified within each group are comparable clinically and with respect to the use of resources.'' In accordance with subparagraph (B), we developed the PHP APCs, as set forth in § 419.31 of the regulations (65 FR 18446 and 18447; 63 FR 47559 through 47562 and 47567 through 47569). As discussed above, PHP services are grouped into APCs.

Based on section 1833(t)(2)(C) of the Act, we believe that the word ''establish'' can be interpreted as applying to APCs at the inception of the OPPS in 2000 or whenever a new APC is added to the OPPS. In creating the original APC for PHP services (APC 0033), we did ''establish'' the initial relative payment weight for PHP services, provided in both hospital-based and CMHC-based settings, only on the basis of hospital data. Subsequently, from CY 2003 through CY 2008, the relative payment weights for PHP services were based on a combination of hospital and CMHC data. For CY 2009, we established new APCs for PHP services based exclusively on hospital data. Specifically, we adopted a two-tiered APC methodology (in lieu of the original APC 0033) under which CMS paid one rate for days with 3 services (APC 0172) and a different payment rate for days with 4 or more services (APC 0173). These two new APCs were established using only hospital data. For CY 2011, we added two new APCs (APCs 0175 and 0176) for PHP services provided by hospitals and based the relative payment weights for these APCs solely on hospital data. APCs 0172 and 0173 were designated for PHP services provided by CMHCs and were based on a mixture of hospital and CMHC data. As the Secretary argued in the *Paladin* case, the courts have consistently held that the phrase ''based on'' does not mean ''based exclusively on.'' Thus, the relative payment weights for the two APCs for PHP services provided by CMHCs in CY 2011 were ''based on'' hospital data, no less than the relative payment weights for the two APCs for hospital-based PHP services.

Although we used hospital data to establish the relative payment weights for APCs 0033, 0172, 0173, 0175, and 0176 for PHP services, we believe that we have the authority to discontinue the use of hospital data in determining the OPPS relative payment weights for PHP services provided by CMHCs. Other parts of section 1833(t)(2)(C) of the Act make plain that the data source for the relative payment weights is subject to change from one period to another. Section 1833(t)(2)(C) of the Act provides that, in establishing the relative payment weights, ''the Secretary shall [ ] us[e] data on claims from 1996 and us[e] data from the most recent available cost reports.'' We used 1996 data (in addition to 1997 data) in determining only the original relative payment weights for 2000. In the ensuing calendar year updates, we continually used more recent cost report data.

Moreover, section 1833(t)(9)(A) of the Act requires the Secretary to ''review not less often than annually and revise the groups, the relative payment weights, and the wage and other adjustments described in paragraph (2) to take into account changes in medical practice, changes in technology, the addition of new services, new cost data, and other relevant information and factors.'' For purposes of the CY 2012 update, we exercised our authority under section 1833(t)(9)(A) of the Act to change the data source for the relative payment weights for PHP services provided by CMHCs based on ''new cost data, and other relevant information and factors.''

In the CY 2014 OPPS/ASC final rule with comment period, we finalized our proposal to base the relative payment weights that underpin the OPPS APCs, including the four PHP APCs, on geometric means rather than on the medians. For CY 2014, we established the four PHP APC per diem payment rates based on geometric mean cost levels calculated using the most recent claims data for each provider type. We refer readers to the CY 2014 OPPS/ASC final rule with comment period for a more detailed discussion (78 FR 75047 through 75050).

B. Proposed PHP APC Update for CY 2015

For CY 2015, we are proposing to apply our established policies to calculate the four PHP APC per diem payment rates based on geometric mean per diem costs using the most recent claims data for each provider type. We computed proposed CMHC PHP APC geometric mean per diem costs for Level I (3 services per day) and Level II (4 or more services per day) PHP services using only CY 2013 CMHC claims data, and proposed hospital-based PHP APC geometric mean per diem costs for Level I and Level II PHP services using only CY 2013 hospital-based PHP claims data. These proposed geometric mean per diem costs are shown in Table 44 below.

TABLE 44—PROPOSED CY 2015 GEOMETRIC MEAN PER DIEM COSTS FOR CMHC AND HOSPITAL-BASED PHP SERVICES, BASED ON CY 2013 CLAIMS DATA

APC	Group title	Proposed geometric mean per diem costs
0172	Level I Partial Hospitalization (3 services) for CMHCs	$97.43
0173	Level II Partial Hospitalization (4 or more services) for CMHCs	114.93
0175	Level I Partial Hospitalization (3 services) for hospital-based PHPs	177.32
0176	Level II Partial Hospitalization (4 or more services) for hospital-based PHPs	190.21

For CY 2015, the proposed geometric mean per diem costs for days with 3 services (Level I) is approximately $97 for CMHCs and approximately $177 for hospital-based PHPs. The proposed geometric mean per diem costs for days with 4 or more services (Level II) is approximately $115 for CMHCs and approximately $190 for hospital-based PHPs.

The CY 2015 proposed geometric mean per diem costs for CMHCs calculated under the proposed CY 2015 methodology using CY 2013 claims data have remained relatively constant when compared to the CY 2014 final geometric mean per diem costs for CMHCs established in the CY 2014 OPPS/ASC final rule with comment period (78 FR 75050), with geometric mean per diem costs for Level I CMHC PHP services decreasing from approximately $99 to approximately $97 for CY 2015, and geometric mean per diem costs for Level II CMHC PHP services increasing from approximately $112 to approximately $115 for CY 2015.

The CY 2015 proposed geometric mean per diem costs for hospital-based PHPs calculated under the proposed CY 2015 methodology using CY 2013 claims data show more variation when compared to the CY 2014 final geometric mean per diem costs for hospital-based PHPs, with geometric mean per diem costs for Level I hospital-based PHP services decreasing from approximately $191 to approximately $177 for CY 2015, and geometric mean per diem costs for Level II hospital-based PHP services decreasing from approximately $214 to approximately $190 for CY 2015.

We understand that having little variation in the PHP per diem payment amounts from one year to the next allows providers to more easily plan their fiscal needs. However, we believe that it is important to base the PHP payment rates on the claims and cost reports submitted by each provider type so these rates accurately reflect the cost information for these providers. We recognize that several factors may cause a fluctuation in the per diem payment amounts, including direct changes to the PHP APC per diem payment rate (for example, establishing separate APCs and associated per diem payment rates for CMHCs and hospital-based providers based on the provider type's costs), changes to the OPPS (for example, basing the relative payment weights on geometric mean costs), and provider-driven changes (for example, a provider's decision to change its mix of services or to change its charges and clinical practice for some services). We refer readers to a more complete discussion of this issue in the CY 2014 OPPS/ASC final rule with comment period (78 FR 75049). We are inviting public comments on what causes PHP costs to fluctuate from year to year.

The proposed CY 2015 geometric mean per diem costs for the CMHC and hospital-based PHP APCs are shown in Table 44 of this proposed rule. We are inviting public comments on these proposals.

C. Proposed Separate Threshold for Outlier Payments to CMHCs

As discussed in the CY 2004 OPPS final rule with comment period (68 FR 63469 through 63470), after examining the costs, charges, and outlier payments for CMHCs, we believed that establishing a separate OPPS outlier policy for CMHCs would be appropriate. A CMHC-specific outlier policy would direct OPPS outlier payments towards genuine cost of outlier cases, and address situations where charges were being artificially increased to enhance outlier payments. We created a separate outlier policy that would be specific to the estimated costs and OPPS payments provided to CMHCs. We note that, in the CY 2009 OPPS/ASC final rule with comment period, we established an outlier reconciliation policy to comprehensively address charging aberrations related to OPPS outlier payments (73 FR 68594 through 68599). Therefore, beginning in CY 2004, we designated a portion of the estimated OPPS outlier target amount specifically for CMHCs, consistent with the percentage of projected payments to CMHCs under the OPPS each year, excluding outlier payments, and established a separate outlier threshold for CMHCs.

The separate outlier threshold for CMHCs resulted in $1.8 million in outlier payments to CMHCs in CY 2004, and $0.5 million in outlier payments to CMHCs in CY 2005. In contrast, in CY 2003, more than $30 million was paid to CMHCs in outlier payments. We believe that this difference in outlier payments indicates that the separate outlier threshold for CMHCs has been successful in keeping outlier payments to CMHCs in line with the percentage of OPPS payments made to CMHCs.

We are proposing to continue designating a portion of the estimated 1.0 percent outlier target amount specifically for CMHCs, consistent with the percentage of projected payments to CMHCs under the OPPS in CY 2015, excluding outlier payments. CMHCs are projected to receive 0.03 percent of total OPPS payments in CY 2015, excluding outlier payments. Therefore, we are proposing to designate 0.47 percent of the estimated 1.0 percent outlier target amount for CMHCs, and establish a threshold to achieve that level of outlier payments. Based on our simulations of CMHC payments for CY 2015, we are proposing to continue to set the threshold for CY 2015 at 3.40 times the highest CMHC PHP APC payment rate (that is, APC 0173 (Level II Partial Hospitalization)). We continue to believe that this approach would neutralize the impact of inflated CMHC charges on outlier payments and better target outlier payments to those truly exceptionally high-cost cases that might otherwise limit beneficiary access. In addition, we are proposing to continue to apply the same outlier payment percentage that applies to hospitals. Therefore, for CY 2015, we are proposing to continue to pay 50 percent of CMHC per diem costs over the threshold. In section II.G. of this proposed rule, for the hospital outpatient outlier payment policy, we are proposing to set a dollar threshold in addition to an APC multiplier threshold. Because the PHP APCs are the only APCs for which CMHCs may receive payment under the OPPS, we would not expect to redirect outlier payments by imposing a dollar threshold. Therefore, we are not proposing to set a dollar threshold for CMHC outlier payments.

In summary, we are proposing to establish that if a CMHC's cost for partial hospitalization services, paid under either APC 0172 or APC 0173, exceeds 3.40 times the payment rate for APC 0173, the outlier payment would be calculated as 50 percent of the amount by which the cost exceeds 3.40 times the APC 0173 payment rate. We are inviting public comments on these proposals.

IX. Proposed Procedures That Would Be Paid Only as Inpatient Procedures

A. Background

We refer readers to the CY 2012 OPPS/ASC final rule with comment period (76 FR 74352 through 74353) for a full historical discussion of our longstanding policies on how we identify procedures that are typically provided only in an inpatient setting (referred to as the inpatient list) and, therefore, will not be paid by Medicare under the OPPS; and on the criteria that we use to review the inpatient list each year to determine whether or not any procedures should be removed from the list.

B. Proposed Changes to the Inpatient List

For the CY 2015 OPPS, we are proposing to use the same methodology (described in the November 15, 2004 final rule with comment period (69 FR 65835)) of reviewing the current list of procedures on the inpatient list to identify any procedures that may be removed from the list. The established criteria upon which we make such a determination are as follows:

1. Most outpatient departments are equipped to provide the services to the Medicare population.
2. The simplest procedure described by the code may be performed in most outpatient departments.
3. The procedure is related to codes that we have already removed from the inpatient list.
4. A determination is made that the procedure is being performed in numerous hospitals on an outpatient basis.
5. A determination is made that the procedure can be appropriately and safely performed in an ASC, and is on the list of approved ASC procedures or has been proposed by us for addition to the ASC list.

Using this methodology, we did not identify any procedures that potentially could be removed from the inpatient list for CY 2015. Therefore, we are proposing to not remove any procedures from the inpatient list for CY 2015.

After our annual review of APCs and code assignments as required by section 1833(t)(9) of the Act and further clinical review performed by CMS medical officers, we are proposing to add CPT code 22222 (Osteotomy of spine, including discectomy, anterior approach, single vertebral segment; thoracic) to the CY 2015 inpatient list.

The complete list of codes that we are proposing to be paid by Medicare in CY 2015 only as inpatient procedures is included as Addendum E to this proposed rule (which is available via the Internet on the CMS Web site).

X. Proposed Nonrecurring Policy Changes: Collecting Data on Services Furnished in Off-Campus Provider-Based Departments

As we discussed in the CY 2014 OPPS/ASC proposed rule and final rule with comment period (78 FR 43626 and 78 FR 75061, respectively) and in the CY 2014 Medicare Physician Fee Schedule (MPFS) proposed rule (78 FR 43301 and 78 FR 74427), in recent years, the research literature and popular press have documented the increased trend toward hospital acquisition of physician practices, integration of those practices as a department of the hospital, and the resultant increase in the delivery of physicians' services in a hospital setting. When a Medicare beneficiary receives outpatient services in a hospital, the total payment amount for outpatient services made by Medicare is generally higher than the total payment amount made by Medicare when a physician furnishes those same services in a freestanding clinic or in a physician's office.

We continue to seek a better understanding of how the growing trend toward hospital acquisition of physician offices and subsequent treatment of those locations as off-campus provider-based outpatient departments affects payments under the MPFS and OPPS, as well as beneficiary cost-sharing obligations. MedPAC continues to question the appropriateness of increased Medicare payment and beneficiary cost-sharing when physician offices become hospital outpatient departments and to recommend that Medicare pay selected hospital outpatient services at MPFS rates (MedPAC March 2012 and June 2013 *Report to Congress*). In order to understand how this trend is affecting Medicare, we need information on the extent to which this shift is occurring. To that end, during the CY 2014 OPPS/ASC rulemaking cycle, we sought public comment regarding the best method for collecting information and data that would allow us to analyze the frequency, type, and payment for physicians' and outpatient hospital services furnished in off-campus provider-based hospital outpatient departments (78 FR 75061 through 75062 and 78 FR 74427 through 74428). In response to our solicitation, we received many detailed public comments. However, the commenters did not present a consensus opinion regarding the options we presented in last year's proposed rule. Based on our analysis of the public comments we received, we believe the most efficient and equitable means of gathering this important information across two different payment systems would be to create a HCPCS modifier to be reported with every code for physicians' services and outpatient hospital services furnished in an off-campus provider-based department of a hospital on both the CMS–1500 claim form for physicians' services and the UB–04 form (CMS Form 1450) for hospital outpatient services. We note that a main provider may treat an off-campus facility as provider-based if certain requirements in 42 CFR 413.65 are satisfied, and we define a ''campus'' at 42 CFR 413.65(a)(2) to be the physical area immediately adjacent to the provider's main buildings, other areas and structures that are not strictly contiguous to the main buildings but are located within 250 yards of the main buildings, and any other areas determined on an individual case basis, by the CMS regional office, to be part of the provider's campus.

Section 220(a) of the Protecting Access to Medicare Act of 2014 (Pub. L. 113–93) added a new subparagraph (M) under section 1848(c)(2) of the Act that granted CMS the authority to engage in data collection to support valuation of services paid under the MPFS. We are seeking more information on the frequency and type of services furnished in provider-based departments under this authority to improve the accuracy of MPFS practice expense payments for services furnished in off-campus provider-based departments. We discuss this issue in more detail in the CY 2015 MPFS proposed rule (CMS–1612–P). In that discussion, we note our concerns that our current MPFS practice expense methodology primarily distinguishes between the resources involved in furnishing services in two sites of service: The nonfacility setting and the facility setting. As more physician practices become hospital-based and are treated as off-campus provider-based departments, we believe it is important to develop an understanding of which practice expense costs typically are incurred by the physicians and practitioners in the setting, which are incurred by the hospital, and whether the facility and nonfacility site of service differentials adequately account for the typical resource costs given these new ownership arrangements.

To understand how this trend is affecting Medicare, including the accuracy of payments made through the MPFS, we need to develop data to assess the extent to which this shift toward hospital-based physician practices is occurring. Therefore, we are proposing to collect information on the type and frequency of physicians' services and outpatient hospital services furnished in off-campus provider-based departments beginning January 1, 2015, in accordance with our authority under section 1834(c)(2)(M) of the Act (as added by section 220(a) of Pub. L. 113–93). As noted above, we would create a HCPCS modifier that is to be reported with every code for physicians' services and outpatient hospital services furnished in an off-campus provider-based department of a hospital. The modifier would be reported on both the CMS–1500 claim form for physicians' services and the UB–04 form (CMS Form 1450) for hospital outpatient services. We are seeking additional public comment on whether or not the

use of a modifier code is the best mechanism for collecting this service-level data in the hospital outpatient department.

XI. Proposed CY 2015 OPPS Payment Status and Comment Indicators

A. Proposed CY 2015 OPPS Payment Status Indicator Definitions

Payment status indicators (SIs) that we assign to HCPCS codes and APCs serve an important role in determining payment for services under the OPPS. They indicate whether a service represented by a HCPCS code is payable under the OPPS or another payment system and also whether particular OPPS policies apply to the code. The complete list of the proposed CY 2015 payment status indicators and their definitions is displayed in Addendum D1 on the CMS Web site at: *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HospitalOutpatientPPS/index.html*. The proposed CY 2015 payment status indicator assignments for APCs and HCPCS codes are shown in Addendum A and Addendum B, respectively, on the CMS Web site at: *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HospitalOutpatientPPS/index.html*. The proposed changes to CY 2015 payment status indicators and their definitions are discussed in detail below.

We note that in the CY 2014 OPPS/ASC final rule with comment period (78 FR 74869 through 74888), for CY 2014, we created a new status indicator ''J1'' to identify HCPCS codes that are paid under a comprehensive APC. However, because we delayed implementation of the new comprehensive APC policy until CY 2015, we also delayed the effective date of payment status indicator ''J1'' to CY 2015. A claim with payment status indicator ''J1'' will trigger a comprehensive APC payment for the claim. We refer readers to section II.A.2.e. of this proposed rule for a discussion of implementation of the new comprehensive APC policy.

For CY 2015, we are proposing to delete payment status indicator ''X,'' and assign ancillary services that are currently assigned payment status indicator ''X'' to either payment status indicator ''Q1'' or ''S.'' We also are proposing to revise the definition payment status indicator ''Q1'' by removing payment status indicator ''X'' from the packaging criteria, so that codes assigned payment status indicator ''Q1'' would be designated as STV-packaged, rather than STVX-packaged because payment status indicator ''X'' is proposed for deletion. These proposed changes are discussed in greater detail in section II.A.3.c.(1) of this proposed rule.

In addition, for CY 2015, we are proposing to clarify the definition of payment status indicator ''E'' to state that status indicator ''E'' applies to items, codes, and services—

- For which pricing is not available;
- Not covered by any Medicare outpatient benefit category;
- Statutorily excluded by Medicare; and
- Not reasonable and necessary.

Regarding items ''for which pricing is not available,'' this applies to drugs and biologicals assigned a HCPCS code but with no available pricing information, for example, WAC.

In reviewing the OPPS status indicators and Addendum D1 for CY 2015, we noticed that there are a few drugs or biologicals that are currently assigned payment status indicator ''A'' indicating payment under a non-OPPS fee schedule. These drugs are administered infrequently in conjunction with emergency dialysis for patients with ESRD, but when administered in the HOPD, they would be paid under the standard OPPS drug payment methodology for drugs and biologicals, that is, at ASP+6 percent unless they are packaged. We refer readers to section V. of this proposed rule for additional discussion of these drugs and their status indicators. Based on this proposed change to the status indicators for these drugs, for CY 2015, we are proposing to remove the phrase ''EPO for ESRD Patients'' from the list of examples for status indicator ''A.'' In addition, we are proposing to clarify the definition of payment status indicator ''A'' by adding the phrase ''separately payable'' to nonimplantable prosthetic and orthotic devices.

B. Proposed CY 2015 Comment Indicator Definitions

For the CY 2015 OPPS, we are proposing to use the same two comment indicators that are in effect for the CY 2014 OPPS.

- ''CH''—Active HCPCS codes in current and next calendar year; status indicator and/or APC assignment have changed or active HCPCS code that will be discontinued at the end of the current calendar year.
- ''NI''—New code for the next calendar year or existing code with substantial revision to its code descriptor in the next calendar year as compared to current calendar year, interim APC assignment; comments will be accepted on the interim APC assignment for the new code.

We are proposing to use the ''CH'' comment indicator in this CY 2015 OPPS/ASC proposed rule to indicate HCPCS codes for which the status indicator or APC assignment, or both, are proposed for change in CY 2015 compared to their assignment as of June 30, 2014. We believe that using the ''CH'' indicator in this proposed rule will facilitate the public's review of the changes that we are proposing for CY 2015. Use of the comment indicator ''CH'' in association with a composite APC indicates that the configuration of the composite APC is proposed to be changed in the CY 2015 OPPS/ASC final rule with comment period.

We are proposing to use the ''CH'' comment indicator in the CY 2015 OPPS/ASC final rule with comment period to indicate HCPCS codes for which the status indicator or APC assignment, or both, would change in CY 2015 compared to their assignment as of December 31, 2014.

In addition, we are proposing that any existing HCPCS codes with substantial revisions to the code descriptors for CY 2015 compared to the CY 2014 descriptors would be labeled with comment indicator ''NI'' in Addendum B to the CY 2015 OPPS/ASC final rule with comment period. However, in order to receive the comment indicator ''NI,'' the CY 2015 revision to the code descriptor (compared to the CY 2014 descriptor) must be significant such that the new code descriptor describes a new service or procedure for which the OPPS treatment may change. We use comment indicator ''NI'' to indicate that these HCPCS codes will be open for comment as part of this CY 2015 OPPS/ASC final rule with comment period. Like all codes labeled with comment indicator ''NI,'' we will respond to public comments and finalize their OPPS treatment in the CY 2016 OPPS/ASC final rule with comment period.

In accordance with our usual practice, we are proposing that CPT and Level II HCPCS codes that are new for CY 2015 also would be labeled with comment indicator ''NI'' in Addendum B to the CY 2015 OPPS/ASC final rule with comment period.

Only HCPCS codes with comment indicator ''NI'' in the CY 2015 OPPS/ASC final rule with comment period are subject to comment. HCPCS codes that do not appear with comment indicator ''NI'' in the CY 2015 OPPS/ASC final rule with comment period will not be open to public comment, unless we specifically request additional comments elsewhere in the final rule with comment period.

We believe that the CY 2014 definitions of the OPPS comment

indicators continue to be appropriate for CY 2015. Therefore, we are proposing to continue to use those definitions without modification for CY 2015. The proposed definitions of the OPPS comment indicators are listed in Addendum D2 on the CMS Web site at: *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HospitalOutpatientPPS/index.html*.

XII. Proposed Updates to the Ambulatory Surgical Center (ASC) Payment System

A. Background

1. Legislative History, Statutory Authority, and Prior Rulemaking for the ASC Payment System

For a detailed discussion of the legislative history and statutory authority related to ASCs, we refer readers to the CY 2012 OPPS/ASC final rule with comment period (76 FR 74377 through 74378) and the June 12, 1998 proposed rule (63 FR 32291 through 32292). For a discussion of prior rulemaking on the ASC payment system, we refer readers to the CY 2012 OPPS/ASC final rule with comment period (76 FR 74378 through 74379), the CY 2013 OPPS/ASC final rule with comment period (77 FR 68434 through 68467), and the CY 2014 OPPS/ASC final rule with comment period (78 FR 75064 through 75090).

2. Policies Governing Changes to the Lists of Codes and Payment Rates for ASC Covered Surgical Procedures and Covered Ancillary Services

Under § 416.2 and § 416.166 of the regulations, subject to certain exclusions, covered surgical procedures in an ASC are surgical procedures that are separately paid under the OPPS, that would not be expected to pose a significant risk to beneficiary safety when performed in an ASC, and that would not be expected to require active medical monitoring and care at midnight following the procedure (''overnight stay''). We adopted this standard for defining which surgical procedures are covered under the ASC payment system as an indicator of the complexity of the procedure and its appropriateness for Medicare payment in ASCs. We use this standard only for purposes of evaluating procedures to determine whether or not they are appropriate to be furnished to Medicare beneficiaries in ASCs. We define surgical procedures as those described by Category I CPT codes in the surgical range from 10000 through 69999, as well as those Category III CPT codes and Level II HCPCS codes that directly crosswalk or are clinically similar to ASC covered surgical procedures (72 FR 42478).

In the August 2, 2007 final rule, we also established our policy to make separate ASC payments for the following ancillary items and services when they are provided integral to ASC covered surgical procedures: (1) Brachytherapy sources; (2) certain implantable items that have pass-through status under the OPPS; (3) certain items and services that we designate as contractor-priced, including, but not limited to, procurement of corneal tissue; (4) certain drugs and biologicals for which separate payment is allowed under the OPPS; and (5) certain radiology services for which separate payment is allowed under the OPPS. These covered ancillary services are specified in § 416.164(b) and, as stated previously, are eligible for separate ASC payment (72 FR 42495). Payment for ancillary items and services that are not paid separately under the ASC payment system is packaged into the ASC payment for the covered surgical procedure.

We update the lists of, and payment rates for, covered surgical procedures and covered ancillary services in ASCs in conjunction with the annual proposed and final rulemaking process to update the OPPS and the ASC payment system (§ 416.173; 72 FR 42535). In addition, as discussed in detail in section XII.B. of this proposed rule, because we base ASC payment policies for covered surgical procedures, drugs, biologicals, and certain other covered ancillary services on the OPPS payment policies, we also provide quarterly update change requests (CRs) for ASC covered surgical procedures and covered ancillary services throughout the year (January, April, July, and October). CMS releases new Level II codes to the public or recognizes the release of new CPT codes by the AMA and makes these codes effective (that is, the codes are recognized on Medicare claims) via these ASC quarterly update CRs. Thus, these quarterly updates are to implement newly created Level II HCPCS and Category III CPT codes for ASC payment and to update the payment rates for separately paid drugs and biologicals based on the most recently submitted ASP data. New Category I CPT codes, except vaccine codes, are released only once a year and, therefore, are implemented only through the January quarterly update. New Category I CPT vaccine codes are released twice a year and, therefore, are implemented through the January and July quarterly updates. We refer readers to Table 41 in the CY 2012 OPPS/ASC proposed rule for the process used to update the HCPCS and CPT codes (76 FR 42291).

In our annual updates to the ASC list of, and payment rates for, covered surgical procedures and covered ancillary services, we undertake a review of excluded surgical procedures (including all procedures newly proposed for removal from the OPPS inpatient list), new procedures, and procedures for which there is revised coding, to identify any that we believe meet the criteria for designation as ASC covered surgical procedures or covered ancillary services. Updating the lists of ASC covered surgical procedures and covered ancillary services, as well as their payment rates, in association with the annual OPPS rulemaking cycle is particularly important because the OPPS relative payment weights and, in some cases, payment rates, are used as the basis for the payment of covered surgical procedures and covered ancillary services under the revised ASC payment system. This joint update process ensures that the ASC updates occur in a regular, predictable, and timely manner.

B. Proposed Treatment of New Codes

1. Proposed Process for Recognizing New Category I and Category III CPT Codes and Level II HCPCS Codes

Category I CPT, Category III CPT, and Level II HCPCS codes are used to report procedures, services, items, and supplies under the ASC payment system. Specifically, we recognize the following codes on ASC claims: (1) Category I CPT codes, which describe surgical procedures and vaccine codes; (2) Category III CPT codes, which describe new and emerging technologies, services, and procedures; and (3) Level II HCPCS codes, which are used primarily to identify products, supplies, temporary procedures, and services not described by CPT codes.

We finalized a policy in the August 2, 2007 final rule to evaluate each year all new Category I and Category III CPT codes and Level II HCPCS codes that describe surgical procedures, and to make preliminary determinations during the annual OPPS/ASC rulemaking process regarding whether or not they meet the criteria for payment in the ASC setting as covered surgical procedures and, if so, whether or not they are office-based procedures (72 FR 42533 through 42535). In addition, we identify new codes as ASC covered ancillary services based upon the final payment policies of the revised ASC payment system.

We have separated our discussion below into two sections based on whether we are proposing to solicit public comments in this CY 2015 OPPS/ASC proposed rule (and respond to those comments in the CY 2015 OPPS/ASC final rule with comment period) or whether we will be soliciting public comments in the CY 2015 OPPS/ASC final rule with comment period (and responding to those comments in the CY 2016 OPPS/ASC final rule with comment period).

We note that we sought public comment in the CY 2014 OPPS/ASC final rule with comment period (78 FR 75067) on the new Category I and Category III CPT and Level II HCPCS codes that were effective January 1, 2014. We also sought public comment in the CY 2014 OPPS/ASC final rule with comment period on the new Level II HCPCS codes effective October 1, 2013. These new codes, with an effective date of October 1, 2013, or January 1, 2014, were flagged with comment indicator ''NI'' in Addenda AA and BB to the CY 2014 OPPS/ASC final rule with comment period to indicate that we were assigning them an interim payment status and payment rate, if applicable, which were subject to public comment following publication of the CY 2014 OPPS/ASC final rule with comment period. We will respond to public comments and finalize the treatment of these codes under the ASC payment system in the CY 2015 OPPS/ASC final rule with comment period.

2. Proposed Treatment of New Level II HCPCS Codes and Category III CPT Codes Implemented in April 2014 and July 2014 for Which We Are Soliciting Public Comments in This Proposed Rule

In the April 2014 and July 2014 CRs, we made effective for April 1, 2014 and July 1, 2014, respectively, a total of seven new Level II HCPCS codes and four new Category III CPT codes that describe ASC covered surgical procedures and covered ancillary services that were not addressed in the CY 2014 OPPS/ASC final rule with comment period.

In the April 2014 ASC quarterly update (Transmittal 2927, CR 8675, dated April 10, 2014), we added two new surgical Level II HCPCS codes and one new drug and biological Level II HCPCS code to the list of covered surgical procedures and covered ancillary services, respectively. Table 45 below lists the new Level II HCPCS codes that were implemented April 1, 2014, along with their proposed payment indicators for CY 2015.

In the July 2014 quarterly update (Transmittal 2970, CR 8786, dated May 23, 2014), we added one new brachytherapy Level II HCPCS code and three new drug and biological Level II HCPCS codes to the list of covered ancillary services. Table 46 below lists the new Level II HCPCS codes that were implemented July 1, 2014 along with their proposed payment indicators and proposed ASC payment rates for CY 2015.

Through the July 2014 quarterly update CR, we also implemented ASC payment for four new Category III CPT codes as one ASC covered surgical procedure and three covered ancillary services, effective July 1, 2014. These codes are listed in Table 47 below, along with their proposed payment indicators and proposed payment rates for CY 2015.

The HCPCS codes listed in Table 45 are included in Addenda AA or BB to this proposed rule (which are available via the Internet on the CMS Web site). Because the payment rates associated with the new Level II HCPCS codes and Category III CPT codes that became effective July 1, 2014 (listed in Table 46 and Table 47 of this proposed rule) are not available to us in time for incorporation into the Addenda to this OPPS/ASC proposed rule, our policy is to include these HCPCS codes and their proposed payment indicators and payment rates in the preamble to the proposed rule but not in the Addenda to the proposed rule. These codes and their final payment indicators and rates will be included in the appropriate Addendum to the CY 2015 OPPS/ASC final rule with comment period. Thus, the codes implemented by the July 2014 ASC quarterly update CR and their proposed CY 2015 payment indicators and rates that are displayed in Table 46 and Table 47 are not included in Addenda AA or BB to this proposed rule (which are available via the Internet on the CMS Web site). The final list of ASC covered surgical procedures and covered ancillary services and the associated payment weights and payment indicators will be included in Addenda AA or BB to the CY 2015 OPPS/ASC final rule with comment period, consistent with our annual update policy.

We invite public comment on these proposed payment indicators and the proposed payment rates for the new Category III CPT code and Level II HCPCS codes that were newly recognized as ASC covered surgical procedures or covered ancillary services in April 2014 and July 2014 through the quarterly update CRs, as listed in Tables 45, 46, and 47 below. We are proposing to finalize their payment indicators and their payment rates in the CY 2015 OPPS/ASC final rule with comment period.

TABLE 45—NEW LEVEL II HCPCS CODES FOR COVERED SURGICAL PROCEDURES OR COVERED ANCILLARY SERVICES IMPLEMENTED IN APRIL 2014

CY 2014 HCPCS Code	CY 2014 Long descriptor	Proposed CY 2015 payment indicator
C9739	Cystourethroscopy, with insertion of transprostatic implant; 1 to 3 implants	G2
C9740	Cystourethroscopy, with insertion of transprostatic implant; 4 or more implants	G2
C9021	Injection, obinutuzumab, 10 mg	K2

G2 = Non office-based surgical procedure added in CY 2008 or later; payment based on OPPS relative payment weight.
K2 = Drugs and biologicals paid separately when provided integral to a surgical procedure on ASC list; payment based on OPPS rate.

TABLE 46—NEW LEVEL II HCPCS CODES FOR COVERED ANCILLARY SERVICES IMPLEMENTED IN JULY 2014

CY 2014 HCPCS Code	CY 2014 Long descriptor	Proposed CY 2015 payment indicator	Proposed CY 2015 payment rate
C2644	Brachytherapy source, cesium-131 chloride solution, per millicurie	H2	$18.97
C9022	Injection, elosulfase alfa, 1mg	K2	226.42
C9134	Factor XIII (antihemophilic factor, recombinant), Tretten, per 10 i.u.	K2	14.10

TABLE 46—NEW LEVEL II HCPCS CODES FOR COVERED ANCILLARY SERVICES IMPLEMENTED IN JULY 2014—Continued

CY 2014 HCPCS Code	CY 2014 Long descriptor	Proposed CY 2015 payment indicator	Proposed CY 2015 payment rate
Q9970*	Injection, ferric carboxymaltose, 1 mg	K2	1.06

*HCPCS code Q9970 replaces HCPCS code C9441 effective July 1, 2014.
H2 = Brachytherapy source paid separately when provided integral to a surgical procedure on ASC list; payment based on OPPS rate.
K2 = Drugs and biologicals paid separately when provided integral to a surgical procedure on ASC list; payment based on OPPS rate.

TABLE 47—NEW CATEGORY III CPT CODES FOR COVERED SURGICAL PROCEDURES OR COVERED ANCILLARY SERVICES IMPLEMENTED IN JULY 2014

CY 2014 CPT Code	CY 2014 Long descriptor	Proposed CY 2015 payment indicator	Proposed CY 2015 payment rate
0348T	Radiologic examination, radiostereometric analysis (RSA); spine, (includes, cervical, thoracic and lumbosacral, when performed).	Z2	$50.21
0349T	Radiologic examination, radiostereometric analysis (RSA); upper extremity(ies), (includes shoulder, elbow and wrist, when performed).	Z2	$50.21
0350T	Radiologic examination, radiostereometric analysis (RSA); lower extremity(ies), (includes hip, proximal femur, knee and ankle, when performed).	Z2	50.21
0356T	Insertion of drug-eluting implant (including punctal dilation and implant removal when performed) into lacrimal canaliculus, each.	R2	42.81

R2 = Office-based surgical procedure added to ASC list in CY 2008 or later without MPFS nonfacility PE RVUs; payment based on OPPS relative payment weight.
Z2 = Radiology service paid separately when provided integral to a surgical procedure on ASC list; payment based on MPFS nonfacility PE RVUs.

3. Proposed Process for New Level II HCPCS Codes and Category I and Category III CPT Codes for Which We Will Be Soliciting Public Comments in the CY 2015 OPPS/ASC Final Rule With Comment Period

As has been our practice in the past, we incorporate those new Category I and Category III CPT codes and new Level II HCPCS codes that are effective January 1 in the final rule with comment period updating the ASC payment system for the following calendar year. These codes are released to the public via the CMS HCPCS (for Level II HCPCS codes) and AMA Web sites (for CPT codes), and also through the January ASC quarterly update CRs. In the past, we also have released new Level II HCPCS codes that are effective October 1 through the October ASC quarterly update CRs and incorporated these new codes in the final rule with comment period updating the ASC payment system for the following calendar year. All of these codes are flagged with comment indicator ''NI'' in Addenda AA and BB to the OPPS/ASC final rule with comment period to indicate that we are assigning them an interim payment status which is subject to public comment. The payment indicator and payment rate, if applicable, for all such codes flagged with comment indicator ''NI'' are open to public comment in the OPPS/ASC final rule with comment period, and we respond to these comments in the final rule with comment period for the next calendar year's OPPS/ASC update.

We are proposing to continue this process for CY 2015. Specifically, for CY 2015, we are proposing to include in Addenda AA and BB to the CY 2015 OPPS/ASC final rule with comment period the new Category I and III CPT codes effective January 1, 2015, that would be incorporated in the January 2015 ASC quarterly update CR and the new Level II HCPCS codes, effective October 1, 2014 or January 1, 2015, that would be released by CMS in its October 2014 and January 2015 ASC quarterly update CRs. These codes would be flagged with comment indicator ''NI'' in Addenda AA and BB to the CY 2015 OPPS/ASC final rule with comment period to indicate that we have assigned them an interim payment status. Their payment indicators and payment rates, if applicable, would be open to public comment in the CY 2015 OPPS/ASC final rule with comment period and would be finalized in the CY 2016 OPPS/ASC final rule with comment period.

C. Proposed Update to the Lists of ASC Covered Surgical Procedures and Covered Ancillary Services

1. Covered Surgical Procedures

a. Additions to the List of ASC Covered Surgical Procedures

We are proposing to update the list of ASC covered surgical procedures by adding 10 procedures to the list for CY 2015. These 10 procedures were among those excluded from the ASC list for CY 2014 because we believed they did not meet the definition of a covered surgical procedure based on our expectation that they would pose a significant safety risk to Medicare beneficiaries or would require an overnight stay if performed in ASCs. We conducted a review of all HCPCS codes that currently are paid under the OPPS, but not included on the ASC list of covered surgical procedures, to determine if changes in technology and/or medical practice affected the clinical appropriateness of these procedures for the ASC setting. We determined that these 10 procedures could be safely performed in the ASC setting and would not require an overnight stay if performed in an ASC and, therefore, we are proposing to include them on the list of ASC covered surgical procedures for CY 2015.

The 10 procedures that we are proposing to add to the ASC list of covered surgical procedures, including their HCPCS code long descriptors and proposed CY 2015 payment indicators, are displayed in Table 48 below.

TABLE 48—PROPOSED ADDITIONS TO THE LIST OF ASC COVERED SURGICAL PROCEDURES FOR CY 2015

CY 2014 HCPCS Code	CY 2014 Long descriptor	Proposed CY 2015 ASC payment indicator
22551	Arthrodesis, anterior interbody, including disc space preparation, discectomy, osteophytectomy and decompression of spinal cord and/or nerve roots; cervical below c2.	G2
22554	Arthrodesis, anterior interbody technique, including minimal discectomy to prepare interspace (other than for decompression); cervical below c2.	G2
22612	Arthrodesis, posterior or posterolateral technique, single level; lumbar (with lateral transverse technique, when performed).	G2
22614	Arthrodesis, posterior or posterolateral technique, single level; each additional vertebral segment (list separately in addition to code for primary procedure).	N1
63020	Laminotomy (hemilaminectomy), with decompression of nerve root(s), including partial facetectomy, foraminotomy and/or excision of herniated intervertebral disc; 1 interspace, cervical.	G2
63030	Laminotomy (hemilaminectomy), with decompression of nerve root(s), including partial facetectomy, foraminotomy and/or excision of herniated intervertebral disc; 1 interspace, lumbar.	G2
63042	Laminotomy (hemilaminectomy), with decompression of nerve root(s), including partial facetectomy, foraminotomy and/or excision of herniated intervertebral disc, reexploration, single interspace; lumbar.	G2
63045	Laminectomy, facetectomy and foraminotomy (unilateral or bilateral with decompression of spinal cord, cauda equina and/or nerve root[s], [eg, spinal or lateral recess stenosis]), single vertebral segment; cervical.	G2
63047	Laminectomy, facetectomy and foraminotomy (unilateral or bilateral with decompression of spinal cord, cauda equina and/or nerve root[s], [eg, spinal or lateral recess stenosis]), single vertebral segment; lumbar.	G2
63056	Transpedicular approach with decompression of spinal cord, equina and/or nerve root(s) (eg, herniated intervertebral disc), single segment; lumbar (including transfacet, or lateral extraforaminal approach) (eg, far lateral herniated intervertebral disc).	G2

b. Proposed Covered Surgical Procedures Designated as Office-Based

(1) Background

In the August 2, 2007 ASC final rule, we finalized our policy to designate as ''office-based'' those procedures that are added to the ASC list of covered surgical procedures in CY 2008 or later years that we determine are performed predominantly (more than 50 percent of the time) in physicians' offices based on consideration of the most recent available volume and utilization data for each individual procedure code and/or, if appropriate, the clinical characteristics, utilization, and volume of related codes. In that rule, we also finalized our policy to exempt all procedures on the CY 2007 ASC list from application of the office-based classification (72 FR 42512). The procedures that were added to the ASC list of covered surgical procedures beginning in CY 2008 that we determined were office-based were identified in Addendum AA to that rule by payment indicator ''P2'' (Office-based surgical procedure added to ASC list in CY 2008 or later with MPFS nonfacility PE RVUs; payment based on OPPS relative payment weight); ''P3'' (Office-based surgical procedures added to ASC list in CY 2008 or later with MPFS nonfacility PE RVUs; payment based on MPFS nonfacility PE RVUs); or ''R2'' (Office-based surgical procedure added to ASC list in CY 2008 or later without MPFS nonfacility PE RVUs; payment based on OPPS relative payment weight), depending on whether we estimated it would be paid according to the standard ASC payment methodology based on its OPPS relative payment weight or at the MPFS nonfacility PE RVU-based amount.

Consistent with our final policy to annually review and update the list of surgical procedures eligible for payment in ASCs, each year we identify surgical procedures as either temporarily office-based (these are new procedure codes without utilization data which our Medical Officers have determined are clinically similar to other procedures that are permanently office-based), permanently office-based, or non-office-based, after taking into account updated volume and utilization data.

(2) Proposed Changes for CY 2015 to Covered Surgical Procedures Designated as Office-Based

In developing this proposed rule, we followed our policy to annually review and update the surgical procedures for which ASC payment is made and to identify new procedures that may be appropriate for ASC payment, including their potential designation as office-based. We reviewed CY 2013 volume and utilization data and the clinical characteristics for all surgical procedures that are assigned payment indicator ''G2'' (Non-office-based surgical procedure added in CY 2008 or later; payment based on OPPS relative payment weight) in CY 2014, as well as for those procedures assigned one of the temporary office-based payment indicators, specifically ''P2*,'' ''P3*,'' or ''R2*'' in the CY 2014 OPPS/ASC final rule with comment period (78 FR 75071 through 75075).

Our review of the CY 2013 volume and utilization data resulted in our identification of two covered surgical procedures that we believe meet the criteria for designation as office-based. The data indicate that these procedures are performed more than 50 percent of the time in physicians' offices and that our medical advisors believe the services are of a level of complexity consistent with other procedures performed routinely in physicians' offices. The two CPT codes we are proposing to permanently designate as office-based are listed in Table 49 below.

TABLE 49—ASC COVERED SURGICAL PROCEDURES NEWLY PROPOSED FOR PERMANENT OFFICE-BASED DESIGNATION FOR CY 2015

CY 2014 CPT Code	CY 2014 Long descriptor	CY 2014 ASC payment indicator	Proposed CY 2015 ASC payment indicator *
10022	Fine needle aspiration; with imaging guidance	G2	P3
19296	Placement of radiotherapy afterloading expandable catheter (single or multichannel) into the breast for interstitial radioelement application following partial mastectomy, includes imaging guidance; on date separate from partial mastectomy.	G2	P2

* Proposed payment indicators are based on a comparison of the proposed rates according to the ASC standard ratesetting methodology and the MPFS proposed rates. According to the statutory formula, current law requires a negative update to the MPFS payment rates for CY 2015. For a discussion of those rates, we refer readers to the CY 2015 MPFS proposed rule.

We invite public comment on this proposal.

We also reviewed CY 2013 volume and utilization data and other information for the 8 procedures finalized for temporary office-based status in Table 52 and Table 53 in the CY 2014 OPPS/ASC final rule with comment period (78 FR 75074 through 75075). Among these 8 procedures, there were very few claims data or no claims data for six procedures: CPT code 0099T (Implantation of intrastromal corneal ring segments); CPT code 0299T (Extracorporeal shock wave for integumentary wound healing, high energy, including topical application and dressing care; initial wound); CPT code C9800 (Dermal injection procedure(s) for facial lipodystrophy syndrome (LDS) and provision of Radiesse or Sculptra dermal filler, including all items and supplies); CPT code 10030 (Image-guided fluid collection drainage by catheter (eg, abscess, hematoma, seroma, lymphocele, cyst), soft tissue (eg, extremity, abdominal wall, neck), percutaneous); CPT code 64617 (Chemodenervation of muscle(s); larynx, unilateral, percutaneous (eg, for spasmodic dysphonia), includes guidance by needle electromyography, when performed); and CPT code 67229 (Treatment of extensive or progressive retinopathy, one or more sessions; preterm infant (less than 37 weeks gestation at birth), performed from birth up to 1 year of age (eg, retinopathy of prematurity), photocoagulation or cryotherapy). Consequently, we are proposing to maintain their temporary office-based designations for CY 2015.

We are proposing that one procedure that has a temporary office-based designation for CY 2014, CPT code 0226T (Anoscopy, high resolution (HRA) (with magnification and chemical agent enhancement); diagnostic, including collection of specimen(s) by brushing or washing when performed), be packaged under the OPPS for CY 2015. Our policy is to package covered surgical procedures under the ASC payment system if these procedures are packaged under the OPPS. Consequently, we are proposing to package, and assign payment indicator ''N1'' to, this covered surgical procedure code in CY 2015.

HCPCS code 0124T (Conjunctival incision with posterior extrascleral placement of pharmacological agent (does not include supply of medication)) was finalized for temporary office-based status in the CY 2014 OPPS/ASC final rule with comment period; however, this code was deleted effective December 31, 2013.

The proposed CY 2015 payment indicator designations for the 7 remaining procedures that were temporarily designated as office-based in CY 2014 are displayed in Table 50 below. The procedures for which the proposed office-based designations for CY 2015 are temporary also are indicated by asterisks in Addendum AA to this proposed rule (which is available via the Internet on the CMS Web site).

TABLE 50—PROPOSED CY 2015 PAYMENT INDICATORS FOR ASC COVERED SURGICAL PROCEDURES DESIGNATED AS TEMPORARILY OFFICE-BASED IN THE CY 2014 OPPS/ASC FINAL RULE WITH COMMENT PERIOD

CY 2014 CPT Code	CY 2014 Long descriptor	CY 2014 ASC Payment indicator	Proposed CY 2015 ASC payment indicator **
0099T	Implantation of intrastromal corneal ring segments	R2*	R2*
0226T	Anoscopy, high resolution (HRA) (with magnification and chemical agent enhancement); diagnostic, including collection of specimen(s) by brushing or washing when performed.	R2*	N1
0299T	Extracorporeal shock wave for integumentary wound healing, high energy, including topical application and dressing care; initial wound.	R2*	R2*
C9800	Dermal injection procedure(s) for facial lipodystrophy syndrome (LDS) and provision of Radiesse or Sculptra dermal filler, including all items and supplies.	R2*	R2*
10030	Image-guided fluid collection drainage by catheter (eg, abscess, hematoma, seroma, lymphocele, cyst), soft tissue (eg, extremity, abdominal wall, neck), percutaneous.	P2*	P2*
64617	Chemodenervation of muscle(s); larynx, unilateral, percutaneous (eg, for spasmodic dysphonia), includes guidance by needle electromyography, when performed.	P3*	P3*
67229	Treatment of extensive or progressive retinopathy, one or more sessions; preterm infant (less than 37 weeks gestation at birth), performed from birth up to 1 year of age (eg, retinopathy of prematurity), photocoagulation or cryotherapy.	R2*	R2*

* If designation is temporary.

** Proposed payment indicators are based on a comparison of the proposed rates according to the ASC standard ratesetting methodology and the MPFS proposed rates. According to the statutory formula, current law requires a negative update to the MPFS payment rates for CY 2015. For a discussion of those rates, we refer readers to the CY 2015 MPFS proposed rule.

We invite public comment on these proposals.

c. Proposed ASC Covered Surgical Procedures To Be Designated as Device-Intensive

(1) Background

As discussed in the August 2, 2007 final rule (72 FR 42503 through 42508), we adopted a modified payment methodology for calculating the ASC payment rates for covered surgical procedures that are assigned to the subset of OPPS device-dependent APCs with a device offset percentage greater than 50 percent of the APC cost under the OPPS, in order to ensure that payment for the procedure is adequate to provide packaged payment for the high-cost implantable devices used in those procedures.

(2) Proposed Changes To List of ASC Covered Surgical Procedures Designated as Device-Intensive for CY 2015

As discussed in section II.A.2.e of this proposed rule, for CY 2015, we are proposing to create 28 comprehensive APCs to replace the current device dependent APCs and a few non-device dependent APCs under the OPPS; thus, there would be no device dependent APCs. We are proposing to define a comprehensive APC as a classification for the provision of a primary service and all adjunctive services provided to support the delivery of the primary service. Because a comprehensive APC would treat all individually reported codes as representing components of the comprehensive service, our OPPS proposal is to make a single prospective payment based on the cost of all individually reported codes that represent the provision of a primary service and all adjunctive services provided to support the delivery of the primary service.

Unlike the OPPS claims processing system that can be configured to make a single payment for the encounter-based comprehensive service whenever a HCPCS code that is assigned to a comprehensive APC appears on the claim, the ASC claims-processing system does not allow for this type of conditional packaging. Therefore, we are proposing that all separately paid covered ancillary services that are provided integral to covered surgical procedures that would map to comprehensive APCs would continue to be separately paid under the ASC payment system instead of being packaged into the payment for the comprehensive APC as under the OPPS. The OPPS relative payment weights for the comprehensive APCs would include costs for ancillary services so we could duplicate payment if we based the ASC payment rate on the OPPS relative payment weights for the comprehensive APCs. Therefore, to avoid this issue, we are proposing that the ASC payment rates for these comprehensive APCs would be based on the CY 2015 OPPS relative payments weights that have been calculated using the standard APC ratesetting methodology for the primary service instead of the relative payment weights that are based on the comprehensive bundled service. For the same reason, under the ASC payment system, we also are proposing to use the standard OPPS APC ratesetting methodology instead of the comprehensive methodology to calculate the device offset percentage for comprehensive APCs for purposes of identifying device-intensive procedures and to calculate payment rates for device-intensive procedures assigned to comprehensive APCs.

Payment rates for ASC device-intensive procedures are based on a modified payment methodology to ensure that payment for the procedure is adequate to provide packaged payment for the high-cost implantable devices used in those procedures. Device-intensive procedures are currently defined as those procedures that are assigned to device-dependent APCs with a device offset percentage greater than 50 percent of the APC cost under the OPPS. Because we are proposing to implement the comprehensive APC policy and, therefore, eliminate device-dependent APCs under the OPPS in CY 2015, we need to define ASC device-intensive procedures for CY 2015. We are proposing to define ASC device-intensive procedures as those procedures that are assigned to any APC (not only an APC formerly designated device-dependent) with a device offset percentage greater than 40 percent based on the standard OPPS APC ratesetting methodology. We believe that our proposal to lower the offset threshold from greater than 50 percent to greater than 40 percent better aligns with the OPPS device credit policy finalized for CY 2014 (78 FR 75006 and 75007) that applies to procedures with a significant device offset amount, which is defined as exceeding 40 percent of the APC cost. Because the ASC device-intensive methodology is applied to procedures with significant device costs, we believe that the definition of ''significant'' with regard to device-intensive procedures should match that used under the OPPS to determine ''significant'' device costs for the device credit policy. We are proposing changes to § 416.171(b)(2) to reflect this proposal.

We also are proposing to update the ASC list of covered surgical procedures that are eligible for payment according to our device-intensive procedure payment methodology, consistent with our proposed modified definition of device-intensive procedures, reflecting the proposed APC assignments of procedures and APC device offset percentages based on the CY 2013 OPPS claims and cost report data available for the proposed rule.

The ASC covered surgical procedures that we are proposing to designate as device-intensive and that would be subject to the device-intensive procedure payment methodology for CY 2015 are listed in Table 51 below. The CPT code, the CPT code short descriptor, the proposed CY 2015 ASC payment indicator (PI), the proposed CY 2015 OPPS APC assignment, the proposed CY 2015 OPPS APC device offset percentage, and an indication if the full credit/partial credit (FB/FC) device adjustment policy would apply are also listed in Table 51 below. All of these procedures are included in Addendum AA to this proposed rule (which is available via the Internet on the CMS Web site).

We invite public comment on these proposals.

d. Proposed Adjustment to ASC Payments for No Cost/Full Credit and Partial Credit Devices

Our ASC policy with regard to payment for costly devices implanted in ASCs at no cost/full credit or partial credit as set forth in § 416.179 is consistent with the OPPS policy that was in effect until CY 2014. The established ASC policy reduces payment to ASCs when a specified device is furnished without cost or with full credit or partial credit for the cost of the device for those ASC covered surgical procedures that are assigned to APCs under the OPPS to which this policy applies. We refer readers to the CY 2009 OPPS/ASC final rule with comment period for a full discussion of the ASC payment adjustment policy for no cost/full credit and partial credit devices (73 FR 68742 through 68744).

As discussed in section IV.B. of the CY 2014 OPPS/ASC final rule with comment period (78 FR 75005 through 75006), we finalized our proposal to modify our former policy of reducing OPPS payment for specified APCs when a hospital furnishes a specified device without cost or with a full or partial credit. Formerly, under the OPPS, our policy was to reduce OPPS payment by 100 percent of the device offset amount

when a hospital furnishes a specified device without cost or with a full credit and by 50 percent of the device offset amount when the hospital receives partial credit in the amount of 50 percent or more of the cost for the specified device. For CY 2014, we finalized our proposal to reduce OPPS payment for applicable APCs by the full or partial credit a provider receives for a replaced device, capped at the device offset amount.

Although we finalized our proposal to modify the policy of reducing payments when a hospital furnishes a specified device without cost or with full or partial credit under the OPPS, in that final rule with comment period (78 FR 75076 through 75080), we finalized our proposal to maintain our ASC policy for reducing payments to ASCs for specified device-intensive procedures when the ASC furnishes a device without cost or with full or partial credit. Unlike the OPPS, there is currently no mechanism within the ASC claims processing system for ASCs to submit to CMS the actual amount received when furnishing a specified device at full or partial credit. Therefore, under the ASC payment system, we finalized our proposal to continue to reduce ASC payments by 100 percent or 50 percent of the device offset amount when an ASC furnishes a device without cost or with full or partial credit, respectively.

We are proposing to update the list of ASC covered device-intensive procedures, based on the revised device-intensive definition proposed above, that would be subject to the no cost/full credit and partial credit device adjustment policy for CY 2015. Table 51 below displays the ASC covered device-intensive procedures that we are proposing would be subject to the no cost/full credit or partial credit device adjustment policy for CY 2015. Specifically, when a procedure that is listed in Table 51 is subject to the no cost/full credit or partial credit device adjustment policy and is performed to implant a device that is furnished at no cost or with full credit from the manufacturer, the ASC would append the HCPCS ''FB'' modifier on the line with the procedure to implant the device. The contractor would reduce payment to the ASC by the device offset amount that we estimate represents the cost of the device when the necessary device is furnished without cost to the ASC or with full credit. We continue to believe that the reduction of ASC payment in these circumstances is necessary to pay appropriately for the covered surgical procedure being furnished by the ASC.

For partial credit, we are proposing to reduce the payment for implantation procedures listed in Table 51 that are subject to the no cost/full credit or partial credit device adjustment policy by one-half of the device offset amount that would be applied if a device was provided at no cost or with full credit, if the credit to the ASC is 50 percent or more of the cost of the new device. The ASC would append the HCPCS ''FC'' modifier to the HCPCS code for a surgical procedure listed in Table 51 that is subject to the no cost/full credit or partial credit device adjustment policy, when the facility receives a partial credit of 50 percent or more of the cost of a device. In order to report that they received a partial credit of 50 percent or more of the cost of a new device, ASCs would have the option of either: (1) Submitting the claim for the device replacement procedure to their Medicare contractor after the procedure's performance but prior to manufacturer acknowledgment of credit for the device, and subsequently contacting the contractor regarding a claim adjustment once the credit determination is made; or (2) holding the claim for the device implantation procedure until a determination is made by the manufacturer on the partial credit and submitting the claim with the ''FC'' modifier appended to the implantation procedure HCPCS code if the partial credit is 50 percent or more of the cost of the replacement device. Beneficiary coinsurance would continue to be based on the reduced payment amount.

We currently apply the FB/FC policy to device-intensive procedures that involve devices that would be amenable to removal and replacement in a device recall or warranty situation. We are proposing to apply the FB/FC policy to all device-intensive procedures beginning in CY 2015 because, in addition to receiving devices at no cost/full credit or partial credit due to a device recall or warranty situation, ASCs also may receive devices at no cost/full credit or partial credit due to being part of an investigational device trial. In order to ensure that our policy covers any situation involving a device-intensive procedure where an ASC may receive a device at no cost/full credit or partial credit, we are proposing to apply our FB/FC policy to all device-intensive procedures.

TABLE 51—ASC COVERED SURGICAL PROCEDURES PROPOSED FOR DEVICE-INTENSIVE DESIGNATION FOR CY 2015, INCLUDING ASC COVERED SURGICAL PROCEDURES FOR WHICH WE ARE PROPOSING THAT THE NO COST/FULL CREDIT OR PARTIAL CREDIT DEVICE ADJUSTMENT POLICY WOULD APPLY

HCPCS Code	Short descriptor	Proposed CY 2015 ASC PI	Proposed CY 2015 OPPS APC	Proposed CY 2015 device offset percent	Proposed FB/FC policy would apply
19298	Place breast rad tube/caths	J8	0648	0.4415	Yes.
19325	Enlarge breast with implant	J8	0648	0.4415	Yes.
19342	Delayed breast prosthesis	J8	0648	0.4415	Yes.
19357	Breast reconstruction	J8	0648	0.4415	Yes.
23515	Treat clavicle fracture	J8	0064	0.4308	Yes.
23585	Treat scapula fracture	J8	0064	0.4308	Yes.
23615	Treat humerus fracture	J8	0064	0.4308	Yes.
23616	Treat humerus fracture	J8	0064	0.4308	Yes.
23630	Treat humerus fracture	J8	0064	0.4308	Yes.
23670	Treat dislocation/fracture	J8	0064	0.4308	Yes.
24361	Reconstruct elbow joint	J8	0425	0.5661	Yes.
24363	Replace elbow joint	J8	0425	0.5661	Yes.
24365	Reconstruct head of radius	J8	0425	0.5661	Yes.
24366	Reconstruct head of radius	J8	0425	0.5661	Yes.
24370	Revise reconst elbow joint	J8	0425	0.5661	Yes.
24371	Revise reconst elbow joint	J8	0425	0.5661	Yes.
24435	Repair humerus with graft	J8	0425	0.5661	Yes.
24498	Reinforce humerus	J8	0425	0.5661	Yes.

TABLE 51—ASC COVERED SURGICAL PROCEDURES PROPOSED FOR DEVICE-INTENSIVE DESIGNATION FOR CY 2015, INCLUDING ASC COVERED SURGICAL PROCEDURES FOR WHICH WE ARE PROPOSING THAT THE NO COST/FULL CREDIT OR PARTIAL CREDIT DEVICE ADJUSTMENT POLICY WOULD APPLY—Continued

HCPCS Code	Short descriptor	Proposed CY 2015 ASC PI	Proposed CY 2015 OPPS APC	Proposed CY 2015 device offset percent	Proposed FB/FC policy would apply
24515	Treat humerus fracture	J8	0064	0.4308	Yes.
24516	Treat humerus fracture	J8	0064	0.4308	Yes.
24545	Treat humerus fracture	J8	0064	0.4308	Yes.
24546	Treat humerus fracture	J8	0064	0.4308	Yes.
24575	Treat humerus fracture	J8	0064	0.4308	Yes.
24579	Treat humerus fracture	J8	0064	0.4308	Yes.
24586	Treat elbow fracture	J8	0064	0.4308	Yes.
24587	Treat elbow fracture	J8	0064	0.4308	Yes.
24615	Treat elbow dislocation	J8	0064	0.4308	Yes.
24635	Treat elbow fracture	J8	0064	0.4308	Yes.
24666	Treat radius fracture	J8	0064	0.4308	Yes.
25441	Reconstruct wrist joint	J8	0425	0.5661	Yes.
25442	Reconstruct wrist joint	J8	0425	0.5661	Yes.
25444	Reconstruct wrist joint	J8	0425	0.5661	Yes.
25446	Wrist replacement	J8	0425	0.5661	Yes.
25574	Treat fracture radius & ulna	J8	0064	0.4308	Yes.
25575	Treat fracture radius/ulna	J8	0064	0.4308	Yes.
25607	Treat fx rad extra-articul	J8	0064	0.4308	Yes.
25608	Treat fx rad intra-articul	J8	0064	0.4308	Yes.
25609	Treat fx radial 3+ frag	J8	0064	0.4308	Yes.
26686	Treat hand dislocation	J8	0064	0.4308	Yes.
27415	Osteochondral knee allograft	J8	0425	0.5661	Yes.
27428	Reconstruction knee	J8	0425	0.5661	Yes.
27438	Revise kneecap with implant	J8	0425	0.5661	Yes.
27440	Revision of knee joint	J8	0425	0.5661	Yes.
27442	Revision of knee joint	J8	0425	0.5661	Yes.
27443	Revision of knee joint	J8	0425	0.5661	Yes.
27446	Revision of knee joint	J8	0425	0.5661	Yes.
27745	Reinforce tibia	J8	0425	0.5661	Yes.
27759	Treatment of tibia fracture	J8	0064	0.4308	Yes.
27823	Treatment of ankle fracture	J8	0064	0.4308	Yes.
27827	Treat lower leg fracture	J8	0064	0.4308	Yes.
27828	Treat lower leg fracture	J8	0064	0.4308	Yes.
28415	Treat heel fracture	J8	0064	0.4308	Yes.
28715	Fusion of foot bones	J8	0425	0.5661	Yes.
33206	Insert heart pm atrial	J8	0089	0.6940	Yes.
33207	Insert heart pm ventricular	J8	0089	0.6940	Yes.
33208	Insrt heart pm atrial & vent	J8	0089	0.6940	Yes.
33210	Insert electrd/pm cath sngl	J8	0090	0.6828	Yes.
33211	Insert card electrodes dual	J8	0090	0.6828	Yes.
33212	Insert pulse gen sngl lead	J8	0090	0.6828	Yes.
33213	Insert pulse gen dual leads	J8	0089	0.6940	Yes.
33214	Upgrade of pacemaker system	J8	0089	0.6940	Yes.
33216	Insert 1 electrode pm-defib	J8	0090	0.6828	Yes.
33217	Insert 2 electrode pm-defib	J8	0090	0.6828	Yes.
33221	Insert pulse gen mult leads	J8	0655	0.7504	Yes.
33224	Insert pacing lead & connect	J8	0089	0.6940	Yes.
33227	Remove&replace pm gen singl	J8	0090	0.6828	Yes.
33228	Remv&replc pm gen dual lead	J8	0089	0.6940	Yes.
33229	Remv&replc pm gen mult leads	J8	0655	0.7504	Yes.
33230	Insrt pulse gen w/dual leads	J8	0107	0.7807	Yes.
33231	Insrt pulse gen w/mult leads	J8	0108	0.8095	Yes.
33233	Removal of pm generator	J8	0090	0.6828	Yes.
33240	Insrt pulse gen w/singl lead	J8	0107	0.7807	Yes.
33249	Nsert pace-defib w/lead	J8	0108	0.8095	Yes.
33262	Remv&replc cvd gen sing lead	J8	0107	0.7807	Yes.
33263	Remv&replc cvd gen dual lead	J8	0107	0.7807	Yes.
33264	Remv&replc cvd gen mult lead	J8	0108	0.8095	Yes.
33282	Implant pat-active ht record	J8	0090	0.6828	Yes.
37221	Iliac revasc w/stent	J8	0229	0.4981	Yes.
37225	Fem/popl revas w/ather	J8	0229	0.4981	Yes.
37226	Fem/popl revasc w/stent	J8	0229	0.4981	Yes.
37227	Fem/popl revasc stnt & ather	J8	0319	0.5796	Yes.
37228	Tib/per revasc w/tla	J8	0229	0.4981	Yes.
37229	Tib/per revasc w/ather	J8	0319	0.5796	Yes.
37230	Tib/per revasc w/stent	J8	0319	0.5796	Yes.
37231	Tib/per revasc stent & ather	J8	0319	0.5796	Yes.
37236	Open/perq place stent 1st	J8	0229	0.4981	Yes.

TABLE 51—ASC COVERED SURGICAL PROCEDURES PROPOSED FOR DEVICE-INTENSIVE DESIGNATION FOR CY 2015, INCLUDING ASC COVERED SURGICAL PROCEDURES FOR WHICH WE ARE PROPOSING THAT THE NO COST/FULL CREDIT OR PARTIAL CREDIT DEVICE ADJUSTMENT POLICY WOULD APPLY—Continued

HCPCS Code	Short descriptor	Proposed CY 2015 ASC PI	Proposed CY 2015 OPPS APC	Proposed CY 2015 device offset percent	Proposed FB/FC policy would apply
37238	Open/perq place stent same	J8	0229	0.4981	Yes.
53440	Male sling procedure	J8	0385	0.5944	Yes.
53444	Insert tandem cuff	J8	0385	0.5944	Yes.
53445	Insert uro/ves nck sphincter	J8	0386	0.6919	Yes.
53447	Remove/replace ur sphincter	J8	0386	0.6919	Yes.
54400	Insert semi-rigid prosthesis	J8	0385	0.5944	Yes.
54401	Insert self-contd prosthesis	J8	0386	0.6919	Yes.
54405	Insert multi-comp penis pros	J8	0386	0.6919	Yes.
54410	Remove/replace penis prosth	J8	0386	0.6919	Yes.
54416	Remv/repl penis contain pros	J8	0386	0.6919	Yes.
55873	Cryoablate prostate	J8	0385	0.5944	Yes.
61885	Insrt/redo neurostim 1 array	J8	0039	0.8612	Yes.
61886	Implant neurostim arrays	J8	0318	0.8658	Yes.
61888	Revise/remove neuroreceiver	J8	0061	0.5642	Yes.
62361	Implant spine infusion pump	J8	0227	0.8060	Yes.
62362	Implant spine infusion pump	J8	0227	0.8060	Yes.
63650	Implant neuroelectrodes	J8	0061	0.5642	Yes.
63655	Implant neuroelectrodes	J8	0039	0.8612	Yes.
63663	Revise spine eltrd perq aray	J8	0061	0.5642	Yes.
63664	Revise spine eltrd plate	J8	0061	0.5642	Yes.
63685	Insrt/redo spine n generator	J8	0318	0.8658	Yes.
64553	Implant neuroelectrodes	J8	0061	0.5642	Yes.
64555	Implant neuroelectrodes	J8	0061	0.5642	Yes.
64561	Implant neuroelectrodes	J8	0061	0.5642	Yes.
64565	Implant neuroelectrodes	J8	0061	0.5642	Yes.
64568	Inc for vagus n elect impl	J8	0318	0.8658	Yes.
64569	Revise/repl vagus n eltrd	J8	0061	0.5642	Yes.
64575	Implant neuroelectrodes	J8	0061	0.5642	Yes.
64580	Implant neuroelectrodes	J8	0039	0.8612	Yes.
64581	Implant neuroelectrodes	J8	0061	0.5642	Yes.
64590	Insrt/redo pn/gastr stimul	J8	0039	0.8612	Yes.
65770	Revise cornea with implant	J8	0293	0.6588	Yes.
69714	Implant temple bone w/stimul	J8	0425	0.5661	Yes.
69715	Temple bne implnt w/stimulat	J8	0425	0.5661	Yes.
69718	Revise temple bone implant	J8	0425	0.5661	Yes.
69930	Implant cochlear device	J8	0259	0.8316	Yes.
0238T	Trluml perip athrc iliac art	J8	0319	0.5796	Yes.
0282T	Periph field stimul trial	J8	0061	0.5642	Yes.
0283T	Periph field stimul perm	J8	0318	0.8658	Yes.
0302T	Icar ischm mntrng sys compl	J8	0089	0.6940	Yes.
0303T	Icar ischm mntrng sys eltrd	J8	0090	0.6828	Yes.
0304T	Icar ischm mntrng sys device	J8	0090	0.6828	Yes.
0308T	Insj ocular telescope prosth	J8	0351	0.9004	Yes.
0316T	Replc vagus nerve pls gen	J8	0039	0.8612	Yes.
0319T	Insert subq defib w/eltrd	J8	0108	0.8095	Yes.
0320T	Insert subq defib electrode	J8	0090	0.6828	Yes.
0321T	Insert subq defib pls gen	J8	0107	0.7807	Yes.
0323T	Rmvl & replc subq pls gen	J8	0107	0.7807	Yes.
0334T	Perq stablj sacroiliac joint	J8	0425	0.5661	Yes.

We invite public comment on these proposals.

e. ASC Treatment of Surgical Procedures Proposed for Removal From the OPPS Inpatient Only List for CY 2015

As we discussed in the CY 2009 OPPS/ASC final rule with comment period (73 FR 68724), we adopted a policy to include in our annual evaluation of the ASC list of covered surgical procedures, a review of the procedures that are being proposed for removal from the OPPS inpatient only list for possible inclusion on the ASC list of covered surgical procedures. There are no procedures proposed for removal from the OPPS inpatient only list for CY 2015, so we are not proposing any procedures for possible inclusion on the ASC list of covered surgical procedures under this section.

2. Covered Ancillary Services

Consistent with the established ASC payment system policy, we are proposing to update the ASC list of covered ancillary services to reflect the proposed payment status for the services under the CY 2015 OPPS. Maintaining consistency with the OPPS may result in proposed changes to ASC payment indicators for some covered ancillary services because of changes that are being proposed under the OPPS for CY 2015. For example, a covered ancillary service that was separately paid under the revised ASC payment system in CY 2014 may be proposed for packaged status under the CY 2015

OPPS and, therefore, also under the ASC payment system for CY 2015.

To maintain consistency with the OPPS, we are proposing that these services also would be packaged under the ASC payment system for CY 2015. Comment indicator ''CH,'' discussed in section XII.F. of this proposed rule, is used in Addendum BB to this proposed rule (which is available via the Internet on the CMS Web site) to indicate covered ancillary services for which we are proposing a change in the ASC payment indicator to reflect a proposed change in the OPPS treatment of the service for CY 2015.

Except for the Level II HCPCS codes and Level III CPT codes listed in Table 46 and Table 47 of this proposed rule, all ASC covered ancillary services and their proposed payment indicators for CY 2015 are included in Addendum BB to this proposed rule.

We invite public comment on this proposal.

D. Proposed ASC Payment for Covered Surgical Procedures and Covered Ancillary Services

1. Proposed ASC Payment for Covered Surgical Procedures

a. Background

Our ASC payment policies for covered surgical procedures under the revised ASC payment system are fully described in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66828 through 66831). Under our established policy for the revised ASC payment system, the ASC standard ratesetting methodology of multiplying the ASC relative payment weight for the procedure by the ASC conversion factor for that same year is used to calculate the national unadjusted payment rates for procedures with payment indicators ''G2'' and ''A2.'' Payment indicator ''A2'' was developed to identify procedures that were included on the list of ASC covered surgical procedures in CY 2007 and were, therefore, subject to transitional payment prior to CY 2011. Although the 4-year transitional period has ended and payment indicator ''A2'' is no longer required to identify surgical procedures subject to transitional payment, we retained payment indicator ''A2'' because it is used to identify procedures that are exempted from application of the office-based designation.

The rate calculation established for device-intensive procedures (payment indicator ''J8'') is structured so that the packaged device payment amount is the same as under the OPPS, and only the service portion of the rate is subject to the ASC standard ratesetting methodology. In the CY 2014 OPPS/ASC final rule with comment period (78 FR 75064 through 75090), we updated the CY 2013 ASC payment rates for ASC covered surgical procedures with payment indicators of ''A2,'' ''G2,'' and ''J8'' using CY 2012 data, consistent with the CY 2014 OPPS update. We also updated payment rates for device-intensive procedures to incorporate the CY 2014 OPPS device offset percentages.

Payment rates for office-based procedures (payment indicators ''P2,'' ''P3,'' and ''R2'') are the lower of the MPFS nonfacility PE RVU-based amount (we refer readers to the CY 2015 MPFS proposed rule) or the amount calculated using the ASC standard ratesetting methodology for the procedure. In the CY 2014 OPPS/ASC final rule with comment period, we updated the payment amounts for office-based procedures (payment indicators ''P2,'' ''P3,'' and ''R2'') using the most recent available MPFS and OPPS data. We compared the estimated CY 2014 rate for each of the office-based procedures, calculated according to the ASC standard ratesetting methodology, to the MPFS nonfacility PE RVU-based amount to determine which was lower and, therefore, would be the CY 2014 payment rate for the procedure according to the final policy of the revised ASC payment system (§ 416.171(d)).

b. Proposed Update to ASC Covered Surgical Procedure Payment Rates for CY 2015

We are proposing to update ASC payment rates for CY 2015 using the established rate calculation methodologies under § 416.171 and using our proposed modified definition of device-intensive procedures, as discussed above. Because the proposed OPPS relative payment weights are based on geometric mean costs for CY 2015, the ASC system will use geometric means to determine proposed relative payment weights under the ASC standard methodology. We are proposing to continue to use the amount calculated under the ASC standard ratesetting methodology for procedures assigned payment indicators ''A2'' and ''G2.''

We are proposing that payment rates for office-based procedures (payment indicators ''P2,'' ''P3,'' and ''R2'') and device-intensive procedures (payment indicator ''J8'') be calculated according to our established policies and, for device-intensive procedures, using our proposed modified definition of device-intensive procedures, as discussed above. Thus, we are proposing to update the payment amount for the service portion of the device-intensive procedures using the ASC standard ratesetting methodology and the payment amount for the device portion based on the proposed CY 2015 OPPS device offset percentages that have been calculated using the standard OPPS APC ratesetting methodology. Payment for office-based procedures is at the lesser of the proposed CY 2015 MPFS nonfacility PE RVU-based amount or the proposed CY 2015 ASC payment amount calculated according to the ASC standard ratesetting methodology.

In the CY 2014 OPPS/ASC final rule with comment period (78 FR 75081), we finalized our proposal to calculate the CY 2014 payment rates for ASC covered surgical procedures according to our established methodologies, with the exception of device removal procedures. For CY 2014, we finalized a policy to conditionally package device removal codes under the OPPS. Under the OPPS, a conditionally packaged code (status indicators ''Q1'' and ''Q2'') describes a HCPCS code where the payment is packaged when it is provided with a significant procedure but is separately paid when the service appears on the claim without a significant procedure. Because ASC services always include a covered surgical procedure, HCPCS codes that are conditionally packaged under the OPPS are always packaged (payment indicator ''N1'') under the ASC payment system. Thus, no Medicare payment would be made when a device removal procedures is performed in an ASC without another surgical procedure included on the claim so no Medicare payment would be made if a device was removed but not replaced. To address this concern, for the 71 device removal procedures that are conditionally packaged in the OPPS (status indicator ''Q2''), we assigned the current ASC payment indicators associated with these procedures and continued to provide separate payment in CY 2014. For CY 2015, we are proposing to continue this policy for the 71 device removal procedures for these same reasons.

We invite public comment on these proposals.

c. Waiver of Coinsurance and Deductible for Certain Preventive Services

Section 1833(a)(1) and section 1833(b)(1) of the Act waive the coinsurance and the Part B deductible for those preventive services under section 1861(ddd)(3)(A) of the Act as described in section 1861(ww)(2) of the Act (excluding electrocardiograms) that are recommended by the United States

Preventive Services Task Force (USPSTF) with a grade of A or B for any indication or population and that are appropriate for the individual. Section 1833(b) of the Act also waives the Part B deductible for colorectal cancer screening tests that become diagnostic. In the CY 2011 OPPS/ASC final rule with comment period, we finalized our policies with respect to these provisions and identified categories of services and the ASC covered surgical procedures and covered ancillary services that are preventive services that are recommended by the USPSTF with a grade of A or B for which the coinsurance and the deductible are waived. For a complete discussion of our policies and categories of services, we refer readers to the CY 2011 OPPS/ASC final rule with comment period (75 FR 72047 through 72049). We are not proposing any changes to our policies or the categories of services for CY 2015. We identify the specific services with a double asterisk in Addenda AA and BB to this proposed rule.

d. Proposed Payment for Cardiac Resynchronization Therapy Services

Cardiac resynchronization therapy (CRT) uses electronic devices to sequentially pace both sides of the heart to improve its output. CRT utilizes a pacing electrode implanted in combination with either a pacemaker or an implantable cardioverter defibrillator (ICD). CRT performed by the implantation of an ICD along with a pacing electrode is referred to as ''CRT–D.'' In the CY 2012 OPPS/ASC final rule with comment period, we finalized our proposal to establish the CY 2012 ASC payment rate for CRT–D services based on the OPPS payment rate applicable to APC 0108 when procedures described by CPT codes 33225 (Insertion of pacing electrode, cardiac venous system, for left ventricular pacing, at time of insertion of pacing cardioverter-defibrillator or pacemaker pulse generator (e.g., for upgrade to dual chamber system) (list separately in addition to code for primary procedure)) and 33249 (Insertion or replacement of permanent pacing cardioverter-defibrillator system with transvenous lead(s), single or dual chamber) are performed on the same date of service in an ASC. ASCs use the corresponding HCPCS Level II G-code (G0448) for proper reporting when the procedures described by CPT codes 33225 and 33249 are performed on the same date of service. When not performed on the same day as the service described by CPT code 33225, ASC payment for the service described by CPT code 33249 is based on APC 0108 using the device-intensive methodology. When not performed on the same day as the service described by CPT code 33249, ASC payment for the service described by CPT code 33225 is based on APC 0655 using the device-intensive methodology. For a complete discussion of our policy regarding payment for CRT–D services in ASCs, we refer readers to the CY 2012 OPPS/ASC final rule with comment period (76 FR 74427 through 74428).

For CY 2015, we are proposing that CPT code 33249, the primary code for CRT–D services, continue to be assigned to APC 0108, and that payment for CPT code 33225 be packaged under the OPPS. Consequently, we also are proposing that CPT code 33249 would continue to be assigned to APC 0108 and payment for CPT code 33225 would be packaged into the payment for the primary covered surgical procedure (for example, CPT code 33249) under the ASC payment system for CY 2015. Because we are proposing to package CPT code 33225 packaged under the ASC payment system and, therefore, it would not receive separate payment, it would no longer be necessary that ASCs use the HCPCS Level II G-code (G0448) for proper reporting when the procedures described by CPT codes 33225 and 33249 are performed on the same date of service.

We invite public comment on these proposals.

e. Payment for Low Dose Rate (LDR) Prostate Brachytherapy Composite

LDR prostate brachytherapy is a treatment for prostate cancer in which hollow needles or catheters are inserted into the prostate, followed by permanent implantation of radioactive sources into the prostate through the needles/catheters. At least two CPT codes are used to report the treatment service because there are separate codes that describe placement of the needles/catheters and the application of the brachytherapy sources: CPT code 55875 (Transperineal placement of needles or catheters into prostate for interstitial radioelement application, with or without cystoscopy); and CPT code 77778 (Interstitial radiation source application; complex). Generally, the component services represented by both codes are provided in the same operative session on the same date of service to the Medicare beneficiary being treated with LDR brachytherapy for prostate cancer.

In the CY 2013 OPPS/ASC final rule with comment period, we finalized our proposal to establish the CY 2013 ASC payment rate for LDR prostate brachytherapy services based on the OPPS relative payment weight applicable to APC 8001 when CPT codes 55875 and 77778 are performed on the same date of service in an ASC. ASCs use the corresponding HCPCS Level II G-code (G0458) for proper reporting when the procedures described by CPT codes 55875 and 77778 are performed on the same date of service, and therefore receive the appropriate LDR prostate brachytherapy composite payment. When not performed on the same day as the service described by CPT code 55875, the service described by CPT code 77778 will be assigned to APC 0651. When not performed on the same day as the service described by CPT code 77778, the service described by CPT code 55875 will be assigned to APC 0162. For a complete discussion of our policy regarding payment for LDR prostate brachytherapy services in ASCs, we refer readers to the CY 2013 OPPS/ASC final rule with comment period (77 FR 68457). We are not proposing any changes to our current policy regarding ASC payment for LDR prostate brachytherapy services for CY 2015.

2. Proposed Payment for Covered Ancillary Services

a. Background

Our final payment policies under the revised ASC payment system for covered ancillary services vary according to the particular type of service and its payment policy under the OPPS. Our overall policy provides separate ASC payment for certain ancillary items and services integrally related to the provision of ASC covered surgical procedures that are paid separately under the OPPS and provides packaged ASC payment for other ancillary items and services that are packaged or conditionally packaged (status indicators ''N,'' ''Q1,'' and ''Q2'') under the OPPS. In the CY 2013 OPPS/ASC rulemaking (77 FR 45169; 77 FR 68457 through 68458), we further clarified our policy regarding the payment indicator assignment of codes that are conditionally packaged in the OPPS (status indicators ''Q1'' and ''Q2''). Under the OPPS, a conditionally packaged code describes a HCPCS code where the payment is packaged when it is provided with a significant procedure but is separately paid when the service appears on the claim without a significant procedure. Because ASC services always include a surgical procedure, HCPCS codes that are conditionally packaged under the OPPS are always packaged (payment indictor ''N1'') under the ASC payment system.

Thus, our final policy generally aligns ASC payment bundles with those under the OPPS (72 FR 42495). In all cases, in order for those ancillary services also to be paid, ancillary items and services must be provided integral to the performance of ASC covered surgical procedures for which the ASC bills Medicare.

Our ASC payment policies provide separate payment for drugs and biologicals that are separately paid under the OPPS at the OPPS rates. We generally pay for separately payable radiology services at the lower of the MPFS nonfacility PE RVU-based (or technical component) amount or the rate calculated according to the ASC standard ratesetting methodology (72 FR 42497). However, as finalized in the CY 2011 OPPS/ASC final rule with comment period (75 FR 72050), payment indicators for all nuclear medicine procedures (defined as CPT codes in the range of 78000 through 78999) that are designated as radiology services that are paid separately when provided integral to a surgical procedure on the ASC list are set to ''Z2'' so that payment is made based on the ASC standard ratesetting methodology rather than the MPFS nonfacility PE RVU amount, regardless of which is lower. This modification to the ASC payment methodology for ancillary services was finalized in response to a comment on the CY 2011 OPPS/ASC proposed rule that suggested it is inappropriate to use the MPFS-based payment methodology for nuclear medicine procedures because the associated diagnostic radiopharmaceutical, although packaged under the ASC payment system, is separately paid under the MPFS (42 CFR 416.171(d)(1)). We set the payment indicator to ''Z2'' for these nuclear medicine procedures in the ASC setting so that payment for these procedures would be based on the OPPS relative payment weight rather than the MPFS nonfacility PE RVU-based amount to ensure that the ASC will be compensated for the cost associated with the diagnostic radiopharmaceuticals.

In addition, because the same issue exists for radiology procedures that use contrast agents (the contrast agent is packaged under the ASC payment system but is separately paid under the MPFS), we finalized in the CY 2012 OPPS/ASC final rule with comment period (76 FR 74429 through 74430) to set the payment indicator to ''Z2'' for radiology services that use contrast agents so that payment for these procedures will be based on the OPPS relative payment weight and will, therefore, include the cost for the contrast agent (42 CFR 416.171(d)(2)).

ASC payment policy for brachytherapy sources mirrors the payment policy under the OPPS. ASCs are paid for brachytherapy sources provided integral to ASC covered surgical procedures at prospective rates adopted under the OPPS or, if OPPS rates are unavailable, at contractor-priced rates (72 FR 42499). Since December 31, 2009, ASCs have been paid for brachytherapy sources provided integral to ASC covered surgical procedures at prospective rates adopted under the OPPS.

Our ASC policies also provide separate payment for: (1) Certain items and services that CMS designates as contractor-priced, including, but not limited to, the procurement of corneal tissue; and (2) certain implantable items that have pass-through status under the OPPS. These categories do not have prospectively established ASC payment rates according to the final policies for the revised ASC payment system (72 FR 42502 and 42508 through 42509; 42 CFR 416.164(b)). Under the revised ASC payment system, we have designated corneal tissue acquisition and hepatitis B vaccines as contractor-priced. Corneal tissue acquisition is contractor-priced based on the invoiced costs for acquiring the corneal tissue for transplantation. Hepatitis B vaccines are contractor-priced based on invoiced costs for the vaccine.

Devices that are eligible for pass-through payment under the OPPS are separately paid under the ASC payment system and are contractor-priced. Currently, the one device that is eligible for pass-through payment in the OPPS is described by HCPCS code C1841 (Retinal prosthesis, includes all internal and external components). The payment amount for HCPCS code C1841 under the ASC payment system is contractor-priced. Under the revised ASC payment system (72 FR 42502), payment for the surgical procedure associated with the pass-through device is made according to our standard methodology for the ASC payment system, based on only the service (non-device) portion of the procedure's OPPS relative payment weight if the APC weight for the procedure includes other packaged device costs. (We note that the cost for the new pass-through device would not be included in the APC weight since historical claims are used to establish the OPPS relative weights). We also refer to this methodology as applying a ''device offset'' to the ASC payment for the associated surgical procedure. This ensures that duplicate payment is not provided for any portion of an implanted device with OPPS pass-through status. There are no other device costs included in the APC for the surgical procedure associated with HCPCS code C1841. Therefore, payment for the associated surgical procedure is made according to the standard methodology and no device offset is applied. HCPCS code C1841 was approved for pass-through payment effective October 1, 2013, and will continue to be eligible for pass-through payment in CY 2015.

b. Proposed Payment for Covered Ancillary Services for CY 2015

For CY 2015, we are proposing to update the ASC payment rates and to make changes to ASC payment indicators as necessary to maintain consistency between the OPPS and ASC payment system regarding the packaged or separately payable status of services and the proposed CY 2015 OPPS and ASC payment rates. We also are proposing to continue to set the CY 2015 ASC payment rates for brachytherapy sources and separately payable drugs and biologicals equal to the proposed OPPS payment rates for CY 2015.

Consistent with established ASC payment policy (72 FR 42497), we are proposing that the proposed CY 2015 payment for separately payable covered radiology services be based on a comparison of the proposed CY 2015 MPFS nonfacility PE RVU-based amounts (we refer readers to the CY 2015 MPFS proposed rule) and the proposed CY 2015 ASC payment rates calculated according to the ASC standard ratesetting methodology and then set at the lower of the two amounts (except as discussed below for nuclear medicine procedures and radiology services that use contrast agents). We are proposing that payment for a radiology service would be packaged into the payment for the ASC covered surgical procedure if the radiology service is packaged or conditionally packaged under the OPPS. The payment indicators in Addendum BB to this proposed rule indicate whether the proposed payment rates for radiology services are based on the MPFS nonfacility PE RVU-based amount or the ASC standard ratesetting methodology, or whether payment for a radiology service is packaged into the payment for the covered surgical procedure (payment indicator ''N1''). Radiology services that we are proposing to pay based on the ASC standard ratesetting methodology are assigned payment indicator ''Z2'' (proposed revised definition, as discussed below: Radiology *or diagnostic* service paid

separately when provided integral to a surgical procedure on ASC list; payment based on OPPS relative payment weight), and those for which the proposed payment is based on the MPFS nonfacility PE RVU-based amount be assigned payment indicator ''Z3'' (proposed revised definition, as discussed below: Radiology *or diagnostic* service paid separately when provided integral to a surgical procedure on ASC list; payment based on MPFS nonfacility PE RVUs).

As finalized in the CY 2011 OPPS/ASC final rule with comment period (75 FR 72050), payment indicators for all nuclear medicine procedures (defined as CPT codes in the range of 78000 through 78999) that are designated as radiology services that are paid separately when provided integral to a surgical procedure on the ASC list are set to ''Z2'' so that payment for these procedures will be based on the OPPS relative payment weight (rather than the MPFS nonfacility PE RVU-based amount, regardless of which is lower) and, therefore, will include the cost for the diagnostic radiopharmaceutical. We are proposing to continue this modification to the payment methodology in CY 2015 and, therefore, set the payment indicator to ''Z2'' for nuclear medicine procedures.

As finalized in the CY 2012 OPPS/ASC final rule with comment period (76 FR 74429 through 74430), payment indicators for radiology services that use contrast agents are set to ''Z2'' so that payment for these procedures will be based on the OPPS relative payment weight and, therefore, will include the cost for the contrast agent. We are proposing to continue this modification to the payment methodology in CY 2015 and, therefore, are proposing to assign the payment indicator ''Z2'' to radiology services that use contrast agents.

Covered ancillary services are items and services that are integral to a covered surgical procedure performed in an ASC for which separate payment may be made under the ASC payment system (see 42 CFR 416.2). Covered ancillary services include, among other categories of items and services, certain radiology services, including diagnostic imaging services, for which separate payment is allowed under the OPPS when these services are necessary for the successful completion of a surgical procedure and are performed in the ASC immediately preceding, during, or immediately following the covered surgical procedure, as evidenced by the service being provided on the same day as a covered surgical procedure (see 42 CFR 416.164(b)(5)). Currently, there are certain non-imaging diagnostic tests for which payment is not made under Medicare Part B when provided in an ASC setting although these tests are paid under the OPPS. Therefore, we believe that certain non-imaging diagnostic tests for which separate payment is allowed under the OPPS should be considered covered ancillary services and separately paid when these tests are required for the successful performance of the surgery and are performed in the ASC on the same day as a covered surgical procedure.

Therefore, we are proposing that, beginning in CY 2015, certain diagnostic tests within the medicine range of CPT codes for which separate payment is allowed under the OPPS be covered ancillary services when they are integral to an ASC covered surgical procedure. We believe that adopting such a payment policy is reasonable and appropriate to ensure access to these tests in ASCs and is consistent with the OPPS. We are proposing that diagnostic tests within the medicine range of CPT codes include all Category I CPT codes in the medicine range established by CPT, from 90000 to 99999, and Category III CPT codes and Level II HCPCS codes that describe diagnostic tests that crosswalk or are clinically similar to procedures in the medicine range established by CPT.

We are proposing to pay for these tests at the lower of the MPFS nonfacility PE RVU-based (or technical component) amount or the rate calculated according to the ASC standard ratesetting methodology, because this would ensure appropriate and equitable payment for these diagnostic tests provided integral to covered surgical procedures and not provide a payment incentive for migration of the tests from physician offices to ASCs. Further, we believe these diagnostic tests are similar to the covered ancillary services that are radiology services and this is the payment methodology we use for those services. We are proposing that the diagnostic tests for which the proposed payment is based on the ASC standard ratesetting methodology be assigned to payment indicator ''Z2'' (proposed revised definition: Radiology *or diagnostic* service paid separately when provided integral to a surgical procedure on ASC list; payment based on OPPS relative payment weight), and those for which the proposed payment is based on the MPFS nonfacility PE RVU-based amount be assigned payment indicator ''Z3'' (proposed revised definition: Radiology *or diagnostic* service paid separately when provided integral to a surgical procedure on ASC list; payment based on MPFS nonfacility PE RVUs). We are proposing changes to the definitions for payment indicators ''Z2'' and ''Z3,'' as detailed in section XII.F.2 of this preamble below, and are proposing changes to §§ 416.164(a)(11) and (b)(5) as well as § 416.171(b)(1) to reflect these proposals.

We have identified one diagnostic test that is within the medicine range of CPT codes and for which separate payment is allowed under the OPPS: CPT code 91035 (Esophagus, gastroesophageal reflux test; with mucosal attached telemetry pH electrode placement, recording, analysis and interpretation). We are proposing to add this code to the list of ASC covered ancillary services and are proposing separate ASC payment as a covered ancillary service for this code beginning in CY 2015 when the test is integral to an ASC covered surgical procedure. We would expect the procedure described by CPT code 91035 to be integral to the endoscopic attachment of the electrode to the esophageal mucosa.

Most covered ancillary services and their proposed payment indicators are listed in Addendum BB to this proposed rule (which is available via the Internet on the CMS Web site).

We invite public comment on these proposals.

E. New Technology Intraocular Lenses (NTIOLs)

1. NTIOL Application Cycle

Our process for reviewing applications to establish new classes of new technology intraocular lenses (NTIOLs) is as follows:

- Applicants submit their NTIOL requests for review to CMS by the annual deadline. For a request to be considered complete, we require submission of the information that is found in the guidance document entitled ''Application Process and Information Requirements for Requests for a New Class of New Technology Intraocular Lenses (NTIOLs) or Inclusion of an IOL in an existing NTIOL Class'' posted on the CMS Web site at: *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/ASCPayment/NTIOLs.html.*
- We announce annually in the proposed rule updating the ASC and OPPS payment rates for the following calendar year, a list of all requests to establish new NTIOL classes accepted for review during the calendar year in which the proposal is published. In accordance with section 141(b)(3) of Pub. L. 103–432 and our regulations at § 416.185(b), the deadline for receipt of public comments is 30 days following

publication of the list of requests in the proposed rule.

• In the final rule updating the ASC and OPPS payment rates for the following calendar year, we—

○ Provide a list of determinations made as a result of our review of all new NTIOL class requests and public comments;

○ When a new NTIOL class is created, we identify the predominant characteristic of NTIOLs in that class that sets them apart from other IOLs (including those previously approved as members of other expired or active NTIOL classes) and that is associated with an improved clinical outcome.

○ The date of implementation of a payment adjustment in the case of approval of an IOL as a member of a new NTIOL class would be set prospectively as of 30 days after publication of the ASC payment update final rule, consistent with the statutory requirement.

○ Announce the deadline for submitting requests for review of an application for a new NTIOL class for the following calendar year.

2. Requests To Establish New NTIOL Classes for CY 2015

We did not receive any requests for review to establish a new NTIOL class for CY 2015 by March 3, 2014, the due date published in the CY 2014 OPPS/ASC final rule with comment period (78 FR 75085).

3. Payment Adjustment

The current payment adjustment for a 5-year period from the implementation date of a new NTIOL class is $50 per lens. Since implementation of the process for adjustment of payment amounts for NTIOLs in 1999, we have not revised the payment adjustment amount, and we are not proposing to revise the payment adjustment amount for CY 2015.

F. Proposed ASC Payment and Comment Indicators

1. Background

In addition to the payment indicators that we introduced in the August 2, 2007 final rule, we also created final comment indicators for the ASC payment system in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66855). We created Addendum DD1 to define ASC payment indicators that we use in Addenda AA and BB to provide payment information regarding covered surgical procedures and covered ancillary services, respectively, under the revised ASC payment system. The ASC payment indicators in Addendum DD1 are intended to capture policy relevant characteristics of HCPCS codes that may receive packaged or separate payment in ASCs, such as whether they were on the ASC list of covered services prior to CY 2008; payment designation, such as device-intensive or office-based, and the corresponding ASC payment methodology; and their classification as separately payable ancillary services including radiology services, brachytherapy sources, OPPS pass-through devices, corneal tissue acquisition services, drugs or biologicals, or NTIOLs.

We also created Addendum DD2 that lists the ASC comment indicators. The ASC comment indicators used in Addenda AA and BB to the proposed rules and final rules with comment period serve to identify, for the revised ASC payment system, the status of a specific HCPCS code and its payment indicator with respect to the timeframe when comments will be accepted. The comment indicator ''NI'' is used in the OPPS/ASC final rule with comment period to indicate new codes for the next calendar year for which the interim payment indicator assigned is subject to comment. The comment indicator ''NI'' is also assigned to existing codes with substantial revisions to their descriptors such that we consider them to be describing new services, as discussed in the CY 2010 OPPS/ASC final rule with comment period (74 FR 60622). In the CY 2015 OPPS/ASC final rule with comment period, we will respond to public comments and finalize the ASC treatment of all codes that are labeled with comment indicator ''NI'' in Addenda AA and BB to the CY 2014 OPPS/ASC final rule with comment period.

The ''CH'' comment indicator is used in Addenda AA and BB to this proposed rule (which are available via the Internet on the CMS Web site) to indicate that the payment indicator assignment has changed for an active HCPCS code in the current year and next calendar year; an active HCPCS code is newly recognized as payable in ASCs; or an active HCPCS code is discontinued at the end of the current calendar year. The ''CH'' comment indicators that are published in the final rule with comment period are provided to alert readers that a change has been made from one calendar year to the next, but do not indicate that the change is subject to comment.

2. Proposed ASC Payment and Comment Indicators

We are not proposing any changes to the definitions of the ASC comment indicators for CY 2015. In order to incorporate changes associated with our proposal for CY 2015, as detailed above in section XII.D.2.b. of this proposed rule, that certain diagnostic tests qualify as covered ancillary services when provided integral to an ASC covered surgical procedure, we are proposing to revise the definitions for payment indicators ''Z2'' and ''Z3'' to add the words ''or diagnostic'' after ''Radiology'' so that the proposed definition for payment indicator ''Z2'' would be ''Radiology *or diagnostic* service paid separately when provided integral to a surgical procedure on ASC list; payment based on OPPS relative payment weight,'' and the proposed definition for payment indicator ''Z3'' would be ''Radiology *or diagnostic* service paid separately when provided integral to a surgical procedure on ASC list; payment based on MPFS nonfacility PE RVUs.'' We refer readers to Addenda DD1 and DD2 to this proposed rule (which are available via the Internet on the CMS Web site) for the complete list of ASC payment and comment indicators proposed for the CY 2015 update.

G. Calculation of the Proposed ASC Conversion Factor and the Proposed ASC Payment Rates

1. Background

In the August 2, 2007 final rule (72 FR 42493), we established our policy to base ASC relative payment weights and payment rates under the revised ASC payment system on APC groups and the OPPS relative payment weights. Consistent with that policy and the requirement at section 1833(i)(2)(D)(ii) of the Act that the revised payment system be implemented so that it would be budget neutral, the initial ASC conversion factor (CY 2008) was calculated so that estimated total Medicare payments under the revised ASC payment system in the first year would be budget neutral to estimated total Medicare payments under the prior (CY 2007) ASC payment system (the ASC conversion factor is multiplied by the relative payment weights calculated for many ASC services in order to establish payment rates). That is, application of the ASC conversion factor was designed to result in aggregate Medicare expenditures under the revised ASC payment system in CY 2008 being equal to aggregate Medicare expenditures that would have occurred in CY 2008 in the absence of the revised system, taking into consideration the cap on ASC payments in CY 2007 as required under section 1833(i)(2)(E) of the Act (72 FR 42522). We adopted a policy to make the system budget

neutral in subsequent calendar years (72 FR 42532 through 42533; 42 CFR 416.171(e)).

We note that we consider the term ''expenditures'' in the context of the budget neutrality requirement under section 1833(i)(2)(D)(ii) of the Act to mean expenditures from the Medicare Part B Trust Fund. We do not consider expenditures to include beneficiary coinsurance and copayments. This distinction was important for the CY 2008 ASC budget neutrality model that considered payments across the OPPS, ASC, and MPFS payment systems. However, because coinsurance is almost always 20 percent for ASC services, this interpretation of expenditures has minimal impact for subsequent budget neutrality adjustments calculated within the revised ASC payment system.

In the CY 2008 OPPS/ASC final rule with comment period (72 FR 66857 through 66858), we set out a step-by-step illustration of the final budget neutrality adjustment calculation based on the methodology finalized in the August 2, 2007 final rule (72 FR 42521 through 42531) and as applied to updated data available for the CY 2008 OPPS/ASC final rule with comment period. The application of that methodology to the data available for the CY 2008 OPPS/ASC final rule with comment period resulted in a budget neutrality adjustment of 0.65.

For CY 2008, we adopted the OPPS relative payment weights as the ASC relative payment weights for most services and, consistent with the final policy, we calculated the CY 2008 ASC payment rates by multiplying the ASC relative payment weights by the final CY 2008 ASC conversion factor of $41.401. For covered office-based surgical procedures and covered ancillary radiology services (excluding covered ancillary radiology services involving certain nuclear medicine procedures or involving the use of contrast agents, as discussed in section XII.D.2.b. of this proposed rule), the established policy is to set the payment rate at the lower of the MPFS unadjusted nonfacility PE RVU-based amount or the amount calculated using the ASC standard ratesetting methodology. Further, as discussed in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66841 through 66843), we also adopted alternative ratesetting methodologies for specific types of services (for example, device-intensive procedures).

As discussed in the August 2, 2007 final rule (72 FR 42517 through 42518) and as codified at § 416.172(c) of the regulations, the revised ASC payment system accounts for geographic wage variation when calculating individual ASC payments by applying the pre-floor and pre-reclassified hospital wage indexes to the labor-related share, which is 50 percent of the ASC payment amount based on a GAO report of ASC costs using 2004 survey data. Beginning in CY 2008, CMS accounted for geographic wage variation in labor cost when calculating individual ASC payments by applying the pre-floor and pre-reclassified hospital wage index values that CMS calculates for payment under the IPPS, using updated Core Based Statistical Areas (CBSAs) issued by OMB in June 2003. In other words, the wage index for an ASC is the pre-floor and pre-reclassified hospital wage index under the IPPS of the CBSA that maps to the CBSA where the ASC is located.

The reclassification provision in section 1886(d)(10) of the Act is specific to hospitals. We believe that using the most recently available raw pre-floor and pre-reclassified hospital wage indexes results in the most appropriate adjustment to the labor portion of ASC costs. In addition, use of the unadjusted hospital wage data avoids further reductions in certain rural statewide wage index values that result from reclassification. We continue to believe that the unadjusted hospital wage indexes, which are updated yearly and are used by many other Medicare payment systems, appropriately account for geographic variation in labor costs for ASCs.

On February 28, 2013, OMB issued OMB Bulletin No. 13–01, which provides the delineations of all Metropolitan Statistical Areas, Metropolitan Divisions, Micropolitan Statistical Areas, Combined Statistical Areas, and New England City and Town Areas in the United States and Puerto Rico based on the standards published on June 28, 2010 in the **Federal Register** (75 FR 37246 through 37252) and 2010 Census Bureau data. (A copy of this bulletin may be obtained at: *http://www.whitehouse.gov/sites/default/files/omb/bulletins/2013/b-13-01.pdf.*) The pre-floor and pre-reclassified hospital wage indexes for FY 2014 do not reflect OMB's new area delineations and, because the ASC wage indexes are the pre-floor and pre-reclassified hospital wage indexes, the CY 2014 ASC wage indexes do not reflect the OMB changes. As discussed in the FY 2015 IPPS/LTCH PPS proposed rule (79 FR 28054 through 28068), we are proposing to use the new CBSAs delineations issued by OMB in OMB Bulletin 13–01 for the IPPS hospital wage index. Therefore, because the ASC wage indexes are the pre-floor and pre-reclassified hospital wage indexes, the proposed CY 2015 ASC wage indexes reflect the new OMB delineations. As discussed in section XII.G.2.b. of this proposed rule, we are proposing a transition to these new OMB delineations in certain situations for CY 2015.

We note that in certain instances there might be urban or rural areas for which there is no IPPS hospital whose wage index data would be used to set the wage index for that area. For these areas, our policy has been to use the average of the wage indexes for CBSAs (or metropolitan divisions as applicable) that are contiguous to the area that has no wage index (where ''contiguous'' is defined as sharing a border). For example, for CY 2014, we applied a proxy wage index based on this methodology to ASCs located in CBSA 25980 (Hinesville-Fort Stewart, GA) and CBSA 08 (Rural Delaware).

When all of the areas contiguous to the urban CBSA of interest are rural and there is no IPPS hospital that has wage index data that could be used to set the wage index for that area, we determine the ASC wage index by calculating the average of all wage indexes for urban areas in the State (75 FR 72058 through 72059). In other situations, where there are no IPPS hospitals located in a relevant labor market area, we will continue our current policy of calculating an urban or rural area's wage index by calculating the average of the wage indexes for CBSAs (or metropolitan divisions where applicable) that are contiguous to the area with no wage index.

2. Proposed Calculation of the ASC Payment Rates

a. Updating the ASC Relative Payment Weights for CY 2015 and Future Years

We update the ASC relative payment weights each year using the national OPPS relative payment weights (and MPFS nonfacility PE RVU-based amounts, as applicable) for that same calendar year and uniformly scale the ASC relative payment weights for each update year to make them budget neutral (72 FR 42533). Consistent with our established policy, we are proposing to scale the CY 2015 relative payment weights for ASCs according to the following method. Holding ASC utilization and the mix of services constant from CY 2013, we are proposing to compare the total payment using the CY 2014 ASC relative payment weights with the total payment using the CY 2015 relative payment weights to take into account the changes in the OPPS relative payment weights between CY 2014 and CY 2015. We are

proposing to use the ratio of CY 2014 to CY 2015 total payment (the weight scaler) to scale the ASC relative payment weights for CY 2015. The proposed CY 2015 ASC scaler is 0.9142 and scaling would apply to the ASC relative payment weights of the covered surgical procedures and covered ancillary radiology services for which the ASC payment rates are based on OPPS relative payment weights.

Scaling would not apply in the case of ASC payment for separately payable covered ancillary services that have a predetermined national payment amount (that is, their national ASC payment amounts are not based on OPPS relative payment weights), such as drugs and biologicals that are separately paid or services that are contractor-priced or paid at reasonable cost in ASCs. Any service with a predetermined national payment amount would be included in the ASC budget neutrality comparison, but scaling of the ASC relative payment weights would not apply to those services. The ASC payment weights for those services without predetermined national payment amounts (that is, those services with national payment amounts that would be based on OPPS relative payment weights) would be scaled to eliminate any difference in the total payment between the current year and the update year.

For any given year's ratesetting, we typically use the most recent full calendar year of claims data to model budget neutrality adjustments. At the time of this proposed rule, we have available 98 percent of CY 2013 ASC claims data.

To create an analytic file to support calculation of the weight scaler and budget neutrality adjustment for the wage index (discussed below), we summarized available CY 2013 ASC claims by ASC and by HCPCS code. We used the National Provider Identifier for the purpose of identifying unique ASCs within the CY 2013 claims data. We used the supplier zip code reported on the claim to associate State, county, and CBSA with each ASC. This file, available to the public as a supporting data file for this proposed rule, is posted on the CMS Web site at: *http://www.cms.gov/Research-Statistics-Data-and-Systems/Files-for-Order/LimitedDataSets/ASCPaymentSystem.html*.

b. Proposed Transition Period to New OMB Delineations for ASC Wage Index

As discussed in the FY 2015 IPPS/LTCH PPS proposed rule (79 FR 28054 through 28055), we are proposing to use the new CBSA delineations issued by OMB in OMB Bulletin 13–01 dated February 28, 2013 for the IPPS hospital wage index. Therefore, because the ASC wage indexes are the pre-floor and pre-reclassified hospital wage indexes, the proposed CY 2015 ASC wage indexes reflect the new OMB delineations. While we believe that instituting the latest OMB labor market area delineations would create a more accurate and up-to-date wage index system, we also recognize that implementing the new OMB delineations may cause some short-term instability in ASC payments; therefore, we are proposing a transition to the new OMB delineations similar to what has been proposed for the IPPS for FY 2015 (79 FR 28062) and the OPPS as described in section II.C of this proposed rule. Specifically for ASCs, we are proposing a 1-year blended wage index for all ASCs that would experience any decrease in their actual wage index exclusively due to the implementation of the new OMB delineations. For ASCs where the CY 2015 ASC wage index with the CY 2015 CBSAs would be lower than with the CY 2014 CBSAs, we are proposing that the CY 2015 ASC wage index would be 50 percent of the ASC wage index based on the CY 2014 CBSA and 50 percent of the ASC wage index based on the new CY 2015 CBSA. We believe a 1-year 50/50 blended wage index would mitigate the short-term instability and negative payment impacts due to the proposed implementation of the new OMB delineations, providing ASCs that would be negatively impacted by the new OMB delineations with a transition period during which they may adjust to their new geographic CBSA. We believe that a longer transition period would reduce the accuracy of the overall labor market area wage index system.

c. Updating the ASC Conversion Factor

Under the OPPS, we typically apply a budget neutrality adjustment for provider level changes, most notably a change in the wage index values for the upcoming year, to the conversion factor. Consistent with our final ASC payment policy, for the CY 2015 ASC payment system, we are proposing to calculate and apply a budget neutrality adjustment to the ASC conversion factor for supplier level changes in wage index values for the upcoming year, just as the OPPS wage index budget neutrality adjustment is calculated and applied to the OPPS conversion factor. For CY 2015, we calculated this proposed adjustment for the ASC payment system by using the most recent CY 2013 claims data available and estimating the difference in total payment that would be created by introducing the proposed CY 2015 ASC wage indexes. Specifically, holding CY 2013 ASC utilization and service-mix and the proposed CY 2015 national payment rates after application of the weight scaler constant, we calculated the total adjusted payment using the CY 2014 ASC wage indexes and the total adjusted payment using the proposed CY 2015 ASC wage indexes (which reflect the new OMB delineations and would include any applicable transition period). We used the 50-percent labor-related share for both total adjusted payment calculations. We then compared the total adjusted payment calculated with the CY 2014 ASC wage indexes to the total adjusted payment calculated with the proposed CY 2015 ASC wage indexes and applied the resulting ratio of 0.9983 (the proposed CY 2015 ASC wage index budget neutrality adjustment) to the CY 2014 ASC conversion factor to calculate the proposed CY 2015 ASC conversion factor.

Section 1833(i)(2)(C)(i) of the Act requires that, ''if the Secretary has not updated amounts established'' under the revised ASC payment system in a calendar year, the payment amounts ''shall be increased by the percentage increase in the Consumer Price Index for all urban consumers (U.S. city average) as estimated by the Secretary for the 12-month period ending with the midpoint of the year involved.'' The statute, therefore, does not mandate the adoption of any particular update mechanism, but it requires the payment amounts to be increased by the CPI–U in the absence of any update. Because the Secretary updates the ASC payment amounts annually, we adopted a policy, which we codified at 42 CFR 416.171(a)(2)(ii), to update the ASC conversion factor using the CPI–U for CY 2010 and subsequent calendar years. Therefore, the annual update to the ASC payment system is the CPI–U (referred to as the CPI–U update factor).

Section 3401(k) of the Affordable Care Act amended section 1833(i)(2)(D) of the Act by adding a new clause (v) which requires that ''any annual update under [the ASC payment] system for the year, after application of clause (iv), shall be reduced by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II)'' of the Act effective with the calendar year beginning January 1, 2011. The statute defines the productivity adjustment to be equal to the 10-year moving average of changes in annual economy-wide private nonfarm business multifactor productivity (MFP) (as projected by the Secretary for the 10-year period ending

with the applicable fiscal year, year, cost reporting period, or other annual period) (the ''MFP adjustment''). Clause (iv) of section 1833(i)(2)(D) of the Act authorizes the Secretary to provide for a reduction in any annual update for failure to report on quality measures. Clause (v) of section 1833(i)(2)(D) of the Act states that application of the MFP adjustment to the ASC payment system may result in the update to the ASC payment system being less than zero for a year and may result in payment rates under the ASC payment system for a year being less than such payment rates for the preceding year.

In the CY 2012 OPPS/ASC final rule with comment period (76 FR 74516), we finalized a policy that ASCs begin submitting data on quality measures for services beginning on October 1, 2012 for the CY 2014 payment determination under the ASCQR Program. In the CY 2013 OPPS/ASC final rule with comment period (77 FR 68499 through 68500), we finalized a methodology to calculate reduced national unadjusted payment rates using the ASCQR Program reduced update conversion factor that would apply to ASCs that fail to meet their quality reporting requirements for the CY 2014 payment determination and subsequent years. The application of the 2.0 percentage point reduction to the annual update factor, which currently is the CPI–U, may result in the update to the ASC payment system being less than zero for a year for ASCs that fail to meet the ASCQR Program requirements. We amended §§ 416.160(a)(1) and 416.171 to reflect these policies.

In accordance with section 1833(i)(2)(C)(i) of the Act, before applying the MFP adjustment, the Secretary first determines the ''percentage increase'' in the CPI–U, which we interpret cannot be a negative percentage. Thus, in the instance where the percentage change in the CPI–U for a year is negative, we would hold the CPI–U update factor for the ASC payment system to zero. For the CY 2014 payment determination and subsequent years, under section 1833(i)(2)(D)(iv) of the Act, we would reduce the annual update by 2.0 percentage points for an ASC that fails to submit quality information under the rules established by the Secretary in accordance with section 1833(i)(7) of the Act. Section 1833(i)(2)(D)(v) of the Act, as added by section 3401(k) of the Affordable Care Act, requires that the Secretary reduce the annual update factor, after application of any quality reporting reduction, by the MFP adjustment, and states that application of the MFP adjustment to the annual update factor after application of any quality reporting reduction may result in the update being less than zero for a year. If the application of the MFP adjustment to the annual update factor after application of any quality reporting reduction would result in an MFP-adjusted update factor that is less than zero, the resulting update to the ASC payment rates would be negative and payments would decrease relative to the prior year. We refer readers to the CY 2011 OPPS/ASC final rule with comment period (75 FR 72062 through 72064) for illustrative examples of how the MFP adjustment is applied to the ASC payment system.

For this proposed rule, based on IHS Global Insight's (IGI's) 2014 first quarter forecast with historical data through 2013 fourth quarter, for the 12-month period ending with the midpoint of CY 2015, the CPI–U update is projected to be 1.7 percent. Also, based on IGI's 2014 first quarter forecast, the MFP adjustment for the period ending with the midpoint of CY 2015 is projected to be 0.5 percent. IGI is a nationally recognized economic and financial forecasting firm that contracts with CMS to forecast the components of CMS' market baskets as well as the CPI–U and MFP. We finalized the methodology for calculating the MFP adjustment in the CY 2011 MPFS final rule with comment period (75 FR 73394 through 73396) as revised in the CY 2012 MPFS final rule with comment period (76 FR 73300 through 73301). The ASCQR Program affected payment rates beginning in CY 2014 and, under this program, there is a 2.0 percentage point reduction to the CPI–U for ASCs that fail to meet the ASCQR Program requirements.

We are proposing to reduce the CPI–U update of 1.7 percent by the MFP adjustment of 0.5 percentage point, resulting in an MFP-adjusted CPI–U update factor of 1.2 percent for ASCs meeting the quality reporting requirements. Therefore, we are proposing to apply a 1.2 percent MFP-adjusted CPI–U update factor to the CY 2014 ASC conversion factor for ASCs meeting the quality reporting requirements. We are proposing to reduce the CPI–U update of 1.7 percent by 2.0 percentage points for ASCs that do not meet the quality reporting requirements and then apply the 0.5 percentage point MFP reduction. Therefore, we are proposing to apply a −0.8 percent quality reporting/MFP-adjusted CPI–U update factor to the CY 2014 ASC conversion factor for ASCs not meeting the quality reporting requirements. We also are proposing that if more recent data are subsequently available (for example, a more recent estimate of the CY 2015 CPI–U update and MFP adjustment), we would use such data, if appropriate, to determine the CY 2015 ASC update for the final rule with comment period.

For CY 2015, we also are proposing to adjust the CY 2014 ASC conversion factor ($43.471) by the proposed wage index budget neutrality factor of 0.9983 in addition to the MFP-adjusted update factor of 1.2 percent discussed above, which results in a proposed CY 2015 ASC conversion factor of $43.918 for ASCs meeting the quality reporting requirements. For ASCs not meeting the quality reporting requirements, we are proposing to adjust the CY 2014 ASC conversion factor ($43.471) by the proposed wage index budget neutrality factor of 0.9983 in addition to the quality reporting/MFP-adjusted update factor of −0.8 percent discussed above, which results in a proposed CY 2015 ASC conversion factor of $43.050.

We invite public comment on these proposals.

3. Display of Proposed CY 2015 ASC Payment Rates

Addenda AA and BB to this proposed rule (which are available via the Internet on the CMS Web site) display the proposed updated ASC payment rates for CY 2015 for covered surgical procedures and covered ancillary services, respectively. The payment rates included in these addenda reflect the full ASC payment update and not the reduced payment update used to calculate payment rates for ASCs not meeting the quality reporting requirements under the ASCQR Program. These addenda contain several types of information related to the proposed CY 2015 payment rates. Specifically, in Addendum AA, a ''Y'' in the column titled ''Proposed to be Subject to Multiple Procedure Discounting'' indicates that the surgical procedure would be subject to the multiple procedure payment reduction policy. As discussed in the CY 2008 OPPS/ASC final rule with comment period (72 FR 66829 through 66830), most covered surgical procedures are subject to a 50-percent reduction in the ASC payment for the lower-paying procedure when more than one procedure is performed in a single operative session. Display of the comment indicator ''CH'' in the column titled ''Comment Indicator'' indicates a change in payment policy for the item or service, including identifying discontinued HCPCS codes, designating items or services newly payable under the ASC payment system, and identifying items or services with changes in the ASC payment indicator

for CY 2015. Display of the comment indicator ''NI'' in the column titled ''Comment Indicator'' indicates that the code is new (or substantially revised) and that the payment indicator assignment is an interim assignment that is open to comment in the final rule with comment period.

The values displayed in the column titled ''Proposed CY 2015 Payment Weight'' are the proposed relative payment weights for each of the listed services for CY 2015. The proposed payment weights for all covered surgical procedures and covered ancillary services whose ASC payment rates are based on OPPS relative payment weights were scaled for budget neutrality. Therefore, scaling was not applied to the device portion of the device-intensive procedures, services that are paid at the MPFS nonfacility PE RVU-based amount, separately payable covered ancillary services that have a predetermined national payment amount, such as drugs and biologicals and brachytherapy sources that are separately paid under the OPPS, or services that are contractor-priced or paid at reasonable cost in ASCs.

To derive the proposed CY 2015 payment rate displayed in the ''Proposed CY 2015 Payment Rate'' column, each ASC payment weight in the ''Proposed CY 2015 Payment Weight'' column was multiplied by the proposed CY 2015 conversion factor of $43.918. The conversion factor includes a budget neutrality adjustment for changes in the wage index values and the annual update factor as reduced by the productivity adjustment (as discussed in section XII.H.2.b. of this proposed rule).

In Addendum BB, there are no relative payment weights displayed in the ''Proposed CY 2015 Payment Weight'' column for items and services with predetermined national payment amounts, such as separately payable drugs and biologicals. The ''Proposed CY 2015 Payment'' column displays the proposed CY 2015 national unadjusted ASC payment rates for all items and services. The proposed CY 2015 ASC payment rates listed in Addendum BB for separately payable drugs and biologicals are based on ASP data used for payment in physicians' offices in April 2014.

Addendum E provides the HCPCS codes and short descriptors for surgical procedures that are proposed to be excluded from payment in ASCs for FY 2015.

III. Hospital Outpatient Quality Reporting Program Updates

A. Background

1. Overview

CMS seeks to promote higher quality and more efficient health care for Medicare beneficiaries. In pursuit of these goals, CMS has implemented quality reporting programs for multiple care settings including the quality reporting program for hospital outpatient care, known as the Hospital Outpatient Quality Reporting (OQR) Program, formerly known as the Hospital Outpatient Quality Data Reporting Program (HOP QDRP). The Hospital OQR Program has generally been modeled after the quality reporting program for hospital inpatient services known as the Hospital Inpatient Quality Reporting (IQR) Program (formerly known as the Reporting Hospital Quality Data for Annual Payment Update (RHQDAPU) Program).

In addition to the Hospital IQR and Hospital OQR Programs, CMS has implemented quality reporting programs for other care settings that provide financial incentives for the reporting of quality data to CMS. These additional programs include reporting for care furnished by:

- Physicians and other eligible professionals, under the Physician Quality Reporting System (PQRS, formerly referred to as the Physician Quality Reporting Program Initiative (PQRI));
- Inpatient rehabilitation facilities, under the Inpatient Rehabilitation Facility Quality Reporting Program (IRF QRP);
- Long-term care hospitals, under the Long-Term Care Hospital Quality Reporting (LTCHQR) Program;
- PPS-exempt cancer hospitals, under the PPS-Exempt Cancer Hospital Quality Reporting (PCHQR) Program;
- Ambulatory surgical centers, under the Ambulatory Surgical Center Quality Reporting (ASCQR) Program;
- Inpatient psychiatric facilities, under the Inpatient Psychiatric Facility Quality Reporting (IPFQR) Program;
- Home health agencies, under the Home Health Quality Reporting Program (HH QRP); and
- Hospices, under the Hospice Quality Reporting Program.

In addition, CMS has implemented two value-based purchasing programs, the Hospital Value-Based Purchasing (Hospital VBP) Program and the End-Stage Renal Disease (ESRD) Quality Incentive Program (QIP), that link payment to performance.

In implementing the Hospital OQR Program and other quality reporting programs, we have focused on measures that have high impact and support national priorities for improved quality and efficiency of care for Medicare beneficiaries as reflected in the National Quality Strategy (NQS) and CMS Quality Strategy, as well as conditions for which wide cost and treatment variations have been reported, despite established clinical guidelines. To the extent possible under various authorizing statutes, our ultimate goal is to align the clinical quality measure requirements of our various quality reporting programs. As appropriate, we will consider the adoption of measures with electronic specifications to enable the collection of this information as part of care delivery.

We refer readers to the CY 2013 OPPS/ASC final rule with comment period (77 FR 68467 through 68469) for a discussion on the principles underlying consideration for future measures that we intend to use in implementing this and other quality reporting programs.

2. Statutory History of the Hospital OQR Program

We refer readers to the CY 2011 OPPS/ASC final rule with comment period (75 FR 72064 through 72065) for a detailed discussion of the statutory history of the Hospital OQR Program.

3. Measure Updates and Data Publication

a. Maintenance of Technical Specifications for Quality Measures

CMS maintains technical specifications for previously adopted Hospital OQR Program measures. These specifications are updated as we continue to develop the Hospital OQR Program. The manuals that contain specifications for the previously adopted measures can be found on the QualityNet Web site at: *https://www.qualitynet.org/dcs/ContentServer?c=Page&pagename=QnetPublic%2FPage%2FQnetTier2&cid=1196289981244*.

Many of the quality measures used in Medicare and Medicaid reporting programs are endorsed by the National Quality Forum (NQF). We note that not all of the measures adopted by the Hospital OQR Program are NQF-endorsed, nor is NQF endorsement a program requirement (section 1833(t)(17)(C)(i) of the Act). As part of its regular maintenance process for endorsed performance measures, the NQF requires measure stewards (owners/developers) to submit annual measure maintenance updates and undergo maintenance of endorsement

review every 3 years. In the measure maintenance process, the measure steward is responsible for updating and maintaining the currency and relevance of the measure and will confirm existing or minor specification changes with the NQF on an annual basis. The NQF solicits information from measure stewards for annual reviews, and it reviews measures for continued endorsement in a specific 3-year cycle.

We note that the NQF's annual or triennial maintenance processes for endorsed measures may result in the NQF requiring updates to measures in order to maintain endorsement status. Other non-NQF measures may undergo maintenance changes as well. We believe that it is important to have in place a subregulatory process to incorporate nonsubstantive updates into the measure specifications for measures that we have adopted for the Hospital OQR Program so that these measure specifications remain current. We also recognize that some changes to measures are substantive in nature and might not be appropriate for adoption using a subregulatory process.

Therefore, in the CY 2013 OPPS/ASC final rule with comment period (77 FR 68469 through 68470) we finalized our proposal to follow the same process for updating Hospital OQR Program measures that we adopted for the Hospital IQR Program measures, including the subregulatory process for making updates to the adopted measures (77 FR 53504 through 53505). This process expanded upon the subregulatory process for updating measures that we finalized in the CY 2009 OPPS/ASC final rule with comment period (73 FR 68766 through 68767).

b. Public Display of Quality Measures

We refer readers to the CY 2014 OPPS/ASC proposed rule (78 FR 43645) for a discussion of our policy for the publication of Hospital OQR Program data on the *Hospital Compare* Web site and noninteractive CMS Web sites.

We are not proposing any changes to our policies on the public display of quality measures.

B. Process for Retention of Hospital OQR Program Measures Adopted in Previous Payment Determinations

In the CY 2013 OPPS/ASC final rule with comment period (77 FR 68471), we finalized a policy that once a quality measure is adopted for the Hospital OQR Program, it is retained for use in subsequent years unless otherwise specified.

We are not proposing any changes to the process for retaining measures previously adopted.

C. Removal of Quality Measures From the Hospital OQR Program Measure Set

1. Considerations in Removing Quality Measures From the Hospital OQR Program

In the FY 2010 IPPS/LTCH PPS final rule, we finalized a process for immediate retirement, which we later termed ''removal'' (74 FR 43863), of Hospital IQR Program measures based on evidence that the continued use of the measure as specified raised patient safety concerns. We adopted the same immediate measure retirement policy for the Hospital OQR Program in the CY 2010 OPPS/ASC final rule with comment period (74 FR 60634 through 60635). We refer readers to the CY 2013 OPPS/ASC final rule with comment period (77 FR 68472 through 68473) for a discussion of our reasons for changing the term ''retirement'' to ''removal'' in the Hospital OQR Program.

In the FY 2011 IPPS/LTCH PPS final rule (75 FR 50185), we finalized a set of criteria for determining whether to remove measures from the Hospital IQR Program. These criteria are: (1) Measure performance among hospitals is so high and unvarying that meaningful distinctions and improvements in performance can no longer be made (''topped-out'' measures); (2) performance or improvement on a measure does not result in better patient outcomes; (3) a measure does not align with current clinical guidelines or practice; (4) the availability of a more broadly applicable (across settings, populations, or conditions) measure for the topic; (5) the availability of a measure that is more proximal in time to desired patient outcomes for the particular topic; (6) the availability of a measure that is more strongly associated with desired patient outcomes for the particular topic; and (7) collection or public reporting of a measure leads to negative unintended consequences such as patient harm. These criteria were suggested through public comment on proposals for the Hospital IQR Program, and we determined that these criteria are also applicable in evaluating the Hospital OQR Program quality measures for removal.

In the CY 2013 OPPS/ASC final rule with comment period (77 FR 68472 through 68473), we finalized our proposal to apply these measure removal criteria in the Hospital OQR Program as well. In addition to the Hospital IQR Program's criteria, we consider eliminating measure redundancy and incorporating the views of the Measures Application Partnership (MAP) when evaluating measures for removal.

2. Proposed Criteria for Removal of ''Topped-Out'' Measures

In this proposed rule, we are proposing to refine the criteria for determining when a measure is ''topped-out.'' We had previously finalized that a measure is ''topped-out'' when measure performance among hospitals is so high and unvarying that meaningful distinctions and improvements in performance can no longer be made (''topped-out'' measures) (77 FR 68472). We do not believe that measuring hospital performance on ''topped-out'' measures provides meaningful information on the quality of care provided by hospitals. We further believe that quality measures, once ''topped-out,'' represent care standards that have been widely adopted by hospitals. We believe such measures should be considered for removal from the Hospital OQR Program because their associated reporting burden may outweigh the value of the quality information they provide.

In order to determine ''topped-out'' status, we are proposing to apply the following two criteria, the first of which was previously adopted by the Hospital VBP Program in the Hospital Inpatient VBP Program final rule (76 FR 26496 through 26497). The second criterion is a modified version of what was previously adopted by the Hospital VBP Program in the above mentioned final rule, with the change from the ''less than'' operator (<) to the ''less than or equal to'' operator (≤). Specifically, we are proposing that a measure under the Hospital OQR Program is ''topped-out'' when it meets both of the following criteria:

- Statistically indistinguishable performance at the 75th and 90th percentiles; and
- A truncated coefficient of variation less than or equal to 0.10.

To identify if a measure has statistically indistinguishable performance at the 75th and 90th percentiles, we would determine whether the difference between the 75th and 90th percentiles for a measure is within two times the standard error of the full dataset. The coefficient of variation (CV) is a descriptive statistic that expresses the standard deviation as a percentage of the sample mean; this provides a statistic that is independent of the units of observation. Applied to this analysis, a large CV would indicate a broad distribution of individual hospital scores, with large and

presumably meaningful differences between hospitals in relative performance. A small CV would indicate that the distribution of individual hospital scores is clustered tightly around the mean value, suggesting that it is not useful to draw distinctions among individual hospitals' measure performance. The truncated CV excludes observations whose rates are below the 5th percentile and above the 95th percentile. We have proposed these same criteria for when we would consider a measure to be ''topped-out'' for the Hospital VBP Program (79 FR 28119) and the Hospital IQR Program (79 FR 28219), and we are also proposing them for the ASCQR Program in section XIV.B.3. of this proposed rule.

We invite public comment on this proposal.

3. Proposed Removal of Measures From the Hospital OQR Program for the CY 2017 Payment Determination and Subsequent Years

We are proposing to remove three measures for the CY 2017 payment determination and subsequent years: OP–4, OP–6, and OP–7. Based on our analysis of Hospital OQR Program chart-abstracted measure data for January 1, 2013–June 30, 2013 (Q1–Q2) encounters, the following measures meet both: (1) The previously finalized criteria for being ''topped-out,'' that is, measure performance among hospitals is so high and unvarying that meaningful distinctions and improvements in performance can no longer be made (77 FR 68472), and (2) the two criteria we are proposing in section XIII.C.2. of this proposed rule for determining ''topped-out'' status. These measures are:

- OP–4: Aspirin at Arrival (NQF #0286);
- OP–6: Timing of Antibiotic Prophylaxis; and
- OP–7: Prophylactic Antibiotic Selection for Surgical Patients (NQF #0528).

Therefore, we are proposing to remove these three measures from the Hospital OQR Program beginning with the CY 2017 payment determination.

We believe that removal is appropriate as there is little room for improvement for these measures, all of which address standard clinical care. In addition, by removing these measures, we would alleviate the maintenance costs and administrative burden to hospitals associated with retaining them. Should we determine that hospital adherence to these practices has unacceptably declined, we would repropose these measures in future rulemaking. In addition, we would comply with any requirements imposed by the Paperwork Reduction Act before reinstituting these measures. We have also proposed to remove three measures under the Hospital IQR Program that are similar to these measures. We note that the similar measures are called AMI–1, SCIP-Inf-1, and SCIP-Inf-2, respectively, in the Hospital IQR Program and that we proposed to retain SCIP-Inf-1 and SCIP-Inf-2 as voluntarily reported electronic clinical quality measures (79 FR 28219 through 28220 and 79 FR 29242).

We invite public comment on these proposals.

HOSPITAL OQR PROGRAM MEASURES PROPOSED FOR REMOVAL FOR THE CY 2017 PAYMENT DETERMINATION AND SUBSEQUENT YEARS

NQF No.	Measure
0286	OP–4: Aspirin at Arrival.
N/A	OP–6: Timing of Prophylactic Antibiotics.
0528	OP–7: Prophylactic Antibiotic Selection for Surgical Patients.

D. Quality Measures Previously Adopted for the CY 2016 Payment Determination and Subsequent Years

As previously discussed, in the CY 2013 OPPS/ASC final rule with comment period (77 FR 68471), we finalized a policy that, beginning CY 2013, when we adopt measures for the Hospital OQR Program, these measures are automatically adopted for all subsequent years' payment determinations, unless we propose to remove, suspend, or replace the measures. The table below lists 27 measures that we adopted for the CY 2016 payment determination and subsequent years under the Hospital OQR Program.

HOSPITAL OQR PROGRAM MEASURE SET PREVIOUSLY ADOPTED FOR THE CY 2016 PAYMENT DETERMINATION AND SUBSEQUENT YEARS

NQF No.	Measure name
N/A	OP–1: Median Time to Fibrinolysis.
0288	OP–2: Fibrinolytic Therapy Received Within 30 Minutes of ED Arrival****.
0290	OP–3: Median Time to Transfer to Another Facility for Acute Coronary Intervention.
0286	OP–4: Aspirin at Arrival**.
0289	OP–5: Median Time to ECG.
N/A	OP–6: Timing of Prophylactic Antibiotics**.
0528	OP–7: Prophylactic Antibiotic Selection for Surgical Patients**.
0514	OP–8: MRI Lumbar Spine for Low Back Pain.
N/A	OP–9: Mammography Follow-up Rates.
N/A	OP–10: Abdomen CT—Use of Contrast Material.
0513	OP–11: Thorax CT—Use of Contrast Material.
N/A	OP–12: The Ability for Providers with HIT to Receive Laboratory Data Electronically Directly into their ONC-Certified EHR System as Discrete Searchable Data.
0669	OP–13: Cardiac Imaging for Preoperative Risk Assessment for Non Cardiac Low Risk Surgery.
N/A	OP–14: Simultaneous Use of Brain Computed Tomography (CT) and Sinus Computed Tomography (CT).
N/A	OP–15: Use of Brain Computed Tomography (CT) in the Emergency Department for Atraumatic Headache.
N/A	OP–17: Tracking Clinical Results between Visits.
0496	OP–18: Median Time from ED Arrival to ED Departure for Discharged ED Patients.
N/A	OP–20: Door to Diagnostic Evaluation by a Qualified Medical Professional.

HOSPITAL OQR PROGRAM MEASURE SET PREVIOUSLY ADOPTED FOR THE CY 2016 PAYMENT DETERMINATION AND SUBSEQUENT YEARS—Continued

NQF No.	Measure name
0662	OP–21: Median Time to Pain Management for Long Bone Fracture.
N/A	OP–22: ED—Left Without Being Seen****.
0661	OP–23: ED—Head CT or MRI Scan Results for Acute Ischemic Stroke or Hemorrhagic Stroke who Received Head CT or MRI Scan Interpretation Within 45 minutes of Arrival.
N/A	OP–25: Safe Surgery Checklist Use.
N/A	OP–26: Hospital Outpatient Volume on Selected Outpatient Surgical Procedures*.
0431	OP–27: Influenza Vaccination Coverage among Healthcare Personnel.
0658	OP–29: Endoscopy/Polyp Surveillance: Appropriate Follow-up Interval for Normal Colonoscopy in Average Risk Patients.
0659	OP–30: Endoscopy/Polyp Surveillance: Colonoscopy Interval for Patients with a History of Adenomatous Polyps—Avoidance of Inappropriate Use.
1536	OP–31: Cataracts—Improvement in Patient's Visual Function within 90 Days Following Cataract Surgery***.

* OP–26: Procedure categories and corresponding HCPCS codes are located at: *http://qualitynet.org/dcs/BlobServer?blobkey=id&blobnocache=true&blobwhere=1228889963089&blobheader=multipart%2Foctet-stream&blobheadername1=Content-Disposition&blobheadervalue1=attachment%3Bfilename%3D1r_OP26MIF_v+6+0b.pdf&blobcol=urldata&blobtable=MungoBlobs*.

** Measures we are proposing for removal beginning with the CY 2017 payment determination in section XIII.C.3. of this proposed rule.

*** Measure we are proposing for voluntary data collection in section XIII.D.3.b. of this proposed rule.

**** Name has been updated to correspond with NQF-endorsed name.

1. Data Submission Requirements for OP–27: Influenza Vaccination Coverage Among Healthcare Personnel (NQF #0431) Reported via NHSN for the CY 2017 Payment Determination and Subsequent Years

The Influenza Vaccination Coverage among Healthcare Personnel (HCP) (NQF #0431) was finalized for the Hospital OQR Program in the CY 2014 OPPS/ASC final rule with comment period (78 FR 75097 through 75100). We refer readers to the CY 2014 OPPS/ASC final rule with comment period (78 FR 75116 through 75117) for a discussion of the previously finalized data submission requirements for this measure. This measure was previously finalized for the Hospital IQR Program in the FY 2012 IPPS/LTCH PPS final rule (76 FR 51636). In this proposed rule, we are making two clarifications: (1) Correcting the previously stated submission deadline; and (2) clarifying that hospitals should report the Influenza Vaccination Coverage among HCP (NQF #0431) measure by CMS Certification Number (CCN) rather than separately reporting for both the inpatient and outpatient setting.

a. Clarification of Submission Deadline and Data Submitted

We note that there was a typographical error in our discussion in the CY 2014 OPPS/ASC final rule with comment period (78 FR 75116 through 75117); and we are proposing to remedy that error through this proposed rule. Specifically, we finalized that the first deadline for hospitals to submit NHSN HAI measure data would be ''May 15, 2015 with respect to the October 1, 2015 through March 31, 2015 encounter period'' (78 FR 75117). We are clarifying here that the beginning of the encounter period should be ''October 1, 2014'' instead of ''October 1, 2015.'' In addition, we are clarifying here that the data to be submitted are more specifically referred to as ''health care personnel influenza vaccination summary reporting data'' instead of ''HAI measure data.''

b. Clarification on Reporting by CMS Certification Number (CCN)

We received public comment about the burden of separately collecting HCP influenza vaccination status for both the hospital inpatient and outpatient settings. We believe that reporting a single vaccination count for each health care facility enrolled in NHSN will be less burdensome to facilities. Therefore, in response to these concerns, we collaborated with CDC to clarify in an Operational Guidance document, that beginning with the 2014–2015 influenza season (CY 2014 reporting period and CY 2016 payment determination), facilities should collect and report a single vaccination count for each health care facility by CNN, instead of separately reporting by inpatient or outpatient setting. We are clarifying here that facilities will report data to NHSN by enrolled facility. CDC will then submit the data on behalf of the facilities by CNN. The CDC also has produced an Operational Guidance document regarding reporting for this measure, which can be found at: *http://www.cdc.gov/nhsn/PDFs/HCP/Operational-Guidance-ACH-HCP-Flu.pdf*.

Reporting data in this way will allow health care facilities with multiple care settings to simplify data collection and submit a single count applicable across the inpatient and outpatient settings. We will then publicly report the percentage of HCP who received an influenza vaccination per CCN. This single count per CCN will inform the public of the percentage of vaccinated HCP at a particular healthcare facility, which would still provide meaningful data and help to improve the quality of care. Specific details on data submission for this measure can be found at: *http://www.cdc.gov/nhsn/acute-care-hospital/hcp-vaccination/* and at: *http://www.cdc.gov/nhsn/acute-care-hospital/index.html*.

This clarification regarding the reporting of a single count applicable across the inpatient and outpatient settings was also noted in the FY 2015 IPPS/LTCH PPS proposed rule for the Hospital IQR Program (79 FR 28221). We note that, in that rule, we refer to reporting specifically by CNN rather than by ''enrolled facility''.

2. Delayed Data Collection for OP–29 and OP–30

In the CY 2014 OPPS/ASC final rule with comment period, we adopted OP–29: Endoscopy/Polyp Surveillance: Appropriate Follow-up Interval for Normal Colonoscopy in Average Risk Patients (NQF #0558) (78 FR 75102) and OP–30: Endoscopy/Polyp Surveillance: Colonoscopy Interval for Patients with a History of Adenomatous Polyps—Avoidance of Inappropriate Use (NQF #0659) (78 FR 75102), both chart-abstracted measures, and proposed that aggregate data would be collected via an online Web-based tool (the QualityNet Web site) beginning with the CY 2016 payment determination. We finalized that, for the CY 2016 payment determination, hospitals would be required to submit aggregate-level encounter data between July 1, 2015 and November 1, 2015 for data collected

during January 1, 2014–December 31, 2014 (78 FR 75114 through 75115).

On December 31, 2013, we issued guidance stating that we would delay the implementation of OP–29 and OP–30 for 3 months for the CY 2016 payment determination, changing the encounter period from January 1, 2014–December 31, 2014 to April 1, 2014–December 31, 2014 (*https://www.qualitynet.org/dcs/ContentServer?c=Page&pagename=QnetPublic%2FPage%2FQnetTier2&cid=1228721506778*). The data submission window for data collected from April 1, 2014–December 31, 2014 is still July 1, 2015–November 1, 2015. The data submission windows and the encounter periods for subsequent years remains as previously finalized (78 FR 75114); hospitals are to submit Web-based data between July 1 and November 1 of the year prior to a payment determination with respect to the encounter period of January 1 to December 31 of 2 years prior to a payment determination year.

3. OP–31: Cataracts—Improvement in Patient's Visual Function Within 90 Days Following Cataract Surgery

In the CY 2014 OPPS/ASC final rule with comment period, we adopted OP–31 Cataracts—Improvement in Patient's Visual Function within 90 Days Following Cataract Surgery (NQF #1536) for the CY 2016 payment determination and subsequent years (78 FR 75103). This measure assesses the rate of patients 18 years and older (with a diagnosis of uncomplicated cataract) in a sample who had improvement in visual function achieved within 90 days following cataract surgery based on completing both a pre-operative and post-operative visual function survey.

In this proposed rule, we are: (1) Correcting our response to public comments, (2) noting our decision to delay data collection for the CY 2016 payment determination, and, (3) proposing voluntary data collection for the CY 2017 payment determination and subsequent years for OP–31: Cataracts: Improvement in Patient's Visual Function within 90 Days Following Cataract Surgery (NQF #1536).

a. Correction of Response to Public Comments

In the CY 2014 OPPS/ASC final rule with comment period, we stated in response to commenters concerned that the proposed chart-abstracted measures had not been field-tested, that, ''all three measures that we are finalizing . . . were field-tested in the HOPD facility setting by the measure stewards. These three measures are: (1) Endoscopy/Polyp Surveillance: Appropriate Follow-Up Interval for Normal Colonoscopy in Average Risk Patients (NQF #0658); (2) Endoscopy/Polyp Surveillance: Colonoscopy Interval for Patients with a History of Adenomatous Polyps—Avoidance of Inappropriate Use (NQF #0659); and (3) [OP–31] Cataracts: Improvement in Patient's Visual Function within 90 Days Following Cataract Surgery (NQF #1536)'' (78 FR 75099 through 75100).

We inadvertently misstated that the OP–31: Cataracts: Improvement in Patient's Visual Function within 90 Days Following Cataract Surgery (NQF #1536) had been field-tested in the HOPD setting, and we are clarifying here that this measure has not been field-tested in that setting. We note that in considering and selecting this measure, however, we took into account other principles or factors, including: NQS goals, type of measure, HHS Strategic Plan and Initiatives, NQF endorsement, MAP support, stakeholder input, alignment with quality goals and settings, relevance, utility and burden. More information about these principles can be found in the CY 2014 OPPS/ASC final rule with comment period (78 FR 43643 through 43644 and 75090 through 75091).

b. Delayed Data Collection for OP–31 and Proposed Exclusion from the CY 2016 Payment Determination Measure Set

Since our adoption of this measure, we have come to believe that it may be operationally difficult for hospitals to collect and report this measure. Specifically, we are concerned that the results of the survey used to assess the pre-operative and post-operative visual function of the patient may not be shared across clinicians, making it difficult for hospitals to have knowledge of the visual function of the patient before and after surgery.

We are also concerned about the use of inconsistent surveys to assess visual function; the measure specifications allow for the use of any validated survey and results may be inconsistent should clinicians use different surveys. Therefore, on December 31, 2013, we issued guidance stating that we would delay the implementation of OP–31 by 3 months from January 1, 2014 to April 1, 2014 for the CY 2016 payment determination (*https://www.qualitynet.org/dcs/ContentServer?c=Page&pagename=QnetPublic%2FPage%2FQnetTier2&cid=1228721506778*). Because of continuing concerns, on April 2, 2014, we issued additional guidance stating that we would further delay the implementation of the measure from April 1, 2014 to January 1, 2015 for the CY 2016 payment determination (*https://www.qualitynet.org/dcs/ContentServer?c=Page&pagename=QnetPublic%2FPage%2FQnetTier2&cid=1228721506778*). Therefore, we are proposing to exclude OP–31 Cataracts: Improvement in Patient's Visual Function within 90 Days Following Cataract Surgery (NQF #1536) from the CY 2016 payment determination measure set. We will not subject hospitals to a payment reduction with respect to this measure for the CY 2016 payment determination.

We invite comment on this proposal.

c. Proposed Voluntary Collection of Data for OP–31 for the CY 2017 Payment Determination and Subsequent Years

We continue to believe that this measure addresses an area of care that is not adequately addressed in our current measure set and that the measure serves to drive coordination of care (78 FR 75103). Further, we believe that HOPDs should be a partner in care with physicians and other clinicians using their facility, and this measure provides an opportunity to do so. Therefore, we are continuing to include this measure in the Hospital OQR Program measure set, but we are proposing that hospitals have the option to voluntarily collect and submit OP–31 data for the CY 2015 encounter period/CY 2017 payment determination and subsequent years. Further, we will not subject hospitals to a payment reduction with respect to this measure during the period of voluntary reporting. For hospitals that choose to voluntarily submit data, we would request that they submit such data using the means and timelines finalized in the CY 2014 OPPS/ASC final rule with comment period (78 FR 75112 through 75113). Data submitted voluntarily will be publicly reported as discussed in the CY 2014 OPPS/ASC proposed rule (78 FR 43645) and final rule (78 FR 75092).

We invite public comment on this proposal.

E. Proposed New Quality Measure for the CY 2017 Payment Determination and Subsequent Years

We are proposing to adopt one new claims-based measure into the Hospital OQR Program for the CY 2017 payment determination and subsequent years: OP–32: Facility 7-Day Risk-Standardized Hospital Visit Rate after Outpatient Colonoscopy. Colonoscopy is one of the most frequently performed procedures in the outpatient setting in

the United States.[1] The most recent data available indicate that, in 2002 alone, physicians performed an estimated 14 million colonoscopies in the United States.[2] Colonoscopies are associated with a range of well-described and potentially preventable adverse events that can lead to hospital visits, repeat procedures, or surgical intervention for treatment, including colonic perforation, gastrointestinal (GI) bleeding, and cardiopulmonary events such as hypoxia, aspiration pneumonia, and cardiac arrhythmias. While hospital visits are generally unexpected after outpatient colonoscopy, the literature suggests that the majority of these visits occur within the first 7 days.[3 4 5] Reported hospital visit rates after outpatient colonoscopy range from 0.8 to 1.0 percent at 7 to 14 days post procedure, and from 2.4 to 3.8 percent at 30 days post procedure.[6 7 8] Some adverse events such as bleeding occur after the 7th day, but based on input from clinical experts, public comment, and empirical analyses, we concluded that unplanned hospital visits within 7 days is the optimal outcome to ensure capture of procedure-related adverse events and to minimize capture of hospital visits unrelated to the procedure. This measure provides the opportunity for providers to improve quality of care and to lower the rates of adverse events leading to hospital visits after outpatient colonoscopy; this will encourage providers to achieve the outcome rates of the best performers.

We believe it is important to reduce adverse patient outcomes associated with preparation for colonoscopy, the procedure itself, and follow-up care. Therefore, we are proposing to include OP–32: Facility 7-Day Risk-Standardized Hospital Visit Rate after Outpatient Colonoscopy, which is based on Medicare FFS claims, in the Hospital OQR Program for the CY 2017 payment determination and subsequent years. We expect the measure would promote improvement in patient care over time because transparency in publicly reporting measure scores will make patient unplanned hospital visits (emergency department visits, observation stays, and inpatient admissions) following colonoscopies more visible to providers and patients and encourage providers to incorporate quality improvement activities in order to reduce these visits. Providers are often unaware of complications following colonoscopy for which patients visit the hospital.[9] This risk-standardized quality measure will address this information gap and promote quality improvement by providing feedback to facilities and physicians, as well as transparency for patients on the rates and variation across facilities in unplanned hospital visits after colonoscopy.

The outcome measured in the OP–32 measure is all-cause, unplanned hospital visits (admissions, observation stays, and emergency department visits) within 7 days of an outpatient colonoscopy procedure. The measure score, also referred to as the facility-level risk-standardized hospital visit rate, is derived from the calculation of the ratio of the numerator to the denominator multiplied by the crude rate. The numerator is the number of predicted (meaning adjusted actual) hospital visits, which is the number of unplanned hospital visits within seven days of colonoscopy that the facility is predicted to have based on its case-mix. The denominator is the number of expected hospital visits, which is the number of unplanned hospital visits the facility is expected to have based on the nation's performance with the facility's case-mix. The crude rate is the national unadjusted number of patients who had a hospital visit post-colonoscopy among all patients who had a colonoscopy.

Based on discussions with clinical and technical panel experts, the measure excludes colonoscopies for patients undergoing concomitant high-risk upper GI endoscopy because these patients are at a higher risk for hospital visits than patients undergoing a typical colonoscopy, and patients with a history of inflammatory bowel disease (IBD) or diverticulitis in the year preceding the colonoscopy because we likely could not fully characterize and adjust for their pre-procedure risk of needing a post-procedure hospital visit or identify whether these admissions are planned or unplanned. The measure also excludes procedures for patients who lack continuous enrollment in Medicare FFS Parts A and B in the 1 month after the procedure to ensure all patients have complete data available for outcome assessment. The statistical risk adjustment model includes 15 clinically relevant risk-adjustment variables that are strongly associated with risk of hospital visits within 7 days following colonoscopy. Additional methodology details and information obtained from public comments for measure development are available at: *http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/HospitalQualityInits/Measure-Methodology.html* under ''Hospital Outpatient Colonoscopy.''

Section 1890A(a)(2) of the Act outlines the pre-rulemaking process established under section 1890A of the Act, which requires the Secretary to make available to the public by December 1 of each year a list of quality and efficiency measures that the Secretary is considering. This measure was included on a publicly available document titled ''MAP Pre-Rulemaking Report: 2014 Recommendations on Measures for More than 20 Federal Programs'' on the NQF Web site at: *http://www.qualityforum.org/Publications/2014/01/MAP_Pre-Rulemaking_Report__2014_Recommendations_on_Measures_for_More_than_20_Federal_Programs.aspx* (formerly referred to as the ''List of Measures Under Consideration'') in compliance with section 1890A(a)(2) of the Act. (We note that at the time the measure was listed on the ''MAP Pre-Rulemaking Report: 2014 Recommendations on Measures for More than 20 Federal Programs,'' it was named ''High-Acuity Care Visits after Outpatient Colonoscopy Procedure''.)

The MAP, which represents stakeholder groups, conditionally supported the measure, ''noting the need to provide outcome information to inform consumer decisions and drive quality improvement.'' The MAP further stated that ''[t]his measure addresses an important quality and safety issue with

[1] Russo A, Elixhauser A, Steiner C, Wier L. Hospital-Based Ambulatory Surgery, 2007: Statistical Brief #86. *Healthcare Cost and Utilization Project (HCUP) Statistical Briefs.* Rockville (MD) 2006.

[2] Seeff LC, Richards TB, Shapiro JA, et al. How many endoscopies are performed for colorectal cancer screening? Results from CDC's survey of endoscopic capacity. *Gastroenterology.* Dec 2004;127(6):1670–1677.

[3] Rathgaber SW., Wick TM. Colonoscopy completion and complication rates in a community gastroenterology practice. *Gastrointest Endosc.* 2006; 64:556–62.

[4] Rabeneck L, Saskin R, Paszat LF. Onset and clinical course of bleeding and perforation after outpatient colonoscopy: a population-based study. *Gastrointest Endosc.* 2011; 73:520–3.

[5] Ko CW, Riffle S, Michael L, et al. Serious complications within 30 days of screening and surveillance colonoscopy are uncommon. *Clin Gastroenterol Hepatol.* 2010; 8:166–73.

[6] Ko CW, Riffle S, Shapiro JA, et al. Incidence of minor complications and time lost from normal activities after screening or surveillance colonoscopy. *Gastrointest Endosc.* Apr 2007;65(4):648–656.

[7] Leffler DA, Kheraj R, Garud S, et al. The incidence and cost of unexpected hospital use after scheduled outpatient endoscopy. *Arch Intern Med.* Oct 25 2010;170(19):1752–1757.

[8] Chukmaitov AS, Menachemi N, Brown SL, Saunders C, Tang A, Brooks R. Is there a relationship between physician and facility volumes of ambulatory procedures and patient outcomes? *J Ambul Care Manage.* Oct–Dec 2008;31(4):354–369.

[9] Leffler DA, Kheraj R, Garud S, et al. The incidence and cost of unexpected hospital use after scheduled outpatient endoscopy. *Arch Intern Med.* Oct 25 2010;170(19):1752–1757.

incidence of these events ranging from 10 to 22 per 1,000 after risk adjustment.'' The MAP, however, also ''recognized the need for the measure to be further developed and gain NQF endorsement. [The] MAP expects the endorsement process to resolve questions of the reliability and validity of the measure as well as with the accuracy of the algorithm for attributing claims data in light of possible effects of the Medicare 3-day payment window policy.'' As required under section 1890A(a)(4) of the Act, we considered the input and recommendations provided by the MAP in selecting measures to propose for the Hospital OQR Program.

We believe we have addressed the concerns raised by the MAP to the extent possible. The measure is well defined and precisely specified for consistent implementation within and between organizations that will allow for comparability. Reliability testing demonstrated the measure data elements produced were repeatable; that is, the same results were produced a high proportion of the time when assessed in the same population in the same time period. Validity testing demonstrated that the measure data elements produce measure scores that correctly reflect the quality of care provided and that adequately identify differences in quality. In order to ensure the accuracy of the algorithm for attributing claims data and the comprehensive capture of HOPD colonoscopies potentially affected by the policy, we identified physician claims for colonoscopy in the HOPD setting from the Medicare Part B Standard Analytical Files (SAF) with an inpatient admission within three days and lacking a corresponding HOPD facility claim. We then attribute the colonoscopies identified as affected by this policy to the appropriate HOPD facility using the facility provider ID from the inpatient claim.

Section 1833(t)(17)(C)(i) of the Act states that, ''The Secretary shall develop measures . . . that reflect consensus among affected parties and, to the extent feasible and practicable, shall include measures set forth by one or more national consensus building entities.'' We believe that this proposed measure reflects consensus among the affected parties, because the MAP, which represents stakeholder groups, reviewed, conditionally supported the measure, and stated that it ''would provide valuable outcome information to inform consumer decision and drive quality improvement.'' Further, the measure was subject to public comment during the MAP and measure development processes, with some public commenters agreeing with the MAP's conclusions on the measure (p. 184, MAP Report, January 2014; *http://www.qualityforum.org/Publications/2014/01/MAP_Pre-Rulemaking_Report_2014_Recommendations_on_Measures_for_More_than_20_Federal_Programs.aspx*). We also note that the measure was submitted to NQF for endorsement on February 21, 2014.

Currently, there are no publicly available quality of care reports for providers or facilities that conduct outpatient colonoscopies. Thus, adoption of this measure provides an opportunity to enhance the information available to patients choosing among providers who offer this elective procedure. We believe this measure would reduce adverse patient outcomes associated with preparation for colonoscopy, the procedure itself, and follow-up care by capturing and making more visible to providers and patients all unplanned hospital visits following the procedure. Further, providing outcome rates to providers will make visible to clinicians meaningful quality differences and encourage improvement. Although this measure is not NQF-endorsed, it is currently undergoing the endorsement process, as noted above. Thus, we believe the statutory requirement for included measures to have, to the extent feasible and practicable, been set forth by a national consensus-building entity has been met by the measure being proposed for adoption.

We invite public comment on the proposal to include the following measure in the Hospital OQR Program for the CY 2017 payment determination and subsequent years.

NQF No.	Proposed measure for the CY 2017 payment determination and subsequent years
Pending	OP–32: Facility 7-Day Risk-Standardized Hospital Visit Rate after Outpatient Colonoscopy.

The proposed and previously finalized measures are listed below.

PROPOSED HOSPITAL OQR PROGRAM MEASURE SET FOR THE CY 2017 PAYMENT DETERMINATION AND SUBSEQUENT YEARS

NQF No.	Measure name
N/A	OP–1: Median Time to Fibrinolysis.
0288	OP–2: Fibrinolytic Therapy Received Within 30 Minutes of ED Arrival.****
0290	OP–3: Median Time to Transfer to Another Facility for Acute Coronary Intervention.
0289	OP–5: Median Time to ECG.
0514	OP–8: MRI Lumbar Spine for Low Back Pain.
N/A	OP–9: Mammography Follow-up Rates.
N/A	OP–10: Abdomen CT—Use of Contrast Material.
0513	OP–11: Thorax CT—Use of Contrast Material.
N/A	OP–12: The Ability for Providers with HIT to Receive Laboratory Data Electronically Directly into their ONC-Certified EHR System as Discrete Searchable Data.
0669	OP–13: Cardiac Imaging for Preoperative Risk Assessment for Non Cardiac Low Risk Surgery.
N/A	OP–14: Simultaneous Use of Brain Computed Tomography (CT) and Sinus Computed Tomography (CT).
N/A	OP–15: Use of Brain Computed Tomography (CT) in the Emergency Department for Atraumatic Headache.
N/A	OP–17: Tracking Clinical Results between Visits.
0496	OP–18: Median Time from ED Arrival to ED Departure for Discharged ED Patients.
N/A	OP–20: Door to Diagnostic Evaluation by a Qualified Medical Professional.
0662	OP–21: Median Time to Pain Management for Long Bone Fracture.
N/A	OP–22: ED—Left Without Being Seen.****

PROPOSED HOSPITAL OQR PROGRAM MEASURE SET FOR THE CY 2017 PAYMENT DETERMINATION AND SUBSEQUENT YEARS—Continued

NQF No.	Measure name
0661	OP–23: ED—Head CT or MRI Scan Results for Acute Ischemic Stroke or Hemorrhagic Stroke who Received Head CT or MRI Scan Interpretation Within 45 minutes of Arrival.
N/A	OP–25: Safe Surgery Checklist Use.
N/A	OP–26: Hospital Outpatient Volume on Selected Outpatient Surgical Procedures.*
0431	OP–27: Influenza Vaccination Coverage among Healthcare Personnel.
0658	OP–29: Endoscopy/Polyp Surveillance: Appropriate Follow-up Interval for Normal Colonoscopy in Average Risk Patients.
0659	OP–30: Endoscopy/Polyp Surveillance: Colonoscopy Interval for Patients with a History of Adenomatous Polyps—Avoidance of Inappropriate Use.
1536	OP–31: Cataracts—Improvement in Patient's Visual Function within 90 Days Following Cataract Surgery.**
N/A	OP–32: Facility 7-Day Risk-Standardized Hospital Visit Rate after Outpatient Colonoscopy.***

* OP–26: Procedure categories and corresponding HCPCS codes are located at: *http://qualitynet.org/dcs/BlobServer?blobkey=id&blobnocache=true&blobwhere=1228889963089&blobheader=multipart%2Foctet-stream&blobheadername1=Content-Disposition&blobheadervalue1=attachment%3Bfilename%3D1r_OP26MIF_v+6+0b.pdf&blobcol=urldata&blobtable=Mungo Blobs*.

** Measure we are proposing for voluntary data collection in section XIII.D.3.b. of this proposed rule.

*** New measure proposed for the CY 2017 payment determination and subsequent years.

**** Name has been updated to correspond with NQF-endorsed name.

F. Possible Hospital OQR Program Measures and Topics for Future Consideration

The current measure set for the Hospital OQR Program includes measures that assess process of care, imaging efficiency patterns, care transitions, ED throughput efficiency, the use of health information technology (health IT), care coordination, patient safety, and volume. For future payment determinations, we are considering expanding these measure areas and creating measures in new areas. Specifically, we are exploring (1) electronic clinical quality measures; (2) partial hospitalization measures; (3) behavioral health measures; and (4) other measures that align with the National Quality Strategy and the CMS Quality Strategy domains.

1. Electronic Clinical Quality Measures

HHS believes all patients, their families, and their healthcare providers should have consistent and timely access to their health information in a standardized format that can be securely exchanged between the patient, providers, and others involved in the patient's care. (HHS August 2013 Statement, ''Principles and Strategies for Accelerating Health Information Exchange.'' (*http://www.healthit.gov/sites/default/files/accelerating hieprinciples_strategy.pdf*)) The Department is committed to accelerating health information exchange (HIE) through the use of electronic health records (EHRs) and other types of health information technology (health IT) across the broader care continuum through a number of initiatives including: (1) Alignment of incentives and payment adjustments to encourage provider adoption and optimization of health IT and HIE services through Medicare and Medicaid payment policies; (2) adoption of common standards and certification requirements for interoperable health IT; (3) support for privacy and security of patient information across all HIE-focused initiatives; and (4) governance of health information networks.

More information on the governance of health information networks and its role in facilitating interoperability of health information systems can be found at: *http://www.healthit.gov/sites/default/files/ONC10yearInteroperabilityConceptPaper.pdf*.

These initiatives are designed to encourage HIE among health care providers, including professionals and hospitals eligible for the Medicare and Medicaid EHR Incentive Programs as well as those who are not eligible for those programs, and are designed to improve care delivery and coordination across the entire care continuum. For example, the Transition of Care Measure #2 in Stage 2 of the Medicare and Medicaid EHR Incentive Programs requires HIE to share summary records for more than 10 percent of care transitions. In addition, to increase flexibility in the Office of the National Coordinator for Health Information Technology's (ONC's) health IT Certification Program and expand health IT certification, ONC has issued a proposed rule concerning a voluntary 2015 Edition of EHR certification criteria, which would more easily accommodate the certification of health IT used in health care settings where health care providers are not typically eligible for incentive payments under the EHR Incentive Programs, to facilitate greater HIE across the entire care continuum.

We believe that HIE and the use of certified EHRs can effectively and efficiently help providers improve internal care delivery practices, support management of patient care across the continuum, and support the reporting of electronically specified clinical quality measures (eCQMs). More information on the Voluntary 2015 Edition EHR Certification Criteria proposed rule can be found at: *http://healthit.gov/policy-researchers-implementers/standards-and-certification-regulations*.

We anticipate that as electronic health records (EHR) technology evolves and more infrastructure is operational, we will begin to accept electronic reporting of many measures from EHR technology certified under the ONC health IT Certification Program. We are working diligently toward this goal. We believe that this progress would significantly reduce the administrative burden on hospitals under the Hospital OQR Program to report chart-abstracted measures. We recognize that considerable work needs to be done by measure owners and health IT developers and implementers to make this possible with respect to the clinical quality measures targeted for electronic specifications (e-specifications). This work includes completing e-specifications for measures, pilot testing, reliability and validity testing, and implementing such specifications in certified EHR technology to capture and calculate the results.

2. Partial Hospitalization Program Measures

We seek to develop a comprehensive set of quality measures to be available for widespread use for informed decision-making and quality improvement in the hospital outpatient setting. Therefore, in the CY 2014 OPPS/ASC final rule with comment period (78 FR 75106), we stated that,

through future rulemaking, we intend to propose new measures that help us further our goal of achieving better health care and improved health for Medicare beneficiaries who receive health care in hospital outpatient settings, such as partial hospitalization programs (PHPs) that are part of HOPDs.

Partial hospitalization is an intensive outpatient program of psychiatric services provided to patients as an alternative to inpatient psychiatric care for individuals who have acute mental illness. The PHP was designed to assist individuals with acute psychiatric illness in managing debilitating symptoms and prevent the need for hospitalization or re-hospitalization. Behavioral health treatments and services have improved and evolved through medication advances, recovery-based therapy, and evidenced-based interventions, including peer supports. PHP services have had the opportunity to evolve to provide individuals with a unique setting that can contribute to maintaining social and community connectivity while focusing on sustained recovery to prevent initial hospitalization during a given episode and subsequent re-hospitalization. Currently, the Hospital OQR Program has not adopted measures applicable to PHPs.

Although we believe that the PHP is an important program offering an alternative to inpatient stays, we note that PHP utilization has been declining.[10] Therefore, as we consider implementing PHP measures in future years, we invite public comment regarding the utility of including measures for this care setting in the Hospital OQR Program.

We specifically request public comment on three PHP measures we submitted to the MAP for consideration as part of the ''MAP Pre-Rulemaking Report: 2014 Recommendations on Measures for More than 20 Federal Programs'' (*http://www.qualityforum.org/Setting_Priorities/Partnership/Measure_Applications_Partnership.aspx* (formerly referred to as the ''List of Measures Under Consideration'')):

- 30-Day Readmission;
- Group Therapy; and
- No Individual Therapy.

These measures are included in the Program for Evaluating Payment Patterns Electronic Reports (PEPPERs) developed under the Comprehensive Error Rate Testing (CERT) Program. Further information on these claims-based measures that provide indicators of quality of care can be found at *http://www.pepperresources.org/LinkClick.aspx?fileticket=stK9uUmQWlM%3d&tabid=148*.

We also request public input on other possible quality measures for partial hospitalization services for inclusion in the Hospital OQR Program in future years.

3. Behavioral Health Measures

In addition to PHP measures, we are considering other measures specific to behavioral health in the outpatient setting, including measures addressing depression and alcohol abuse. Major depression is a leading cause of disability in the United States, complicates the treatment of other serious illnesses, and is associated with an increased risk of suicide. Major depression is a common mental health condition, affecting 6 to 9 percent of those over 55 years of age.[11] Along with other serious mental health conditions, it has a higher Medicare inpatient readmission rate than all other conditions with the exception of heart failure.[12] Alcohol use disorders are the most prevalent type of addictive disorder in individuals ages 65 and over.[13] Roughly 6 percent of the elderly are considered to be heavy users of alcohol.[14] Alcohol abuse is often associated with depression and contributes to the etiology of serious medical conditions, including liver disease and coronary heart disease. Because of the prevalence of depression and alcohol abuse and their impact on the Medicare population, we believe that we should consider measures in these and other behavioral health areas for use in future Hospital OQR Program payment determination years. Therefore, we invite public comment on measures applicable to these areas that would be suitable for the Hospital OQR Program.

4. National Quality Strategy and CMS Quality Strategy Measure Domains

In considering future Hospital OQR Program measures, we are focusing on the following National Quality Strategy and CMS Quality Strategy measure domains: Making care safer, strengthen person and family engagement, promote effective communication and coordination of care, promote effective prevention and treatment, work with communities to promote best practices of healthy living, and make care affordable. We believe measures in these areas will promote better care and align measures across multiple CMS quality programs, in particular, the Hospital OQR, Hospital IQR, and ASCQR Programs.

We invite public comment on these possible measures.

G. Proposed Payment Reduction for Hospitals That Fail To Meet the Hospital Outpatient Quality Reporting (OQR) Program Requirements for the CY 2015 Payment Update

1. Background

Section 1833(t)(17) of the Act, which applies to subsection (d) hospitals (as defined under section 1886(d)(1)(B) of the Act), states that hospitals that fail to report data required to be submitted on the measures selected by the Secretary, in the form and manner, and at a time, required by the Secretary will incur a 2.0 percentage point reduction to their Outpatient Department (OPD) fee schedule increase factor; that is, the annual payment update factor. Section 1833(t)(17)(A)(ii) of the Act specifies that any reduction applies only to the payment year involved and will not be taken into account in computing the applicable OPD fee schedule increase factor for a subsequent payment year.

The application of a reduced OPD fee schedule increase factor results in reduced national unadjusted payment rates that apply to certain outpatient items and services provided by hospitals that are required to report outpatient quality data in order to receive the full payment update factor and that fail to meet the Hospital OQR Program requirements. Hospitals that meet the reporting requirements receive the full OPPS payment update without the reduction. For a more detailed discussion of how this payment reduction was initially implemented, we refer readers to the CY 2009 OPPS/ASC final rule with comment period (73 FR 68769 through 68772).

The national unadjusted payment rates for many services paid under the OPPS equal the product of the OPPS conversion factor and the scaled relative

[10] *http://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/Reports/downloads/Leung_PHP_PPS_2010.pdf.*

[11] O'Connor E, Whitlock E, Beil T, et al. Screening for depression in adult patients in primary care settings: a systematic evidence review. Annals of Internal Medicine 2009 December 1:151(11):793–803.

[12] Stephen F. Jencks, M.D., M.P.H., Mark V. Williams, M.D., and Eric A. Coleman, M.D., M.P.H. Rehospitalizations among Patients in the Medicare Fee-for-Service Program. N Engl J Med 2009;360:1418–28.

[13] Stephen Ross. Alcohol Use Disorders in the Elderly. Psychiatry Weekly (no date) Available at: *http://www.psychweekly.com/aspx/article/ArticleDetail.aspx?articleid=19*.

[14] AL Mirand and JW Welte. Alcohol consumption among the elderly in a general population, Erie County, New York. Am J Public Health. 1996 July; 86(7): 978–984.

payment weight for the APC to which the service is assigned. The OPPS conversion factor, which is updated annually by the OPD fee schedule increase factor, is used to calculate the OPPS payment rate for services with the following status indicators (listed in Addendum B to this proposed rule, which is available via the Internet on the CMS Web site): ''P,'' ''Q1,'' ''Q2,'' ''Q3,'' ''R,'' ''S,'' ''T,'' ''V,'' or ''U.'' We note that we are proposing to delete status indicator ''X''' as described in sections II.A.3. and X. of this proposed rule. We also note that we are proposing to develop status indicator ''J1'' as part of our comprehensive APC policy, effective for CY 2015, discussed in section II.A.2.e. of the CY 2014 OPPS/ASC final rule with comment period (78 FR 74861 through 74910) and section II.A.2.e. of this proposed rule. Payment for all services assigned to these status indicators will be subject to the reduction of the national unadjusted payment rates for hospitals that fail to meet Hospital OQR Program requirements, with the exception of services assigned to New Technology APCs with assigned status indicator ''S'' or ''T.'' We refer readers to the CY 2009 OPPS/ASC final rule with comment period (73 FR 68770 through 68771) for a discussion of this policy.

The OPD fee schedule increase factor is an input into the OPPS conversion factor, which is used to calculate OPPS payment rates. To reduce the OPD fee schedule increase factor for hospitals that fail to meet reporting requirements, we calculate two conversion factors—a full market basket conversion factor (that is, the full conversion factor), and a reduced market basket conversion factor (that is, the reduced conversion factor). We then calculate a reduction ratio by dividing the reduced conversion factor by the full conversion factor. We refer to this reduction ratio as the ''reporting ratio'' to indicate that it applies to payment for hospitals that fail to meet their reporting requirements. Applying this reporting ratio to the OPPS payment amounts results in reduced national unadjusted payment rates that are mathematically equivalent to the reduced national unadjusted payment rates that would result if we multiplied the scaled OPPS relative payment weights by the reduced conversion factor. For example, to determine the reduced national unadjusted payment rates that applied to hospitals that failed to meet their quality reporting requirements for the CY 2010 OPPS, we multiplied the final full national unadjusted payment rate found in Addendum B of the CY 2010 OPPS/ASC final rule with comment period by the CY 2010 OPPS final reporting ratio of 0.980 (74 FR 60642).

In the CY 2009 OPPS/ASC final rule with comment period (73 FR 68771 through 68772), we established a policy that the Medicare beneficiary's minimum unadjusted copayment and national unadjusted copayment for a service to which a reduced national unadjusted payment rate applies would each equal the product of the reporting ratio and the national unadjusted copayment or the minimum unadjusted copayment, as applicable, for the service. Under this policy, we apply the reporting ratio to both the minimum unadjusted copayment and national unadjusted copayment for services provided by hospitals that receive the payment reduction for failure to meet the Hospital OQR Program reporting requirements. This application of the reporting ratio to the national unadjusted and minimum unadjusted copayments is calculated according to § 419.41 of our regulations, prior to any adjustment for a hospital's failure to meet the quality reporting standards according to § 419.43(h). Beneficiaries and secondary payers thereby share in the reduction of payments to these hospitals.

In the CY 2009 OPPS/ASC final rule with comment period (73 FR 68772), we established the policy that all other applicable adjustments to the OPPS national unadjusted payment rates apply when the OPD fee schedule increase factor is reduced for hospitals that fail to meet the requirements of the Hospital OQR Program. For example, the following standard adjustments apply to the reduced national unadjusted payment rates: the wage index adjustment; the multiple procedure adjustment; the interrupted procedure adjustment; the rural sole community hospital adjustment; and the adjustment for devices furnished with full or partial credit or without cost. Similarly, OPPS outlier payments made for high cost and complex procedures will continue to be made when outlier criteria are met. For hospitals that fail to meet the quality data reporting requirements, the hospitals' costs are compared to the reduced payments for purposes of outlier eligibility and payment calculation. We established this policy in the OPPS beginning in the CY 2010 OPPS/ASC final rule with comment period (74 FR 60642). For a complete discussion of the OPPS outlier calculation and eligibility criteria, we refer readers to section II.G. of this proposed rule.

2. Proposed Reporting Ratio Application and Associated Adjustment Policy for CY 2015

We are proposing to continue our established policy of applying the reduction of the OPD fee schedule increase factor through the use of a reporting ratio for those hospitals that fail to meet the Hospital OQR Program requirements for the full CY 2015 annual payment update factor. For the CY 2015 OPPS, the proposed reporting ratio is 0.980, calculated by dividing the proposed reduced conversion factor of $72.692 by the proposed full conversion factor of $74.176. We are proposing to continue to apply the reporting ratio to all services calculated using the OPPS conversion factor. For the CY 2015 OPPS, we are proposing to apply the reporting ratio, when applicable, to all HCPCS codes to which we have assigned status indicators ''P,'' ''Q1,'' ''Q2,'' ''Q3,'' ''R,'' ''S,'' ''T,'' ''V,'' and ''U'' (other than new technology APCs to which we have assigned status indicators ''S'' and ''T''). We note that we are proposing to delete status indicator ''X'' as described in sections II.A.3. and X. of this proposed rule. We note that we are proposing to develop status indicator ''J1'' as part of our CY 2015 comprehensive APC policy, discussed in section II.A.2.e. of this proposed rule and to apply the reporting ratio to the comprehensive APCs. We are proposing to continue to exclude services paid under New Technology APCs. We are proposing to continue to apply the reporting ratio to the national unadjusted payment rates and the minimum unadjusted and national unadjusted copayment rates of all applicable services for those hospitals that fail to meet the Hospital OQR Program reporting requirements. We also are proposing to continue to apply all other applicable standard adjustments to the OPPS national unadjusted payment rates for hospitals that fail to meet the requirements of the Hospital OQR Program. Similarly, we are proposing to continue to calculate OPPS outlier eligibility and outlier payment based on the reduced payment rates for those hospitals that fail to meet the reporting requirements.

We invite public comment on these proposals.

H. Proposed Requirements for Reporting Hospital OQR Program Data for the CY 2017 Payment Determination and Subsequent Years

1. Administrative Requirements for the CY 2017 Payment Determination and Subsequent Years

We refer readers to the CY 2014 OPPS/ASC final rule with comment period (78 FR 75108 through 75109) for a discussion of the Hospital OQR Program procedural requirements for the CY 2015 payment determination and subsequent years. In that final rule with comment period, we codified these procedural requirements at 42 CFR 419.46(a).

2. Form, Manner, and Timing of Data Submitted for the Hospital OQR Program

a. General Procedural Requirements

We refer readers to the CY 2014 OPPS/ASC final rule with comment period (78 FR 75110 through 75111) for a discussion of Hospital OQR Program general procedural requirements. In that final rule with comment period, we finalized our proposal to codify these general procedural requirements at 42 CFR 419.46(c).

We are proposing to correct a typographical error in 42 CFR 419.46(c). This section states, ''Except as provided in paragraph (d) of this section, hospitals that participate in the Hospital OQR Program must submit to CMS data on measures selected under section 1833(17)(C) of the Act . . '' We are proposing to correct the erroneous reference of ''section 1833(17)(C)'' to ''section 1833(t)(17)(C).'' We invite public comment on this proposal.

b. Requirements for Chart-Abstracted Measures Where Data Is Submitted Directly to CMS for the CY 2017 Payment Determination and Subsequent Years

The following chart-abstracted measures in the Hospital OQR Program require data to be submitted for the CY 2017 payment determination and subsequent years:

- OP–1: Median Time to Fibrinolysis;
- OP–2: Fibrinolytic Therapy Received Within 30 Minutes of ED Arrival (NQF #0288);
- OP–3: Median Time to Transfer to Another Facility for Acute Coronary Intervention (NQF #0290);
- OP–5: Median Time to ECG (NQF #0289);
- OP–18: Median Time from ED Arrival to ED Departure for Discharged ED Patients (NQF #0496);
- OP–20: Door to Diagnostic Evaluation by a Qualified Medical Professional;
- OP–21: ED—Median Time to Pain Management for Long Bone Fracture (NQF #0662);
- OP–22: ED—Left Without Being Seen;
- OP–23: ED—Head CT Scan Results for Acute Ischemic Stroke or Hemorrhagic Stroke who Received Head CT Scan Interpretation Within 45 Minutes of Arrival (NQF #0661);
- OP–29: Endoscopy/Polyp Surveillance: Appropriate Follow-up Interval for Normal Colonoscopy in Average Risk Patients (NQF #0658); and
- OP–30: Endoscopy/Polyp Surveillance: Colonoscopy Interval for Patients with a History of Adenomatous Polyps—Avoidance of Inappropriate Use (NQF #1536).

We refer readers to the CY 2013 OPPS/ASC final rule with comment period (77 FR 68481 through 68484) for a discussion of the form and manner for data submission of these measures.

We are neither proposing new chart-abstracted measures where patient-level data is submitted directly to CMS nor proposing new requirements for data submission for chart-abstracted measures.

c. Claims-Based Measure Data Requirements for the CY 2017 Payment Determination and Subsequent Years

As discussed in section XIII.E. of the preamble of this proposed rule, we are proposing one additional claims-based measure for the CY 2017 payment determination and subsequent years, OP–32: Facility 7-Day Risk-Standardized Hospital Visit Rate after Outpatient Colonoscopy. If this proposal is finalized, there will be a total of eight claims-based measures for the CY 2017 payment determination and subsequent years:

- OP–8: MRI Lumbar Spine for Low Back Pain (NQF #0514);
- OP–9: Mammography Follow-Up Rates;
- OP–10: Abdomen CT—Use of Contrast Material;
- OP–11: Thorax CT—Use of Contrast Material;
- OP–13: Cardiac Imaging for Preoperative Risk Assessment for Non-Cardiac Low Risk Surgery (NQF #0669);
- OP–14: Simultaneous Use of Brain Computed Tomography (CT) and Sinus Computed Tomography (CT);
- OP–15: Use of Brain Computed Tomography (CT) in the Emergency Department for Atraumatic Headache; and
- OP–32: Facility 7-Day Risk-Standardized Hospital Visit Rate after Outpatient Colonoscopy.

We refer readers to the CY 2014 OPPS/ASC final rule with comment period (78 FR 75111 through 75112) for a discussion of the claims-based measure data submission requirements for the CY 2015 payment determination and subsequent years.

In the CY 2012 OPPS/ASC final rule with comment period, we deferred the public reporting of OP–15 (76 FR 74456). We extended the postponement of public reporting for this measure in the CY 2013 and CY 2014 OPPS/ASC final rules with comment period (77 FR 68481, 78 FR 75111). We are not proposing any changes to this policy. Public reporting for OP–15 continues to be deferred, and this deferral has no effect on any payment determinations; however, hospitals are still required to submit data as previously finalized (76 FR 74456).

d. Data Submission Requirements for Measure Data Submitted via the CMS Web-Based Tool for the CY 2017 Payment Determination and Subsequent Years

We refer readers to the CY 2014 OPPS/ASC final rule with comment period (78 FR 75112 through 75115) for a discussion of the requirements for measure data submitted via the Web-based tool on a CMS Web site (the QualityNet Web site) for the CY 2016 payment determination and subsequent years.

We are not proposing any changes to the data submission requirements for data submitted via the CMS Web-based tool.

e. Population and Sampling Data Requirements for the CY 2017 Payment Determination and Subsequent Years

We refer readers to the CY 2011 OPPS/ASC final rule with comment period (75 FR 72100 through 72103) and the CY 2012 OPPS/ASC final rule with comment period (76 FR 74482 through 74483) for discussions of our policy that hospitals may voluntarily submit aggregate population and sample size counts for Medicare and non-Medicare encounters for the measure populations for which chart-abstracted data must be submitted. We are not proposing any changes to this policy.

f. Proposed Review and Corrections Period for Chart-Abstracted Measures

Under the Hospital OQR Program, hospitals submit chart-abstracted data to CMS on a quarterly basis. This data is typically due 4 months after the quarter has ended, unless we grant an extension or exception, as further described in section XIII.J. of this proposed rule. We refer readers to the CY 2014 OPPS/ASC

final rule with comment period for a discussion of our previously finalized policies regarding submissions deadlines for chart-abstracted measures (78 FR 68482). Hospitals can begin submitting data on the first discharge day of any reporting quarter and can modify this data up until the close of the submission period (or 4 months after the quarter has ended). For example, if a hospital enters data on January 2, it could continue to review, correct, and change this data until August 1, the first quarter submission deadline. We generally provide rates for the measures that have been submitted for chart-abstracted, patient-level data 24–48 hours following submission. Hospitals are encouraged to submit data early in the submission schedule so that they can identify errors and resubmit data before the quarterly submission deadline.

We are proposing to formalize this 4-month period as the review and corrections period for chart-abstracted data for the Hospital OQR Program. During this review and corrections period, hospitals can enter, review, and correct data submitted directly to CMS. After the submission deadline, however, hospitals would not be allowed to change these data. We believe that 4 months is sufficient time for hospitals to perform these activities. We invite public comment on this proposal.

3. Hospital OQR Program Validation Requirements for Chart-Abstracted Measure Data Submitted Directly to CMS for the CY 2017 Payment Determination and Subsequent Years

a. Background

We refer readers to the CY 2013 OPPS/ASC final rule with comment period (77 FR 68484 through 68487) for a discussion of finalized policies regarding our validation requirements. We codified these policies at 42 CFR 419.46(e). We are proposing three changes to our validation procedures: (1) We are proposing to change the eligibility requirements for hospitals selected for validation so that a hospital would be eligible if it submits at least one case to the Hospital OQR Program Clinical Data Warehouse during the quarter containing the most recently available data; (2) we are proposing give hospitals the option to either submit paper copies of patient charts or securely transmit electronic versions of medical information for validation; and (3) we are proposing that a hospital must identify the medical record staff responsible for submission of records under the Hospital OQR Program to the designated CMS contractor.

b. Proposed Selection of Hospitals for Data Validation of Chart-Abstracted Measures for the CY 2017 Payment Determination and Subsequent Years

We refer readers to the CY 2012 and CY 2013 OPPS/ASC final rules with comment period (76 FR 74484 through 74485 and 77 FR 68484 through 68485) for a discussion of finalized policies regarding our sampling methodology, including sample size, eligibility for validation selection, and encounter minimums for patient-level data for measures where data is obtained from chart abstraction and submitted directly to CMS from selected hospitals.

We are proposing one change to this process. Previously, to be eligible for random selection for validation, a hospital must have been coded as ''open'' in the CASPER system at the time of selection and must have submitted at least 10 encounters to the OPPS Clinical Warehouse during the data collection period for the applicable payment determination (76 FR 74484). We are proposing that, beginning with the CY 2015 encounter period for the CY 2017 payment determination and subsequent years, a hospital will be eligible for validation if it submits at least one case to the Hospital OQR Program Clinical Data Warehouse during the quarter containing the most recently available data. The quarter containing the most recently available data will be defined based on when the random sample is drawn. For example, if we draw a sample in December 2014, the most recent data available would be that from the second quarter of 2014, which ends June 2014, because the submission deadline for second quarter data would be November 1, 2014 (*https://www.qualitynet.org/dcs/ContentServer?c=Page&pagename=QnetPublic%2FPage%2FQnetTier2&cid=1205442125082*; 78 FR 68482). As another example, if a sample is drawn in October 2014, the most recent available data would be from quarter one, which ended in March 2014, because data must be submitted by August 1, 2014. We believe this change is necessary because it increases the probability that selected hospitals have current data in the Warehouse to be validated. Previously, hospitals that did not have data from the current year available could still be selected for validation. We invite public comment on this proposal.

c. Targeting Criteria for Data Validation Selection for the CY 2017 Payment Determination and Subsequent Years

We refer readers to the CY 2013 OPPS/ASC final rule with comment period (77 FR 68485 through 68486) for a discussion of our targeting criteria. We are not proposing any changes to these policies.

d. Methodology for Encounter Selection for the CY 2017 Payment Determination and Subsequent Years

We refer readers to the CY 2013 OPPS/ASC final rule with comment period (77 FR 68486) for a discussion of our methodology for encounter selection. We are not proposing any changes to this policy.

e. Proposed Medical Record Documentation Requests for Validation and Validation Score Calculation for the CY 2017 Payment Determination and Subsequent Years

We refer readers to the CY 2013 OPPS/ASC final rule with comment period (77 FR 68486 through 68487) for a discussion of our previously finalized procedures for requesting medical record documentation for validation and validation score calculation. In the CY 2014 OPPS/ASC final rule with comment period (78 FR 75118), we codified these procedures at 42 CFR 419.46(e)(1) and (e)(2). We are proposing two changes to these policies for the CY 2017 payment determination and subsequent years: (1) We are proposing to give hospitals the option to either submit paper copies of patient charts or securely transmit electronic versions of medical information for validation; and (2) we are proposing that a hospital must identify the medical record staff responsible for submission of records under the Hospital OQR Program to the designated CMS contractor.

For records stored electronically, hospitals expend additional resources printing records onto paper that may be more efficiently transmitted electronically. In addition, the length of paper charts has been increasing, and the paper used to submit these records has an environmental impact. Therefore, we are proposing to give hospitals the option to either submit copies of paper patient charts or securely transmit electronic versions of medical information, which has the potential to significantly reduce administrative burden, cost, and environmental impact. We have already finalized a similar policy for the Hospital IQR Program in the FY 2014 IPPS/LTCH PPS final rule (78 FR 50834 through 50836) that allows hospitals for the Hospital IQR Program to submit electronic records through the mail on a CD, DVD, or flash drive. In addition, in the FY 2015 IPPS/LTCH PPS proposed rule for the Hospital IQR Program (79 FR 28251), we have

proposed to also allow hospitals to submit patient charts using a Secure File Transfer Portal on the QualityNet Web site.

The current Hospital OQR Program regulation at § 419.46(e)(1) states: ''Upon written request by CMS or its contractor, a hospital must submit to CMS supporting medical record documentation that the hospital used for purposes of data submission under the program. . . .'' We are proposing that this requirement may be met by employing either of the following options for the CY 2017 payment determination and subsequent years: (1) A hospital may submit paper medical records, the form in which we have historically requested them; or (2) a hospital may securely transmit electronic versions of medical information.

For the CY 2017 payment determination and subsequent years, we are proposing that hospitals that chose to securely transmit electronic versions of medical information should either: (1) Download or copy the digital image of the patient chart onto CD, DVD, or flash drive and ship the electronic media following instructions specified on the QualityNet Web site; or (2) securely submit digital images (PDFs) of patient charts using a Secure File Transfer Portal on the QualityNet Web site. The Secure File Transfer Portal would allow hospitals to transfer files through either a Web-based portal or directly from a client application using a secure file transfer protocol. The system provides a mechanism for securely exchanging documents containing sensitive information such as Protected Health Information (PHI) or Personally Identifiable Information (PII). Detailed instructions on how to use this system are available in the Secure File Transfer 1.0 User Manual available on QualityNet at: *http://www.qualitynet.org/dcs/ContentServer?c=Page&pagename=QnetPublic%2FPage%2FQnetBasic&cid=1228773343598*.

In addition, in the CY 2013 OPPS/ASC final rule with comment period (77 FR 68486 through 68487), we stated that our validation contractor would request medical documentation from each hospital selected for validation via certified mail or other trackable method. This request would be sent to ''the hospital's medical record staff identified by the hospital for the submission of records under the Hospital IQR Program (that is, the hospital's medical records staff identified by the hospital to the State QIO)'' (77 FR 68487). Quality Improvement Organizations (QIOs) are CMS contractors required by the Act (section 1152 through 1154) tasked with, among other responsibilities, assisting hospitals with quality improvement activities. Due to the evolution of the structure of the QIO program, beginning with CY 2015 for the CY 2017 payment determination and subsequent years, we are proposing that a hospital must identify the medical record staff responsible for submission of records under the Hospital OQR Program to the designated CMS contractor; this CMS contractor may be a contractor other than the State QIO.

Finally, we note that a typographical error exists in our validation language in § 419.46(e). This section states, ''CMS may validate one or more measures selected under section 1833(17)(C) of the Act . . .'' ''[S]ection 1833(17)(C)'' should instead state ''section 1833(t)(17)(C).'' We are proposing to make this change in the regulation text.

We invite public comment on these proposals.

I. Hospital OQR Program Reconsideration and Appeals Procedures for the CY 2017 Payment Determination and Subsequent Years

We refer readers to the CY 2013 OPPS/ASC final rule with comment period (77 FR 68487 through 68489) and the CY 2014 OPPS/ASC final rule with comment period (78 FR 75118 through 75119) for a discussion of our reconsideration and appeals procedures. We codified this process by which participating hospitals may submit requests for reconsideration at 42 CFR 419.46(f). We also codified language at § 419.46(f)(3) stating that a hospital that is dissatisfied with a decision made by CMS on its reconsideration request may file an appeal with the Provider Reimbursement Review Board.

We are not proposing any changes to the reconsideration and appeals procedures.

J. Extension or Exception Process for the CY 2017 Payment Determination and Subsequent Years

We refer readers to the CY 2013 OPPS/ASC final rule with comment period (77 FR 68489), the CY 2014 OPPS/ASC final rule with comment period (78 FR 75119 through 75120), and 42 CFR 419.46(d) for a complete discussion of our extraordinary circumstances extension or waiver process under the Hospital OQR Program. We are not proposing any substantive changes to these policies or the processes.

However, in the future, we will refer to the process as the Extraordinary Circumstances Extensions or Exemptions process, instead of the Extraordinary Circumstances Extensions or Waiver process. We are in the process of revising the Extraordinary Circumstances/Disaster Extension or Waiver Request form (CMS–10432), approved under OMB control number 0938–1171. We are updating the forms and instructions so that a hospital or facility may apply for an extension for all applicable quality reporting programs at one time.

In addition, we are proposing to make a conforming change from the phrase ''extension or waiver'' to the phrase ''extension or exemption'' in 42 CFR 419.46(d). Section 419.46(d) currently states,

Exception. CMS may grant an extension or waiver of one or more data submission deadlines and requirements in the event of extraordinary circumstances beyond the control of the hospital, such as when an act of nature affects an entire region or locale or a systemic problem with one of CMS' data collection systems directly or indirectly affects data submission. CMS may grant an extension or waiver as follows:

(1) *Upon request by the hospital.* Specific requirements for submission of a request for an extension or waiver are available on the QualityNet Web site.

(2) *At the discretion of CMS.* CMS may grant waivers or extensions to hospitals that have not requested them when CMS determines that an extraordinary circumstance has occurred.

We are proposing to revise this language to state,

Exception. CMS may grant an extension or exception of one or more data submission deadlines and requirements in the event of extraordinary circumstances beyond the control of the hospital, such as when an act of nature affects an entire region or locale or a systemic problem with one of CMS' data collection systems directly or indirectly affects data submission. CMS may grant an extension or exception as follows:

(1) *Upon request by the hospital.* Specific requirements for submission of a request for an extension or exception are available on the QualityNet Web site.

(2) *At the discretion of CMS.* CMS may grant exceptions or extensions to hospitals that have not requested them when CMS determines that an extraordinary circumstance has occurred.

XIV. Requirements for the Ambulatory Surgical Center Quality Reporting (ASCQR) Program

A. Background

1. Overview

We refer readers to section XIII.A.1. of this proposed rule for a general overview of our quality reporting programs.

2. Statutory History of the Ambulatory Surgical Center Quality Reporting (ASCQR) Program

We refer readers to section XIV.K.1. of the CY 2012 OPPS/ASC final rule with comment period (76 FR 74492 through 74493) for a detailed discussion of the statutory history of the ASCQR Program.

3. Regulatory History of the ASCQR Program

We refer readers to section XV.A.3. of the CY 2014 OPPS/ASC final rule with comment period (78 FR 75122) for an overview of the regulatory history of the ASCQR Program.

B. ASCQR Program Quality Measures

1. Considerations in the Selection of ASCQR Program Quality Measures

We refer readers to the CY 2013 OPPS/ASC final rule with comment period (77 FR 68493 through 68494) for a detailed discussion of priorities we consider for ASCQR Program quality measure selection.

2. Proposed Policy for Removal of Quality Measures From the ASCQR Program

We previously adopted a policy to retain measures from the previous year's ASCQR Program measure set for subsequent years' measure sets except when they are removed, suspended or replaced as indicated (76 FR 74504; 77 FR 68494 through 68495; 78 FR 75122). In this proposed rule, we are proposing a process for removing adopted measures.

In the FY 2010 IPPS/LTCH PPS final rule (74 FR 43863 through 43865), we finalized a process for immediate retirement (a term we later changed to ''removal'') of RHQDAPU Program (now referred to as the Hospital IQR Program) measures based on evidence that the continued use of the measure as specified raised patient safety concerns. We stated that we believe immediate retirement of quality measures should occur when the clinical evidence suggests that continued collection of the data may result in harm to patients. For example, we removed the AMI–6-Beta Blocker at Arrival measure from the Hospital IQR Program because it encouraged care that raised potential safety concerns according to newly published research suggesting that beta-blockers could increase mortality risks for certain patient populations (74 FR 43863). Under such circumstances, we may not be able to wait until the annual rulemaking cycle or until we have had the opportunity to obtain input from the public to retire the measure because of the need to discourage potentially harmful practices which may result from continued collection of the measure.

In these situations, we would promptly retire the measure and notify hospitals and the public of the retirement of the measure and the reasons for its retirement through the usual communication channels. Further, we would confirm the retirement of the measure that was the subject of immediate retirement in the next program rulemaking. Finally, we stated that, in other circumstances where we do not believe that continued use of a measure raises specific safety concerns, we intend to use the rulemaking process to retire a measure. For the same reasons stated for the Hospital IQR Program, we believe that this process also would be appropriate for the ASCQR Program. Therefore, we are proposing to adopt this same removal process for the ASCQR Program. Under this process, we would immediately remove an ASCQR Program measure based on evidence that the continued use of the measure as specified raised patient safety concerns. In these situations, we would promptly remove the measure and notify ASCs and the public of the removal of the measure and the reasons for its removal through the ASCQR Program ListServ and the ASCQR Program QualityNet Web site at *http://www.qualitynet.org/dcs/ContentServer?c=Page&pagename=QnetPublic%2FPage%2FQnetTier2&cid=1228772879650*. Further, we would confirm the removal of the measure that was the subject of immediate removal in the next OPPS/ASC rulemaking.

For situations where we do not believe that continued use of a measure raises specific safety concerns, we are proposing to use the regular rulemaking process to remove a measure to allow for public comment. In the FY 2013 IPPS/LTCH PPS final rule (77 FR 53505 through 53506), we listed the criteria we have used to determine whether to remove measures from the Hospital IQR Program. These criteria are: (1) Measure performance among hospitals is so high and unvarying that meaningful distinctions and improvements in performance can no longer be made (''topped out'' measures); (2) availability of alternative measures with a stronger relationship to patient outcomes; (3) a measure does not align with current clinical guidelines or practice; (4) the availability of a more broadly applicable (across settings, populations, or conditions) measure for the topic; (5) the availability of a measure that is more proximal in time to desired patient outcomes for the particular topic; (6) the availability of a measure that is more strongly associated with desired patient outcomes for the particular topic; and (7) collection or public reporting of a measure leads to negative unintended consequences other than patient harm. These criteria were suggested through public comment on proposals for the Hospital IQR Program and, we agreed that these criteria should be considered in evaluating the Hospital IQR Program quality measures for removal (75 FR 53506). We believe that these criteria also are applicable in evaluating ASCQR Program quality measures for removal, because we have found them useful for evaluating measures in the Hospital IQR Program and our other quality reporting programs, which share similar goals to the ASCQR Program. Accordingly, we are proposing to adopt these measure removal criteria for the ASCQR Program.

We invite public comment on these proposals.

3. Proposed Criteria for Removal of ''Topped-Out'' Measures

We are proposing to define criteria for when we would consider a measure to be ''topped-out.'' A measure is ''topped-out'' when measure performance among ASCs is so high and unvarying that meaningful distinctions and improvements in performance can no longer be made (''topped-out'' measures). We do not believe that measuring ASC performance on ''topped-out'' measures provides meaningful information on the quality of care provided by ASCs. We further believe that quality measures, once ''topped-out,'' represent care standards that have been widely adopted by ASCs. We believe such measures should be considered for removal from the ASCQR Program because their associated reporting burden may outweigh the value of the quality information they provide.

Specifically, we are proposing that a measure under the ASCQR Program is ''topped-out'' when it meets both of the following criteria:

- Statistically indistinguishable performance at the 75th and 90th percentiles; and
- A truncated coefficient of variation less than or equal to 0.10.

To identify if a measure has statistically indistinguishable performance at the 75th and 90th percentiles, we would determine whether the difference between the 75th and 90th percentiles for an ASC's measure is within two times the standard error of the full dataset. The coefficient of variation (CV) is a descriptive statistic that expresses the standard deviation as a percentage of the sample mean; this provides a

statistic that is independent of the units of observation. Applied to this analysis, a large CV would indicate a broad distribution of individual ASC scores, with large and presumably meaningful differences between ASCs in relative performance. A small CV would indicate that the distribution of individual hospital scores is clustered tightly around the mean value, suggesting that it is not useful to draw distinctions among individual ASCs' measure performance. The truncated CV excludes observations whose rates are below the 5th percentile and above the 95th percentile. This was done to avoid undue effects of the highest and lowest outlier ASCs, which if included, would tend to greatly widen the dispersion of the distribution and make the measure appear to be more reliable or discerning. These same criteria for when we would consider a measure to be ''topped-out'' have been proposed for adoption in the Hospital VBP Program (79 FR 28119) and the Hospital IQR Program (79 FR 28219).

We invite public comment on this proposal.

4. ASCQR Program Quality Measures Adopted in Previous Rulemaking

In the CY 2012 OPPS/ASC final rule with comment period (76 FR 74492 through 74517), we finalized our proposal to implement the ASCQR Program beginning with the CY 2014 payment determination. In the CY 2012 OPPS/ASC final rule with comment period, we adopted five claims-based measures for the CY 2014 payment determination and subsequent years, two measures with data submission via an online Web page for the CY 2015 payment determination and subsequent years, and one process of care measure for the CY 2016 payment determination and subsequent years (74 FR 74496 to 74511). In the CY 2014 OPPS/ASC final rule with comment period, we adopted three chart-abstracted measures for the CY 2016 payment determination and subsequent years (78 FR 75124 to 75130).

The quality measures that we have previously adopted are listed below.

ASC PROGRAM MEASURE SET PREVIOUSLY ADOPTED FOR THE CY 2016 PAYMENT DETERMINATION AND SUBSEQUENT YEARS

ASC No.	NQF No.	Measure name
ASC–1	0263	Patient Burn.
ASC–2	0266	Patient Fall.
ASC–3	0267	Wrong Site, Wrong Side, Wrong Patient, Wrong Procedure, Wrong Implant.
ASC–4	0265	Hospital Transfer/Admission.
ASC–5	0264	Prophylactic Intravenous (IV) Antibiotic Timing.
ASC–6	N/A	Safe Surgery Checklist Use.
ASC–7	N/A	ASC Facility Volume Data on Selected ASC Surgical Procedures. Procedure categories and corresponding HCPCS codes are located at: *http://qualitynet.org/dcs/ContentServer?c=Page&pagename=QnetPublic%2FPage%2FQnetTier2&cid=1228772475754*.
ASC–8	0431	Influenza Vaccination Coverage among Healthcare Personnel.
ASC–9	0658	Endoscopy/Polyp Surveillance: Appropriate Follow-Up Interval for Normal Colonoscopy in Average Risk Patients.
ASC–10	0659	Endoscopy/Polyp Surveillance: Colonoscopy Interval for Patients with a History of Adenomatous Polyps-Avoidance of Inappropriate Use.
ASC–11	1536	Cataracts: Improvement in Patient's Visual Function within 90 Days Following Cataract Surgery.*

*We are proposing voluntary data collection starting in CY 2017 for this previously adopted measure in section XIV.E.3.c. of this proposed rule.

5. Proposed New ASCQR Program Quality Measure for the CY 2017 Payment Determination and Subsequent Years

We refer readers to the CY 2014 OPPS/ASC final rule with comment period (78 FR 75124) for a detailed discussion of our approach to ASCQR measure selection. In this proposed rule, we are proposing to adopt one new claims-based measure into the ASCQR Program for the CY 2017 payment determination and subsequent years: ASC–12: Facility Seven-Day Risk-Standardized Hospital Visit Rate after Outpatient Colonoscopy.

Colonoscopy is the most commonly performed ambulatory surgery in the United States.[15] The most recent data available indicate that, in 2002 alone, physicians performed an estimated 14 million colonoscopies in the United States.[16] Colonoscopies are associated with a range of well-described and potentially preventable adverse events that can lead to hospital visits, repeat procedures, or surgical intervention for treatment, including colonic perforation, gastrointestinal (GI) bleeding, and cardiopulmonary events such as hypoxia, aspiration pneumonia, and cardiac arrhythmias. While hospital visits are generally unexpected after outpatient colonoscopy, the literature suggests that the majority of these visits occur within the first 7 days.[17 18 19] Reported hospital visit rates after outpatient colonoscopy range from 0.8 to 1.0 percent at 7 to 14 days post procedure, and from 2.4 to 3.8 percent at 30 days post procedure.[20 21 22] Some adverse events such as bleeding occur after day 7, but based on input from clinical experts, public comment, and

[15] Russo A, Elixhauser A, Steiner C, Wier L. Hospital-Based Ambulatory Surgery, 2007: Statistical Brief #86. *Healthcare Cost and Utilization Project (HCUP) Statistical Briefs.* Rockville (MD)2006.

[16] Seeff LC, Richards TB, Shapiro JA, et al. How many endoscopies are performed for colorectal cancer screening? Results from CDC's survey of endoscopic capacity. *Gastroenterology.* Dec 2004;127(6):1670–1677.

[17] Rathgaber SW, Wick TM. Colonoscopy completion and complication rates in a community gastroenterology practice. *Gastrointest Endosc.* 2006; 64:556–62.

[18] Rabeneck L, Saskin R, Paszat LF. Onset and clinical course of bleeding and perforation after outpatient colonoscopy: A population-based study. *Gastrointest Endosc.* 2011; 73:520–3.

[19] Ko CW, Riffle S, Michael L, et al. Serious complications within 30 days of screening and surveillance colonoscopy are uncommon. *Clin Gastroenterol Hepatol.* 2010; 8:166–73.

[20] Ko CW, Riffle S, Shapiro JA, et al. Incidence of minor complications and time lost from normal activities after screening or surveillance colonoscopy. *Gastrointest Endosc.* Apr 2007;65(4):648–656.

[21] Leffler DA, Kheraj R, Garud S, et al. The incidence and cost of unexpected hospital use after scheduled outpatient endoscopy. *Arch Intern Med.* Oct 25 2010;170(19):1752–1757.

[22] Chukmaitov AS, Menachemi N, Brown SL, Saunders C, Tang A, Brooks R. Is there a relationship between physician and facility volumes of ambulatory procedures and patient outcomes? *J Ambul Care Manage.* Oct-Dec 2008;31(4):354–369.

empirical analyses, we concluded that unplanned hospital visits within 7 days is the optimal outcome to ensure capture of procedure-related adverse events and to minimize capture of hospital visits unrelated to the procedure. This measure provides the opportunity for ASCs to improve quality of care and to lower the rates of adverse events leading to hospital visits after outpatient colonoscopy; this would encourage ASCs to achieve the outcome rates of the best performers.

We believe it is important to reduce adverse patient outcomes associated with preparation for colonoscopy, the procedure itself, and follow-up care. Therefore, we are proposing to include the ASC–12: Facility Seven-Day Risk-Standardized Hospital Visit Rate after Outpatient Colonoscopy measure, which is based on Medicare FFS claims, in the ASCQR Program for the CY 2017 payment determination and subsequent years. We expect the measure would promote improvement in patient care over time because transparency in publicly reporting measure scores would make patient unplanned hospital visits (emergency department visits, observation stays and inpatient admissions) following colonoscopies more visible to ASCs and patients and incentivize ASCs to incorporate quality improvement activities in order to reduce these visits. ASCs are often unaware of complications following colonoscopy for which patients visit the hospital.[23] This risk-standardized quality measure would address this information gap and promote quality improvement by providing feedback to facilities and physicians, as well as transparency for patients on the rates and variation across facilities in unplanned hospital visits after colonoscopy.

The outcome measured in the ASC–12 measure is all-cause, unplanned hospital visits (admissions, observation stays, and emergency department visits) within 7 days of an outpatient colonoscopy procedure. The measure score, also referred to as the facility-level risk-standardized hospital visit rate, is derived from the calculation of the ratio of the numerator to the denominator multiplied by the crude rate. The numerator is the number of predicted (meaning adjusted actual) hospital visits, which is the number of unplanned hospital visits within seven days of colonoscopy that the facility is predicted to have based on its case-mix. The denominator is the number of expected hospital visits, which is the number of unplanned hospital visits the facility is expected to have based on the nation's performance with the facility's case-mix. The crude rate is the national unadjusted number of patients who had a hospital visit post-colonoscopy among all patients who had a colonoscopy.

Based on discussions with clinical and technical panel experts, the measure excludes colonoscopies for patients undergoing concomitant high-risk upper GI endoscopy because these patients are at a higher risk for hospital visits than patients undergoing a typical colonoscopy, and patients with a history of inflammatory bowel disease (IBD) or diverticulitis in the year preceding the colonoscopy because we likely could not fully characterize and adjust for their pre-procedure risk of needing a post-procedure hospital visit or identify whether these admissions are planned or unplanned. The measure also excludes procedures for patients who lack continuous enrollment in Medicare FFS Parts A and B in the first month after the procedure to ensure all patients have complete data available for outcome assessment. The statistical risk adjustment model includes 15 clinically relevant risk-adjustment variables that are strongly associated with risk of hospital visits within seven days following a colonoscopy. Additional methodology details, and information obtained from public comment for measure development are available at: *http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/HospitalQualityInits/Measure-Methodology.html*.

Section 1890A of the Act requires the Secretary to establish a pre-rulemaking process with respect to the selection of certain categories of quality and efficiency measures. Under section 1890A(a)(2) of the Act, the Secretary must make available to the public by December 1st of each year a list of quality and efficiency measures that the Secretary is considering for the Medicare program. The measure that we are proposing was reviewed by the MAP and was included on a publicly available document entitled ''MAP Pre-Rulemaking Report: 2014 Recommendations on Measures for More than 20 Federal Programs'' (formerly referred to as the ''List of Measures Under Consideration'') on the NQF Web site at: *http://www.qualityforum.org/Publications/2014/01/MAP_Pre-Rulemaking_Report__2014_Recommendations_on_Measures_for_More_than_20_Federal_Programs.aspx* (''MAP Report''). (We note that at the time the measure was listed on the ''MAP Pre-Rulemaking Report: 2014 Recommendations on Measures for More than 20 Federal Programs'' it was named, ''High-Acuity Care Visits after Outpatient Colonoscopy Procedure.'') The MAP conditionally supported this measure for the ASCQR Program.

The MAP Report stated that the measure ''[s]hould be submitted for and receive NQF endorsement; Measure is promising but needs further development,'' (p. 187, MAP Report). Further, the MAP Report stated that the measure ''would provide valuable outcome information to inform consumer decision and drive quality improvement'' and that the ''NQF endorsement process would resolve questions about the reliability and validity of the measure.'' The MAP also stated that NQF endorsement would resolve questions about ''the feasibility of the algorithm for attributing claims data in light of possible effects of the Medicare three-day payment window'' (p. 187, MAP Report). However, this concern with Part A hospital payments relates to the Hospital OQR Program and not the ASCQR Program. As required under section 1890A(a)(4) of the Act, we considered the input and recommendations provided by the MAP in selecting measures to propose for the ASCQR Program.

We believe we have addressed the concerns raised by the MAP to the extent possible. The measure was submitted to NQF for endorsement on February 21, 2014. The measure is well-defined and precisely specified for consistent implementation within and between organizations that will allow for comparability. Reliability testing demonstrated the measure data elements produced were repeatable; that is, the same results were produced a high proportion of the time when assessed in the same population in the same time. Validity testing demonstrated that the measure data elements produce measure scores that correctly reflect the quality of care provided and that adequately identify differences in quality.

Currently, there are no publicly available quality of care reports for ASCs that conduct outpatient colonoscopies. Thus, adoption of this measure provides an opportunity to enhance the information available to patients choosing among ASCs who offer this elective procedure. We believe this measure would reduce adverse patient outcomes associated with preparation for colonoscopy, the procedure itself, and follow-up care by capturing and making more visible to ASCs and patients all unplanned hospital visits following the procedure.

[23] Leffler DA, Kheraj R, Garud S, et al. The incidence and cost of unexpected hospital use after scheduled outpatient endoscopy. *Arch Intern Med.* Oct 25 2010;170(19):1752–1757.

In addition, providing outcome rates to ASCs would make visible to clinicians meaningful quality differences and incentivize improvement.

Sections 1833(i)(7)(B) and 1833(t)(17)(C)(i) of the Act, when read together, require the Secretary, except as the Secretary may otherwise provide, to develop measures appropriate for the measurement of the quality of care furnished by ASCs, that reflect consensus among affected parties and, to the extent feasible and practicable, that include measures set forth by one or more national consensus building entities. As stated in the CY 2012 OPPS/ASC final rule with comment period (76 FR 74465 and 74505), we believe that consensus among affected parties can be reflected through means other than NQF endorsement, including consensus achieved during the measure development process, consensus shown through broad acceptance and use of measures, and consensus through public comment. We believe this proposed measure meets these statutory requirements. We believe that this measure is appropriate for the measurement of quality of care furnished by ASCs because this procedure is commonly performed in ASCs and, as discussed above, can signify important issues in the care being provided in ASCs. We also believe this measure reflects consensus among affected parties, because the MAP, which represents stakeholder groups, reviewed and conditionally supported the measure, and stated that it ''would provide valuable outcome information to inform consumer decision and drive quality improvement.'' Further, the measure was subject to public comment during the MAP and measure development processes, with some public commenters agreeing with the MAP's conclusions on the measure (p. 187, MAP Report, January 2014; *http://www.qualityforum.org/Publications/2014/01/MAP_Pre-Rulemaking_Report_2014_Recommendations_on_Measures_for_More_than_20_Federal_Programs.aspx*).

As discussed above, the statute also requires the Secretary, except as the Secretary may otherwise provide, to include measures set forth by one or more national consensus building entities to the extent feasible and practicable. This measure is not NQF-endorsed; however, as noted above, this measure is currently undergoing the NQF endorsement process. We note that section 1833(t)(17) of the Act does not require that each measure we adopt for the ASCQR Program be endorsed by a national consensus building entity, or by the NQF specifically. Further, under section 1833(i)(7)(B) of the Act, section 1833(t)(17)(C)(i) of the Act, which contains this requirement, applies to the ASCQR Program, except as the Secretary may otherwise provide. Under this provision, the Secretary has further authority to adopt non-endorsed measures.

In summary, we are proposing to adopt one new measure for the ASCQR Program for the CY 2017 payment determination and subsequent years.

ASC No.	NQF No.	Proposed ASCQR measure for the CY 2017 payment determination and subsequent years
ASC–12	Pending	Facility Seven-Day Risk-Standardized Hospital Visit Rate after Outpatient Colonoscopy.

If this proposal is finalized, the measure set for the ASCQR Program CY 2017 payment determination and subsequent years would be as listed below.

PROPOSED ASC PROGRAM MEASURE SET FOR THE CY 2017 PAYMENT DETERMINATION AND SUBSEQUENT YEARS

ASC No.	NQF No.	Measure name
ASC–1	0263	Patient Burn.
ASC–2	0266	Patient Fall.
ASC–3	0267	Wrong Site, Wrong Side, Wrong Patient, Wrong Procedure, Wrong Implant.
ASC–4	0265	Hospital Transfer/Admission.
ASC–5	0264	Prophylactic Intravenous (IV) Antibiotic Timing.
ASC–6	N/A	Safe Surgery Checklist Use.
ASC–7	N/A	ASC Facility Volume Data on Selected ASC Surgical Procedures. Procedure categories and corresponding HCPCS codes are located at: *http://qualitynet.org/dcs/ContentServer?c=Page&pagename=QnetPublic%2FPage%2FQnetTier2&cid=1228772475754*.
ASC–8	0431	Influenza Vaccination Coverage among Healthcare Personnel.
ASC–9	0658	Endoscopy/Polyp Surveillance: Appropriate Follow-Up Interval for Normal Colonoscopy in Average Risk Patients.
ASC–10	0659	Endoscopy/Polyp Surveillance: Colonoscopy Interval for Patients with a History of Adenomatous Polyps-Avoidance of Inappropriate Use.
ASC–11.	1536	Cataracts: Improvement in Patient's Visual Function within 90 Days Following Cataract Surgery.*
ASC–12	Pending	Facility Seven-Day Risk-Standardized Hospital Visit Rate after Outpatient Colonoscopy.**

* We are proposing voluntary data collection for this previously adopted measure in section XIV.E.3.c. of this proposed rule.
** New measure proposed for CY 2017 payment determination and subsequent years.

We invite public comment on our proposal to include ASC–12: Facility Seven-Day Risk-Standardized Hospital Visit Rate after Outpatient Colonoscopy in the ASCQR Program beginning with the CY 2017 payment determination.

6. ASCQR Program Measures for Future Consideration

We refer readers to the CY 2013 OPPS/ASC final rule with comment period (77 FR 68493 through 68494), where we finalized our approach to future measure selection for the ASCQR Program. We seek to develop a comprehensive set of quality measures to be available for widespread use for informed ''patient decision-making and quality improvement in the ASC setting'' (77 FR 68496). We also seek to align these quality measures with the National Quality Strategy (NQS), the CMS Strategic Plan (which includes the CMS Quality Strategy), and our other quality reporting and value-based

purchasing programs, as appropriate. Accordingly, in considering future ASCQR Program measures, we are focusing on the following NQS and CMS Quality Strategy measure domains: Make care safer; strengthen person and family engagement; promote effective communication and coordination of care; promote effective prevention and treatment; work with communities to promote best practices of healthy living; and make care affordable.

7. Maintenance of Technical Specifications for Quality Measures

We refer readers to the CY 2012 OPPS/ASC final rule with comment period (76 FR 74513 through 74514), where we finalized our proposal to follow the same process for updating the ASCQR Program measures that we adopted for the Hospital OQR Program measures, including the subregulatory process for making updates to the adopted measures. In the CY 2013 OPPS/ASC final rule with comment period (77 FR 68496 through 68497) and the CY 2014 OPPS/ASC final rule with comment period (78 FR 75131), we provided additional clarification regarding the ASCQR Program policy in the context of the previously finalized Hospital OQR Program policy, including the processes for addressing nonsubstantive and substantive changes to adopted measures.

We maintain technical specifications for previously adopted ASCQR Program measures. These specifications are updated as we continue to develop the ASCQR Program. The manuals that contain specifications for the previously adopted measures can be found on the QualityNet Web site at: *https://www.qualitynet.org/dcs/ContentServer?c=Page&pagename=QnetPublic%2FPage%2FQnetTier2&cid=1228772475754*.

Many of the quality measures used in Medicare and Medicaid reporting programs are NQF-endorsed. We note that two of the measures previously adopted for the ASCQR Program are not NQF-endorsed, and NQF endorsement is not a program requirement. However, for those measures that are NQF-endorsed, the NQF requires measure stewards to submit annual measure maintenance updates and undergo maintenance of endorsement review every 3 years as part of its regular maintenance process for NQF-endorsed performance measures. In the measure maintenance process, the measure steward (owner/developer) is responsible for updating and maintaining the currency and relevance of the measure and will confirm existing or minor specification changes with the NQF on an annual basis. The NQF solicits information from measure stewards for annual reviews, and it reviews measures for continued endorsement in a specific 3-year cycle.

We note that the NQF's annual or triennial maintenance processes for endorsed measures may result in the NQF requiring updates to measures in order to maintain endorsement status. Other non-NQF measures may undergo maintenance changes as well. We believe that it is important to have in place the subregulatory process that we have adopted for the ASCQR Program to incorporate nonsubstantive updates into the measure specifications for measures so that the measure specifications remain current. We also recognize that some changes to measures are substantive in nature and might not be appropriate for adoption using a subregulatory process.

We are not proposing any changes to this policy.

8. Public Reporting of ASCQR Program Data

In the CY 2012 OPPS/ASC final rule with comment period (76 FR 74514 through 74515), we finalized a policy to make data that an ASC submitted for the ASCQR Program publicly available on a CMS Web site after providing an ASC an opportunity to review the data to be made public. These data will be displayed at the CCN level. We are not proposing any changes to this policy.

C. Payment Reduction for ASCs That Fail To Meet the ASCQR Program Requirements

1. Statutory Background

We refer readers to section XV.C.1. of the CY 2014 OPPS/ASC final rule with comment period (78 FR 75131 through 75132) for a detailed discussion of the statutory background regarding payment reductions for ASCs that fail to meet the ASCQR Program requirements.

2. Reduction to the ASC Payment Rates for ASCs That Fail To Meet the ASCQR Program Requirements for a Payment Determination Year

The national unadjusted payment rates for many services paid under the ASC payment system equal the product of the ASC conversion factor and the scaled relative payment weight for the APC to which the service is assigned. Currently, the ASC conversion factor is equal to the conversion factor calculated for the previous year updated by the MFP-adjusted CPI–U update factor, which is the adjustment set forth in section 1833(i)(2)(D)(v) of the Act. The MFP-adjusted CPI–U update factor is the Consumer Price Index for all urban consumers (CPI–U), which currently is the annual update for the ASC payment system, minus the MFP adjustment. As discussed in the CY 2011 MPFS final rule with comment period (75 FR 73397), if the CPI–U is a negative number, the CPI–U would be held to zero. Under the ASCQR Program, any annual update would be reduced by 2.0 percentage points for ASCs that fail to meet the reporting requirements of the ASCQR Program. This reduction would apply beginning with the CY 2014 payment rates. For a complete discussion of the calculation of the ASC conversion factor, we refer readers to section XII.G. of this proposed rule.

In the CY 2013 OPPS/ASC final rule with comment period (77 FR 68499 through 68500), in order to implement the requirement to reduce the annual update for ASCs that fail to meet the ASCQR Program requirements, we finalized our proposal that we would calculate two conversion factors: A full update conversion factor and an ASCQR Program reduced update conversion factor. We finalized our proposal to calculate the reduced national unadjusted payment rates using the ASCQR Program reduced update conversion factor that would apply to ASCs that fail to meet their quality reporting requirements for that calendar year payment determination. We finalized our proposal that application of the 2.0 percentage point reduction to the annual update may result in the update to the ASC payment system being less than zero prior to the application of the MFP adjustment.

The ASC conversion factor is used to calculate the ASC payment rate for services with the following payment indicators (listed in Addenda AA and BB to this proposed rule, which are available via the Internet on the CMS Web site): ''A2,'' ''G2,'' ''P2,'' ''R2,'' ''Z2,'' as well as the service portion of device-intensive procedures identified by ''J8.'' We finalized our proposal that payment for all services assigned the payment indicators listed above would be subject to the reduction of the national unadjusted payment rates for applicable ASCs using the ASCQR Program reduced update conversion factor.

The conversion factor is not used to calculate the ASC payment rates for separately payable services that are assigned status indicators other than payment indicators ''A2,'' ''G2,'' ''J8,'' ''P2,'' ''R2,'' and ''Z2.'' These services include separately payable drugs and biologicals, pass-through devices that are contractor-priced, brachytherapy sources that are paid based on the OPPS

payment rates, and certain office-based procedures and radiology services where payment is based on the MPFS PE RVU amount and a few other specific services that receive cost-based payment. As a result, we also finalized our proposal that the ASC payment rates for these services would not be reduced for failure to meet the ASCQR Program requirements because the payment rates for these services are not calculated using the ASC conversion factor and, therefore, not affected by reductions to the annual update.

Office-based surgical procedures (performed more than 50 percent of the time in physicians' offices) and separately paid radiology services (excluding covered ancillary radiology services involving certain nuclear medicine procedures or involving the use of contrast agents, as discussed in section XII.C.1.b. of this proposed rule) are paid at the lesser of the MPFS nonfacility PE RVU-based amounts and the standard ASC ratesetting methodology. We finalized our proposal that the standard ASC ratesetting methodology for this comparison would use the ASC conversion factor that has been calculated using the full ASC update adjusted for productivity. This is necessary so that the resulting ASC payment indicator, based on the comparison, assigned to an office-based or radiology procedure is consistent for each HCPCS code regardless of whether payment is based on the full update conversion factor or the reduced update conversion factor.

For ASCs that receive the reduced ASC payment for failure to meet the ASCQR Program requirements, we believe that it is both equitable and appropriate that a reduction in the payment for a service should result in proportionately reduced copayment liability for beneficiaries. Therefore, in the CY 2013 OPPS/ASC final rule with comment period (77 FR 68500), we finalized our proposal that the Medicare beneficiary's national unadjusted copayment for a service to which a reduced national unadjusted payment rate applies would be based on the reduced national unadjusted payment rate.

In that final rule with comment period, we finalized our proposal that all other applicable adjustments to the ASC national unadjusted payment rates would apply in those cases when the annual update is reduced for ASCs that fail to meet the requirements of the ASCQR Program (77 FR 68500). For example, the following standard adjustments would apply to the reduced national unadjusted payment rates: The wage index adjustment, the multiple procedure adjustment, the interrupted procedure adjustment, and the adjustment for devices furnished with full or partial credit or without cost. We believe that these adjustments continue to be equally applicable to payment for ASCs that do not meet the ASCQR Program requirements.

In the CY 2014 OPPS/ASC final rule with comment period (78 FR 75132), we did not make any changes to these policies. We are not proposing any changes to these policies.

D. Administrative Requirements

1. Requirements Regarding QualityNet Account and Security Administrator

We refer readers to the CY 2014 OPPS/ASC final rule with comment period (78 FR 75132 through 75133) for a detailed discussion of the QualityNet security administrator requirements, including setting up a QualityNet account, and the associated timelines, for the CY 2014 payment determination and subsequent years. We are not proposing any changes to these policies.

2. Requirements Regarding Participation Status

We refer readers to the CY 2014 OPPS/ASC final rule with comment period (78 FR 75133 through 78 FR 75135) for a complete discussion of the participation status requirements for the CY 2014 payment determination and subsequent years. We are not proposing any changes to these policies.

E. Form, Manner, and Timing of Data Submitted for the ASCQR Program

1. Requirements Regarding Data Processing and Collection Periods for Claims-Based Measures Using Quality Data Codes (QDCs)

We refer readers to the CY 2014 OPPS/ASC final rule with comment period (78 FR 75135) for a complete summary of the data processing and collection periods for the claims-based measures using QDCs for the CY 2014 payment determination and subsequent years. We are not proposing any changes to these policies.

2. Minimum Threshold, Minimum Case Volume, and Data Completeness for Claims-Based Measures Using QDCs

We refer readers to the CY 2014 OPPS/ASC final rule with comment period (78 FR 75135 through 75137) for a complete discussion of the minimum thresholds, minimum case volume, and data completeness for successful reporting for the CY 2014 payment determination and subsequent years. We are not proposing any changes to these policies.

3. Requirements for Data Submitted Via a CMS Online Data Submission Tool

a. Data Collection for ASC–6 and ASC–7

We refer readers to the CY 2012 OPPS/ASC final rule with comment period (76 FR 74509) and the CY 2014 OPPS/ASC final rule with comment period (78 FR 75137 through 75138) for a complete discussion of the requirements for data collection and submission for the ASC–6: Safe Surgery Checklist Use and ASC–7: ASC Facility Volume Data on Selected ASC Surgical Procedures measures for the CY 2015 payment determination and subsequent years. We are not proposing any changes to these policies.

b. Delayed Data Collection for ASC–9 and ASC–10

In the CY 2014 OPPS/ASC final rule with comment period (78 FR 75124 through 75130), we adopted ASC–9: Endoscopy/Polyp Surveillance: Appropriate Follow-up Interval for Normal Colonoscopy in Average Risk Patients (NQF #0658) and ASC–10: Endoscopy/Polyp Surveillance: Colonoscopy Interval for Patients with a History of Adenomatous Polyps—Avoidance of Inappropriate Use (NQF #0659), two additional chart-abstracted measures, and we finalized a policy that aggregate data (numerators, denominators, and exclusions) on all ASC patients would be collected via an online Web-based tool that would be made available to ASCs via the QualityNet Web site.

We finalized that the data collection time period would be the calendar year (January 1 to December 31) 2 years prior to the affected payment determination year, and the data collected would be submitted during the time period of January 1 to August 15 in the year prior to the affected payment determination year. Thus, for the CY 2016 payment determination, ASCs would be required to submit aggregate-level encounter data from January 1, 2014 to December 31, 2014 using our Web-based tool during the data submission window of January 1, 2015 to August 15, 2015 (78 FR 75138 through 75139).

On December 31, 2013, we issued guidance stating that we would delay the implementation of ASC–9 and ASC–10 for 3 months for the CY 2016 payment determination, with a resulting encounter period of April 1, 2014 to December 31, 2014 instead of January 1, 2014 to December 31, 2014 (*https://www.qualitynet.org/dcs/ContentServer?c=Page&pagename=QnetPublic%2FPage%2FQnetTier3&cid=1228772879036*). The data

submission timeframe and the encounter period for subsequent years remain as previously finalized (78 FR 75139).

c. Delayed Data Collection and Proposed Exclusion for ASC–11 for the CY 2016 Payment Determination and Proposed Voluntary Data Collection for ASC–11 for CY 2017 and Subsequent Payment Determination Years

We refer readers to the CY 2014 OPPS/ASC final rule with comment period, where we adopted ASC–11: Cataracts—Improvement in Patient's Visual Function within 90 Days Following Cataract Surgery (NQF #1536) beginning with the CY 2016 payment determination (78 FR 75129), and finalized the data collection and data submission timelines (78 FR 75138 to 75139). This measure assesses the rate of patients 18 years and older (with a diagnosis of uncomplicated cataract) in a sample who had improvement in visual function achieved within 90 days following cataract surgery based on completing both a pre-operative and post-operative visual function survey.

Since our adoption of this measure, we have come to believe that it may be operationally difficult at this time for ASCs to collect and report this measure. Specifically, we are concerned that the results of the survey used to assess the pre-operative and post-operative visual function of the patient may not be shared across clinicians and facilities, making it difficult for ASCs to have knowledge of the visual function of the patient before and after surgery. We are also concerned about the surveys used to assess visual function; the measure allows for the use of any validated survey and results may be inconsistent should clinicians use different surveys.

Therefore, on December 31, 2013, we issued guidance stating that we would delay data collection for ASC–11 for 3 months (data collection would commence with April 1, 2014 encounters) for the CY 2016 payment determination (*https://www.qualitynet.org/dcs/ContentServer?c=Page&pagename=QnetPublic%2FPage%2FQnetTier3&cid=1228772879036*). We issued additional guidance on April 2, 2014, stating that we would further delay the implementation of ASC–11 for an additional 9 months, until January 1, 2015 for the CY 2016 payment determination, due to continued concerns (*https://www.qualitynet.org/dcs/ContentServer?c=Page&pagename=QnetPublic%2FPage%2FQnetTier3&cid=1228773811586*). Therefore, we are proposing to exclude ASC–11 Cataracts: Improvement in Patient's Visual Function within 90 Days Following Cataract Surgery (NQF #1536) from the CY 2016 payment determination measure set. We would not subject ASCs to a payment reduction with respect to this measure for the CY 2016 payment determination.

We continue to believe that this measure addresses an area of care that is not adequately addressed in our current measure set and the measure serves to drive coordination of care (78 FR 75129). Further, we believe ASCs should be a partner in care with physicians and other clinicians using their facility and that this measure provides an opportunity to do so. Therefore, we are continuing to include this measure in the ASCQR Program measure set for the CY 2017 payment determination and subsequent years. However, we understand the concerns and, therefore, are proposing that data collection and submission be voluntary for this measure for the CY 2017 payment determination and subsequent years. ASCs would not be subject to a payment reduction for failing to report this measure during the period of voluntary reporting. For ASCs that choose to submit data, we continue to request that they submit such data using the means and timelines finalized in the CY 2014 OPPS/ASC final rule with comment period (78 FR 75138 to 75139). Data submitted voluntarily will be publicly reported as discussed in the CY 2014 OPPS/ASC proposed rule (78 FR 75138 to 75139).

We invite public comment on this proposal.

4. Claims-Based Measure Data Requirements for the Proposed New Measure for the CY 2017 Payment Determination and Subsequent Years

We are proposing to adopt the ASC–12: Facility Seven-Day Risk-Standardized Hospital Visit Rate after Outpatient Colonoscopy measure, which is a claims-based measure that does not require any additional data submission apart from standard Medicare FFS claims. We are proposing that, for this measure, which uses ASC Medicare claims data as specified in the ASCQR Specifications Manual and does not require any additional data submission such as QDCs, we would use paid Medicare FFS claims from a 12-month period from July 1 of the year 3 years before the payment determination year to June 30 of the following year. Thus, for the CY 2017 payment determination for this measure, claims from July 1, 2014 to June 30, 2015 would be used. We note that we are proposing to adopt this measure under the Hospital OQR Program, as described in section XIII.H.2.c. of this proposed rule. This ASCQR Program time period provides for the timeliest data possible while aligning the proposed data submission requirements with our Hospital OQR Program proposal, which would use the claims-based measure data submission requirements for the CY 2015 payment determination and subsequent years that we adopted in the CY 2014 OPPS/ASC final rule with comment period (78 FR 75111 through 75112).

We invite public comment on this proposal.

5. Data Submission Requirements for ASC–8 (Influenza Vaccination Coverage Among Healthcare Personnel) Reported via the National Healthcare Safety Network (NHSN) for the CY 2016 Payment Determination and Subsequent Years

a. Previously Adopted Requirements for the CY 2016 Payment Determination

We refer readers to the CY 2012 OPPS/ASC final rule with comment period (76 FR 74510) and the CY 2014 OPPS/ASC final rule with comment period (78 FR 75139 through 75140) for a complete discussion of the ASC–8 measure (Influenza Vaccination Coverage among Healthcare Personnel) (NQF #0431), including the data collection timeframe and the data reporting standard procedures for the CY 2016 payment determination.

In the CY 2014 OPPS/ASC final rule with comment period (78 FR 75139 through 75140), we finalized our proposal to use the data submission and reporting standard procedures that have been set forth by the CDC for NHSN participation in general and for submission of this measure to NHSN. We refer readers to the CDC's NHSN Web site for detailed procedures for enrollment (*http://www.cdc.gov/nhsn/ambulatory-surgery/enroll.html*), set-up (*http://www.cdc.gov/nhsn/ambulatory-surgery/setup.html*), and reporting (*https://sams.cdc.gov*) (user authorization through Secure Access Management Services (SAMS) is required for access to NHSN). We note that the reporting link has been updated in this proposed rule.

b. Proposed Data Collection Timeframes for the CY 2017 Payment Determination and Subsequent Years and Proposed Submission Deadlines for the CY 2016 Payment Determination and Subsequent Years

In the CY 2012 OPPS/ASC final rule with comment period (76 FR 74510), we finalized that data collection for the CY 2016 payment determination would be

from October 1, 2014 through March 31, 2015 (the 2014–2015 influenza season data). We are proposing that for the CY 2017 payment determination and subsequent years, ASCs would collect data from October 1 of the year 2 years prior to the payment determination year to March 31 of the year prior to the payment determination year. For example, the CY 2017 payment determination would require data collection from October 1, 2015 to March 31, 2016.

In the CY 2014 OPPS/ASC proposed rule, we proposed that ASCs would have until August 15, 2015 to submit their 2014–2015 influenza season data (October 1, 2014 through March 31, 2015) to NHSN. We stated that this date is the latest date possible for data entry that would provide sufficient time for CMS to make the CY 2016 payment determinations and is aligned with the data entry deadline for the measures entered via the CMS online tool (78 FR 43670). While some commenters supported this proposal, others expressed disagreement with this proposal because it differed from the May 15 deadline proposed for the Hospital IQR Program (78 FR 27700, 50822) and the Hospital OQR Program (78 FR 43656, 75116 through 75117) and they believed this difference in deadlines could cause confusion, thereby disadvantaging ASCs (78 FR 75140). Other commenters believed that providing ASCs with a later deadline would provide an unfair advantage because ASCs would have longer to submit their data. Due to these concerns, we did not finalize the August 15, 2015 deadline. We stated that we intended to propose a submission deadline for this measure for the CY 2016 payment determination in this proposed rule.

In this proposed rule, we are proposing that May 15 of the year in which the influenza season ends be the submission deadline for each payment determination year, similar to the Hospital IQR and OQR Programs. For example, for the CY 2016 payment determination, ASCs would be required to submit their 2014–2015 influenza season data (October 1, 2014 through March 31, 2015) by May 15, 2015. Similarly, for the CY 2017 payment determination, ASCs would be required to submit their 2015–2016 influenza season data (October 1, 2015 through March 31, 2016) by May 15, 2016. We believe a May 15 reporting deadline would enable ASCs to use data summarizing the results of their previous influenza vaccination campaign to set targets and make plans for their influenza vaccination campaigns prior to the next influenza season. This deadline also would enable us to post and the public to review the summary data before the start of the next influenza season. Finally, this date aligns to the May 15 deadline used in the Hospital IQR and OQR Programs for this measure.

We invite public comment on this proposal.

6. ASCQR Program Validation of Claims-Based and CMS Web-Based Measures

We refer readers to the FY 2013 IPPS/LTCH PPS final rule (77 FR 53641 through 53642) for a complete discussion of our policy not to require validation of claims-based measures (beyond the usual claims validation activities conducted by our administrative contractors) or Web-based measures for the ASCQR Program, which is in alignment with our requirements for the Hospital IQR and OQR Programs. We are not proposing any changes to this policy.

7. Extraordinary Circumstances Extensions or Exemptions for the CY 2017 Payment Determination and Subsequent Years

We refer readers to the FY 2013 IPPS/LTCH PPS final rule (77 FR 53642 through 53643) and the CY 2014 OPPS/ASC final rule with comment period (78 FR 75140 through 75141) for a complete discussion of our extraordinary circumstances extension or waiver process under the ASCQR Program. We are not proposing any substantive changes to these policies or the processes. However, in the future, we will refer to the process as the ''Extraordinary Circumstances Extensions or Exemptions'' process rather than the ''Extraordinary Circumstances Extensions or Waivers'' process.

We also are in the process of revising the Extraordinary Circumstances/Disaster Extension or Waiver Request form (CMS–10432), approved under OMB control number 0938–1171. We are updating the instructions and the form so that a hospital or facility may apply for an extension for all applicable quality reporting programs at the same time. In addition, the instructions for the form will be updated.

8. ASCQR Program Reconsideration Procedures for the CY 2017 Payment Determination and Subsequent Years

We refer readers to the FY 2013 IPPS/LTCH PPS final rule (77 FR 53643 through 53644) and the CY 2014 OPPS/ASC final rule with comment period (78 FR 75141) for a complete discussion of our informal reconsideration process for the ASCQR Program for the CY 2014 payment determination and subsequent years. We are not proposing any changes to the informal reconsideration process.

XV. Proposed Changes to the Rural Provider and Hospital Ownership Exceptions to the Physician Self-Referral Law: Expansion Exception Process

A. Background

1. Statutory Basis

Section 1877 of the Act, also known as the ''physician self-referral law'' prohibits: (1) A physician from making referrals for certain designated health services payable by Medicare to an entity with which the physician (or an immediate family member) has a financial relationship (ownership or compensation), unless an exception applies; and (2) the entity from submitting claims to Medicare (or to another individual, entity, or third party payer) for those designated health services furnished as a result of a prohibited referral. The Act establishes a number of specific exceptions to the physician self-referral law and grants the Secretary the authority to create regulatory exceptions that pose no risk of program or patient abuse. Since the original enactment of the statute in 1989, we have published a series of final rules interpreting the statute and promulgating numerous exceptions.

Section 1877(d) of the Act sets forth exceptions related to ownership and investment interests held by a physician (or an immediate family member of a physician) in an entity that furnishes designated health services. Section 1877(d)(2) of the Act provides an exception for ownership and investment interests in rural providers. Under the provision of section 1877(d)(2) of the Act, in order for an ownership or investment interest to qualify for the exception, the designated health services must be furnished in a rural area (as defined in section 1886(d)(2) of the Act), and substantially all of the designated health services furnished by the entity must be furnished to individuals residing in a rural area. Section 1877(d)(3) of the Act provides the hospital ownership exception, often referred to as the ''whole hospital exception,'' for ownership and investment interests 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).

2. Affordable Care Act Amendments to the Rural Provider and Hospital Ownership Exceptions to the Physician Self-Referral Law

Section 6001(a) of the Affordable Care Act amended the rural provider and whole hospital exceptions to the physician self-referral law to impose additional restrictions on physician ownership and investment in rural providers and hospitals. Section 6001(a) defines a ''physician owner or investor'' as a physician, or immediate family member of a physician, who has a direct or indirect ownership or investment interest in a hospital. We refer to hospitals with direct or indirect physician owners or investors as ''physician-owned hospitals.''

Section 6001(a)(3) of the Affordable Care Act established new section 1877(i) of the Act, which imposes additional requirements for physician-owned hospitals to qualify for the rural provider or whole hospital exception. In addition to other requirements, section 1877(i)(1) of the Act prohibits a physician-owned hospital from expanding its facility capacity beyond the number of operating rooms, procedure rooms, and beds for which the hospital was licensed as of March 23, 2010, unless an exception is granted by the Secretary.

Section 1877(i)(3) of the Act requires the Secretary to establish and implement an exception process to the prohibition on expansion of facility capacity. We refer to this process as the ''expansion exception process.'' Section 1877(i)(3)(A)(i) of the Act provides that a hospital qualifying as an ''applicable hospital'' or a ''high Medicaid facility'' may apply for an expansion exception. Section 1877(i)(3)(E) of the Act sets forth the eligibility criteria for applicable hospitals, which include criteria concerning inpatient Medicaid admissions, bed capacity, and bed occupancy. Section 1877(i)(3)(F) of the Act sets forth the eligibility criteria for high Medicaid facilities, which include a criterion concerning inpatient Medicaid admissions.

In the CY 2011 OPPS/ASC final rule with comment period (75 FR 72240), we addressed many of the additional requirements that were established by section 6001(a) of the Affordable Care Act for the rural provider and whole hospital exceptions, including the prohibition on expansion of facility capacity. In that final rule with comment period, we finalized regulations at 42 CFR 411.362(b)(2) that prohibit a physician-owned hospital from increasing the number of operating rooms, procedure rooms, and beds beyond that for which the hospital was licensed on March 23, 2010 (or, in the case of a physician-owned hospital that did not have a provider agreement in effect as of that date, but did have a provider agreement in effect on December 31, 2010, the effective date of such agreement), if the hospital seeks to avail itself of the rural provider or whole hospital exception.

In the CY 2012 OPPS/ASC final rule with comment period (76 FR 74517), we promulgated regulations under 42 CFR 411.362(c) that govern the expansion exception process. Section 411.362(c)(2) sets forth the criteria for a physician-owned hospital to qualify for an expansion exception as an applicable hospital. Specifically, § 411.362(c)(2) states that: (1) The hospital's annual percent of total inpatient admissions under Medicaid must be equal to or greater than the average percent with respect to such admissions for all hospitals located in the county in which the hospital is located during the most recent fiscal year for which data are available as of the date that the hospital submits its exception request; (2) the hospital must be located in a State in which the average bed capacity in the State is less than the national average bed capacity during the most recent fiscal year for which data are available as of the date that the hospital submits its request; and (3) the hospital must have an average bed occupancy rate that is greater than the average bed occupancy rate in the State in which the hospital is located during the most recent fiscal year for which data are available as of the date that the hospital submits its request.

Section 411.362(c)(3) specifies the criteria for a physician-owned hospital seeking an exception under the expansion exception process on the basis that it is a high Medicaid facility, including the requirement that, with respect to each of the 3 most recent fiscal years for which data are available as of the date that the hospital submits its exception request, the hospital must have 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.

In the CY 2012 OPPS/ASC proposed rule (76 FR 42350 through 42352), we proposed that data from the CMS Healthcare Cost Report Information System (HCRIS) be used to determine whether a hospital satisfies the inpatient Medicaid admissions, bed capacity, and bed occupancy criteria for applicable hospitals and the inpatient Medicaid admissions criterion for high Medicaid facilities. We requested public comments concerning alternative data sources that could result in more accurate determinations as to whether a hospital satisfies the relevant criteria (76 FR 42350). The public comments that we received provided no persuasive support for a data source more accurate than the filed hospital cost report data reported to HCRIS and, therefore, we finalized the requirement to use filed hospital cost report data for purposes of facility capacity expansion exception requests in the CY 2012 OPPS/ASC final rule with comment period (76 FR 74518). We refer to the filed hospital cost report data that are required under our existing regulations as ''HCRIS data'' in this proposal.

As required by section 1877(i)(3)(A) of the Act, the regulations addressing the expansion exception process in the CY 2012 OPPS/ASC final rule with comment period were issued by January 1, 2012, and the process was implemented on February 1, 2012.

B. Limitations Identified by Stakeholders Regarding the Required Use of HCRIS Data

Following the implementation of the expansion exception process, industry stakeholders informed us of what they believed to be certain limitations regarding the required use of HCRIS data, which we describe in the following two sections.

1. Medicaid Managed Care Data

Existing § 411.362(c)(2)(ii) provides that an applicable hospital must use filed cost report discharge data to estimate its annual percent of total inpatient admissions under Medicaid for the most recent fiscal year for which data are available. Existing § 411.362(c)(3)(ii) similarly provides that a high Medicaid facility must use filed cost report discharge data to estimate its annual percent of total inpatient admissions under Medicaid and such percent for every other hospital located in its county for each of the 3 most recent fiscal years for which data are available.

Since the issuance and implementation of this rule, several industry stakeholders have informed us that a correctly completed hospital cost report does not include Medicaid managed care admissions or discharges and, therefore, Medicaid managed care admissions and discharges are not available in HCRIS. The industry stakeholders claimed that, because HCRIS data does not include Medicaid managed care admissions or discharges, they are unable to satisfy §§ 411.362(c)(2)(ii) and (c)(3)(ii) and,

thus, cannot qualify for an exception under the existing expansion exception process, despite claiming to have served a significant number of total Medicaid patients.

After being notified of this issue, we confirmed that hospitals cannot report Medicaid managed care admissions or discharges through their hospital cost reports and that this information is not available in HCRIS. In addition, we have concluded that the information collected currently through HCRIS cannot be used to estimate Medicaid managed care admissions or discharges for purposes of estimating inpatient Medicaid admissions under §§ 411.362(c)(2)(ii) and (c)(3)(ii).

We believe that some physician-owned hospitals that serve a significant number of Medicaid managed care patients and are interested in the expansion exception process may fail to qualify for an exception based on the exclusion of Medicaid managed care data. Accordingly, as detailed in section XV.C. of this proposed rule, we are proposing to revise the expansion exception process to permit physician-owned hospitals to use filed hospital cost report data, data from internal data sources, or data from external data sources to estimate the required percentages of inpatient admissions under Medicaid. (We refer in this proposal to the non-HCRIS internal data sources and external data sources that we are proposing to permit for purposes of the expansion exception process as ''supplemental data sources.'') We believe that our proposal to permit the use of supplemental data sources is necessary to effectuate section 6001(a) of the Affordable Care Act for those physician-owned hospitals that are unable to satisfy the criteria for an expansion exception using only HCRIS data.

2. Hospitals That Lack Filed Cost Reports for the Relevant Fiscal Years

As stated above, existing § 411.362(c)(3)(ii) provides that a high Medicaid facility must use filed cost report discharge data to estimate its annual percent of total inpatient admissions under Medicaid and such percent for every other hospital located in its county for each of the 3 most recent fiscal years for which data are available. One industry stakeholder, seeking to avail itself of the whole hospital exception, stated that it would like to expand its facility capacity by qualifying as a high Medicaid facility. The stakeholder claimed that, although it treated Medicaid patients during the relevant 3-year period, it does not have filed cost report discharge data available for each of the relevant fiscal years because it was not a Medicare participating provider during the entire period. The industry stakeholder further claimed that it is unable to request an exception as a high Medicaid facility until it has 3 years of the required filed cost report data.

The stakeholder is correct that a hospital that has not participated as a provider in the Medicare program for all of the 3 most recent fiscal years for which data are available would be precluded from seeking a facility expansion exception. It would be similarly prohibitive if the hospitals in the county in which the requesting hospital is located were not Medicare participating providers or were not participating in the Medicare program for the entire period for which comparisons are required under the statute and our regulations. We find this to be another persuasive reason to permit the use of supplemental data sources and, as such, we are proposing to permit the use of other data sources, as further detailed in section XV.C. of this proposed rule, for physician-owned hospitals to estimate the percentages of inpatient admissions under Medicaid for § 411.362(c)(3)(ii). We believe that our proposal will enable physician-owned hospitals to perform the comparison set forth in § 411.362(c)(3)(ii), even if the requesting hospital and/or another hospital located in its county lacks filed hospital cost report data for some or all of the relevant fiscal years. We note that the proposal would apply regardless of the reason that the requesting hospital and/or another hospital in its county lacks filed hospital cost report data.

The industry stakeholder that informed us of this issue would like to qualify as a high Medicaid facility; therefore, the stakeholder's comments addressed only the inpatient Medicaid admissions criterion for high Medicaid facilities. However, as stated above, hospitals seeking to qualify as an applicable hospital also use filed hospital cost report data for the inpatient Medicaid admissions, bed capacity, and bed occupancy criteria set forth in § 411.362(c)(2). We recognize that these hospitals may also lack filed hospital cost report data or may be subject to comparisons against other hospitals that lack filed cost report data for the relevant fiscal year. Therefore, as further detailed in section XV.C. of this proposed rule, we are proposing to permit the use of supplemental data sources for the inpatient Medicaid admissions, bed capacity, and bed occupancy criteria for applicable hospitals.

C. Proposed Changes To Permit Supplemental Data Sources in the Expansion Exception Process

Given the limitations regarding the required use of HCRIS data described in sections XV.B.1. and XV.B.2. of this proposed rule, we are proposing to revise our regulations at §§ 411.362(c)(2)(ii), (c)(2)(iv), (c)(2)(v), and (c)(3)(ii) to permit physician-owned hospitals to use data from certain internal data sources or external data sources, in addition to HCRIS data, in order to estimate the percentages of inpatient Medicaid admissions, and to determine the bed capacities and the bed occupancy rates referenced in those sections. We are not prescribing that hospitals use a specific individual data source or combination of data sources.

We are proposing that, for purposes of the expansion exception process, internal data sources are sources generated, maintained, or under the control of the Department. The following list provides examples of internal data sources that we are proposing physician-owned hospitals may use in the expansion exception process:

- Healthcare Cost and Utilization Project (HCUP)—HCUP is a family of health care databases and related software tools and products developed through a Federal-State-industry partnership and sponsored by the Agency for Healthcare Research and Quality (AHRQ). HCUP databases bring together the data collection efforts of State data organizations, hospital associations, private data organizations, and the Federal government to create a national information resource of encounter-level health care data (*HCUP Partners*).
- Medicaid Statistical Information System (MSIS)—States report Medicaid data through MSIS. Through this system, States submit raw eligibility and claims data to CMS, which CMS uses to produce Medicaid program characteristics and utilization information.
- Medicaid Analytic Extract (MAX)—MAX data are person-level data files on Medicaid eligibility, service utilization, and payment information for all individuals, whether or not they used any Medicaid services in a given calendar year. The purpose of MAX is to produce data to support research and policy analysis on Medicaid populations.

We also are seeking public comments that recommend other possible internal data sources.

We are proposing that, for purposes of the expansion exception process,

external data sources are data sources generated, maintained, or under the control of a State Medicaid agency. We are seeking public comments that recommend other possible external data sources, including those of other State agencies or departments.

We are proposing to define the terms ''internal data source'' and ''external data source'' in § 411.351. We recognize the need for an accurate and consistent expansion exception process. Accordingly, we are proposing to define ''internal data source'' to include only non-HCRIS data sources that are reliable and transparent, and that maintain or generate data that are accurate, complete, and objectively verifiable for purposes of the expansion exception process. In addition, we are proposing to define ''external data source'' to include only data sources that are reliable and transparent, and that maintain or generate data that are accurate, complete, and objectively verifiable for purposes of the expansion exception process. Finally, we are proposing in § 411.351 that internal data sources and external data sources must maintain data that are readily available and accessible to the requesting hospital, comparison hospitals, and to CMS for purposes of the expansion exception process. We note that the expansion exception process includes both the physician-owned hospital's completion of its request and CMS' consideration of the physician-owned hospital's request.

We believe that the supplemental data sources should—

- Be transparent regarding what comprises the data, where the data originated, and the manner and method by which the data source received the data;
- Be maintained on a secure database that prevents distortion or corruption of data and that ensures the accuracy of the data;
- Contain sufficient information to enable accurate estimates of the percentages of inpatient Medicaid admissions, and accurate determinations of bed capacities and bed occupancy rates;
- Contain sufficient information to enable the comparisons required by §§ 411.362(c)(2)(ii), (c)(2)(iv), (c)(2)(v), and (c)(3)(ii) for the fiscal year(s) at issue; and
- Contain sufficiently clear and detailed data that will enable multiple users to produce consistent results and outcomes when using the same data set.

Under the existing expansion exception process, CMS uses HCRIS data to provide the average percent of total inpatient Medicaid admissions per county, the average bed capacity per State, the national average bed capacity, and the average bed occupancy rate per State on the CMS Web site at: *http://www.cms.gov/Medicare/Fraud-and-Abuse/PhysicianSelfReferral/Physician_Owned_Hospitals.html*. If we finalize our proposal to permit the use of supplemental data sources, we plan to continue to provide HCRIS-based information and issue guidance on the potential use of supplemental data sources on the CMS Web site.

We recognize that if a physician-owned hospital uses data from a supplemental data source, the hospitals may ultimately need to make estimates or determinations in addition to those referenced in our existing regulations. Accordingly, we are proposing to revise our regulations to allow for the additional estimates or determinations that may be necessary under our revised process. Specifically, we are proposing to permit a requesting hospital to use data from a supplemental data source to:

- Estimate its own annual percentage of inpatient Medicaid admissions (§ 411.362(c)(2)(ii)).
- Estimate the average percentage with respect to such admissions for all hospitals located in the county in which the hospital is located (§ 411.362(c)(2)(ii)).
- Determine the average bed capacity in the State in which the hospital is located (§ 411.362(c)(2)(iv)).
- Determine the national average bed capacity (§ 411.362(c)(2)(iv)).
- Determine its own average bed occupancy rate (§ 411.362(c)(2)(v)).
- Determine the average bed occupancy rate for the State in which the hospital is located (§ 411.362(c)(2)(v)).
- Estimate its annual percentage of total inpatient admissions under Medicaid for each of the 3 most recent fiscal years for which data are available (§ 411.362(c)(3)(ii)).
- Estimate the annual percentages of total inpatient admissions under Medicaid for every other hospital located in the county in which the hospital is located for each of the 3 most recent fiscal years for which data are available (§ 411.362(c)(3)(ii)).

We note that section 1877(i)(3)(F) of the Act requires that a high Medicaid facility use data from the 3 most recent fiscal years for which data are available. In the CY 2012 OPPS/ASC final rule with comment period (76 FR 74518), we stated that we consider the most recent fiscal year for which data are available to be the most recent year for which HCRIS contains data from at least 6,100 hospitals. We currently apply this standard to expansion exception requests for both applicable hospitals and high Medicaid facilities. We are proposing to revise our standard so that the most recent fiscal year for which data are available would be the year for which the data source(s) used in an expansion exception request contain sufficient data to perform the comparisons required under §§ 411.362(c)(2)(ii), (c)(2)(iv), (c)(2)(v), and (c)(3)(ii). Specifically, we are proposing that data sources, either alone or in combination with other data sources, would be considered to contain ''sufficient data'' if they contain all data from the requesting hospital and each hospital to which the requesting hospital must compare itself that are necessary to perform the estimates required in the expansion exception process. In addition, with respect to a hospital seeking an expansion exception as an applicable hospital, we are proposing that, in order to be considered to contain ''sufficient data,'' the data sources, either alone or in combination with other data sources, must contain the data necessary to determine the State and national average bed capacity and the average bed occupancy rate in the State in which the requesting hospital is located for purposes of the expansion exception process.

Modifying our current interpretation of ''the most recent fiscal year for which data are available'' would allow physician-owned hospitals in counties or States where all data necessary to perform the required estimates and determinations have been filed or otherwise included in the permissible data source(s) to proceed with an expansion exception request, even if hospitals unrelated to the request have not filed or otherwise submitted data to the source(s) being used in the hospital's request. We also are proposing to require that data from the same fiscal year be used for the applicable hospital eligibility criteria at §§ 411.362(c)(2)(ii), (c)(2)(iv), (c)(2)(v), even if the hospital uses multiple data sources for those criteria. We believe that requiring the use of data from the same fiscal year will ensure consistency and equitability in the expansion exception process. We are seeking public comments on our proposal to revise the standard that determines the most recent fiscal year(s) for which data are available, as well as other ways to define ''sufficient data'' for purposes of the expansion exception process.

In addition, we are proposing to require that the requesting hospital provide actual notification directly to hospitals whose data are part of the comparisons set forth under

§§ 411.362(c)(2)(ii) and (c)(3)(ii) of the regulations. Under proposed § 411.362(c)(5), the notification must be in writing, in either electronic or hard copy form, and must be provided at the same time that the hospital discloses on any public Web site for the hospital that it is requesting an exception. This additional safeguard would ensure that comparison hospitals are aware of the opportunity to confirm or dispute the accuracy or reliability of the data in the physician-owned hospital's request.

Finally, our existing regulations at § 411.362(c)(5) set forth the process for community input and the timing of a complete expansion exception request. These regulations provide for a 30-day comment period following publication in the **Federal Register** of notice of the physician-owned hospital's expansion exception request and a 30-day rebuttal period for the requesting hospital to respond, if it chooses, to any written comments that CMS receives from the community. Currently, an expansion exception request is considered complete at the end of the 30-day comment period if CMS does not receive written comments from the community. If CMS receives written comments from the community, the request is considered complete at the end of the 30-day rebuttal period, regardless of whether the requesting hospital submits a rebuttal statement. We believe that permitting the use of data from an internal data source or an external data source would likely require additional time for our review of an expansion exception request, including any comments submitted with respect to the request. For example, CMS may need to obtain the data from the original source, confirm that the data presented in the request are an accurate representation of the original source data, and objectively verify the estimates and determinations presented in the request. Therefore, we are proposing to revise our regulations at § 411.362(c)(5) to extend the date by which certain expansion exception requests will be deemed complete. Specifically, we are proposing to revise § 411.362(c)(5) to provide that, where the request, any written comments, and any rebuttal statement include only HCRIS data, an expansion exception request will be deemed complete no later than: (1) The end of the 30-day comment period if no written comments from the community are received; and (2) the end of the 30-day rebuttal period if written comments from the community are received, regardless of whether the physician-owned hospital submitting the request submits a rebuttal statement. We also are proposing that, where the request, any written comments, or a rebuttal statement includes data from a supplemental data source, an expansion exception request will be deemed complete no later than: (1) 180 days after the end of the 30-day comment period if no written comments from the community are received; and (2) 180 days after the end of the 30-day rebuttal period if written comments from the community are received, regardless of whether the physician-owned hospital submitting the request submits a rebuttal statement.

We note that additional revisions may be necessary to conform our regulations at § 411.362(c) if we finalize our proposal to permit the use of supplemental data sources.

D. Additional Considerations

As stated above, we recognize the need for an accurate and consistent expansion exception process. We are aware that data sources have unique characteristics due to their inputs, collection methods, compilation, and other factors, and will take this into consideration if we finalize our proposal to permit the use of supplemental data sources. In an effort to implement an accurate and consistent expansion exception process, we are seeking public comments on the utility, appropriateness, and limitations of our proposal to permit the use of supplemental data sources. Specifically, we are seeking public comments that:

- Address whether permitting the use of supplemental internal or external data sources would significantly affect the outcomes for any of the estimates or determinations required in our regulations.
- Address whether permitting the use of supplemental data sources would materially affect a physician-owned hospital's ability to request an exception or CMS' determination on an exception request.
- Describe the length of time that would be necessary to obtain or generate the required data from a specific data source.
- Address whether and when the data will be available and accessible per fiscal year.
- Address whether the data will be available and accessible in a format that enables the requesting hospital to perform the necessary comparisons.
- Describe how supplemental data sources could or should be prioritized, including, but not limited to, rankings related to accuracy or reliability.
- Describe how data from a particular data source could be used in the expansion exception process. We encourage commenters to specify whether a particular data source already maintains the percentages or rates required, or whether calculations will be necessary to generate the required percentages or rates. If calculations will be necessary, we are requesting that commenters describe the calculations.
- Describe the cost to industry stakeholders, State governments, and the Federal government for obtaining or generating data from any potential data sources. We consider cost to include both resources (for example, human capital and information technology) and actual financial burden (for example, fees to use or purchase the data). We also seek public comments on whether any additional burdens would affect the quality of care for beneficiaries as a result of additional costs borne by a requesting hospital.

XVI. Proposed Revision of the Requirements for Physician Certification of Hospital Inpatient Services Other Than Psychiatric Inpatient Services

In the FY 2014 IPPS/LTCH PPS proposed rule (78 FR 27644 through 27650), we discussed the statutory requirement for certification of hospital inpatient services for payment under Medicare Part A. The certification requirement for inpatient services other than psychiatric inpatient services is found in section 1814(a)(3) of the Act, which provides that Medicare Part A payment will only be made for such services ''which are furnished over a period of time, [if] a physician certifies that such services are required to be given on an inpatient basis.''

In commenting on our FY 2014 proposal, some commenters argued that the statutory reference to services furnished ''over a period of time'' and the then-existing regulation's lack of any specific deadline for physician certifications in nonoutlier cases indicate that no certification is required for short-stay cases. In support of their argument, the commenters cited the legislative history of section 1814(a)(3) of the Act, which these commenters interpreted as indicating that the certification requirements should apply only to certain long-term stays.

As we indicated in our response to these public comments in the FY 2014 IPPS/LTCH PPS final rule (78 FR 50939), we do not agree with the assertion that the only possible interpretation of the statute is that the requirement for physician certification only applies to long-stay cases. The statute does not define ''over a period of time,'' and further provides that ''such

certification shall be furnished only in such cases, and with such frequency, and accompanied by such supporting material . . . as may be provided by regulations.'' By this language, Congress explicitly delegated authority to the agency to elucidate this provision of the statute by regulation.

In our current regulations, we have interpreted the statute's requirement of a physician certification for inpatient hospital services furnished ''over a period of time'' to apply to all inpatient admissions. While this is not the only possible interpretation of the statute, we believe that it is a permissible interpretation.

We continue to believe that the requirement of an order from a physician or other qualified practitioner in order to trigger an inpatient hospital admission as specified in 42 CFR 412.3 is necessary for all inpatient admissions. As described more fully in the FY 2014 IPPS/LTCH PPS final rule (78 FR 50938 through 50954), the requirement for a physician order for a hospital inpatient admission has long been clear in the Medicare hospital conditions of participation (CoPs), and we promulgated § 412.3 to make more explicit that admission pursuant to this order is the means whereby a beneficiary becomes a hospital inpatient and, therefore, is required for payment of hospital inpatient services under Medicare Part A. A beneficiary becomes a hospital inpatient when admitted as such after a physician (or other qualified practitioner as provided in the regulations) orders inpatient admission in accordance with the CoPs, and Medicare pays under Part A for such an admission if the order is documented in the medical record. The order must be supported by objective medical information for purposes of the Part A payment determinations. Thus, the physician order must be present in the medical record and be supported by the physician admission and progress notes in order for the hospital to be paid for hospital inpatient services.

As further noted in the FY 2014 IPPS/LTCH PPS final rule (78 FR 50938 through 50954), we believe the additional certification requirements now specified under 42 CFR 424.13(a)(2), (a)(3), and (a)(4) (that is, the reason for hospitalization, the estimated time the patient will need to remain in the hospital, and the plan of posthospital care, if applicable) generally can be satisfied by elements routinely found in a patient's medical record, such as progress notes.

However, as we look to achieve our policy goals with the minimum administrative requirements necessary, and after considering previous public comments and our experience with our existing regulations, we believe that, in the majority of cases, the additional benefits (for example, as a program safeguard) of formally requiring a physician certification may not outweigh the associated administrative requirements placed on hospitals. Therefore, while we continue to believe that the inpatient admission order is necessary for all inpatient admissions, we are proposing to require such orders as a condition of payment based upon our general rulemaking authority under section 1871 of the Act rather than as an element of the physician certification under section 1814(a)(3) of the Act. Section 1871 of the Act authorizes the Secretary ''to prescribe such regulations as may be necessary to carry out the administration of the insurance programs under [Title XVIII].'' A clear regulatory definition of when and how a beneficiary becomes an inpatient is necessary to carry out the administration of Medicare Part A. Section 1861(b) of the Act defines ''inpatient hospital services'' as certain items and services furnished to ''an inpatient of a hospital,'' but does not define ''an inpatient of a hospital.'' Accordingly, 42 CFR 412.3 provides the necessary definition for purposes of Medicare Part A payment by clarifying when ''an individual is considered an inpatient of a hospital, including a critical access hospital.'' We are proposing to remove paragraph (c) from § 412.3. As we are proposing to rely on a different statutory authority for such regulation, an admission order would no longer be a required component of physician certification of medical necessity.

As to the physician certification requirement, we maintain that our existing longstanding policy is based upon a permissible interpretation of section 1814(a)(3) of the Act pursuant to that provision's express delegation of authority to the agency to determine the circumstances under which such certification should be required. Nonetheless, after consideration of public feedback, our experience under the existing regulations, and our policy goals, we are proposing to change our interpretation of section 1814(a)(3) of the Act to require a physician certification only for long-stay cases and outlier cases.

As noted above, we believe that, in most cases, the admission order, medical record, and progress notes will contain sufficient information to support the medical necessity of an inpatient admission without a separate requirement of an additional, formal, physician certification. However, we believe that evidence of additional review and documentation by a treating physician beyond the admission order is necessary to substantiate the continued medical necessity of long or costly inpatient stays. While granting the Secretary broad discretion to determine the circumstances under which a physician certification should be required, the statute specifies that the certification by a physician with respect to inpatient hospital services (other than inpatient psychiatric hospital services) ''shall be furnished no later than the 20th day'' of the stay. Because the statute specifically requires that certification must occur no later than the 20th day, we believe that, at a minimum, Congress intended that physicians should conduct a more thorough review of such cases to help ensure that all requirements of medical necessity continue to be met. We also note the current regulations at § 424.13(f)(2) specify our longstanding requirement that the physician certification for cost outlier cases occur no later than 20 days into the hospital stay, and we are not proposing to change the requirements for these cases. Therefore, we believe that, for nonoutlier cases, 20 days is also an appropriate minimum threshold for the physician certification, and we are proposing to define long-stay cases as cases with stays of 20 days or longer.

Specifically, in this proposed rule, we are proposing to revise paragraph (a) of § 424.13 to specify that ''Medicare Part A pays for inpatient hospital services (other than inpatient psychiatric facility services) for cases that are 20 inpatient days or more, or are outlier cases under subpart F of Part 412 of this chapter, only if a physician certifies or recertifies the following:

(1) The reasons for either—

(i) Continued hospitalization of the patient for medical treatment or medically required diagnostic study; or

(ii) Special or unusual services for cost outlier cases (under the prospective payment system set forth in subpart F of part 412 of this chapter).

(2) The estimated time the patient will need to remain in the hospital.

(3) The plans for posthospital care, if appropriate.''

We also are proposing to revise paragraph (b) of § 424.13 to specify that certifications for long-stay cases must be furnished no later than 20 days into the hospital stay.

Because the care furnished in inpatient psychiatric facilities is often purely custodial and therefore not covered under Medicare and because the primary purpose of the certification

of these cases is to help ensure that Medicare pays only for services of the type appropriate for Medicare coverage, we are not proposing changes to the certification requirements for inpatient psychiatric hospital services.

As discussed more fully in the FY 2014 IPPS/LTCH PPS final rule (78 FR 50942 through 50943), there also are inherent differences in the operation of and beneficiary admission to IRFs. Therefore, we also are not proposing any changes to the admission requirements for IRFs.

We are inviting public comment on these proposals.

XVII. CMS-Identified Overpayments Associated With Payment Data Submitted by Medicare Advantage (MA) Organizations and Medicare Part D Sponsors (Proposed §§ 422.330 and 423.352)

A. Background

Medicare Part C and Part D payments to Medicare Advantage (MA) organizations and Part D sponsors are determined, in part, using data submitted to CMS by the MA organizations and Part D sponsors. These ''payment data'' include diagnosis data that are used by CMS to risk adjust Part C and Part D payments, Prescription Dug Event (PDE) data that are used by CMS to cost reconcile various Part D subsidies, as well as other types of data discussed below. Through our review and oversight of payment data submitted by MA organizations and Part D sponsors, CMS identifies situations where MA organizations and/or Part D sponsors have submitted payment data to CMS that should not have been submitted—either because the data submitted are inaccurate or because the data are inconsistent with Part C and Part D requirements. (Throughout this section, we refer to these data submissions as ''erroneous payment data.'') If an MA organization or Part D sponsor submits erroneous payment data to CMS, the MA organization or Part D sponsor can address errors by submitting corrected data to the CMS payment systems, and our approach thus far to these kinds of situations has been to request that MA organizations and Part D sponsors make these kinds of data corrections voluntarily.

However, in instances in which the MA organization or Part D sponsor fails to make the requested data correction, the payment amount calculated for the plan may also be incorrect. As a result, we have concluded that CMS needs to establish a formal process that allows us to recoup overpayments that result from the submission of erroneous payment data by an MA organization or Part D sponsor in the limited circumstances when the organization fails to correct those data. We emphasize that, in our experience, the circumstance where an MA organization or Part D sponsor fails to correct identified erroneous payment data arises very infrequently.

This proposed new process is not intended to replace established recovery and appeals processes such as the Risk Adjustment Data Validation (RADV) audit dispute and appeal process described at 42 CFR 422.311 or the Part D payment appeals process described at 42 CFR 423.350. This proposed process would not constitute a change to the existing Part C or Part D payment methodologies. Rather, we are merely proposing to adopt a procedural mechanism for recouping overpayments that CMS will use in those limited circumstances when an MA organization or Part D sponsor fails to correct erroneous payment data. The established recovery and appeals processes do not support this scenario. Section 1856(b) of the Act establishes authority for us to add standards for Part C and MA organizations. Section 1853 of the Act for Part C and sections 1860D–14 and 1860D–15 of the Act for Part D establish the methodology for computing payments to MA organizations and Part D sponsors, respectively. We believe that inherent in the methodology under which payments to MA organizations and Part D sponsors are calculated is the authority for CMS to establish a process for identifying and recouping overpayments, in order to ensure that payments are made consistent with the payment framework established in the statute. Therefore, we are proposing to implement such a process through changes to our regulations.

1. Medicare Part C Payment Background

For Medicare Part C, CMS makes prospective monthly payments to MA organizations for each enrollee in the plan. CMS' monthly Part C payment for each MA plan enrollee consists of two components: The capitated payment for each enrollee (calculated as the plan-specific county payment rate multiplied by the enrollee risk score), plus the plan rebate amount (if any). The plan-specific county rates and the plan rebate amount are based on the bid approved by CMS and are set in advance for a payment year. In addition, payment rates may be adjusted for enrollees with end-stage renal disease, enrollees in Medical Savings Account MA plans, and enrollees in religious fraternal benefit society MA plans under § 422.304. Prospective payments are made during the year, subject to a reconciliation after the end of the year.

CMS adjusts the plan-specific county payment rate for each enrollee based on an enrollee risk score. Enrollee risk scores are determined using the CMS-Hierarchical Condition Category (CMS–HCC) risk adjustment model in effect for the payment year, plan-submitted diagnoses for the data collection year, and other data that CMS determines to be appropriate to perform risk adjustment. The CMS–HCC model is prospective in that it uses diagnosis information from a base year (data collection year) to adjust payments for the next year (payment year or coverage year). For example, the risk adjustment model uses diagnosis data from 2013 to adjust payments to MA organizations for coverage in 2014.

To determine the appropriate risk score for each beneficiary, CMS uses demographic characteristics of beneficiaries and diagnostic information gathered in the administration of Original Medicare and submitted by MA organizations. MA organizations are required to submit an occurrence of an HCC model-relevant diagnosis only once during the data collection year, even though a beneficiary may have several service dates in a data collection year associated with a given diagnosis. The minimum data elements currently collected from MA organizations under § 422.310 are: Health Insurance Claim (HIC) Number; provider type (hospital inpatient, hospital outpatient, or physician); service from date; service through date; and ICD–9 codes at the level of specificity used by the HCC model. In addition, effective January 2012, CMS collects more detailed Part C utilization and cost data from MA organizations (often referred to as encounter data), that are used in setting the risk score.

CMS allows 13 months after the end of a data collection year for MA organizations to update the risk adjustment data submitted under § 422.310; this period provides MA organizations an opportunity to identify and correct errors in data they have submitted for that data collection year (that is, by deleting diagnoses from CMS' systems) and to identify and submit additional diagnoses not submitted during the data collection year. During this 13-month period, CMS uses the diagnosis data that MA organizations have submitted up to that point to calculate interim beneficiary risk scores for adjusting prospective payments made during the payment year. The end of this 13-month period is called the final risk adjustment data

submission deadline (§ 422.310(g)(2)(ii)).

For each payment year, we apply three sets of risk scores to adjust payments: Initial and midyear risk scores during the payment year (both sets are based on incomplete diagnosis data from the data collection year), and final risk scores after the payment year using data MA organizations submitted as of the final deadline for risk adjustment data (which reflect complete data for the data collection year). During the year, CMS makes monthly prospective payments to the MA organization based on enrollment information and using interim risk scores calculated based on the data available before the final risk adjustment data submission deadline. CMS calculates the preliminary risk scores before the first payment is made (that is, for January of the payment year) and again in the middle of the payment year; an interim reconciliation is made so that the prospective payments to MA organizations are based on the most recent risk score available for each enrollee.

After the final risk adjustment data submission deadline, CMS conducts a reconciliation, in which the prospective Part C payments made during the coverage year based on interim risk scores are compared to Part C payments recalculated using final risk scores and the latest enrollment data. While changes in enrollment data are updated every month by CMS' systems during the payment year (for example, disenrollments from MA organizations and dates of death from the Social Security Administration (SSA)), risk adjustment data are not finalized until the final risk adjustment data submission deadline.

We note that after the final risk adjustment data submission deadline, MA organizations are allowed to submit corrected diagnosis data to correct overpayments they received from CMS. However, after this deadline, MA organizations are not allowed to submit diagnosis codes for additional payment, as specified in § 422.310(g)(2)(ii); this provision was recently adopted in the final rule entitled ''Medicare Program; Contract Year 2015 Policy and Technical Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Programs'' (79 FR 29843). When such corrections are submitted, CMS conducts another reconciliation to correct the payments made to the MA organization using the established payment adjustment process. In addition, under § 422.311, CMS conducts RADV audits of the risk adjustment data submitted by MA organizations pursuant to § 422.310. Such RADV audits are conducted at the MA organization contract level and are designed to calculate a contract–level error rate and payment adjustment amount for a specific payment year under audit.

2. Medicare Part D Payment Background

For Medicare Part D, the Medicare Prescription Drug Benefit, Improvement, and Modernization Act (MMA), which amended the Act by adding Part D under Title 18, provides four payment mechanisms: Direct subsidy (codified at § 423.329(a)); reinsurance subsidy (codified at § 423.329(c)); low income subsidy (codified at §§ 423.780 and 423.782); and risk sharing (codified at § 423.336(b)). As a condition of payment, section 1860D–15(d)(2)(A) of the Act requires that Part D sponsors submit data and information necessary for CMS to carry out those payment provisions. Part D sponsors submit PDE data, direct and indirect remuneration (DIR) data, and risk adjustment data to CMS for payment purposes.

Throughout the coverage year, CMS makes prospective payments to Part D sponsors that cover three subsidies: The direct subsidy; the low income cost-sharing subsidy; and the reinsurance subsidy. The payment amounts are based on information in the approved basic bid and on data received by CMS that are used to update payments throughout the year. Following the end of the coverage year, the prospective payments are reconciled against the actual costs of the Part D sponsor. Reconciliation of the low income cost-sharing subsidy and reinsurance and the calculation of risk sharing are based on PDE and DIR data submitted by the Part D sponsor, as well as data captured from other CMS systems. CMS instructs Part D sponsors that they should continually monitor their submitted data throughout the year in order to ensure that the reconciliation and final payment determinations are accurate.

The final payment determination may be reopened and revised at CMS discretion under § 423.346. In our final rule, ''Medicare Program; Medicare Prescription Drug Benefit'' published in the **Federal Register** on January 28, 2005 (70 FR 4194), we stated that including the Medicare Part D reopening provision at § 423.346 would ''ensure that the discovery of any overpayment or underpayments could be rectified'' (70 FR 4316). However, this is only possible to the extent that the data submitted by Part D sponsors are accurate. Accordingly, prior to making a payment determination for a coverage year, either through a reconciliation described at § 423.343 or a reopening described at § 423.346, CMS periodically makes requests that Part D sponsors correct payment data that do not comply with program requirements (that is, what we have defined as ''erroneous payment data''). These may be general requests to all Part D sponsors to look for a type of payment issue (for example, the Health Plan Management System (HPMS) memorandum, ''Correcting Missing, Invalid, and Inactive Prescriber Identifiers on 2012 Prescription Drug Event (PDE) Records,'' dated February 4, 2013) or targeted requests to specific Part D sponsors known to have particular payment issues (as was done in the ''Prescriber NPI Project'' announced in the HPMS memorandum, ''Announcement of Prescriber NPI Project and Web site Release,'' dated December 4, 2012). If a Part D sponsor fails to correct its payment data, the erroneous payment data remain in the payment system, rendering the reopening provision ineffective for rectifying overpayments as it was intended.

B. Provisions of our Proposals

In this proposed rule, we are proposing to establish regulations at 42 CFR 422.330, relating to MA organizations, and at 42 CFR 423.352, relating to Part D sponsors, that would specify the procedural mechanism used by CMS to recoup overpayments associated with errors identified by CMS in payment data submitted by MA organizations and Part D sponsors. We also are proposing to create a process whereby an MA organization or Part D sponsor can appeal the finding that payment data are erroneous.

We note that our proposal is intended to establish a process to address errors and payment adjustments that are not addressed by existing processes such as the RADV audit and appeal process or overpayments identified by the MA organization or Part D sponsor, which are subject to separate procedures. If an MA organization or a Part D sponsor self-identifies an overpayment, that overpayment must be reported and returned to CMS in accordance with section 1128J(d) of the Act, which was added by section 6402 of the Affordable Care Act. Regulations implementing section 1128J(d) have recently been adopted at §§ 422.326 and 423.360 in the final rule entitled ''Medicare Program; Contract Year 2015 Policy and Technical Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Programs'' (79 FR 29843).

1. Proposed Definitions of ''Payment Data'' and ''Applicable Reconciliation Date''

We are proposing to define ''payment data'' to mean data controlled and submitted to CMS by an MA organization or a Part D sponsor that is used for payment purposes (proposed §§ 422.330(a) and 423.352(a)). The MA organization or Part D sponsor is responsible for the accuracy of such data. MA organizations and Part D sponsors are currently required to attest to the accuracy, completeness, and truthfulness of such data under § 422.504(l) and § 423.505(k), respectively. For Medicare Part C, the data submitted by the MA organization to CMS include, for example, enrollment data and risk adjustment data specified at § 422.310. For Medicare Part D, data submitted by the Part D sponsor to CMS include enrollment data and data submitted under § 423.329(b)(3) (risk adjustment data), § 423.336(c)(1) (cost data), § 423.343 (data for retroactive adjustments and reconciliations), and data provided for purposes of supporting allowable reinsurance costs and allowable risk corridor costs as defined in § 423.308, which include data submitted to CMS regarding direct or indirect remuneration (DIR).

There are additional payment-related data that CMS uses to calculate Part C and Part D payments that are submitted directly to CMS by other entities, such as the Social Security Administration (SSA). These entities are the authoritative source for data that they submit to CMS, and MA organizations and Part D sponsors are not the official source for data submitted by these other entities. For example, the SSA is the authoritative source for date of death of Medicare beneficiaries. An MA organization or a Part D sponsor generally does not submit a beneficiary's date of death directly to CMS' systems; such data come from the SSA data feed. When the SSA submits corrected data regarding a beneficiary's date of death to CMS, CMS' systems recalculate the payments made to the plan for that beneficiary and correct any incorrect payment through a routine retroactive payment adjustment process. Therefore, the proposed definition of ''payment data'' refers only to data that the MA organization or Part D sponsor controls and submits to CMS for payment purposes.

For MA organizations under Part C, we are proposing that the ''applicable reconciliation date'' occurs on the date of the annual final risk adjustment data submission deadline set under § 422.310(g)(2)(ii). While changes in enrollment data are updated every month by CMS' systems during the payment year (for example, disenrollments from MA organizations and dates of death from the SSA), risk adjustment data are not finalized until the final risk adjustment data submission deadline. Prior to that deadline, CMS allows the MA organization to continue submitting corrected and new diagnosis data. However, once the final risk adjustment data submission deadline has passed, CMS uses this final diagnosis data to calculate the final risk scores for the payment year. CMS then uses those final risk scores for payment reconciliation. By proposing that the applicable reconciliation date occurs on the risk adjustment data submission deadline, we intend to signal that the normal payment process for the year has been concluded.

For Part D sponsors, we are proposing that the ''applicable reconciliation date'' is the later of either: The annual deadline for submitting PDE data for the annual Part D payment reconciliations referenced in § 423.343(c) and (d); or the annual deadline for submitting DIR data. The annual deadline for submitting PDE data is the last Federal business day prior to June 30 of the year following the coverage year being reconciled. The annual deadline for submitting DIR data is announced annually through subregulatory guidance and generally occurs around the last business day in June of the year following the coverage year being reconciled. We selected these events to define the Part D applicable reconciliation date because data must be submitted by these deadlines in order to be used for the purposes of the final Part D payment reconciliation.

We note that the proposed definitions of ''applicable reconciliation date'' are nearly identical to the definitions of ''applicable reconciliation'' at existing §§ 422.326 and 423.360. Similarly, the proposed definitions of ''payment data'' are nearly identical to the definitions of ''funds'' at existing §§ 422.326 and 423.360. Although proposed §§ 422.330 and 423.352 address overpayments to MA organizations and Part D sponsors that have been identified by CMS, whereas §§ 422.326 and 423.360 address overpayments that are identified by the MA organization or Part D sponsor, we do not believe that the issue of which entity (CMS or the plan) identified the overpayment is relevant to the question of when the overpayment occurred or what information is at issue. Both the current policy regarding overpayments identified by MA organizations and Part D sponsors and the proposed policy regarding CMS-identified overpayments are intended to address circumstances in which an overpayment has been identified; therefore, we believe it would be appropriate and avoid unnecessary confusion to use similar definitions.

2. Request for Corrections of Payment Data

We are proposing that if CMS identifies an error in payment data submitted by an MA organization or Part D sponsor that would result in an overpayment, CMS may request that the organization make corrections to the applicable payment data (proposed §§ 422.330(b) and 423.352(b)). We are proposing that CMS would make the request through a data correction notice that would contain or make reference to the specific payment data identified by CMS as erroneous, the reason why CMS believes that the payment data are erroneous, and the timeframe in which the MA organization or Part D sponsor must make corrections to the data. CMS may identify payment data that need to be corrected through a variety of different mechanisms, including, but not limited to, CMS analyses of payment data, CMS audits, or communications with the MA organization or Part D sponsor.

We understand that, at some point, it would no longer be practical for MA organizations and Part D sponsors to correct payment data for coverage years that have long since been reconciled. Therefore, consistent with the look-back period for overpayments that are identified by the MA organization or Part D sponsor found at existing §§ 422.326 and 423.360, we are proposing that CMS would request corrections to erroneous payment data only if the erroneous data affects payments for one or more of the 6 most recently completed payment years. That would mean, for example, that after the initial reconciliation takes place for Part D payments under § 423.343 (that is, the determination of the final amount of direct subsidy described in § 423.329(a)(1), final reinsurance payments described in § 423.329(c), the final amount of the low income subsidy described in § 423.329(d), or final risk corridor payments as described in § 423.336) for contract year 2015 (which would take place in 2016), CMS may request corrections to erroneous payment data for contract years 2010 through 2015. We are proposing to use the same 6-year look-back period as applies to plan-identified overpayments under existing §§ 422.326 and 423.360 because both overpayment policies are

intended to address circumstances in which an overpayment has been identified, and we do not believe that the issue of which entity (CMS or the plan) identified the overpayment is relevant to the length of the look-back period.

The timeframes for correcting payment data would be the same as under our current practice for correcting payment data described in existing procedural rules and subregulatory guidance and would be explained in additional procedural rules and subregulatory guidance, as necessary. For example, current Part D guidance states that corrections to PDE data must be completed within 90 days from discovery of the issue. We refer readers to the Health Plan Management System (HPMS) memorandum entitled ''Revision to Previous Guidance Titled 'Timely Submission of Prescription Drug Event (PDE) Records and Resolution of Rejected PDEs,' '' dated October 6, 2011.

3. Proposed Payment Offset

If the MA organization or Part D sponsor submits corrected payment data in response to CMS's request pursuant to proposed § 422.330(b) and § 423.352(b), CMS will perform a reconciliation in the payment system using the established payment adjustment process. CMS' systems will conduct a payment reconciliation and determine the associated payment adjustment based on the corrected data using established payment procedures. However, if the MA organization of Part D sponsor fails to correct the erroneous payment data, we are proposing that CMS would conduct a payment offset from plan payments (proposed §§ 422.330(c) and 423.352(c)).

a. Offset Amount

Because the data would not have been corrected in the routine payment process, we are proposing, to be codified at §§ 422.330(c) and 423.352(c), that CMS determine the overpayment offset amount by applying a payment calculation algorithm to simulate the payment calculations currently applied by CMS to produce the routine Part C and Part D payments. The payment calculation algorithm would apply the Part C or Part D payment rules for the applicable year to calculate what the correct payment should have been using corrected payment data. CMS currently simulates payment error amounts for a variety of different purposes including for the annual Part C and Part D error rate reporting (required by the Improper Payment Elimination and Recovery Act (IPERA) and subject to the annual agency's Chief Financial Officer's (CFO) audit and reported in the annual Agency Financial Report (AFR)), RADV payment error estimation (subject to public comment), and the Part C and Part D monthly payment validation required by CFO auditors. These payment error calculations are all conducted outside of the suite of payment systems that CMS uses to make routine payments to MA organizations and Part D sponsors. We believe that these calculations are reliable and an accurate reflection of what the routine payment systems would calculate using the corrected data if the MA organization or Part D sponsor had submitted corrected payment data.

The actual process for calculating the overpayment will be different for Part C and Part D due to the different payment rules for the two programs. The Part C and Part D programs are both subject to risk adjustment payment error resulting from invalid diagnoses and to payment error due to inaccurate enrollment data. The Part D program is further subject to payment reconciliation error resulting from errors in PDE data and/or DIR data. The two programs also are subject to different schedules with regard to the applicable reconciliation date and subsequent payment reconciliation processes.

When new payment-related data are submitted to CMS payment systems, there is generally a change to the correct amount of payment once CMS conducts a payment reconciliation using the established payment adjustment process. However, it is not sufficient for the plan to just submit the new corrected risk adjustment, PDE, or DIR data to CMS systems because data submission does not automatically trigger a system reconciliation and payment adjustment. A change in payment will only occur if a payment reconciliation is conducted. If the applicable reconciliation has already been performed, CMS, at its discretion, may conduct risk adjustment reruns or Part D reopenings to ensure that payments also are corrected to reflect the newly corrected data.

We are proposing that, under the payment calculation algorithm, CMS would calculate the payment to the MA organization or Part D sponsor with and then without the corrected data as of a certain specified date. The difference in the two amounts would be the payment recovery or offset amount. The following are examples of how the offset amount would be calculated for Part C and Part D relative to two different types of payment data errors.

- *Part C Offset Calculation.* The example for Part C relates to incorrect diagnosis data identified by CMS in the process of calculating the national payment error estimate. A beneficiary's final risk score and annual payment will be recalculated outside of the routine payment system without the invalid diagnoses but using all the other data used in the routine payment system. The year-appropriate CMS–HCC risk adjustment software will be used to produce the revised risk scores. The difference in payment for the beneficiary pre- and post-change in the invalid diagnosis will be the offset amount. This offset amount—generated using the same process for each beneficiary for whom erroneous payment data are identified by CMS—will be summed across all beneficiaries.
- *Part D Offset Calculation.* The example for Part D relates to the situation in which a Part D plan sponsor has submitted PDE records for a beneficiary that include invalid National Drug Codes (NDCs). For payment purposes, PDEs are required to reference valid NDCs. In order to calculate the Part D payment offset amount, all of the beneficiary's entire post-reconciliation PDE data will be pulled, and the incorrect PDEs will be deleted or adjusted. The programmed calculation logic will keep track of a variety of payment-related information; for example, a beneficiary's benefit phase, gross covered drug cost, true out-of-pocket (TrOOP) costs, low income cost-sharing subsidies (if any), and plan payment as the beneficiary progresses through the Part D coverage benefit. The calculation algorithm will tap into a variety of different data sets, such as health plan benefit parameters, beneficiary low income subsidy status, and standard low income cost-sharing subsidy parameters. Reports will then be produced on Gross Covered Drug Cost (GCDC) and low income cost-sharing subsidy payment differentials. These payment differential amounts will be incorporated into final reinsurance, low income cost-sharing subsidy, and risk sharing summary totals for a contract. DIR adjustments will be factored into these calculations to arrive at the related payment offset amount to be applied at the contract level. The difference in reinsurance, low income cost-sharing subsidy, and risk sharing dollars with and without the correction to the PDEs will constitute the payment offset related to the beneficiaries with the incorrect PDEs.

If the erroneous payment data in question is subsequently corrected through the CMS payment system, the offset amount will be reversed, and the payment to the MA organization or Part D sponsor will be updated through the

routine payment process. However, if the data in the CMS system are not corrected and CMS conducts a reconciliation or reopening for the applicable payment year after the offset has been determined, the data will not be properly synchronized, and it is possible that the resulting payment adjustments could be incorrect. In order to resolve this problem, CMS may reverse the original offset and recalculate the offset using the more recent data used in the most recent payment reconciliation or reopening. The new offset amount will replace the previous offset amount, and CMS would need to evaluate and act on the resulting overpayment or underpayment.

b. Payment Offset Notification

We are proposing that CMS would provide a payment offset notice to the MA organization or Part D sponsor (proposed §§ 422.330(d)(1) through (d)(3) and 423.352(d)(1) through (d)(3)). The notice would provide the dollar amount to be offset against a plan's monthly prospective payments and an explanation of how the erroneous data were identified and of the calculation of the payment offset amount. Under our proposal, the payment offset notice would also explain that, in the event that the MA organization or Part D sponsor disagrees with the payment offset, it may request an appeal within 30 days of the issuance of the payment offset notice.

4. Proposed Appeals Process for MA Organizations and Part D Sponsors

We are proposing an appeals process for MA organizations and Part D sponsors with three levels of review, including reconsideration (described at proposed §§ 422.330(e)(1) and 423.352(e)(1)), an informal hearing (described at proposed §§ 422.330(e)(2) and 423.352(e)(2)), and an Administrator review (described at proposed §§ 422.330(e)(3) and 423.352(e)(3)).

a. Reconsideration

We are proposing that an MA organization or Part D sponsor must file its request for reconsideration within 30 days from the date that CMS issued the payment offset notice to the MA organization or the Part D sponsor (proposed §§ 422.330(e)(1)(i) and 423.352(e)(1)(i)). At proposed §§ 422.330(e)(1)(ii) and 423.352(e)(1)(ii), we address the information that must be included in the MA organization's or Part D sponsor's request for reconsideration. The request must contain the findings or issues with which the MA organization or Part D sponsor disagrees, the reasons for its disagreement, and any additional documentary evidence that the MA organization or Part D sponsor wishes to submit in support of its position. This additional evidence must be submitted with the request for reconsideration. Any information submitted after this time will be rejected as untimely. In conducting the reconsideration, the CMS reconsideration official reviews the underlying data that were used to determine the amount of the payment offset and any additional documentary evidence that the MA organization or Part D sponsor timely submitted with its reconsideration request (§§ 422.330(e)(1)(iii) and 423.352(e)(1)(iii)). We are proposing at proposed §§ 422.330(e)(1)(iv) and 423.352(e)(1)(iv) that CMS would inform the MA organization or Part D sponsor of its decision. We are proposing at §§ 422.330(e)(1)(v) and 423.352(e)(1)(v) that a reconsideration decision would be final and binding unless a timely request for an informal hearing is filed by the MA organization or Part D sponsor.

b. Informal Hearing

Under our proposal, if the MA organization or Part D sponsor is dissatisfied with CMS' reconsideration decision, it would be entitled to request an informal hearing (proposed §§ 422.330(e)(2) and 423.352(e)(2)). As proposed at §§ 422.330(e)(2)(i) and 423.352(e)(2)(i), a request for an informal hearing must be made in writing and filed within 30 days of the date of CMS' reconsideration decision. The request must include a copy of CMS' reconsideration decision and must specify the findings or issues in the decision with which the MA organization or Part D sponsor disagrees and the reasons for its disagreement (proposed §§ 422.330(e)(2)(ii) and 423.352(e)(2)(ii)).

We set forth the proposed procedures for conducting the informal hearing at proposed §§ 422.330(e)(2)(iii) and 423.352(e)(2)(iii). Under these procedures, CMS would provide written notice of the time and place of the informal hearing at least 10 days before the scheduled date of the hearing (proposed § 422.330(e)(2)(iii)(A) and § 423.352(e)(2)(iii)(A)); the informal hearing would be conducted by a CMS hearing officer. The hearing officer would be limited to reviewing the record that was before CMS when CMS made its reconsideration determination (proposed § 422.330(e)(2)(iii)(B) and § 423.352(e)(2)(iii)(B)). Under our proposal, no new or additional documentation or evidence may be submitted at this hearing. At proposed § 422.330(e)(2)(iii)(C) and § 423.352(e)(2)(iii)(C), we are proposing that the CMS hearing officer would review the record of the proceeding before the CMS reconsideration official using the clearly erroneous standard of review. CMS' reconsideration decision would not be reversed unless the MA organization or Part D sponsor establishes that the decision was clearly erroneous in light of the evidence in the record before the CMS reconsideration official.

At proposed §§ 422.330(e)(2)(iv) and 423.352(e)(2)(iv), we are proposing that the CMS hearing officer would send a written decision of the informal hearing to the MA organization or Part D sponsor explaining the basis for the decision. The CMS hearing officer's decision would be final and binding, unless the decision is reversed or modified by the Administrator (proposed §§ 422.330(e)(2)(v) and 423.352(e)(2)(v)).

c. Review by Administrator

We are proposing that the MA organization or Part D sponsor may request review of the hearing officer's decision by the Administrator within 30 days of issuance of the hearing officer's decision (proposed §§ 422.330(e)(3)(i) and 423.352(e)(3)(i)). The MA organization or Part D sponsor may provide written arguments to the Administrator for review. Under proposed §§ 422.330(e)(3)(ii) and 423.352(e)(3)(ii), after receiving the request to review, the Administrator would have the discretion to elect to review the hearing determination or decline to review it. At proposed §§ 422.330(e)(3)(iii) and 423.352(e)(3)(iii), if the Administrator declines to review the hearing officer's decision, the hearing officer's decision would be final and binding. At proposed §§ 422.330(e)(3)(iv) and 423.352(e)(3)(iv), we are proposing that if the Administrator elects to review the hearing officer's decision, the Administrator would review the hearing officer's decision, as well as any other information included in the record of the hearing officer's decision and any written arguments submitted by the MA organization or Part D sponsor. The Administrator may determine whether to uphold, reverse, or modify the hearing officer's decision. The Administrator's determination would be final and binding (proposed §§ 422.330(e)(3)(v) and 423.352(e)(3)(v)).

5. Matters Subject To Appeal and Burden of Proof

At proposed §§ 422.330(f)(1) and (2) and 423.352(f)(1) and (2), we are proposing to limit the subject-matter that an MA organization or Part D sponsor may appeal under this provision and establish the burden of proof that the MA organization or Part D sponsor must meet in its appeal. Under this provision, an MA organization or Part D sponsor would be able to appeal the notice of payment offset solely on the grounds that CMS' finding that the MA organization's or Part D sponsor's payment data were erroneous was incorrect or otherwise inconsistent with applicable program requirements. The MA organization or Part D sponsor would bear the burden of proof by a preponderance of the evidence in demonstrating that CMS' finding was incorrect or inconsistent with applicable program requirements.

At proposed §§ 422.330(g) and 423.352(g), we are proposing that the appeals process under paragraph (e) of these sections would apply only to payment offsets described at proposed §§ 422.330(c) and 423.352(c). It would not apply to any other CMS payment offset process.

6. Effective Date of Proposed Appeals Process Provisions

We are proposing that this new procedural mechanism for a payment offset at proposed § 422.330 and § 423.352 would apply after the effective date of any final rule implementing the new payment offset and appeals process, but that requests to correct payment data under proposed §§ 422.330(b) and 423.352(b) and the payment offsets under proposed §§ 422.330(c) and 423.352(c) may apply to any payment year, subject to the 6-year limitation under §§ 422.330(b) and 423.352(b).

We are inviting public comment on these proposals.

XVIII. Files Available to the Public via the Internet

Addendum J to this proposed rule is a new addendum that we are proposing for CY 2015, in response to requests by public commenters on the CY 2014 OPPS/ASC final rule with comment period for additional data regarding ratesetting for the new comprehensive APCs established in that final rule with comment period, which are discussed in section II.A.2.e. of this proposed rule. Addendum J lists the HCPCS code pairs for which we are proposing complexity adjustments for CY 2015, by clinical family; the HCPCS codes proposed for exclusion from the comprehensive APC payment bundle; and the relevant cost statistics.

The Addenda to the OPPS/ASC proposed rules and the final rules with comment period are published and available only via the Internet on the CMS Web site. To view the Addenda of this proposed rule pertaining to CY 2015 payments under the OPPS, we refer readers to the CMS Web site at: *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HospitalOutpatientPPS/Hospital-Outpatient-Regulations-and-Notices.html;* select ''1613–P'' from the list of regulations. All OPPS Addenda for this proposed rule are contained in the zipped folder entitled ''2015 OPPS 1613–P Addenda'' at the bottom of the page. To view the Addenda of this proposed rule pertaining to the proposed CY 2015 payments under the ASC payment system, we refer readers to the CMS Web site at: *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/ASCPayment/ASC-Regulations-and-Notices.html;* select ''1613–P'' from the list of regulations. All ASC Addenda for this proposed rule are contained in the zipped folders entitled ''Addendum AA, BB, DD1 and DD2,'' and ''Addendum EE'' at the bottom of the page.

XIX. Collection of Information Requirements

A. Legislative Requirements for Solicitation of Comments

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and to solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

In this proposed rule, we are soliciting public comments on each of the issues outlined above for the information collection requirements discussed below.

B. Requirements in Regulation Text: Proposed Changes to the Rural Provider and Hospital Ownership Exceptions to the Physician Self-Referral Law: Expansion Exception Process (§ 411.362)

Section XV.C. of the preamble of this proposed rule discusses our proposal to revise the expansion exception process for physician-owned hospitals under the rural provider and hospital ownership exceptions to the physician self-referral law. Specifically, we are proposing to revise 42 CFR 411.362(c) to permit physician-owned hospitals to use data from HCRIS, internal data sources, or external data sources to estimate the percentages of inpatient Medicaid admissions and to determine the bed capacities and the bed occupancy rates referenced in that section for the hospitals to demonstrate eligibility for an expansion exception.

We believe the burden associated with this revision is exempt from the PRA under 5 CFR 1320.3(c), which defines the agency collection of information subject to the requirements of the PRA as information collection imposed on 10 or more persons within any 12-month period. We do not believe this information collection impacts 10 or more entities in a 12-month period. We have received four requests since the expansion exception process was implemented on February 1, 2012; only one of the four requests was complete and eligible to proceed in the process. In CYs 2012, 2013, and 2014, we received zero, two, and two requests, respectively.

C. Associated Information Collections Not Specified in Regulatory Text

In this proposed rule, we make reference to proposed associated information collection requirements that were not discussed in the regulation text contained in this proposed rule. The following is a discussion of those requirements.

1. Hospital OQR Program

As we stated in section XIV. of the CY 2012 OPPS/ASC final rule with comment period, the Hospital OQR Program has been generally modeled after the quality data reporting program for the Hospital IQR Program (76 FR 74451). We refer readers to the CY 2011 OPPS/ASC final rule with comment period (75 FR 72111 through 72114), the CY 2012 OPPS/ASC final rule with comment period (76 FR 74549 through 74554), the CY 2013 OPPS/ASC final rule with comment period (77 FR 68527 through 68532) and the CY 2014 OPPS/ASC final rule with comment period (78

FR 75170 through 75172) for detailed discussions of the Hospital OQR Program information collection requirements we have previously finalized.

a. Revisions to the CY 2016 Payment Determination Estimates

In the CY 2014 OPPS/ASC final rule with comment period (78 FR 75103), we finalized the adoption of four new measures for the CY 2016 payment determination and subsequent years: (1) OP–27: Influenza Vaccination Coverage among Healthcare Personnel (NQF #0431); (2) OP–29: Endoscopy/Polyp Surveillance: Appropriate Follow-up Interval for Normal Colonoscopy in Average Risk Patients (NQF #0658); (3) OP–30: Endoscopy/Polyp Surveillance: Colonoscopy Interval for Patients with a History of Adenomatous Polyps—Avoidance of Inappropriate Use (NQF #0659); and (4) OP–31: Cataracts—Improvement in Patient's Visual Function within 90 Days Following Cataract Surgery (NQF #1536). In the CY 2014 OPPS/ASC final rule with comment period (78 FR 75171), we estimated measures OP–29, OP–30 and OP–31 would require 40 hours of reporting per quarter (96 cases × 0.417 hours). We also estimated that reporting these measures via our Web-based tool would take 10 minutes (or 0.167 hours) per measure per year (or 2.5 minutes for each quarter's worth of data, which is submitted on an annual basis) (78 FR 75171 through 75172).

As stated in section XIII.D.2. of this proposed rule, we delayed reporting for OP–29 and OP–30 by one quarter. Therefore, we estimate a reduction in burden of 40 hours for each of these measures (40 hours per quarter for reporting + 2.5 minutes of reporting via the Web-based tool) per hospital for the CY 2016 payment determination. In addition, in section XIII.D.3. of this proposed rule, we are proposing to exclude this measure from the CY 2016 payment determination measure set. Therefore, we estimate that there will be no burden for reporting OP–31 for the CY 2016 payment determination, and an overall reduction in burden of 160 hours ((40 hours per quarter for reporting × 4 quarters) + 0.167 hours per year for reporting via the Web-based tool) per hospital for the CY 2016 payment determination because of this proposal.

Combining the estimated reductions in burden for all three of these measures, we estimate a total reduction in burden of 240 hours (40 hours + 40 hours + 160 hours) per hospital for the CY 2016 payment determination due to delayed data collection and the proposed measure exclusion. We estimate that approximately 3,300 hospitals will participate in the Hospital OQR Program for the CY 2016 payment determination. Therefore, we estimate a total reduction in burden of 792,000 hours (240 hours × 3,300 hospital) for all hospitals participating in the Hospital OQR Program for the CY 2016 payment determination based on the data collection delays for OP–29, OP–30, and OP–31. In the CY 2014 OPPS/ASC final rule with comment period (78 FR 75171), we estimated that these measures would result in a financial burden of $30 per hour. Therefore, we estimate that the delay of these three measures will result in a reduction of $23.8 million ($30/hour × 792,000 hours).

b. Hospital OQR Program Requirements for the CY 2017 Payment Determination and Subsequent Years

As we stated in the CY 2014 OPPS/ASC final rule with comment period (78 FR 75171), we believe there is a burden associated with successful participation in the Hospital OQR Program, where successful participation results in a full annual payment update (APU) for the particular payment determination. For the reasons stated in that rule, we believe that the burden associated with these requirements is 42 hours per hospital or 138,600 hours for all hospitals. We estimate a financial burden for these requirements of $4.2 million ($30/hour × 138,600) for all hospitals.

(1) Claims-Based Measures for the CY 2017 Payment Determination and Subsequent Years

We refer readers to the CY 2013 OPPS/ASC final rule with comment period (77 FR 68530) for detailed discussions of the information collection requirements for the previously finalized claims-based measures (OP–8, OP–9, OP–10, OP–11, OP–13, OP–14, and OP–15). In section XIII.E. of this proposed rule, we are proposing to adopt one additional claims-based measure for the CY 2017 payment determination and subsequent years: OP–32: Facility Seven-Day Risk-Standardized Hospital Visit Rate after Outpatient Colonoscopy. As we note in the CY 2013 OPPS/ASC final rule with comment period (77 FR 68530), we calculate the claims-based measures using Medicare FFS claims data that do not require additional hospital data submissions.

(2) Chart-Abstracted Measures for the CY 2017 Payment Determination and Subsequent Years

We refer readers to the CY 2013 OPPS/ASC final rule with comment period (77 FR 68530 through 68531) and the CY 2014 OPPS/ASC final rule with comment period (78 FR 75171) for detailed discussions of the information collection requirements for the previously finalized chart-abstracted measures (OP–1, OP–2, OP–3, OP–4, OP–5, OP–6, OP–7, OP–18, OP–20, OP–21, OP–22, OP–23, OP–29, OP–30, and OP–31).

In section XIII. of this proposed rule, we are proposing to remove three chart-abstracted measures from the Hospital OQR Program for the CY 2017 payment determination and subsequent years: OP–4: Aspirin at Arrival (NQF #0286); OP–6: Timing of Prophylactic Antibiotics; and OP–7: Perioperative Care: Prophylactic Antibiotic Selection for Surgical Patients (NQF #0528). We previously estimated that each participating hospital will spend 35 minutes (or 0.583 hours) per case to collect and submit the data required for the chart-abstracted measures finalized for the CY 2015 payment determination and subsequent years (OP–1, OP–2, OP–3, OP–4, OP–5, OP–6, OP–7, OP–18, OP–20, OP–21, OP–22, OP–23) for each case (78 FR 75171). Since we are proposing to remove three of these measures, we believe that the time to chart-abstract these measures will be reduced by 25 percent (3 of 12 measures). Therefore, we estimate that hospitals will spend approximately 26 minutes (0.433 hours) per case to collect and submit these data.

Data submitted for the CY 2014 payment determination indicate that a hospital will submit approximately 1,266 cases per year for these measures. Therefore, we estimate that the time it will take a hospital to abstract data for all of the chart-abstracted measures will be 549 hours per year (1,266 cases × 0.433 hours). We estimate that there will be approximately 3,300 hospitals that participate in the Hospital OQR Program for the CY 2017 payment determination and subsequent years. Therefore, we estimate that the chart-abstracted measures for the CY 2017 payment determination and subsequent years will result in a burden of 1.8 million hours (549 hours × 3,300 hospitals) for all participating hospitals, for a total financial burden of approximately $54 million (1.8 million hours × $30/hour).

In addition, in the CY 2014 OPPS/ASC final rule with comment period (78 FR 75171), we estimated that OP–29 and OP–30 would require 25 minutes (0.417

hours) per case per measure to chart-abstract. We also estimated that hospitals would abstract 384 cases per year for each of these measures. Our estimate for the CY 2017 payment determination and subsequent years has not changed from last year's estimate (although, as noted above, we have changed our estimate for the CY 2016 payment determination based on the delay of OP–29 and OP–30). Therefore, for the CY 2017 payment determination and subsequent years, we estimate a burden of 1.1 million hours (3,300 hospitals × 0.417 hours/case × 384 case/measure × 2 measures) for all participating hospitals for OP–29 and OP–30 for a total financial burden of approximately $33 million ($30/hour × 1.1 million hours).

In section XIII.D.3. of this proposed rule, we are proposing to exclude OP–31 from the CY 2016 payment determination measure set and, for the CY 2017 payment determination and subsequent years, to change this measure from required to voluntary. Hospitals would not be subject to a payment reduction with respect to this measure for the CY 2016 payment determination or during the period of voluntary reporting. We continue to believe this measure addresses an important area of care, and anticipate that many facilities will report this measure on a voluntary basis. In the CY 2014 ASC/OPPS final rule with comment period (78 FR 75171), we estimated that OP–31 would require 25 minutes (0.417 hours) per case to chart-abstract. We also estimated that hospitals would abstract 384 cases per year for this measure. We estimate that approximately 20 percent of hospitals (660 hospitals (3,300 hospitals × 0.2)) will elect to report this measure on a voluntary basis. Therefore, we are revising the estimated burden for this measure to 105,685 hours (660 hospitals × 0.417 hours/case × 384 cases) for participating hospitals for the CY 2017 payment determination and subsequent years, for a total financial burden of approximately $3.2 million ($30/hour × 105,685 hours).

Therefore, for the chart-abstracted measures, we estimate a total burden for all participating hospitals of 3 million hours (1.8 million hours + 105,685 hours + 1.1 million hours) and $90 million (3 million hours × $30/hour) for the CY 2017 payment determination and subsequent years.

(3) Web-Based Measures Submitted Directly to CMS for the CY 2017 Payment Determination and Subsequent Years

We refer readers to the CY 2014 OPPS/ASC final rule with comment period (78 FR 75171) for detailed discussions of the information collection requirements for the previously finalized measures submitted via the Web-based tool. For the reasons stated in that final rule with comment period, we estimate that each participating hospital would spend 10 minutes per measure per year to collect and submit the data for the six measures (OP–12, OP–17, OP–25, OP–26, OP–29, and OP–30) submitted via the Web-based tool. Therefore, the estimated annual estimate burden associated with these measures for all participating hospitals is 3,307 hours (3,300 hospitals × 0.167 hours/measure × 6 measures/hospital) for the CY 2017 payment determination and subsequent years.

As stated above, in section XIII.D.3. of this proposed rule, we are proposing to require voluntary reporting for OP–31, meaning that failing to report this measure would not affect a hospital's CY 2017 and subsequent years' payment determinations. We estimate that approximately 20 percent of hospitals (660 hospitals (3,300 hospitals × 0.2)) will elect to report this measure on a voluntary basis. Therefore, we are revising the estimated burden for this measure for all participating hospitals to 111 hours (660 hospitals × 0.167 hours) for the CY 2017 payment determination and subsequent years.

Therefore, we estimate that the financial burden incurred for the Web-based submission of these measures for all participating hospitals will be $119,070 ($30/hour × (3,858 hours + 111 hours)) for the CY 2017 payment determination and subsequent years.

(4) NHSN HAI Measure for the CY 2017 Payment Determination and Subsequent Years

We refer readers to the CY 2014 OPPS/ASC final rule with comment period (78 FR 75172) for detailed discussions of the information collection requirements for OP–27: Influenza Vaccination Coverage among Healthcare Personnel. In section XIII.D.1. of this proposed rule, we are proposing to correct a submission deadline for this measure. We do not believe there will be a change in burden due to this proposal since it was a typographical error and our previous estimates were based on the corrected submission timeframe. We also noted that hospitals may report this measure for both the Hospital IQR Program and the Hospital OQR Program by CCN. Although we believe an overall reduction in burden will occur from this guidance because hospitals will only be required to submit this information once for each program, submitting this information is still a requirement of the Hospital OQR Program. Therefore, we do not believe this guidance will result in a reduction in burden attributable to the Hospital OQR Program. Therefore, for the reasons discussed in the CY 2014 OPPS/ASC final rule with comment period (78 FR 75172), we estimate a total burden for all participating hospitals of 106,940 hours and a total financial burden of $3,208,203 associated with this measure.

c. Review and Corrections Period Requirements for the CY 2017 Payment Determination and Subsequent Years

In section XIII.H.2.f. of this proposed rule, we are proposing to formalize that the time during which hospitals submit chart-abstracted data is the review and corrections period for that data. Because this proposal does not require hospitals to submit additional data, we do not believe it will increase burden for these hospitals.

d. Hospital OQR Program Validation Requirements for the CY 2017 Payment Determination and Subsequent Years

In section XIII.H.3.d. of this proposed rule, we are proposing three changes to our validation procedures: (1) We are proposing to change the eligibility requirements for hospitals selected for validation so that a hospital would be eligible if it submits at least one case to the Hospital OQR Program Clinical Data Warehouse during the quarter containing the most recently available data; (2) we are proposing to give hospitals the option to either submit paper copies of patient charts or securely transmit electronic versions of medical information for validation; and (3) we are proposing that a hospital must identify the medical record staff responsible for submission of records under the Hospital OQR Program to the designated CMS contractor. We do not believe that changing the eligibility requirements will result in additional burden since the same number of hospitals will be selected for validation, as discussed below. In addition, we do not believe that changing to whom a hospital must identify the medical staff responsible for submission of records will result in additional burden since hospitals must already submit this data; that is, only the contractor to whom the data is submitted may change. We do believe, however, that the second

requirement may result in a change in burden.

We are proposing that the requirement to submit patient charts for validation of Hospital OQR Program data may be met by employing either of the following options: (1) A hospital may submit paper medical records, the form in which we have historically requested them; or (2) a hospital may securely transmit electronic versions of medical information beginning in the CY 2017 payment determination. We are proposing that hospitals that chose to securely transmit electronic versions of medical information should either: (1) Download or copy the digital image of the patient chart onto CD, DVD, or flash drive and ship the electronic media following instructions specified on the QualityNet Web site; or (2) securely submit digital images (PDFs) of patient charts using a Secure File Transfer Portal on the QualityNet Web site. In the FY 2014 IPPS/LTCH PPS final rule, the Hospital IQR Program previously finalized a similar policy that also allows hospitals to submit electronic versions of records for validation using the first method (78 FR 50834 through 78 FR 50835). The Hospital IQR Program has proposed the second method, secure submission of digital images via a Secure File Transfer Portal, in the FY 2015 IPPS/LTCH proposed rule (79 FR 28251). For the same reasons outlined in the Hospital IQR Program (78 FR 50956), we are proposing a reimbursement rate of $3.00 per patient chart submitted electronically (using either of the proposed methods for electronic submission) for validation for the CY 2017 payment determination and subsequent years. We will continue to reimburse hospitals at a rate of 12 cents per page, plus shipping, for records provided on paper (76 FR 74577).

The burden associated with validation is the time and effort necessary to submit validation data to the CMS contractor. For some hospitals, we believe that submitting this data electronically may result in a reduction in burden; for others we believe that submitting paper copies will be the least burdensome option. We sample 500 hospitals for validation, and we estimate that it will take each hospital 12 hours to comply with the data submission requirements. Therefore, we estimate a total burden of approximately 6,000 hours (500 hospitals × 12 hours/hospital) and a total financial impact of $180,000 ($30/hour × 6,000 hours) for the CY 2017 payment determination and subsequent years.

e. Extraordinary Circumstances Extensions or Exemptions Process

We refer readers to the CY 2013 OPPS/ASC final rule with comment period (77 FR 68489), the CY 2014 OPPS/ASC final rule with comment period (78 FR 75119 through 75120), and 42 CFR 419.46(d) for a complete discussion of our extraordinary circumstances extension or waiver process under the Hospital OQR Program. In this proposed rule, we are proposing to make a change from the phrase ''extension or waiver'' to the phrase ''extension or exemption'' throughout the regulation. We do not anticipate that this proposed minor change will affect the collection of information burden estimates for this process.

f. Reconsideration and Appeals

While there is burden associated with filing a reconsideration request, 5 CFR 1320.4 of the Paperwork Reduction Act of 1995 regulations excludes collection activities during the conduct of administrative actions such as redeterminations, reconsiderations, or appeals or all of these actions.

We invite public comment on the burden associated with these information collection requirements.

2. ASCQR Program Requirements

a. Background

We refer readers to the CY 2012 OPPS/ASC final rule with comment period (76 FR 74554), the FY 2013 IPPS/LTCH final rule (77 FR 53672), the CY 2013 OPPS/ASC final rule with comment period (77 FR 68532 through 68533), and the CY 2014 OPPS/ASC final rule with comment period (78 FR 75172 through 75174) for detailed discussions of the ASCQR Program information collection requirements we have previously finalized.

b. Revisions to the CY 2016 Payment Determination Estimates

In the CY 2014 OPPS/ASC final rule with comment period (78 FR 75124 through 75130), we finalized the adoption of three new measures for the CY 2016 payment determination and subsequent years: ASC–9: Endoscopy/Polyp Surveillance: Appropriate Follow-up Interval for Normal Colonoscopy in Average Risk Patients (NQF #0658), ASC–10: Endoscopy/Polyp Surveillance: Colonoscopy Interval for Patients with a History of Adenomatous Polyps—Avoidance of Inappropriate Use (NQF #0659), and ASC–11: Cataracts—Improvement in Patient's Visual Function within 90 Days Following Cataract Surgery (NQF #1536). In that rule, we estimated that each participating ASC would spend 35 minutes per case to collect and submit the data for these measures, making a total estimated burden for ASCs with a single case per ASC of 3,067 hours (5,260 ASCs × 0.583 hours per case per ASC). We also stated that we expected ASCs would vary greatly as to the number of cases per ASC due to ASC specialization (78 FR 75173). As stated in section XIV.E.3. of this proposed rule, we have delayed reporting for ASC–9 and ASC–10 by one quarter. Therefore, we estimate a 25-percent reduction in cases and burden for these measures for the CY 2016 payment determination. As stated in section XIV.E.3.c. of this proposed rule, we delayed reporting of ASC–11 by one year and are proposing to exclude ASC–11 from the CY 2016 payment determination measure set . As a result, we do not believe there would be any burden associated with this measure for the CY 2016 payment determination.

c. Claims-Based Measures for the CY 2017 Payment Determination and Subsequent Years

We refer readers to the CY 2013 OPPS/ASC final rule with comment period (77 FR 68532) and CY 2014 OPPS/ASC final rule with comment period (78 FR 75172 through 75174) for detailed discussions of the information collection requirements for the five previously-adopted claims-based ASCQR Program measures (four outcome measures and one process measure). The five previously adopted measures are: ASC–1: Patient Burn (NQF #0263); ASC–2: Patient Fall (NQF #0266); ASC–3: Wrong Site, Wrong Side, Wrong Patient, Wrong Procedure, Wrong Implant (NQF #0267); ASC–4: Hospital Transfer/Admission (NQF #0265); and ASC–5: Prophylactic Intravenous (IV) Antibiotic Timing (NQF #0264). For the reasons we discussed in the CY 2014 OPPS/ASC final rule with comment period (78 FR 75172 through 75173), we estimate that the reporting burden to report Quality Data Codes (QDCs) for these five claims-based outcome measures would be nominal for the CY 2017 payment determination and for subsequent years.

In section XIV.B.5. of this proposed rule, we are proposing to add one additional claims-based measure to the ASCQR Program. The additional measure, ASC–12: Facility Seven-Day Risk-Standardized Hospital Visit Rate after Outpatient Colonoscopy, would be computed by CMS based on Medicare FFS claims, and would not require ASCs to input QDCs. Therefore, we do not anticipate that this proposed

measure would add additional burden to ASCs for the CY 2017 payment determination and for subsequent years.

d. Web-Based Measures for the CY 2017 Payment Determination and Subsequent Years

We refer readers to the CY 2013 OPPS/ASC final rule with comment period (77 FR 68532) and CY 2014 OPPS/ASC final rule with comment period (78 FR 75172 through 75174) for detailed discussions of the information collection requirements for the five previously-adopted Web-based measures, excluding ASC–11, which we are proposing for voluntary inclusion in the ASCQR Program for CY 2017. The five previously adopted measures are: ASC–6: Safe Surgery Checklist Use; ASC–7: ASC Facility Volume Data on Selected ASC Surgical Procedures; ASC–8: Influenza Vaccination Coverage Among Healthcare Personnel (NQF #0431); ASC–9: Endoscopy/Polyp Surveillance: Appropriate Follow-Up Interval for Normal Colonoscopy in Average Risk Patients (NQF #0658); and ASC–10: Endoscopy/Polyp Surveillance: Colonoscopy Interval for Patients with a History of Adenomatous Polyps—Avoidance of Inappropriate Use (NQF #0659).

For the reasons we discussed in the CY 2014 OPPS/ASC final rule with comment period (78 FR 75173 through 75174), we estimate that the reporting burden for the ASC–6: Safe Surgery Checklist Use and the ASC–7: ASC Facility Volume measures would be 1,756 hours (5,260 ASCs × 2 measures × 0.167 hours per ASC) and $52,680 (1,756 hours × $30.00 per hour) annually for the CY 2017 payment determination and for subsequent years.

For the reasons discussed in the CY 2014 OPPS/ASC final rule with comment period (78 FR 75173 through 75174), we estimate that the reporting burden for the ASC–8: Influenza Vaccination Coverage Among Healthcare Personnel (NQF #0431) measure would be 18,005 hours and $540,150 (18,005 hours × $30.00 per hour) annually for the CY 2017 payment determination and for subsequent years.

For the reasons discussed in the CY 2014 OPPS/ASC final rule with comment period (78 FR 75173 through 75174), we estimate that the reporting burden for ASCs with a single case per ASC for the chart-abstracted ASC–9: Endoscopy/Polyp Surveillance: Appropriate Follow-Up Interval for Normal Colonoscopy in Average Risk Patients (NQF #0658) and ASC–10: Endoscopy/Polyp Surveillance: Colonoscopy Interval for Patients with a History of Adenomatous Polyps—Avoidance of Inappropriate Use (NQF #0659) measures would be 3,067 hours and $92,010 (3,067 hours × $30.00 per hour) annually for the CY 2017 payment determination and for subsequent years.

In section XIV.E.3.c. of this proposed rule, we are proposing that data collection and submission be voluntary for ASC–11: Cataracts: Improvement in Patient's Visual Function within 90 Days Following Cataract Surgery (NQF #1536), meaning we would not subject ASCs to payment reduction with respect to this measure during the period of voluntary reporting. We continue to believe this measure addresses an important area of care, and anticipate that many facilities will report this measure on a voluntary basis. In the CY 2014 ASC/OPPS final rule with comment period (78 FR 75173), we estimated that each participating ASC would spend 35 minutes per case to collect and submit the data for this measure, making the total estimated burden for ASCs with a single case per ASC of 3,067 hours (5,260 ASCs × 0.583 hours per case per ASC) annually. We expect that ASCs would vary greatly as to the number of cases per ASC due to ASC specialization. We estimate that approximately 20 percent of ASCs would elect to report this measure on a voluntary basis; therefore, we estimate the total estimated burden for ASCs with a single case per ASC to be 613 hours (1,052 ASCs × 0.583 hours per case per ASC) and $18,390 (613 hours × $30.00 per hour) annually for the CY 2017 payment determination and subsequent years.

e. Extraordinary Circumstances Extension or Exemptions Process

We refer readers to the FY 2013 IPPS/LTCH PPS final rule (77 FR 53642 through 53643) and the CY 2014 OPPS/ASC final rule with comment period (78 FR 75140) for a complete discussion of our extraordinary circumstances extension or waiver process under the ASCQR Program. We are not proposing to make any substantive changes to this process. However, in the future, we will refer to the process as the extraordinary circumstances extensions or exemptions process. In section XIV.E.7. of this proposed rule, we note that we are proposing to make certain changes to the form to ensure that the form is consistent across CMS quality reporting programs. We do not anticipate that these proposed minor changes will affect the burden estimates for this process.

f. Reconsideration and Appeals

While there is burden associated with filing a reconsideration request, 5 CFR 1320.4 of the Paperwork Reduction Act of 1995 regulations excludes collection activities during the conduct of administrative actions such as redeterminations, reconsiderations, or appeals or all of these actions.

We invite public comment on the burden associated with these information collection requirements.

XX. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this proposed rule, and, when we proceed with a subsequent document(s), we will respond to those comments in the preamble to that document.

XXI. Economic Analyses

A. Regulatory Impact Analysis

1. Introduction

We have examined the impacts of this proposed rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (March 22, 1995, Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Contract with America Advancement Act of 1996 (Pub. L. 104–121) (5 U.S.C. 804(2)). This section of the proposed rule contains the impact and other economic analyses for the provisions that we are proposing.

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule has been designated as an economically significant rule under section 3(f)(1) of Executive Order 12866 and a major rule under the Contract with America Advancement Act of 1996 (Pub. L. 104–121). Accordingly, this proposed rule has been reviewed by the Office of Management and Budget. We

have prepared a regulatory impact analysis that, to the best of our ability, presents the costs and benefits of this proposed rule. We are soliciting public comments on the regulatory impact analysis provided.

2. Statement of Need

This proposed rule is necessary to update the Medicare hospital OPPS rates. It is necessary to make changes to the payment policies and rates for outpatient services furnished by hospitals and CMHCs in CY 2015. We are required under section 1833(t)(3)(C)(ii) of the Act to update annually the OPPS conversion factor used to determine the payment rates for APCs. We also are required under section 1833(t)(9)(A) of the Act to review, not less often than annually, and revise the groups, the relative payment weights, and the wage and other adjustments described in section 1833(t)(2) of the Act. We must review the clinical integrity of payment groups and relative payment weights at least annually. We are proposing to revise the APC relative payment weights using claims data for services furnished on and after January 1, 2013, through and including December 31, 2013, and updated cost report information.

This proposed rule also is necessary to update the ASC payment rates for CY 2015, enabling CMS to make changes to payment policies and payment rates for covered surgical procedures and covered ancillary services that are performed in an ASC in CY 2015. Because ASC payment rates are based on the OPPS relative payment weights for the majority of the procedures performed in ASCs, the ASC payment rates are updated annually to reflect annual changes to the OPPS relative payment weights. In addition, we are required under section 1833(i)(1) of the Act to review and update the list of surgical procedures that can be performed in an ASC not less frequently than every 2 years.

3. Overall Impacts for the Proposed OPPS and ASC Payment Provisions

We estimate that the total increase in Federal government expenditures under the OPPS for CY 2015 compared to CY 2014 due to the changes in this proposed rule would be approximately $800 million. Taking into account our estimated changes in enrollment, utilization, and case-mix, we estimate that the proposed OPPS expenditures for CY 2015 would be approximately $5.224 billion higher relative to expenditures in CY 2014. Because this proposed rule is economically significant as measured by the threshold of an additional $100 million in expenditures in one year, we have prepared this regulatory impact analysis that, to the best of our ability, presents its costs and benefits. Table 52 displays the redistributional impact of the proposed CY 2015 changes in OPPS payment to various groups of hospitals and for CMHCs.

We estimate that the proposed update to the conversion factor and other adjustments (not including the effects of outlier payments, the pass-through estimates, and the application of the proposed frontier State wage adjustment for CY 2015) would increase total OPPS payments by 2.1 percent in CY 2015. The proposed changes to the APC weights, the proposed changes to the wage indexes, the proposed continuation of a payment adjustment for rural SCHs, including EACHs, and the proposed payment adjustment for cancer hospitals would not increase OPPS payments because these proposed changes to the OPPS are budget neutral. However, these proposed updates would change the distribution of payments within the budget neutral system. We estimate that the total change in payments between CY 2014 and CY 2015, considering all proposed payments, including proposed changes in estimated total outlier payments, pass-through payments, and the application of the frontier State wage adjustment outside of budget neutrality, in addition to the application of the proposed OPD fee schedule increase factor after all adjustments required by sections 1833(t)(3)(F), 1833(t)(3)(G), and 1833(t)(17) of the Act, would increase total estimated OPPS payments by 2.2 percent.

We estimate the total increase (from proposed changes to the ASC provisions in this proposed rule as well as from enrollment, utilization, and case-mix changes) in expenditures under the ASC payment system for CY 2015 compared to CY 2014 to be approximately $243 million. Because the provisions for the ASC payment system are part of a proposed rule that is economically significant as measured by the $100 million threshold, we have prepared a regulatory impact analysis of the proposed changes to the ASC payment system that, to the best of our ability, presents the costs and benefits of this portion of the proposed rule. Tables 53 and Table 54 of this proposed rule display the redistributional impact of the proposed CY 2015 changes on ASC payment, grouped by specialty area and then grouped by procedures with the greatest ASC expenditures, respectively.

4. Detailed Economic Analyses

a. Estimated Effects of Proposed OPPS Changes in This Proposed Rule

(1) Limitations of Our Analysis

The distributional impacts presented here are the projected effects of the proposed CY 2015 policy changes on various hospital groups. We post on the CMS Web site our proposed hospital-specific estimated payments for CY 2015 with the other supporting documentation for this proposed rule. To view the hospital-specific estimates, we refer readers to the CMS Web site at: *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HospitalOutpatientPPS/index.html*. At the Web site, select ''regulations and notices'' from the left side of the page and then select ''CMS–1613–P'' from the list of regulations and notices. The hospital-specific file layout and the hospital-specific file are listed with the other supporting documentation for this proposed rule. We show hospital-specific data only for hospitals whose claims were used for modeling the impacts shown in Table 52 below. We do not show hospital-specific impacts for hospitals whose claims we were unable to use. We refer readers to section II.A. of this proposed rule for a discussion of the hospitals whose claims we do not use for ratesetting and impact purposes.

We estimate the effects of the proposed individual policy changes by estimating payments per service, while holding all other payment policies constant. We use the best data available, but do not attempt to predict behavioral responses to our proposed policy changes. In addition, we do not make adjustments for future changes in variables such as service volume, service-mix, or number of encounters. In this proposed rule, we are soliciting public comment and information about the anticipated effects of our proposed changes on providers and our methodology for estimating them. Any public comments that we receive will be addressed in the applicable sections of the final rule with comment period.

(2) Estimated Effects of Proposed OPPS Changes on Hospitals

Table 52 below shows the estimated impact of this proposed rule on hospitals. Historically, the first line of the impact table, which estimates the proposed change in payments to all facilities, has always included cancer and children's hospitals, which are held harmless to their pre-BBA amount. We also include CMHCs in the first line that includes all providers. We now include a second line for all hospitals, excluding

permanently held harmless hospitals and CMHCs.

We present separate impacts for CMHCs in Table 52, and we discuss them separately below, because CMHCs are paid only for partial hospitalization services under the OPPS and are a different provider type from hospitals. In CY 2015, we are continuing to pay CMHCs under APC 0172 (Level I Partial Hospitalization (3 services) for CMHCs) and APC 0173 (Level II Partial Hospitalization (4 or more services) for CMHCs), and we are paying hospitals for partial hospitalization services under APC 0175 (Level I Partial Hospitalization (3 services) for hospital-based PHPs) and APC 0176 (Level II Partial Hospitalization (4 or more services) for hospital-based PHPs).

The estimated increase in the total payments made under the OPPS is determined largely by the increase to the conversion factor under the statutory methodology. The distributional impacts presented do not include assumptions about changes in volume and service-mix. The conversion factor is updated annually by the OPD fee schedule increase factor as discussed in detail in section II.B. of this proposed rule.

Section 1833(t)(3)(C)(iv) of the Act provides that the OPD fee schedule increase factor is equal to the market basket percentage increase applicable under section 1886(b)(3)(B)(iii) of the Act, which we refer to as the IPPS market basket percentage increase. The proposed IPPS market basket percentage increase for FY 2015 is 2.7 percent (79 FR 28087). Section 1833(t)(3)(F)(i) of the Act reduces that 2.7 percent by the multifactor productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act, which is proposed to be 0.4 percentage points for FY 2015 (which is also the proposed MFP adjustment for FY 2015 in the FY 2015 IPPS/LTCH PPS proposed rule (79 FR 28087); and sections 1833(t)(3)(F)(ii) and 1833(t)(3)(G)(iv) of the Act further reduce the market basket percentage increase by 0.2 percentage points, resulting in the proposed OPD fee schedule increase factor of 2.1 percent. We are proposing to use the proposed OPD fee schedule increase factor of 2.1 percent in the calculation of the CY 2015 proposed OPPS conversion factor. Section 10324 of the Affordable Care Act, as amended by HCERA, further authorized additional expenditures outside budget neutrality for hospitals in certain frontier States that have a wage index less than 1.00. The amounts attributable to this frontier State wage index adjustment are incorporated in the CY 2015 estimates in Table 52.

To illustrate the impact of the proposed CY 2015 changes, our analysis begins with a baseline simulation model that uses the CY 2014 relative payment weights, the FY 2014 final IPPS wage indexes that include reclassifications, and the final CY 2014 conversion factor. Table 52 shows the estimated redistribution of the proposed increase in payments for CY 2015 over CY 2014 payments to hospitals and CMHCs as a result of the following factors: the impact of the APC reconfiguration and recalibration changes between CY 2014 and CY 2015 (Column 2); the proposed wage indexes and the provider adjustments (Column 3); the combined impact of all the proposed changes described in the preceding columns plus the proposed 2.1 percent OPD fee schedule increase factor update to the conversion factor (Column 4); the combined impact shown in Column 4 plus the proposed CY 2015 frontier State wage index adjustment (Column 5); and the estimated impact taking into account all proposed payments for CY 2015 relative to all payments for CY 2014, including the impact of proposed changes in estimated outlier payments and proposed changes to the pass-through payment estimate (Column 6).

We did not model an explicit budget neutrality adjustment for the rural adjustment for SCHs because we are proposing to maintain the current adjustment percentage for CY 2015. Because the updates to the conversion factor (including the update of the OPD fee schedule increase factor), the estimated cost of the rural adjustment, and the estimated cost of projected pass-through payment for CY 2015 are applied uniformly across services, observed redistributions of payments in the impact table for hospitals largely depend on the mix of services furnished by a hospital (for example, how the APCs for the hospital's most frequently furnished services would change), and the impact of the wage index changes on the hospital. However, total payments made under this system and the extent to which this proposed rule would redistribute money during implementation also would depend on changes in volume, practice patterns, and the mix of services billed between CY 2014 and CY 2015 by various groups of hospitals, which CMS cannot forecast.

Overall, we estimate that the proposed rates for CY 2015 would increase Medicare OPPS payments by an estimated 2.2 percent. Removing payments to cancer and children's hospitals because their payments are held harmless to the pre-OPPS ratio between payment and cost and removing payments to CMHCs results in an estimated 2.2 percent increase in Medicare payments to all other hospitals. These estimated payments would not significantly impact other providers.

Column 1: Total Number of Hospitals

The first line in Column 1 in Table 52 shows the total number of facilities (3,947), including designated cancer and children's hospitals and CMHCs, for which we were able to use CY 2013 hospital outpatient and CMHC claims data to model CY 2014 and CY 2015 payments, by classes of hospitals, for CMHCs and for dedicated cancer hospitals. We excluded all hospitals and CMHCs for which we could not plausibly estimate CY 2014 or CY 2015 payment and entities that are not paid under the OPPS. The latter entities include CAHs, all-inclusive hospitals, and hospitals located in Guam, the U.S. Virgin Islands, Northern Mariana Islands, American Samoa, and the State of Maryland. This process is discussed in greater detail in section II.A. of this proposed rule. At this time, we are unable to calculate a disproportionate share (DSH) variable for hospitals not participating in the IPPS. Hospitals for which we do not have a DSH variable are grouped separately and generally include freestanding psychiatric hospitals, rehabilitation hospitals, and long-term care hospitals. We show the total number of OPPS hospitals (3,814), excluding the hold-harmless cancer and children's hospitals and CMHCs, on the second line of the table. We excluded cancer and children's hospitals because section 1833(t)(7)(D) of the Act permanently holds harmless cancer hospitals and children's hospitals to their ''pre-BBA amount'' as specified under the terms of the statute, and therefore, we removed them from our impact analyses. We show the isolated impact on 72 CMHCs at the bottom of the impact table and discuss that impact separately below.

Column 2: APC Recalibration—All Proposed Changes

Column 2 shows the estimated effect of APC recalibration. Column 2 also reflects any changes in multiple procedure discount patterns or conditional packaging that occur as a result of the changes in the relative magnitude of payment weights. As a result of APC recalibration, we estimate that urban hospitals would experience a decrease of −0.1 percent, with the impact ranging from an increase of 0.1 percent to a decrease of −0.3 percent, depending on the number of beds. Rural hospitals would experience an increase

of 0.5 percent, with the impact ranging from an increase of 1.2 percent to a decrease of −0.6 percent, depending on the number of beds. Major teaching hospitals would experience an increase of 0.6 percent overall.

Column 3: New Wage Indexes and the Effect of the Provider Adjustments

Column 3 demonstrates the combined budget neutral impact of the proposed APC recalibration; the proposed updates for the wage indexes with the proposed fiscal year (FY) 2015 IPPS post-reclassification wage indexes; and the proposed rural adjustment. We modeled the independent effect of the proposed budget neutrality adjustments and the proposed OPD fee schedule increase factor by using the relative payment weights and wage indexes for each year, and using a CY 2014 conversion factor that included the OPD fee schedule increase and a budget neutrality adjustment for differences in wage indexes.

Column 3 reflects the independent effects of the proposed updated wage indexes, including the application of budget neutrality for the rural floor policy on a nationwide basis. This column excludes the effects of the proposed frontier State wage index adjustment, which is not budget neutral and is included in Column 5. We did not model a budget neutrality adjustment for the rural adjustment for SCHs because we are proposing to continue the rural payment adjustment of 7.1 percent to rural SCHs for CY 2015, as described in section II.E. of this proposed rule.

We modeled the independent effect of updating the wage indexes by varying only the wage indexes, holding APC relative payment weights, service-mix, and the rural adjustment constant and using the proposed CY 2015 scaled weights and a CY 2014 conversion factor that included a budget neutrality adjustment for the effect of changing the wage indexes between CY 2014 and CY 2015. The proposed FY 2015 wage policy results in modest redistributions.

There is no difference in impact between the CY 2014 cancer hospital payment adjustment and the proposed CY 2015 cancer hospital payment adjustment because we are proposing the same payment-to-cost ratio target in CY 2015 as in CY 2014.

Column 4: All Proposed Budget Neutrality Changes Combined With the Proposed Market Basket Update

Column 4 demonstrates the combined impact of all the proposed changes previously described and the proposed update to the conversion factor of 2.1 percent. Overall, these changes would increase payments to urban hospitals by 2.1 percent and to rural hospitals by 2.4 percent. Most classes of hospitals would receive an increase in line with the proposed 2.1 percent overall increase after the update is applied to the budget neutrality adjustments.

Column 5: All Proposed Adjustments With the Proposed Frontier State Wage Index Adjustment

This column shows the impact of all proposed budget neutrality adjustments, application of the proposed 2.1 percent OPD fee schedule increase factor, and the nonbudget-neutral impact of applying the proposed CY 2015 frontier State wage adjustment. Rural hospitals in West North Central and Mountain States would experience estimated increases in payment of 3.8 and 4.3 percent, respectively, as a result of the proposed frontier State wage index adjustment, while urban hospitals in those States would experience estimated increases of 3.2 and 2.5 percent, respectively.

Column 6: All Proposed Changes for CY 2015

Column 6 depicts the full impact of the proposed CY 2015 policies on each hospital group by including the effect of all of the proposed changes for CY 2015 and comparing them to all estimated payments in CY 2014. Column 6 shows the combined budget neutral effects of Column 2 and 3; the proposed OPD fee schedule increase; the impact of the proposed frontier State wage index adjustment; the impact of estimated OPPS outlier payments as discussed in section II.G. of this proposed rule; the proposed change in the Hospital OQR Program payment reduction for the small number of hospitals in our impact model that failed to meet the reporting requirements (discussed in section XIII. of this proposed rule); and the difference in total OPPS payments dedicated to transitional pass-through payments.

Of those hospitals that failed to meet the Hospital OQR Program reporting requirements for the full CY 2014 update (and assumed, for modeling purposes, to be the same number for CY 2015), we included 35 hospitals in our model because they had both CY 2013 claims data and recent cost report data. We estimate that the cumulative effect of all proposed changes for CY 2015 would increase payments to all providers by 2.2 percent for CY 2015. We modeled the independent effect of all proposed changes in Column 6 using the final relative payment weights for CY 2014 and the proposed relative payment weights for CY 2015. We used the final conversion factor for CY 2014 of $72.672 and the proposed CY 2015 conversion factor of $74.176 discussed in section II.B. of this proposed rule.

Column 6 contains simulated outlier payments for each year. We used the 1-year proposed charge inflation factor used in the FY 2015 IPPS/LTCH PPS proposed rule (79 FR 28321) of 5.57 percent (1.0557) to increase individual costs on the CY 2013 claims, and we used the most recent overall CCR in the April 2014 Outpatient Provider-Specific File (OPSF) to estimate outlier payments for CY 2014. Using the CY 2013 claims and a 5.57 percent charge inflation factor, we currently estimate that outlier payments for CY 2014, using a multiple threshold of 1.75 and a proposed fixed-dollar threshold of $2,900 would be approximately 0.9 percent of total payments. The estimated current outlier payments of 0.9 percent are incorporated in the comparison in Column 6. We used the same set of claims and a proposed charge inflation factor of 11.46 percent (1.1146) and the CCRs in the April 2014 OPSF, with an adjustment of 0.9813, to reflect relative changes in cost and charge inflation between CY 2013 and CY 2015, to model the CY 2015 proposed outliers at 1.0 percent of estimated total payments using a multiple threshold of 1.75 and a proposed fixed-dollar threshold of $3,100. The charge inflation and CCR inflation factors are discussed in detail in the FY 2015 IPPS/LTCH PPS proposed rule (79 FR 28321).

We estimate that the anticipated change in payment between CY 2014 and CY 2015 for the hospitals failing to meet the Hospital OQR Program requirements would be negligible. Overall, we estimate that facilities would experience an increase of 2.2 percent under this proposed rule in CY 2015 relative to total spending in CY 2014. This projected increase (shown in Column 6) of Table 52 reflects the proposed 2.1 percent OPD fee schedule increase factor, less 0.01 percent for the proposed change in the pass-through estimate between CY 2014 and CY 2015, plus 0.1 percent for the difference in estimated outlier payments between CY 2014 (0.9 percent) and CY 2015 (1.0 percent), less 0.1 percent due to the frontier adjustment in CY 2014, plus 0.1 percent due to the proposed frontier State wage index adjustment in CY 2015. We estimate that the combined effect of all proposed changes for CY 2015 would increase payments to urban hospitals by 2.2 percent.

Overall, we estimate that rural hospitals would experience a 2.5 percent increase as a result of the

combined effects of all proposed changes for CY 2015. We estimate that rural hospitals that bill less than 5,000 lines of OPPS services would experience a decrease of −3.1 percent and rural hospitals that bill 11,000 or more lines of OPPS services would experience increases ranging from 1.5 to 3.0 percent.

Among hospitals by teaching status, we estimate that the impacts resulting from the combined effects of all proposed changes would include an increase of 2.9 percent for major teaching hospitals and 2.1 percent for nonteaching hospitals. Minor teaching hospitals would experience an estimated increase of 1.8 percent.

In our analysis, we also have categorized hospitals by type of ownership. Based on this analysis, we estimate that voluntary hospitals would experience an increase of 2.4 percent, proprietary hospitals would experience an increase of 1.7 percent, and governmental hospitals would experience an increase of 2.2 percent.

TABLE 52—ESTIMATED IMPACT OF THE PROPOSED CY 2015 CHANGES FOR THE HOSPITAL OUTPATIENT PROSPECTIVE PAYMENT SYSTEM

	Number of hospitals	APC Recalibration (all proposed changes)	Proposed new wage index and provider adjustments	All budget neutral changes (combined cols 2,3) with proposed market basket update	All proposed budget neutral changes and proposed update (column 4) with proposed frontier wage index, adjustment	All proposed changes
	(1)	(2)	(3)	(4)	(5)	(6)
ALL FACILITIES*	3,947	0.0	0.0	2.1	2.2	2.2
ALL HOSPITALS (excludes hospitals permanently held harmless and CMHCs)	3,814	0.0	0.0	2.1	2.2	2.2
URBAN HOSPITALS	2,953	−0.1	0.0	2.1	2.2	2.2
LARGE URBAN (GT 1 MILL.)	1,616	−0.1	0.1	2.2	2.2	2.3
OTHER URBAN (LE 1 MILL.)	1,337	−0.1	−0.1	1.9	2.2	2.1
RURAL HOSPITALS	861	0.5	−0.2	2.4	2.7	2.5
SOLE COMMUNITY	377	0.7	−0.1	2.6	3.0	2.7
OTHER RURAL	484	0.3	−0.3	2.2	2.3	2.2
BEDS (URBAN):						
0–99 BEDS	1,008	0.1	0.1	2.4	2.6	2.5
100–199 BEDS	856	0.2	0.0	2.3	2.4	2.4
200–299 BEDS	462	−0.2	0.1	2.0	2.2	2.2
300–499 BEDS	412	−0.3	0.0	1.8	2.0	2.0
500 + BEDS	215	0.1	0.0	2.1	2.1	2.3
BEDS (RURAL):						
0–49 BEDS	338	0.9	0.0	3.0	3.2	3.0
50–100 BEDS	319	1.2	−0.2	3.0	3.3	3.1
101–149 BEDS	117	0.3	−0.1	2.3	2.6	2.4
150–199 BEDS	47	0.0	−0.5	1.6	2.3	1.7
200 + BEDS	40	−0.6	−0.2	1.3	1.3	1.4
VOLUME (URBAN):						
LT 5,000 Lines	500	−2.6	−0.2	−0.8	−0.6	−0.7
5,000–10,999 Lines	138	−2.7	−0.1	−0.7	−0.1	−0.5
11,000–20,999 Lines	120	−2.4	0.0	−0.3	−0.1	−0.1
21,000–42,999 Lines	237	−0.4	0.1	1.8	1.8	1.9
42,999–89,999 Lines	540	−0.2	0.0	1.9	1.9	2.0
GT 89,999 Lines	1,418	0.0	0.0	2.1	2.2	2.3
VOLUME (RURAL):						
LT 5,000 Lines	35	−5.1	−0.1	−3.1	−0.3	−3.1
5,000–10,999 Lines	27	−4.1	0.1	−1.9	−0.7	−1.9
11,000–20,999 Lines	50	−0.2	−0.4	1.5	1.7	1.5
21,000–42,999 Lines	162	1.0	−0.1	3.0	3.5	3.0
GT 42,999 Lines	587	0.5	−0.2	2.4	2.6	2.5
REGION (URBAN):						
NEW ENGLAND	151	1.3	−0.1	3.3	3.3	3.4
MIDDLE ATLANTIC	357	0.5	0.5	3.1	3.1	3.2
SOUTH ATLANTIC	468	−0.2	−0.2	1.6	1.6	1.8
EAST NORTH CENT.	465	0.1	−0.3	1.9	1.9	2.1
EAST SOUTH CENT.	175	−1.0	−0.5	0.6	0.6	0.8
WEST NORTH CENT.	192	−0.1	0.0	2.0	3.2	2.1
WEST SOUTH CENT.	509	−1.1	−0.2	0.8	0.8	1.0
MOUNTAIN	199	0.0	0.0	2.1	2.5	2.3
PACIFIC	390	−0.1	1.0	3.1	3.1	3.2
PUERTO RICO	47	1.0	0.5	3.6	3.6	3.6
REGION (RURAL):						
NEW ENGLAND	23	2.0	−0.1	4.0	4.0	4.1
MIDDLE ATLANTIC	58	1.4	0.4	3.9	3.9	4.0
SOUTH ATLANTIC	130	−0.3	−0.5	1.3	1.3	1.4

TABLE 52—ESTIMATED IMPACT OF THE PROPOSED CY 2015 CHANGES FOR THE HOSPITAL OUTPATIENT PROSPECTIVE PAYMENT SYSTEM—Continued

	Number of hospitals	APC Recalibration (all proposed changes)	Proposed new wage index and provider adjustments	All budget neutral changes (combined cols 2,3) with proposed market basket update	All proposed budget neutral changes and proposed update (column 4) with proposed frontier wage index adjustment	All proposed changes
	(1)	(2)	(3)	(4)	(5)	(6)
EAST NORTH CENT.	120	0.7	0.0	2.8	2.8	2.9
EAST SOUTH CENT.	165	−0.2	−0.4	1.5	1.5	1.6
WEST NORTH CENT.	99	0.7	−0.2	2.6	3.8	2.6
WEST SOUTH CENT.	181	0.1	−0.6	1.6	1.6	1.7
MOUNTAIN	61	0.9	−0.5	2.6	4.3	2.8
PACIFIC	24	1.4	0.9	4.4	4.4	4.4
TEACHING STATUS:						
NON-TEACHING	2,793	−0.1	0.0	2.0	2.1	2.1
MINOR	699	−0.3	−0.1	1.7	1.9	1.8
MAJOR	322	0.6	0.1	2.8	2.8	2.9
DSH PATIENT PERCENT:						
0	15	0.2	0.5	2.8	3.2	2.8
GT 0–0.10	334	0.3	0.2	2.6	2.8	2.7
0.10–0.16	317	0.3	−0.1	2.4	2.5	2.4
0.16–0.23	681	0.2	−0.1	2.3	2.4	2.4
0.23–0.35	1,095	0.0	0.0	2.1	2.3	2.2
GE 0.35	811	−0.2	0.0	1.9	1.9	2.1
DSH NOT AVAILABLE**	561	−6.6	0.1	−4.4	−4.4	−4.5
URBAN TEACHING/DSH:						
TEACHING & DSH	928	0.1	0.0	2.2	2.3	2.3
NO TEACHING/DSH	1,482	−0.2	0.1	2.0	2.1	2.1
NO TEACHING/NO DSH	13	0.2	0.5	2.9	2.9	2.9
DSH NOT AVAILABLE**	530	−6.1	0.2	−3.8	−3.8	−3.9
TYPE OF OWNERSHIP:						
VOLUNTARY	2,007	0.1	0.0	2.2	2.4	2.4
PROPRIETARY	1,255	−0.5	0.0	1.6	1.7	1.7
GOVERNMENT	552	0.0	−0.1	2.1	2.1	2.2
CMHCs	72	−4.0	−0.1	−2.0	−2.0	−1.6

Column (1) shows total hospitals and/or CMHCs.

Column (2) includes all proposed CY 2015 OPPS policies and compares those to the CY 2014 OPPS.

Column (3) shows the budget neutral impact of updating the wage index by applying the proposed FY 2015 hospital inpatient wage index, including all proposed hold harmless policies and transitional wages. The proposed rural adjustment continues our current policy of 7.1 percent so the budget neutrality factor is 1. The budget neutrality adjustment for the proposed cancer hospital adjustment is 1.000 because the payment-to-cost ratio target remains the same as in CY 2014.

Column (4) shows the impact of all budget neutrality adjustments and the addition of the proposed 2.1 percent OPD fee schedule update factor (2.7 percent reduced by 0.4 percentage points for the final productivity adjustment and further reduced by 0.2 percentage point in order to satisfy statutory requirements set forth in the Affordable Care Act).

Column (5) shows the non-budget neutral impact of applying the frontier State wage adjustment in CY 2015.

Column (6) shows the additional adjustments to the conversion factor resulting from a change in the pass-through estimate, adding estimated outlier payments, and applying payment wage indexes.

* These 3,947 providers include children and cancer hospitals, which are held harmless to pre-BBA amounts, and CMHCs.

** Complete DSH numbers are not available for providers that are not paid under IPPS, including rehabilitation, psychiatric, and long-term care hospitals.

(3) Estimated Effects of Proposed OPPS Changes on CMHCs

The last line of Table 52 demonstrates the isolated impact on CMHCs, which furnish only partial hospitalization services under the OPPS. In CY 2014, CMHCs are paid under two APCs for these services: APC 0172 (Level I Partial Hospitalization (3 services) for CMHCs) and APC 0173 (Level II Partial Hospitalization (4 or more services) for CMHCs). Hospitals are paid for partial hospitalization services under APC 0175 (Level I Partial Hospitalization (3 services) for hospital-based PHPs) and APC 0176 (Level II Partial Hospitalization (4 or more services) for hospital-based PHPs). We use our standard ratesetting methodology to derive the payment rates for each APC based on the cost data derived from claims and cost reports for the provider-type-specific APC. For CY 2015, we are proposing to continue the provider-type-specific APC structure that we adopted in CY 2011. We modeled the impact of this proposed APC policy assuming that CMHCs would continue to provide the same number of days of PHP care, with each day having either 3 services or 4 or more services, as seen in the CY 2013 claims data used for this proposed rule. We excluded days with 1 or 2 services because our policy only pays a per diem rate for partial hospitalization when 3 or more qualifying services are provided to the beneficiary. We estimate that CMHCs would experience an overall −1.6 percent decrease in payments from CY 2014 (shown in Column 6).

Column 3 shows that the estimated impact of adopting the proposed FY 2015 wage index values would result in a small decrease of −0.1 percent to CMHCs. We note that all providers paid under the OPPS, including CMHCs, would receive a 2.1 percent OPD fee schedule increase factor. Column 4 shows that combining this proposed OPD fee schedule increase factor, along with proposed changes in APC policy for CY 2015 and the proposed FY 2015 wage index updates, would result in an estimated decrease of −2.0 percent. Column 5 shows that adding the proposed frontier State wage index adjustment would result in no change to the cumulative −2.0 percent decrease. Column 6 shows that adding the proposed changes in outlier and pass-though payments would result in an additional 0.4 percent increase in payment for CMHCs, for a total decrease of −1.6 percent. This reflects all proposed changes to CMHCs for CY 2015.

(4) Estimated Effect of Proposed OPPS Changes on Beneficiaries

For services for which the beneficiary pays a copayment of 20 percent of the payment rate, the beneficiary share of payment would increase for services for which the OPPS payments would rise and would decrease for services for which the OPPS payments would fall. For further discussion on the calculation of the national unadjusted copayments and minimum unadjusted copayments, we refer readers to section II.I. of this proposed rule. In all cases, the statute limits beneficiary liability for copayment for a procedure to the hospital inpatient deductible for the applicable year.

We estimate that the aggregate beneficiary coinsurance percentage would be 20.1 percent for all services paid under the OPPS in CY 2015. The estimated aggregate beneficiary coinsurance reflects general system adjustments, including proposed recalibration of the APC relative payment weights, proposed change in the portion of OPPS payments dedicated to pass-through payments, and the CY 2015 comprehensive APC policy discussed in section II.A.2.e. of this proposed rule.

(5) Estimated Effects of Proposed OPPS Changes on Other Providers

The relative payment weights and payment amounts established under the OPPS affect the payments made to ASCs as discussed in section XII. of this proposed rule. No types of providers or suppliers other than hospitals, CMHCs and ASCs would be affected by the proposed changes in this proposed rule.

(6) Estimated Effects of Proposed OPPS Changes on the Medicare and Medicaid Programs

The effect on the Medicare program is expected to be $800 million in additional program payments for OPPS services furnished in CY 2015. The effect on the Medicaid program is expected to be limited to increased copayments that Medicaid may make on behalf of Medicaid recipients who are also Medicare beneficiaries. We refer readers to our discussion of the impact on beneficiaries in section XXI.A. of this proposed rule.

(7) Alternative OPPS Policies Considered

Alternatives to the OPPS changes we are proposing to make and the reasons for our selected alternatives are discussed throughout this proposed rule.

• Alternatives Considered for the Establishment of Comprehensive APCs

We refer readers to the CY 2014 OPPS/ASC final rule with comment period (78 FR 74861 through 74910 and 75184 through 75185) for a discussion of our policy to establish comprehensive APCs for CY 2015 and the alternatives we considered. We note that we published tables in that final rule with comment period to demonstrate how this policy would have been implemented in CY 2014, and stated that we would be considering any additional public comments we receive when we update the policy for CY 2015 to account for changes that may occur in the CY 2013 claims data.

b. Estimated Effects of CY 2015 ASC Payment System Proposed Policies

Most ASC payment rates are calculated by multiplying the ASC conversion factor by the ASC relative payment weight. As discussed fully in section XII. of this proposed rule, we are proposing to set the CY 2015 ASC relative payment weights by scaling the proposed CY 2015 OPPS relative payment weights by the proposed ASC scaler of 0.9142. The estimated effects of the proposed updated relative payment weights on payment rates are varied and are reflected in the estimated payments displayed in Tables 53 and 54 below.

Beginning in CY 2011, section 3401 of the Affordable Care Act requires that the annual update to the ASC payment system (which currently is the CPI–U) after application of any quality reporting reduction be reduced by a productivity adjustment. The Affordable Care Act defines the productivity adjustment to be equal to the 10-year moving average of changes in annual economy-wide private nonfarm business multifactor productivity (MFP) (as projected by the Secretary for the 10-year period ending with the applicable fiscal year, year, cost reporting period, or other annual period). For ASCs that fail to meet their quality reporting requirements, the CY 2015 payment determinations will be based on the application of a 2.0 percentage point reduction to the annual update factor, which currently is the CPI–U. We calculated the proposed CY 2015 ASC conversion factor by adjusting the CY 2014 ASC conversion factor by 0.9983 to account for changes in the pre-floor and pre-reclassified hospital wage indexes between CY 2014 and CY 2015 and by applying the proposed CY 2015 MFP-adjusted CPI–U update factor of 1.2 percent (projected CPI–U update of 1.7 percent minus a projected productivity adjustment of 0.5 percent). The proposed CY 2015 ASC conversion factor is $43.918.

(1) Limitations of Our Analysis

Presented here are the projected effects of the proposed changes for CY 2015 on Medicare payment to ASCs. A key limitation of our analysis is our inability to predict changes in ASC service-mix between CY 2013 and CY 2015 with precision. We believe that the net effect on Medicare expenditures resulting from the proposed CY 2015 changes would be small in the aggregate for all ASCs. However, such changes may have differential effects across surgical specialty groups as ASCs continue to adjust to the payment rates based on the policies of the revised ASC payment system. We are unable to accurately project such changes at a disaggregated level. Clearly, individual ASCs would experience changes in payment that differ from the aggregated estimated impacts presented below.

(2) Estimated Effects of ASC Payment System Proposed Policies on ASCs

Some ASCs are multispecialty facilities that perform the gamut of surgical procedures from excision of lesions to hernia repair to cataract extraction; others focus on a single specialty and perform only a limited range of surgical procedures, such as eye, digestive system, or orthopedic procedures. The combined effect on an individual ASC of the proposed update to the CY 2015 payments would depend on a number of factors, including, but not limited to, the mix of services the ASC provides, the volume of specific services provided by the ASC, the percentage of its patients who are

Medicare beneficiaries, and the extent to which an ASC provides different services in the coming year. The following discussion presents tables that display estimates of the impact of the proposed CY 2015 updates to the ASC payment system on Medicare payments to ASCs, assuming the same mix of services as reflected in our CY 2013 claims data. Table 53 depicts the estimated aggregate percent change in payment by surgical specialty or ancillary items and services group by comparing estimated CY 2014 payments to estimated CY 2015 payments and Table 54 shows a comparison of estimated CY 2014 payments to estimated CY 2015 payments for procedures that we estimate would receive the most Medicare payment in CY 2014.

Table 53 shows the estimated effects on aggregate Medicare payments under the ASC payment system by surgical specialty or ancillary items and services group. We have aggregated the surgical HCPCS codes by specialty group, grouped all HCPCS codes for covered ancillary items and services into a single group, and then estimated the effect on aggregated payment for surgical specialty and ancillary items and services groups. The groups are sorted for display in descending order by estimated Medicare program payment to ASCs. The following is an explanation of the information presented in Table 53.

- Column 1—Surgical Specialty or Ancillary Items and Services Group indicates the surgical specialty into which ASC procedures are grouped and the ancillary items and services group which includes all HCPCS codes for covered ancillary items and services. To group surgical procedures by surgical specialty, we used the CPT code range definitions and Level II HCPCS codes and Category III CPT codes as appropriate, to account for all surgical procedures to which the Medicare program payments are attributed.
- Column 2—Estimated CY 2014 ASC Payments were calculated using CY 2013 ASC utilization (the most recent full year of ASC utilization) and CY 2014 ASC payment rates. The surgical specialty and ancillary items and services groups are displayed in descending order based on estimated CY 2014 ASC payments.
- Column 3—Estimated CY 2015 Percent Change is the aggregate percentage increase or decrease in Medicare program payment to ASCs for each surgical specialty or ancillary items and services group that are attributable to proposed updates to ASC payment rates for CY 2015 compared to CY 2014.

As seen in Table 53, for the six specialty groups that account for the most ASC utilization and spending, we estimate that the proposed update to ASC rates for CY 2015 would result in a 2-percent decrease in aggregate payment amounts for eye and ocular adnexa procedures, a 6-percent increase in aggregate payment amounts for digestive system procedures, a 1-percent increase in aggregate payment amounts for nervous system procedures, a 2-percent increase in aggregate payment amounts for musculoskeletal system procedures, and a 3-percent increase in aggregate payment amounts for genitourinary system procedures and integumentary system procedures.

An estimated increase in aggregate payment for the specialty group does not mean that all procedures in the group would experience increased payment rates. For example, the estimated increase for CY 2015 for digestive system procedures is likely due to an increase in the ASC payment weight for some of the high volume procedures, such as CPT code 43239 (Upper GI endoscopy biopsy) where estimated payment would increase by 9 percent for CY 2015.

Also displayed in Table 53 is a separate estimate of Medicare ASC payments for the group of separately payable covered ancillary items and services. The payment estimates for the covered surgical procedures include the costs of packaged ancillary items and services. We estimate that aggregate payments for these items and services would not change for CY 2015.

TABLE 53—ESTIMATED IMPACT OF THE PROPOSED CY 2015 UPDATE TO THE ASC PAYMENT SYSTEM ON AGGREGATE CY 2015 MEDICARE PROGRAM PAYMENTS BY SURGICAL SPECIALTY OR ANCILLARY ITEMS AND SERVICES GROUP

Surgical specialty group (1)	Estimated CY 2014 ASC payments (in millions) (2)	Estimated CY 2015 percent change (3)
Total	$3,819	1
Eye and ocular adnexa	1,556	−2
Digestive system	780	6
Nervous system	572	1
Musculoskeletal system	474	2
Genitourinary system	167	3
Integumentary system	137	3
Respiratory system	54	1
Cardiovascular system	35	−3
Ancillary items and services	24	0
Auditory system	14	0
Hematologic & lymphatic systems	6	12

Table 54 below shows the estimated impact of the proposed updates to the revised ASC payment system on aggregate ASC payments for selected surgical procedures during CY 2015. The table displays 30 of the procedures receiving the greatest estimated CY 2014 aggregate Medicare payments to ASCs. The HCPCS codes are sorted in descending order by estimated CY 2014 program payment.

- Column 1—CPT/HCPCS code.
- Column 2—Short Descriptor of the HCPCS code.
- Column 3—Estimated CY 2014 ASC Payments were calculated using CY 2013 ASC utilization (the most recent full year of ASC utilization) and the CY 2014 ASC payment rates. The estimated CY 2014 payments are expressed in millions of dollars.
- Column 4—Estimated CY 2015 Percent Change reflects the percent differences between the estimated ASC

payment for CY 2014 and the estimated payment for CY 2015 based on the proposed update.

TABLE 54—ESTIMATED IMPACT OF THE PROPOSED CY 2015 UPDATE TO THE ASC PAYMENT SYSTEM ON AGGREGATE PAYMENTS FOR SELECTED PROCEDURES

CPT/HCPCS code * (1)	Short descriptor (2)	Estimated CY 2014 ASC payments (in millions) (3)	Estimated CY 2015 percent change (4)
66984	Cataract surg w/iol, 1 stage	$1,132	−2
43239	Upper GI endoscopy, biopsy	170	9
45380	Colonoscopy and biopsy	168	6
45385	Lesion removal colonoscopy	107	6
66982	Cataract surgery, complex	93	−2
64483	Inj foramen epidural l/s	90	0
62311	Inject spine l/s (cd)	79	0
45378	Diagnostic colonoscopy	72	6
66821	After cataract laser surgery	63	2
64493	Inj paravert f jnt l/s 1 lev	47	0
64635	Destroy lumb/sac facet jnt	45	−3
G0105	Colorectal scrn; hi risk ind	45	0
63650	Implant neuroelectrodes	41	5
G0121	Colon ca scrn not hi rsk ind	41	0
64590	Insrt/redo pn/gastr stimul	39	−4
15823	Revision of upper eyelid	35	1
63685	Insrt/redo spine n generator	35	27
29827	Arthroscop rotator cuff repr	34	1
64721	Carpal tunnel surgery	32	−1
29881	Knee arthroscopy/surgery	30	−1
29824	Shoulder arthroscopy/surgery	28	1
29880	Knee arthroscopy/surgery	25	−1
43235	Uppr gi endoscopy diagnosis	23	9
62310	Inject spine c/t	23	0
29823	Shoulder arthroscopy/surgery	22	1
52000	Cystoscopy	22	1
G0260	Inj for sacroiliac jt anesth	21	0
45384	Lesion remove colonoscopy	21	6
67042	Vit for macular hole	21	−1
26055	Incise finger tendon sheath	20	−1

(3) Estimated Effects of ASC Payment System Proposed Policies on Beneficiaries

We estimate that the proposed CY 2015 update to the ASC payment system would be generally positive for beneficiaries with respect to the new procedures that we are adding to the ASC list of covered surgical procedures and for those that we are proposing to designate as office-based for CY 2015. First, other than certain preventive services where coinsurance and the Part B deductible is waived to comply with sections 1833(a)(1) and (b) of the Act, the ASC coinsurance rate for all procedures is 20 percent. This contrasts with procedures performed in HOPDs under the OPPS, where the beneficiary is responsible for copayments that range from 20 percent to 40 percent of the procedure payment (other than for certain preventive services). Second, in almost all cases, the ASC payment rates under the ASC payment system are lower than payment rates for the same procedures under the OPPS. Therefore, the beneficiary coinsurance amount under the ASC payment system will almost always be less than the OPPS copayment amount for the same services. (The only exceptions would be if the ASC coinsurance amount exceeds the inpatient deductible. The statute requires that copayment amounts under the OPPS not exceed the inpatient deductible.) Beneficiary coinsurance for services migrating from physicians' offices to ASCs may decrease or increase under the revised ASC payment system, depending on the particular service and the relative payment amounts under the MPFS compared to the ASC. However, for those additional procedures that we are proposing to designate as office-based in CY 2015, the beneficiary coinsurance amount under the ASC payment system generally would be no greater than the beneficiary coinsurance under the MPFS because the coinsurance under both payment systems generally is 20 percent (except for certain preventive services where the coinsurance is waived under both payment systems).

(4) Alternative ASC Payment Policies Considered

Alternatives to the minor changes that we are proposing to make to the ASC payment system and the reasons that we have chosen specific options are discussed throughout this proposed rule. There are no proposed major changes to ASC policies for CY 2015.

c. Accounting Statements and Tables

As required by OMB Circular A–4 (available on the Office of Management and Budget Web site at: *http://www.whitehouse.gov/sites/default/files/omb/assets/regulatory_matters_pdf/a-4.pdf*), we have prepared two accounting statements to illustrate the impacts of this proposed rule. The first accounting statement, Table 55 (below), illustrates the classification of expenditures for the CY 2015 estimated hospital OPPS incurred benefit impacts associated with the proposed CY 2015

OPD fee schedule increase, based on the 2014 Trustee's Report. The second accounting statement, Table 56 (below), illustrates the classification of expenditures associated with the 1.2 percent proposed CY 2015 update to the ASC payment system, based on the provisions of this proposed rule and the baseline spending estimates for ASCs in the 2014 Trustee's Report. Lastly, the tables classify most estimated impacts as transfers.

TABLE 55—ACCOUNTING STATEMENT: CY 2015 ESTIMATED HOSPITAL OPPS TRANSFERS FROM CY 2014 TO CY 2015 ASSOCIATED WITH THE PROPOSED CY 2015 HOSPITAL OUTPATIENT OPD FEE SCHEDULE INCREASE

Category	Transfers
Annualized Monetized Transfers	$800 million.
From Whom to Whom	Federal Government to outpatient hospitals and other providers who receive payment under the hospital OPPS.
Total	$800 million.

TABLE 56—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED TRANSFERS FROM CY 2014 TO CY 2015 AS A RESULT OF THE PROPOSED CY 2015 UPDATE TO THE ASC PAYMENT SYSTEM

Category	Transfers
Annualized Monetized Transfers	$36 million.
From Whom to Whom	Federal Government to Medicare Providers and Suppliers.
Total	$36 million.

d. Effects of Proposed Requirements for the Hospital OQR Program

In section XIII. of this proposed rule, we are proposing to adopt policies affecting the Hospital OQR Program.

Of 3,325 hospitals that met eligibility requirements for the CY 2014 payment determination, we determined that 88 hospitals did not meet the requirements to receive the full OPD fee schedule increase factor. Most of these hospitals (70 of the 88) chose not to participate in the Hospital OQR Program for the CY 2014 payment determination. We estimate that approximately 90 hospitals will not receive the full OPD fee schedule increase factor for the CY 2017 payment determination and subsequent years.

In sections XIII.E. and XIII.C.3.of this proposed rule, for the CY 2017 payment determination and subsequent years, we are proposing to add one claims-based quality measure and to remove three measures from the Hospital OQR Program. In sections XIII.D.3.b. and c. of this proposed rule we are proposing to remove one measure from the CY 2016 payment determination measure set and to change that measure from required to voluntary for the CY 2017 payment determination and subsequent years. Hospitals would not be subject to a payment reduction with respect to this measure for the CY 2016 payment determination or during the period of voluntary reporting.

Because the measure we are proposing to add for the CY 2017 payment determination and subsequent years is claims-based, it will not require additional burden from data reporting or other action on the part of the hospitals. Therefore, we do not anticipate that this measure will cause any additional facilities to fail the Hospital OQR Program requirements. We anticipate a reduction in burden of approximately 862,077 hours or $25.9 million across participating hospitals from the three measures we are proposing to remove and the one measure we are proposing to make voluntary as further detailed in sections XIII.C.3. and XIII.D.3.c. of this proposed rule, respectively, and the information collection requirements in section XIX.C.1. of this proposed rule.

The validation requirements for the CY 2017 payment determination and subsequent years would result in medical record documentation of approximately 6,000 cases per quarter (up to 12 cases per quarter for 500 hospitals) submitted to the designated CMS contractor. In section XIII.H.3.e. of this proposed rule, we are proposing to allow hospitals to submit medical record documentation for validation using either of two methods: (1) Through paper medical records; or (2) by securely transmitting electronic versions of medical information by either (a) downloading or copying the digital image of the patient chart onto CD, DVD, or flash drive and shipping the electronic media following instructions specified on the QualityNet Web site; or (b) securely submitting digital images (PDFs) of patient charts using a Secure File Transfer Portal on the QualityNet Web site.

As stated previously (76 FR 74577), we would pay for the cost of sending paper medical record documentation to the designated CMS contractor at the rate of 12 cents per page for copying and approximately $1.00 per case for postage. For both new proposed electronic methods, we are proposing in the information collection requirements section of this proposed rule to reimburse hospitals for sending medical records electronically at a rate of $3.00 per patient chart.

As we stated in the CY 2014 OPPS/ASC final rule with comment period (78 FR 75192), we have found that an outpatient medical chart is generally up to 10 pages. However, because we do not yet know how many hospitals will choose to submit data electronically or through paper, we cannot estimate the total cost of expenditures and are unable to estimate the number of hospitals that would fail the validation documentation submission requirement for the CY 2017 payment determination. Because we would pay for the data collection effort though, we believe that a requirement for medical record documentation for up to 12 cases per quarter for up to 500 hospitals for CY 2015 represents a minimal burden to Hospital OQR Program participating hospitals.

e. Effects of CY 2015 Proposed Policies for the ASCQR Program

In section XIV. of this proposed rule, we are proposing to adopt policies affecting the ASCQR Program. Of 5,300 ASCs that met eligibility requirements, we determined that 116 ASCs did not meet the requirements to receive the full annual payment update for CY 2014.

In section XIV.B.5. of this proposed rule, for the CY 2017 payment

determination and subsequent years, we are proposing to add one claims-based quality measure. The measure we are proposing for CY 2017 and subsequent years is claims-based and would not require additional data reporting or other action by ASCs. Therefore, we do not anticipate that this measure would cause any additional ASCs to fail to meet the ASCQR Program requirements. We present the time and burdens associated with our policies and proposals in section XIX.C.2. of this proposed rule.

In section XIV.E.3.b. of this proposed rule, we note a 3-month delay in data collection for two measures for the CY 2016 payment determination. We do not believe that this 3-month delay in data collection would significantly affect the number of ASCs that meet the ASCQR Program requirements.

In section XIV.E.3.c. of this proposed rule, we are proposing that one measure which was to be first included in the CY 2016 payment determination, would not be included in the CY 2016 measure set and that the measure would be voluntary for the CY 2017 payment determination and subsequent years. ASCs would not be subject to a payment reduction for the CY 2016 payment determination, nor would ASCs be subject to a payment reduction for the CY 2017 payment determination and subsequent years for failing to report this measure. Because this measure was not included in the CY 2014 payment determination and has not yet affected any payment determination, we do not believe that there will be an impact on the number of ASCs that meet the ASCQR Program requirements from our proposals not to include this measure in the measure set for the CY 2016 payment determination and to make this measure voluntary for the CY 2017 payment determination and subsequent years.

We do not believe that the other measures we previously adopted would cause any additional ASCs to fail to meet the ASCQR Program requirements. (We refer readers to the CY 2014 OPPS/ASC final rule with comment period for a list of these measures (78 FR 75130).

Further, we do not believe that any of the proposals in this proposed rule would significantly affect the number of ASCs that do not receive a full annual payment update for the CY 2017 payment determination. We are unable to estimate the number of ASCs that would not receive the full annual payment update based on the CY 2015 and CY 2016 payment determinations (78 FR 75192). For this reason, using the CY 2014 payment determination numbers as a baseline, we estimate that approximately 116 ASCs would not receive the full annual payment update in CY 2017 due to failure to meet the ASCQR Program requirements.

f. Effects of Proposed Changes to the Rural Provider and Hospital Ownership Exceptions to the Physician Self-Referral Law

Section 6001(a) of the Affordable Care Act amended the rural provider and hospital ownership exceptions to the physician self-referral law (sections 1877(d)(2) and (d)(3) of the Act, respectively) to impose additional restrictions on physician ownership or investment in hospitals. The amended rural provider and hospital ownership exceptions provide that a hospital may not increase the number of operating rooms, procedure rooms, and beds beyond that for which the hospital was licensed on March 23, 2010 (or, in the case of a hospital that did not have a provider agreement in effect as of this date, but did have a provider agreement in effect on December 31, 2010, the date of effect of such agreement). We issued regulations addressing the prohibition against facility expansion in the CY 2011 OPPS/ASC final rule with comment period (75 FR 72240).

Section 6001(a)(3) of the Affordable Care Act added section 1877(i)(3)(A)(i) of the Act to set forth that the Secretary shall establish and implement an exception process to the prohibition on expansion of facility capacity. We issued regulations that govern the expansion exception process in the CY 2012 OPPS/ASC final rule with comment period (76 FR 74517) at 42 CFR 411.362(c). The regulations addressing the expansion exception process were issued by January 1, 2012, and the process was implemented on February 1, 2012.

As required by the statute, the expansion exception process provides that hospitals that qualify as an ''applicable hospital'' or a ''high Medicaid facility'' may request an exception to the prohibition on facility expansion. The existing expansion exception process requires the use of filed Medicare cost report data from the Healthcare Cost Report Information System (HCRIS) for hospitals to demonstrate that they satisfy the relevant eligibility criteria set forth in § 411.362(c)(2) for applicable hospitals and § 411.362(c)(3) for high Medicaid facilities (76 FR 42350 through 42352). In section XV. of this proposed rule, we discuss our proposal to permit hospitals also to use internal or external data sources, as defined in the proposal, to demonstrate satisfaction of the eligibility criteria. Under our proposal, we would continue to require each hospital seeking to qualify for an expansion exception to access and utilize data for its estimations or determinations to demonstrate that the hospital meets the relevant criteria and to provide a detailed explanation regarding whether and how it satisfies each of the relevant criteria. We believe the impact of our proposed modification on affected hospitals would be minimal, given that the use of data from an internal or external source is voluntary.

Our proposal would require each requesting hospital also to provide actual notification that it is requesting an expansion exception directly to hospitals whose data are part of the comparisons set forth in §§ 411.362(c)(2)(ii) and (c)(3)(ii) of the regulations, in addition to performing the other methods of notification specified in our existing regulations. We believe the impact of this proposed additional requirement on physician-owned hospitals would be minimal.

We believe that our proposals would affect a relatively small number of physician-owned hospitals. We estimate that there are approximately 265 physician-owned hospitals in the country. Since the process was implemented in February 2012, we have received only four requests, only one of which has been considered sufficiently complete to continue with publication in the **Federal Register**, under the current regulations. We anticipate receiving a similar number of requests each year. We do not believe that we can use the four requests to estimate accurately the potential increase in operating rooms, procedure rooms, and beds pursuant to approved expansion exception requests, and we are not aware of any data that may indicate such an increase. At this time, we also have no data or projections that may help estimate the number of physicians that would be affected by these proposals as a result of their ownership interests in hospitals.

We believe that beneficiaries may be positively impacted by our proposals. Specifically, an increase in operating rooms, procedure rooms, and beds may augment the volume or nature of services offered by physician-owned hospitals. An expansion in the number of hospital beds may also permit additional inpatient admissions and overnight stays. Increased operating rooms, procedure rooms, and beds may result in improved access to health care facilities and services. We believe that our proposals are necessary to conform our regulations to the amendments to section 1877 of the Act.

We are soliciting public comments on each of the issues outlined above that contain estimates of the costs and benefits of the proposed rule. We are specifically soliciting comments on the potential impact on State governments, given that we are proposing to define external data sources as data sources generated, maintained, or under the control of a State Medicaid agency.

g. Effects of Proposed Policies Related to CMS-Identified Overpayments Associated With Payment Data Submitted by Medicare Advantage (MA) Organizations and Medicare Part D Sponsors

In section XVII. of this proposed rule, we discuss our proposals to set forth in regulations a formal process, including appeals processes, that allows us to recoup overpayments in the limited set of circumstances where CMS makes a determination that an overpayment to an MA organization or Part D sponsor occurred because the organization or sponsor submitted erroneous data to CMS. It is difficult to predict how many times CMS would annually determine an overpayment due to erroneous data submitted to CMS by the MA organization or Part D sponsor and that, therefore, would be subject to the proposed offset and appeals regulations. However, we predict that it would be highly unlikely to exceed 10 cases a year and would probably be fewer. Further, electing to appeal a CMS overpayment determination under the proposed regulations is completely at the discretion of the MA organization or Part D sponsor. The MA organization or Part D sponsor may agree that the data require correction and resubmit the data; MA organizations and Part D sponsors that receive notification of an overpayment are under no obligation to initiate the appeal process. If the MA organization or Part D sponsor chooses not to appeal, there are no costs or burden associated with the appeal. If the MA organization or Part D sponsor chooses to appeal the overpayment determination, there would be costs associated with preparing the appeal request.

We are proposing three levels of appeal review (reconsideration, informal hearing, and Administrator review), each of which the MA organization or Part D sponsor would have to request. Once the appeal has been filed, however; there will be little or no cost experienced by the MA organization or Part D sponsor because the appeal process is on the record and would not involve oral testimony. The extent to which there would be costs associated with preparing the appeal request is subject to preference and choice. We estimate that it would take a plan 5 hours to prepare and file a reconsideration request. In terms of cost, it has been our experience that most appeals have been prepared by high-level officials of the plan or lawyers. According to the most recent wage data provided by the Bureau of Labor Statistics (BLS) for May 2012, the mean hourly wage for the category of ''Lawyers''—which we believe, considering the variety of officials who have submitted appeals, is the most appropriate category—is $62.93. Multiplying this figure by 50 hours (10 submissions × 5 hours) results in a projected annual cost burden of $3,147. We estimate the preparation and filing of a request for a hearing, or for Administrator's review would take 2 hours, at most, because the MA organization or Part D sponsor cannot submit new evidence. The hearing officer or Administrator is limited to a review of the record. Multiplying this figure by 40 hours (10 submissions × 4 hours) results in a projected annual cost burden of $2,517. It is estimated that if the costs of benefits and overhead are included, the total annual costs for requests at the three levels would be approximately $11,000.

B. Regulatory Flexibility Act (RFA) Analysis

The RFA requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, we estimate that most hospitals, ASCs and CMHCs are small entities as that term is used in the RFA. For purposes of the RFA, most hospitals are considered small businesses according to the Small Business Administration's size standards with total revenues of $35.5 million or less in any single year. Most ASCs and most CMHCs are considered small businesses with total revenues of $14 million or less in any single year. We estimate that this proposed rule may have a significant impact on approximately 2,007 hospitals with voluntary ownership. For details, see the Small Business Administration's ''Table of Small Business Size Standards'' at *http://www.sba.gov/content/table-small-business-size-standards*.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has 100 or fewer beds. We estimate that this proposed rule may have a significant impact on approximately 709 small rural hospitals.

The analysis above, together with the remainder of this preamble, provides a regulatory flexibility analysis and a regulatory impact analysis.

C. Unfunded Mandates Reform Act Analysis

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. That threshold level is currently approximately $141 million. This proposed rule does not mandate any requirements for State, local, or tribal governments, or for the private sector.

D. Conclusion

The changes we are proposing to make in this proposed rule would affect all classes of hospitals paid under the OPPS and would affect both CMHCs and ASCs. We estimate that most classes of hospitals paid under the OPPS would experience a modest increase or a minimal decrease in payment for services furnished under the OPPS in CY 2015. Table 52 demonstrates the estimated distributional impact of the OPPS budget neutrality requirements that would result in a 2.2 percent increase in payments for all services paid under the OPPS in CY 2015, after considering all of the proposed changes to APC reconfiguration and recalibration, as well as the proposed OPD fee schedule increase factor, proposed wage index changes, including the proposed frontier State wage index adjustment, estimated payment for outliers, and proposed changes to the pass-through payment estimate. However, some classes of providers that are paid under the OPPS would experience more significant gains and others would experience modest losses in OPPS payments in CY 2015.

The proposed updates to the ASC payment system for CY 2015 would affect each of the approximately 5,300 ASCs currently approved for participation in the Medicare program. The effect on an individual ASC would depend on its mix of patients, the proportion of the ASC's patients who are Medicare beneficiaries, the degree to which the payments for the procedures offered by the ASC are changed under

the ASC payment system, and the extent to which the ASC provides a different set of procedures in the coming year. Table 53 demonstrates the estimated distributional impact among ASC surgical specialties of the MFP-adjusted CPI–U update factor of 1.2 percent for CY 2015.

XXII. Federalism Analysis

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have examined the OPPS and ASC provisions included in this proposed rule in accordance with Executive Order 13132, Federalism, and have determined that they would not have a substantial direct effect on State, local or tribal governments, preempt State law, or otherwise have a Federalism implication. As reflected in Table 52 of this proposed rule, we estimate that OPPS payments to governmental hospitals (including State and local governmental hospitals) would increase by 2.2 percent under this proposed rule. While we do not know the number of ASCs or CMHCs with government ownership, we anticipate that it is small. The analyses we have provided in this section of this proposed rule, in conjunction with the remainder of this document, demonstrate that this proposed rule is consistent with the regulatory philosophy and principles identified in Executive Order 12866, the RFA, and section 1102(b) of the Act.

This proposed rule would affect payments to a substantial number of small rural hospitals and a small number of rural ASCs, as well as other classes of hospitals, CMHCs, and ASCs, and some effects may be significant.

List of Subjects

42 CFR Part 411

Kidney diseases, Medicare, Physician referral, Reporting and recordkeeping requirements.

42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 416

Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 419

Hospitals, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 422

Administrative practice and procedure, Health facilities, Health maintenance, organizations (HMO), Medicare, Penalties, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 423

Administrative practice and procedure, Emergency medical services, Health facilities, Health maintenance organizations (HMO), Health professionals, Medicare, Penalties, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 424

Emergency medical services, Health professions, Medicare.

For reasons stated in the preamble of this document, the Centers for Medicare & Medicaid Services is proposing to amend 42 CFR Chapter IV as set forth below:

PART 411—EXCLUSIONS FROM MEDICARE AND LIMITATION ON MEDICARE PAYMENT

■ 1. The authority citation for part 411 continues to read as follows:

Authority: Secs. 1102, 1860D–1 through 1860D–42, 1871, and 1877 of the Social Security Act (42 U.S.C. 1302, 1395w–101 through 1395w–152, 1395hh, and 1395nn).

■ 2. Section 411.351 is amended by adding the definitions ''External data source'' and ''Internal data source'' in alphabetical order to read as follows:

§ 411.351 Definitions.

* * * * *

External data source means a data source that—

(1) Is generated, maintained, or under the control of a State Medicaid agency;

(2) Is reliable and transparent;

(3) Maintains data that, for purposes of the process described in § 411.362(c), are readily available and accessible to the requesting hospital, comparison hospitals, and CMS; and

(4) Maintains or generates data that, for purposes of the process described in § 411.362(c), are accurate, complete, and objectively verifiable.

* * * * *

Internal data source means a data source other than the Healthcare Cost Report Information System that—

(1) Is generated, maintained, or under the control of the Department;

(2) Is reliable and transparent;

(3) Maintains data that, for purposes of the process described in § 411.362(c), are readily available and accessible to the requesting hospital, comparison hospitals, and CMS; and

(4) Maintains or generates data that, for purposes of the process described in § 411.362(c), are accurate, complete, and objectively verifiable.

* * * * *

■ 3. Section 411.362 is amended by revising paragraphs (c)(2)(ii), (c)(2)(iv), (c)(2)(v), (c)(3)(ii), and (c)(5) to read as follows:

§ 411.362 Additional requirements concerning physician ownership and investment in hospitals.

* * * * *

(c) * * *

(2) * * *

(ii) *Medicaid inpatient admissions.* Has an annual percent of total inpatient admissions under Medicaid that is equal to or greater than the average percent with respect to such admissions for all hospitals located in the county in which the hospital is located during the most recent fiscal year for which data are available as of the date that the hospital submits its request. A hospital must use only filed Medicare hospital cost report data, data from an internal data source (as defined at § 411.351), and/or data from an external data source (as defined at § 411.351) to estimate its annual percent of total inpatient admissions under Medicaid and the average percent with respect to such admissions for all hospitals located in the county in which the hospital is located:

* * * * *

(iv) *Average bed capacity.* Is located in a State in which the average bed capacity in the State is less than the national average bed capacity during the most recent fiscal year for which data are available as of the date that the hospital submits its request. A hospital must use only filed Medicare hospital cost report data, data from an internal data source (as defined at § 411.351), and/or data from an external data source (as defined at § 411.351) to determine the average bed capacity in the State in which the hospital is located and the national average bed capacity.

(v) *Average bed occupancy.* Has an average bed occupancy rate that is greater than the average bed occupancy rate in the State in which the hospital is located during the most recent fiscal year for which data are available as of the date that the hospital submits its request. A hospital must use only filed Medicare hospital cost report data, data from an internal data source (as defined at § 411.351), and/or data from an external data source (as defined at § 411.351) to determine its average bed occupancy rate and the average bed

occupancy rate for the State in which the hospital is located.

(3) * * *

(ii) *Medicaid inpatient admissions.* 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, 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. A hospital must use only filed Medicare hospital cost report data, data from an internal data source (as defined at § 411.351), and/or data from an external data source (as defined at § 411.351) 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.

* * * * *

(5) *Community input and timing of complete request.* Upon submitting a request for an exception and until the hospital receives a CMS decision, the hospital must disclose on any public Web site for the hospital that it is requesting an exception and must also provide actual notification that it is requesting an exception, in either electronic or hard copy form, directly to hospitals whose data are part of the comparisons in paragraphs (c)(2)(ii) and (c)(3)(ii) of this section. Individuals and entities in the hospital's community may provide input with respect to the hospital's request no later than 30 days after CMS publishes notice of the hospital's request in the **Federal Register**. Such input must take the form of written comments. The written comments must be either mailed or submitted electronically to CMS. If CMS receives written comments from the community, the hospital has 30 days after CMS notifies the hospital of the written comments to submit a rebuttal statement.

(i) If only filed Medicare hospital cost report data are used in the hospital's request, the written comments, and the hospital's rebuttal statement—

(A) A request will be deemed complete at the end of the 30-day comment period if CMS does not receive written comments from the community.

(B) A request will be deemed complete at the end of the 30-day rebuttal period, regardless of whether the hospital submits a rebuttal statement, if CMS receives written comments from the community.

(ii) If data from an internal data source or external data source are used in the hospital's request, the written comments, or the hospital's rebuttal statement—

(A) A request will be deemed complete no later than 180 days after the end of the 30-day comment period if CMS does not receive written comments from the community.

(B) A request will be deemed complete no later than 180 days after the end of the 30-day rebuttal period, regardless of whether the hospital submits a rebuttal statement, if CMS receives written comments from the community.

* * * * *

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

■ 4. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh), and sec. 124 of Public Law 106–113 (113 Stat.1501A–332).

§ 412.3 [Amended]

■ 5. Section 412.3 is amended by—

■ a. Removing paragraph (c).

■ b. Redesignating paragraphs (d) and (e) as paragraphs (c) and (d), respectively.

■ c. In newly redesignated paragraph (d)(1), removing the cross-reference ''paragraph (e)(2)'' and adding in its place the cross-reference ''paragraph (d)(2)''.

PART 416—AMBULATORY SURGICAL SERVICES

■ 6. 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).

■ 7. Section 416.164 is amended by revising paragraphs (a)(11) and (b)(5) to read as follows:

§ 416.164 Scope of ASC services.

(a) * * *

(11) Radiology services for which separate payment is not allowed under the OPPS and other diagnostic tests or interpretive services that are integral to a surgical procedure, except certain diagnostic tests for which separate payment is allowed under the OPPS;

* * * * *

(b) * * *

(5) Certain radiology services and certain diagnostic tests for which separate payment is allowed under the OPPS.

* * * * *

■ 8. Section 416.171 is amended by revising paragraphs (b)(1) and (2) to read as follows:

§ 416.171 Determination of payment rates for ASC services.

* * * * *

(b) * * *

(1) Covered ancillary services specified in § 416.164(b), with the exception of radiology services and certain diagnostic tests as provided in § 416.164(b)(5);

(2) The device portion of device-intensive procedures, which are procedures assigned to an APC with a device cost greater than 40 percent of the APC costs when calculated according to the standard OPPS APC ratesetting methodology.

* * * * *

PART 419—PROSPECTIVE PAYMENT SYSTEM FOR HOSPITAL OUTPATIENT DEPARTMENT SERVICES

■ 9. The authority citation for part 419 continues to read as follows:

Authority: Secs. 1102, 1833(t), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395l(t), and 1395hh).

■ 10. Section 419.2 is amended by revising paragraphs (b)(7) and (16) to read as follows:

§ 419.2 Basis of payment.

* * * * *

(b) * * *

(7) Ancillary services;

* * * * *

(16) Drugs and biologicals that function as supplies when used in a surgical procedure (including, but not limited to, skin substitutes and similar products that aid wound healing and implantable biologicals);

* * * * *

■ 11. Section 419.22 is amended by revising paragraph (j) to read as follows:

§ 419.22 Hospital services excluded from payment under the hospital outpatient prospective payment system.

* * * * *

(j) Except as provided in § 419.2(b)(11), prosthetic devices and orthotic devices.

* * * * *

■ 12. Section 419.32 is amended by adding paragraph (b)(1)(iv)(B)(*6*) to read as follows:

§ 419.32 Calculation of prospective payment rates for hospital outpatient services.

* * * * *

(b) * * *

(1) * * *

(iv) * * *

(B) * * *

(*6*) For calendar year 2015, a multifactor productivity adjustment (as determined by CMS) and 0.2 percentage point.

* * * * *

§ 419.46 [Amended]

■ 13. Section 419.46 is amended by—

■ a. In paragraph (c)(1), removing the phrase ''section 1833(17)(C)'' and adding in its place the phrase ''section 1833(t)(17)(C)''.

■ b. In paragraph (d) introductory text and paragraph (d)(1), removing the term ''waiver'' and adding in its place the term ''exception'' each time it apppears.

■ c. In paragraph (d)(2), removing the term ''waivers'' and adding in its place the term ''exceptions''.

■ d. In paragraph (e) introductory text, removing the phrase ''section 1833(17)(C)'' and adding in its place the phrase ''section 1833(t)(17)(C)''.

■ 14. Section 419.64 is amended by revising paragraph (a)(4)(iv) to read as follows:

§ 419.64 Transitional pass-through payments: Drugs and biologicals.

* * * * *

(a) * * *

(4) * * *

(iv) A biological that is not a skin substitute or similar product that aids wound healing, unless pass-through payment for a skin substitute as a biological is made on or before January 1, 2015.

* * * * *

■ 15. Section 419.66 is amended by revising paragraph (b)(3) and removing paragraph (b)(4)(iii).

The revision reads as follows:

§ 419.66 Transitional pass-through payments: Medical devices.

* * * * *

(b) * * *

(3) The device is an integral part of the service furnished, is used for one patient only, comes in contact with human tissue, and is surgically implanted or inserted (either permanently or temporarily) or applied in or on a wound or other skin lesion.

* * * * *

PART 422—MEDICARE ADVANTAGE PROGRAM

■ 16. The authority citation for part 422 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

■ 17. Section 422.330 is added to subpart G to read as follows:

§ 422.330 CMS-identified overpayments associated with payment data submitted by MA organizations.

(a) *Definitions.* For purposes of this section—

Payment data means data controlled and submitted by an MA organization to CMS and used for payment purposes, including enrollment data and data submitted under § 422.310.

Applicable reconciliation date occurs on the date of the annual final deadline for risk adjustment data submission described at § 422.310(g)(2)(ii).

(b) *Request to correct payment data.* If CMS identifies an error in payment data other than an error identified through the process described in § 422.311, and the payment error identified affects payments for any of the 6 most recently completed payment years, CMS may send a data correction notice to the MA organization requesting that the MA organization correct the payment data. The notice will include or make reference to the specific payment data that need to be corrected, the reason why CMS believes that the payment data are erroneous, and the timeframe for correcting the payment data.

(c) *Payment offset.* If the MA organization fails to submit the corrected payment data within the timeframe as requested in accordance with paragraph (b) of this section, CMS will conduct a payment offset against payments made to the MA organization. CMS will calculate the payment offset amount using a payment algorithm that applies the payment rules for the applicable year.

(d) *Payment offset notification.* CMS will issue a payment offset notice to the MA organization that includes the following:

(1) The dollar amount of the offset from plan payments.

(2) An explanation of how the erroneous data were identified and used to calculate the payment offset amount.

(3) An explanation that, if the MA organization disagrees with the payment offset, it may request an appeal within 30 days of issuance of the payment offset notification.

(e) *Appeals process.* If an MA organization does not agree with the payment offset described in paragraph (c) of this section, it may appeal under the following three-level appeal process:

(1) *Reconsideration.* An MA organization may request reconsideration of the payment offset described in paragraph (c) of this section, according to the following process:

(i) *Manner and timing of request.* A written request for reconsideration must be filed within 30 days from the date that CMS issued the payment offset notice to the MA organization.

(ii) *Content of request.* The written request for reconsideration must specify the findings or issues with which the MA organization disagrees and the reasons for its disagreement. As part of its request for reconsideration, the MA organization may include any additional documentary evidence in support of its position. Any additional evidence must be submitted with the request for reconsideration. Additional information submitted after this time will be rejected as untimely.

(iii) *Conduct of reconsideration.* In conducting the reconsideration, the CMS reconsideration official reviews the underlying data that were used to determine the amount of the payment offset and any additional documentary evidence timely submitted by the MA organization.

(iv) *Reconsideration decision.* The CMS reconsideration official informs the MA organization of its decision on the reconsideration request.

(v) *Effect of reconsideration decision.* The decision of the CMS reconsideration official is final and binding unless a timely request for an informal hearing is filed in accordance with paragraph (e)(2) of this section.

(2) *Informal hearing.* An MA organization dissatisfied with CMS' reconsideration decision made under paragraph (e)(1) of this section is entitled to an informal hearing as provided for under paragraphs (e)(2)(i) through (v) of this section.

(i) *Manner and timing for request.* A request for an informal hearing must be made in writing and filed with CMS within 30 days of the date of CMS' reconsideration decision.

(ii) *Content of request.* The request for an informal hearing must include a copy of the reconsideration decision and must specify the findings or issues in the decision with which the MA organization disagrees and the reasons for its disagreement.

(iii) *Informal hearing procedures.* The informal hearing will be conducted in accordance with the following:

(A) CMS provides written notice of the time and place of the informal hearing at least 10 days before the scheduled date.

(B) The informal hearing is conducted by a CMS hearing officer who neither receives testimony nor accepts any new evidence that was not timely presented with the reconsideration request. The CMS hearing officer is limited to the review of the record that was before the CMS reconsideration official when CMS made its reconsideration determination.

(C) The CMS hearing officer will review the proceeding before the CMS reconsideration official on the record made before the CMS reconsideration official using the clearly erroneous standard of review.

(iv) *Decision of the CMS hearing officer.* The CMS hearing officer decides the case and sends a written decision to the MA organization explaining the basis for the decision.

(v) *Effect of hearing officer's decision.* The hearing officer's decision is final and binding, unless the decision is reversed or modified by the Administrator in accordance with paragraph (e)(3) of this section.

(3) *Review by the Administrator.* The Administrator review will be conducted in the following manner:

(i) An MA organization that has received a hearing officer's decision may request review by the Administrator within 30 days of the date of issuance of the hearing officer's decision under paragraph (e)(2)(iv) of this section. The MA organization may submit written arguments to the Administrator for review.

(ii) After receiving a request for review, the Administrator has the discretion to elect to review the hearing officer's determination in accordance with paragraph (e)(3)(iii) of this section or to decline to review the hearing officer's decision.

(iii) If the Administrator declines to review the hearing officer's decision, the hearing officer's decision is final and binding.

(iv) If the Administrator elects to review the hearing officer's decision, the Administrator will review the hearing officer's decision, as well as any information included in the record of the hearing officer's decision and any written argument submitted by the MA organization, and determine whether to uphold, reverse, or modify the hearing officer's decision.

(v) The Administrator's determination is final and binding.

(f) *Matters subject to appeal and burden of proof.*

(1) The MA organization's appeal is limited to CMS' finding that the payment data submitted by the MA organization are erroneous.

(2) The MA organization bears the burden of proof by a preponderance of the evidence in demonstrating that CMS' finding that the payment data were erroneous was incorrect or otherwise inconsistent with applicable program requirements.

(g) *Applicability of appeals process.* The appeals process under paragraph (e) of this section applies only to payment offsets under paragraph (c) of this section.

PART 423—VOLUNTARY MEDICARE PRESCRIPTION DRUG BENEFIT

■ 18. The authority citation for part 423 continues to read as follows:

Authority: Secs. 1102, 1106, 1860D–1 through 1860D–42, and 1871 of the Social Security Act (42 U.S.C. 1302, 1306, 1395w–101 through 1395w–152, and 1395hh.

■ 19. Section 423.352 is added to read as follows:

§ 423.352 CMS-identified overpayments associated with payment data submitted by Part D sponsors.

(a) *Definitions.* For purposes of this section—

Applicable reconciliation date occurs on the later of either the annual deadline for submitting—

(1) Prescription drug event (PDE) data for the annual Part D payment reconciliations referred to in § 423.343(c) and (d); or

(2) Direct and indirect remuneration data.

Payment data means data controlled and submitted by a Part D sponsor to CMS and used for payment purposes, including enrollment data and data submitted under §§ 423.329(b)(3), 423.336(c)(1), and 423.343, and data provided for purposes of supporting allowable reinsurance costs and allowable risk corridor costs as defined in § 423.308, including data submitted to CMS regarding direct and indirect remuneration.

(b) *Request to correct payment data.* If CMS identifies an error in payment data submitted by a Part D sponsor, and the payment error identified affects payments for any of the 6 most recently completed payment years, CMS may send a data correction notice to the Part D sponsor requesting that the Part D sponsor correct the payment data. The notice will include or make reference to the specific payment data that need to be corrected, the reason why CMS believes that the payment data are erroneous, and the timeframe for correcting the payment data.

(c) *Payment offset.* If the Part D sponsor fails to submit the corrected payment data within the timeframe as requested in accordance with paragraph (b) of this section, CMS will conduct a payment offset against payments made to the Part D sponsor. CMS will calculate the payment offset amount using a payment algorithm that applies the payment rules for the applicable year.

(d) *Payment offset notification.* CMS will issue a payment offset notice to the Part D sponsor that includes the following:

(1) The dollar amount of the offset from plan payments.

(2) An explanation of how the erroneous data were identified and used to calculate the payment offset amount.

(3) An explanation that, if the Part D sponsor disagrees with the payment offset, it may request an appeal within 30 days of issuance of the payment offset notification.

(e) *Appeals process.* If a Part D sponsor does not agree with the payment offset described in paragraph (c) of this section, it may appeal under the following three-level appeal process:

(1) *Reconsideration.* A Part D sponsor may request reconsideration of the payment offset described in paragraph (c) of this section, according to the following process:

(i) *Manner and timing of request.* A written request for reconsideration must be filed within 30 days from the date that CMS issued the payment offset notice to the Part D sponsor.

(ii) *Content of request.* The written request for reconsideration must specify the findings or issues with which the Part D sponsor disagrees and the reasons for its disagreement. As part of its request for reconsideration, the Part D sponsor may include any additional documentary evidence in support of its position. Any additional evidence must be submitted with the request for reconsideration. Additional information submitted after this time will be rejected as untimely.

(iii) *Conduct of reconsideration.* In conducting the reconsideration, the CMS reconsideration official reviews the underlying data that were used to determine the amount of the payment offset and any additional documentary evidence timely submitted by the Part D sponsor.

(iv) *Reconsideration decision.* The CMS reconsideration official informs the Part D sponsor of its decision on the reconsideration request.

(v) *Effect of reconsideration decision.* The decision of the CMS reconsideration official is final and binding unless a timely request for an informal hearing is filed in accordance with paragraph (e)(2) of this section.

(2) *Informal hearing.* A Part D sponsor dissatisfied with CMS' reconsideration decision made under paragraph (e)(1) of this section is entitled to an informal hearing as provided for under paragraphs (e)(2)(i) through (v) of this section.

(i) *Manner and timing for request.* A request for an informal hearing must be made in writing and filed with CMS

within 30 days of the date of CMS' reconsideration decision.

(ii) *Content of request.* The request for an informal hearing must include a copy of the reconsideration decision and must specify the findings or issues in the decision with which the Part D sponsor disagrees and the reasons for its disagreement.

(iii) *Informal hearing procedures.* The informal hearing will be conducted in accordance with the following:

(A) CMS provides written notice of the time and place of the informal hearing at least 10 days before the scheduled date.

(B) The informal hearing is conducted by a CMS hearing officer who neither receives testimony nor accepts any new evidence that was not timely presented with the reconsideration request. The CMS hearing officer is limited to the review of the record that was before the CMS reconsideration official when CMS made its reconsideration determination.

(C) The CMS hearing officer will review the proceeding before the CMS reconsideration official on the record made before the CMS reconsideration official using the clearly erroneous standard of review.

(iv) *Decision of the CMS hearing officer.* The CMS hearing officer decides the case and sends a written decision to the Part D sponsor explaining the basis for the decision.

(v) *Effect of hearing officer's decision.* The hearing officer's decision is final and binding, unless the decision is reversed or modified by the Administrator in accordance with paragraph (e)(3) of this section.

(3) *Review by the Administrator.* The Administrator review will be conducted in the following manner:

(i) A Part D sponsor that has received a hearing officer's decision may request review by the Administrator within 30 days of the date of issuance of the hearing officer's decision under paragraph (e)(2)(iv) of this section. The Part D sponsor may submit written arguments to the Administrator for review.

(ii) After receiving a request for review, the Administrator has the discretion to elect to review the hearing officer's determination in accordance with paragraph (e)(3)(iii) of this section or to decline to review the hearing officer's decision.

(iii) If the Administrator declines to review the hearing officer's decision, the hearing officer's decision is final and binding.

(iv) If the Administrator elects to review the hearing officer's decision, the Administrator will review the hearing officer's decision, as well as any information included in the record of the hearing officer's decision and any written argument submitted by the Part D sponsor, and determine whether to uphold, reverse, or modify the hearing officer's decision.

(v) The Administrator's determination is final and binding.

(f) *Matters subject to appeal and burden of proof.* (1) The Part D sponsor's appeal is limited to CMS' finding that the payment data submitted by the Part D sponsor are erroneous.

(2) The Part D sponsor bears the burden of proof by a preponderance of the evidence in demonstrating that CMS' finding that the payment data were erroneous was incorrect or otherwise inconsistent with applicable program requirements.

(g) *Applicability of appeals process.* The appeals process under paragraph (e) of this section applies only to payment offsets under paragraph (c) of this section.

PART 424—CONDITIONS FOR PAYMENT

■ 20. The authority citation for part 424 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

■ 21. Section 424.13 is amended by—

■ a. Revising paragraph (a) introductory text.

■ b. Removing paragraph (a)(1).

■ c. Redesignating paragraphs (a)(2), (3), and (4) as paragraphs (a)(1), (2), and (3), respectively.

■ d. Revising newly redesignated paragraph (a)(1)(i).

■ e. Revising paragraph (b).

The revisions read as follows:

§ 424.13 Requirements for inpatient services of hospitals other than inpatient psychiatric facilities.

(a) *Content of certification and recertification.* Medicare Part A pays for inpatient hospital services (other than inpatient psychiatric facility services) for cases that are 20 inpatient days or more, or are outlier cases under subpart F of part 412 of this chapter, only if a physician certifies or recertifies the following:

* * * * *

(1) * * *

(i) Hospitalization of the patient for medical treatment or medically required diagnostic study; or

* * * * *

(b) *Timing of certification.* For outlier cases under subpart F of part 412 of this chapter, the certification must be signed and documented in the medical record and as specified in paragraphs (e) through (h) of this section. For all other cases, the certification must be signed and documented no later than 20 days into the hospital stay.

* * * * *

Dated: June 24, 2014.

Marilyn Tavenner,

Administrator, Centers for Medicare & Medicaid Services.

Dated: June 27, 2014.

Sylvia M. Burwell,

Secretary.

[FR Doc. 2014–15939 Filed 7–3–14; 4:15 pm]

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