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DEPARTMENT OF TRANSPORTATION

14 CFR Part 398

[Docket No.: DOT–OST–2014–0061]

Essential Air Service Enforcement Policy

AGENCY: Office of Aviation Analysis (X50), Department of Transportation (DOT).

ACTION: Final notice of enforcement policy.

SUMMARY: This notice of enforcement policy announces how the Department of Transportation (DOT or Department) will enforce compliance with the requirements of the Department of Transportation and Related Agencies Appropriations Act, 2000, which prohibits the Department from subsidizing Essential Air Service (EAS) to communities located within the 48 contiguous States receiving per passenger subsidy amounts exceeding $200, unless the communities are located more than 210 miles from the nearest large or medium hub airport. All communities receiving subsidized EAS have until September 30, 2015, based on data from October 1, 2014 through September 30, 2015, to ensure compliance with the $200 subsidy cap or face termination of subsidy eligibility. After September 30, 2015, the Department will enforce the $200 subsidy cap on an annual basis based on data compiled at the end of every fiscal year. Consistent with established procedures, DOT will issue a show-cause order to each EAS community that has been identified as failing to meet the $200 per passenger subsidy requirement. Each such community will have a fair and reasonable opportunity to demonstrate compliance with the $200 subsidy cap prior to a final decision by DOT. In addition, any community that is deemed ineligible under the $200 subsidy cap provision may petition the Secretary for a waiver. After receiving a community's petition for a waiver, the Secretary may waive the subsidy cap for a limited period of time, on a case-by-case basis, and subject to the availability of funds. To provide the Department with sufficient time to evaluate the FY 2015 data for potentially affected communities, DOT does not intend to issue any show-cause orders concerning compliance with the $200 subsidy cap until 2016.

DATES: This enforcement policy is effective November 10, 2014.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Kevin Schlemmer, Chief, Essential Air Service and Domestic Analysis Division, Office of Aviation Analysis, Department of Transportation, 1200 New Jersey Avenue SE., Room W86–309, Washington, DC 20590; telephone: (202) 366–3176; *Kevin.Schlemmer@dot.gov.* For legal questions concerning this action, contact Claire McKenna, Attorney, Office of the General Counsel, Department of Transportation, 1200 New Jersey Avenue SE., Room 96–309; telephone: (202) 366–0365; email: *Claire.McKenna@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Airline Deregulation Act, passed in 1978, gave airlines significant flexibility to determine which markets to serve domestically and what fares to charge for that service. The United States Congress (Congress) established the EAS program to guarantee that small communities that were served by certificated air carriers before deregulation would maintain at least a minimum level of scheduled air service after airline deregulation. Since its inception, the EAS program has provided a vital link for eligible small communities to the National Airspace System (NAS). Indeed, this program ensures that small communities across America can tap into the economic and quality of life benefits that scheduled air services offer.

Over the years, Congress has made a number of statutory changes to the program (most recently in 2011 and 2012), but the fundamental purpose of the program remains unchanged. Given the socio-economic importance of this program, DOT remains committed to preserving the EAS program for eligible communities and ensuring the sustainability of the program for the future.

This enforcement policy concerns the statutory mandate that prohibits DOT from providing EAS funds to any carrier to serve any community in the 48 contiguous states that requires a per-passenger-subsidy in excess of $200 unless the community is located more than 210 miles from the nearest large or medium airport. Congress first imposed a $200 subsidy per passenger cap for communities in the 48 contiguous States in Fiscal Year 1990 appropriations language. Such language was repeated in several later appropriations acts throughout the 1990s, and was made permanent by the Department of Transportation and Related Agencies Appropriations Act, 2000, Public Law 106–69, 113 Stat. 986 (Oct. 9, 1999). Specifically, the Act provides that:

> Hereafter, notwithstanding 49 U.S.C. 41742, no essential air service subsidies shall be provided to communities in the 48 contiguous States that are located fewer than 70 highway miles from the nearest large or medium hub airport, or that require a rate of subsidy per passenger in excess of $200 unless such point is greater than 210 miles from the nearest large or medium hub airport.

The Department has always expected communities less than 210 miles from a large or medium hub airport [1] to work together with air carriers providing EAS to keep the subsidy per passenger below the $200 cap or risk termination of eligibility for EAS subsidy. DOT has also routinely provided notice of this statutory mandate to communities that were or appeared to be at risk of exceeding the cap, and a number of EAS communities have lost their eligibility as a result of this requirement.

Although the $200 subsidy cap is a longstanding statutory provision, in 2012, Congress added a provision that allows the Secretary to grant waivers in limited circumstances. To effectuate that new provision and to ensure the fair and consistent treatment of all EAS communities subject to the $200 subsidy cap prospectively, DOT published a notice of proposed enforcement policy on May 1, 2014,

[1] Consistent with longstanding practice, DOT calculates the shortest driving distance between an EAS community and a large or medium hub airport from the center of the EAS community to the entrance of the nearest large or medium hub airport as determined by the Federal Highway Administration.

seeking public comments on a proposed policy to enforce the $200 subsidy cap. Comments on the proposal were due June 30.

The Department received seven comments on the proposed policy. All of the commenters noted that the $200 subsidy cap established by the Department of Transportation and Related Agencies Appropriations Act, 2000, Public Law 106–69, 113 Stat. 986 (Oct. 9, 1999), has not kept up with the pace of inflation, and that enforcement of the cap would impose a hardship on EAS communities and be contrary to the EAS program's objectives (to ensure these communities have air service). We recognize these comments; however, the requirements of the statute do not provide us with discretion to adjust the subsidy cap amount or refrain from enforcement.

One commenter offered several suggested changes to the proposed enforcement policy, such as: (1) The subsidy cap should be calculated based on actual subsidy paid, not the estimates provided in the carrier's proposal that form the basis of the subsidy award in the selection order; (2) enforcement of the subsidy cap should be based on the contract term, not the fiscal year—so as to not disadvantage carriers and communities that will be mid-contract at the time of the enforcement action in 2016 (and each year after that); and (3) communities should be permitted to refund funds to the Department, or contribute funds to carriers so that the Federal Government's share of the subsidy is below the subsidy cap. We appreciate these suggestions.

First, regarding the suggestion that the calculation be based on actual subsidy paid, the method of calculating per passenger subsidy described in the Notice of Proposed Enforcement Policy reflects the Department's long standing practice. This method formed the basis of the enforcement actions taken under this provision since it first appeared in appropriations language in 1990. Carriers and communities are familiar with the use of this methodology and we do not, at this time, believe that a change is warranted. Moreover, if a community were over the $200 per passenger cap based on the Department's traditional application, but under $200 based on actual subsidy payments, the community could object to a tentative finding in the show-cause order or raise this point in a petition for waiver, and the Department would then assess those arguments on a case-by-case basis.

Second, with respect to the comment on enforcement by contract term, rather than fiscal year, the Department believes it has given all of the affected parties ample time to come into compliance with the subsidy cap by delaying enforcement until 2016. In addition, while most EAS subsidy contracts have a two-year term, there are several that are for four-year, or even five-year, terms. The Department believes it would not be fiscally prudent, or fair to communities operating under a two year contract, to permit communities with subsidy caps well in excess of $200 per passenger to be essentially excused from this statutory requirement for many years simply because they are operating under longer EAS contracts. While we recognize that there may be some drawbacks to enforcement on a fiscal year basis, there are also drawbacks to a contract-based approach, as noted in the preceding sentence. With this in mind, the Department will move forward with the fiscal year based approach described in the Notice of Proposed Enforcement Policy. We believe that this approach is the most fair to communities, given the variety of contract terms, and is consistent with the practice for enforcement of other EAS eligibility requirements, such as the requirement that EAS communities enplane ten or more passengers per day. 49 U.S.C. 41731(a)(1)(B). The Department intends to publish quarterly calculations of per passenger subsidies at EAS communities on its Web site. We believe that this will further support communities in their efforts to remain below the subsidy cap by providing them with on-going notice of their per passenger subsidy amounts that will hopefully facilitate proactive discussions between communities and carriers to address potential threats to their continued eligibility well in advance of any enforcement action by the Department.

Third, regarding the suggestion that communities be able to remit funds to the Department to lower its subsidy per passenger, section 323 of Public Law 106–69 (Oct. 9, 1999) states that ''no [EAS] subsidies shall be provided'' to communities that require a rate of subsidy in excess of $200 per passenger. The Department has consistently construed this not as a limit on the Department's ability to pay more than $200 per passenger, but rather, as an overall limitation on *any* subsidy payment for EAS service when the required subsidy is in excess of $200 per passenger. *See* DOT Order 89–12–52 (Dec. 29, 1989) (finding that the subsidy cap ''was a disqualification for any subsidy at a point that exceeded'' the cap). Thus, we do not believe that the statute permits this approach.

Having carefully considered the comments received and the statutory requirements for eligibility, we are finalizing the enforcement policy proposed in the Notice of Proposed Enforcement Policy, as follows:

Enforcement Policy

The Department will begin enforcement of the $200 subsidy cap in 2016, based on data compiled from October 1, 2014, through September 30, 2015, as described in this policy. The Department will continue enforcement of the $200 subsidy cap on an annual basis based on data compiled at the end of every fiscal year and submitted to DOT after the close of the most recent fiscal year.

If after September 30, 2015 (and each September 30 thereafter for the preceding fiscal year), a particular community's subsidy per passenger is above $200 (as measured on an annual basis) and its location is less than 210 miles from a large or medium hub airport, the Department will initiate proceedings, consistent with 49 U.S.C. 41733(f) and Public Law 112–95 (Feb. 14, 2012), Section 426(c), directing interested persons to show cause why the Department should not terminate the eligibility of the community in question under the EAS Program. This process will provide each potentially affected community with a fair and reasonable opportunity to demonstrate compliance with the $200 subsidy cap prior to a final decision by DOT.

Communities are reminded that the EAS program contains certain statutory protections that may be invoked by an EAS community adversely affected by the $200 per passenger subsidy cap. First, in the event that DOT determines that a community is ineligible because it exceeds the $200 subsidy cap provision in a given fiscal year, the community may petition the U.S. Transportation Secretary for a waiver pursuant to Public Law 112–95, Sec. 426(c) (Feb. 14, 2012). Under this provision, ''[s]ubject to the availability of funds, the Secretary may waive, on a case-by-case basis, the subsidy-per-passenger cap.'' The law further provides: ''A waiver . . . shall remain in effect for a limited period of time, as determined by the Secretary.'' Second, a community that is deemed ineligible for subsidy based on the $200 subsidy cap may submit a proposal to the Secretary for restoration of subsidy. Upon receipt of a proposal, the Department will restore the community's subsidy eligibility if the Secretary determines that the rate of the per passenger

subsidy under the proposal does not exceed $200, and the proposal is likely to result in an average of more than 10 enplanements per day and is consistent with the EAS program's other legal and regulatory requirements. 49 U.S.C. 41733(g).

Consistent with past practice and the Department's obligations under 49 U.S.C. 41733(f)(2), DOT encourages potentially affected communities to work with air carriers providing subsidized EAS to maximize use of the service awarded under their respective carrier-selection orders to avoid exceeding the $200 subsidy cap.

Issued in Washington, DC, on October 2, 2014.

Brandon M. Belford,

Deputy Assistant Secretary for Aviation and International Affairs.

[FR Doc. 2014–24190 Filed 10–8–14; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2 and 38

[Docket No. RM05–5–022; Order No. 676–H]

Standards for Business Practices and Communication Protocols for Public Utilities; Correction

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final rule in Docket No. RM05–5–022 that was published in the **Federal Register** on Wednesday, September 24, 2014 (79 FR 56939). The final rule amended the Commission's regulations to incorporate by reference, with certain enumerated exceptions, the latest version (Version 003) of the Standards for Business Practices and Communication Protocols for Public Utilities adopted by the Wholesale Electric Quadrant (WEQ) of the North American Energy Standards Board (NAESB) as mandatory enforceable requirements.

DATES: This correction is effective October 24, 2014. Dates for implementation are provided in the final rule published September 24, 2014 (79 FR 56939).

FOR FURTHER INFORMATION CONTACT:

Tony Dobbins (Technical Issues), Office of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–6630.

Gary D. Cohen (Legal Issues), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8321.

SUPPLEMENTARY INFORMATION:

Need for Correction

On September 18, 2014, the Commission issued a ''Final Rule, Order No. 676–H'' in the above-captioned proceeding. *Standards for Business Practices and Communication Protocols for Public Utilities,* 148 FERC ¶ 61,205 (2014).

This document serves to correct the citations of five of the incorporated standards listed in PP 18, 89 and in the regulatory text to incorporate Standards WEQ–000, WEQ–001, WEQ–002, WEQ–003 and WEQ–013. We also correct a date for waiver requests in P 86.

Accordingly, we are correcting the citations given in the final rule in this proceeding (Docket No. RM05–5–022) published on September 24, 2014, 79 FR 56939.

Corrections to Preamble

1. On page 56941, third column, and page 56942, first column, correct WEQ–000, WEQ–001, WEQ–002, and WEQ–003 to read as follows:

• WEQ–000, Abbreviations, Acronyms, and Definition of Terms, WEQ Version 003, July 31, 2012, as modified by NAESB final actions ratified on Oct. 4, 2012, Nov. 28, 2012 and Dec. 28, 2012 (with minor corrections applied Nov. 26, 2013);

• WEQ–001, Open Access Same-Time Information System (OASIS), OASIS Version 2.0, WEQ Version 003, July 31, 2012, as modified by NAESB final actions ratified on Dec. 28, 2012 (with minor corrections applied Nov. 26, 2013) excluding Standards 001–9.5, 001–10.5, 001–14.1.3, 001–15.1.2 and 001–106.2.5;

• WEQ–002, Open Access Same-Time Information System (OASIS) Business Practice Standards and Communication Protocols (S&CP), OASIS Version 2.0, WEQ Version 003, July 31, 2012, as modified by NAESB final actions ratified on Nov. 28, 2012 and Dec. 28, 2012 (with minor corrections applied Nov. 26, 2013);

• WEQ–003, Open Access Same-Time Information System (OASIS) Data Dictionary Business Practice Standards, OASIS Version 2.0, WEQ Version 003, July 31, 2012, as modified by NAESB final actions ratified on Dec. 28, 2012 (with minor corrections applied Nov. 26, 2013).

2. On page 56942, first column, correct WEQ–013 to read as follows:

• WEQ–013, Open Access Same-Time Information System (OASIS) Implementation Guide, OASIS Version 2.0, WEQ Version 003, July 31, 2012, as modified by NAESB final actions ratified on Dec. 28, 2012 (with minor corrections applied Nov. 26, 2013).

3. On page 56950, third column, correct ''February 24, 2016'' to read ''January 24, 2016''.

4. On page 56951, first column, correct WEQ–000, WEQ–001, WEQ–002, and WEQ–003 to read as follows:

• WEQ–000, Abbreviations, Acronyms, and Definition of Terms, WEQ Version 003, July 31, 2012, as modified by NAESB final actions ratified on Oct. 4, 2012, Nov. 28, 2012 and Dec. 28, 2012 (with minor corrections applied Nov. 26, 2013);

• WEQ–001, Open Access Same-Time Information System (OASIS), OASIS Version 2.0, WEQ Version 003, July 31, 2012, as modified by NAESB final actions ratified on Dec. 28, 2012 (with minor corrections applied Nov. 26, 2013) excluding Standards 001–9.5, 001–10.5, 001–14.1.3, 001–15.1.2 and 001–106.2.5;

• WEQ–002, Open Access Same-Time Information System (OASIS) Business Practice Standards and Communication Protocols (S&CP), OASIS Version 2.0, WEQ Version 003, July 31, 2012, as modified by NAESB final actions ratified on Nov. 28, 2012 and Dec. 28, 2012 (with minor corrections applied Nov. 26, 2013);

• WEQ–003, Open Access Same-Time Information System (OASIS) Data Dictionary Business Practice Standards, OASIS Version 2.0, WEQ Version 003, July 31, 2012, as modified by NAESB final actions ratified on Dec. 28, 2012 (with minor corrections applied Nov. 26, 2013).

5. On page 56951, second column, correct WEQ–013 to read as follows:

• WEQ–013, Open Access Same-Time Information System (OASIS) Implementation Guide, OASIS Version 2.0, WEQ Version 003, July 31, 2012, as modified by NAESB final actions ratified on Dec. 28, 2012 (with minor corrections applied Nov. 26, 2013).

Corrections to Regulatory Text

■ 6. On page 56954, third column, and page 56955, first column, correct § 38.1(b)(1) through (4) and (b)(12), to read as follows:

§ 38.1 Incorporation by reference of North American Energy Standards Board Wholesale Electric Quadrant standards.

* * * * *

(b) * * *

(1) WEQ–000, Abbreviations, Acronyms, and Definition of Terms, WEQ Version 003, July 31, 2012, as modified by NAESB final actions ratified on Oct. 4, 2012, Nov. 28, 2012 and Dec. 28, 2012 (with minor corrections applied Nov. 26, 2013);

(2) WEQ–001, Open Access Same-Time Information System (OASIS), OASIS Version 2.0, WEQ Version 003, July 31, 2012, as modified by NAESB final actions ratified on Dec. 28, 2012 (with minor corrections applied Nov. 26, 2013) excluding Standards 001–9.5, 001–10.5, 001–14.1.3, 001–15.1.2 and 001–106.2.5;

(3) WEQ–002, Open Access Same-Time Information System (OASIS) Business Practice Standards and Communication Protocols (S&CP), OASIS Version 2.0, WEQ Version 003, July 31, 2012, as modified by NAESB final actions ratified on Nov. 28, 2012 and Dec. 28, 2012 (with minor corrections applied Nov. 26, 2013);

(4) WEQ–003, Open Access Same-Time Information System (OASIS) Data Dictionary Business Practice Standards, OASIS Version 2.0, WEQ Version 003, July 31, 2012, as modified by NAESB final actions ratified on Dec. 28, 2012 (with minor corrections applied Nov. 26, 2013);

* * * * *

(12) WEQ–013, Open Access Same-Time Information System (OASIS) Implementation Guide, OASIS Version 2.0, WEQ Version 003, July 31, 2012, as modified by NAESB final actions ratified on Dec. 28, 2012 (with minor corrections applied Nov. 26, 2013).

* * * * *

Dated: October 3, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–24093 Filed 10–8–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2013–0009; T.D. TTB–125; Ref: Notice No. 140]

RIN 1513–AB68

Establishment of the Adelaida District, Creston District, El Pomar District, Paso Robles Estrella District, Paso Robles Geneseo District, Paso Robles Highlands District, Paso Robles Willow Creek District, San Juan Creek, San Miguel District, Santa Margarita Ranch, and Templeton Gap District Viticultural Areas

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) establishes the Adelaida District, Creston District, El Pomar District, Paso Robles Estrella District, Paso Robles Geneseo District, Paso Robles Highlands District, Paso Robles Willow Creek District, San Juan Creek, San Miguel District, Santa Margarita Ranch, and Templeton Gap District viticultural areas within the boundary of the existing Paso Robles viticultural area in northern San Luis Obispo County, California. The Paso Robles viticultural area, in turn, is located within the larger multicounty Central Coast viticultural area. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

DATES: This final rule is effective November 10, 2014.

FOR FURTHER INFORMATION CONTACT: Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120–01 (Revised), dated December 10, 2013, to the TTB Administrator to perform the functions and duties in the administration and enforcement of this law.

Part 4 of the TTB regulations (27 CFR part 4) authorizes the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission to TTB of petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved AVAs.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features, as described in part 9 of the regulations, and a name and a delineated boundary, as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to the wine's geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an AVA and provides that any interested party may petition TTB to establish a grape-growing region as an AVA. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes the standards for petitions for the establishment of AVAs. Petitions to establish an AVA must include the following:

- Evidence that the area within the proposed AVA boundary is nationally or locally known by the AVA name specified in the petition;

• An explanation of the basis for defining the boundary of the proposed AVA;

• A narrative description of the features of the proposed AVA that affect viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed AVA distinctive and distinguish it from adjacent areas outside the proposed AVA boundary;

• The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed AVA, with the boundary of the proposed AVA clearly drawn thereon; and

• A detailed narrative description of the proposed AVA boundary based on USGS map markings.

Adelaida District, Creston District, El Pomar District, Paso Robles Estrella District, Paso Robles Geneseo District, Paso Robles Highlands District, Paso Robles Willow Creek District, San Juan Creek, San Miguel District, Santa Margarita Ranch, and Templeton Gap District Petitions

The Paso Robles Viticultural Area Committee (PRVAC) petitioned TTB to establish 11 new AVAs located entirely within the existing Paso Robles AVA (27 CFR 9.84) in northern San Luis Obispo County, California. The Paso Robles viticultural area, in turn, is located within the larger multicounty Central Coast viticultural area (27 CFR 9.75). The 11 proposed AVAs are Adelaida District, Creston District, El Pomar District, Paso Robles Estrella District, Paso Robles Geneseo District, Paso Robles Highlands District, Paso Robles Willow Creek District, San Juan Creek, San Miguel District, Santa Margarita Ranch, and Templeton Gap District. The 59 wine industry members who constitute PRVAC cumulatively own or manage over 10,000 acres of vineyards within the 11 proposed AVAs.

The PRVAC proposal to establish the 11 new AVAs would not alter the current boundary or size of the Paso Robles AVA. According to the PRVAC, some portions of the Paso Robles AVA are not included in any of the 11 proposed AVAs because they are urban areas, government-owned lands unavailable for commercial viticulture, or they contain little or no viticultural activity due to environmental or topographical factors.

Notice of Proposed Rulemaking

TTB published Notice No. 140 in the **Federal Register** on September 20, 2013 (78 FR 58050), proposing to establish the Adelaida District, Creston District, El Pomar District, Paso Robles Estrella District, Paso Robles Geneseo District, Paso Robles Highlands District, Paso Robles Willow Creek District, San Juan Creek, San Miguel District, Santa Margarita Ranch, and Templeton Gap District AVAs. In the notice, TTB summarized the evidence from all 11 petitions regarding the name, boundary, and distinguishing features of each proposed AVA. The notice also compared the distinguishing features of each proposed AVA to the other proposed AVAs, as well as to the distinguishing features of the larger Paso Robles and Central Coast AVAs within which the 11 proposed AVAs are located. The following table summarizes the distinctive characteristics of the 11 proposed AVAs, the Paso Robles AVA, and the Central Coast AVA. For a more detailed description of the evidence relating to the names, boundaries, and distinguishing features of the 11 proposed AVAs, see Notice No. 140.

COMPARISON OF THE CENTRAL COAST AND PASO ROBLES VITICULTURAL AREAS TO THE ELEVEN PROPOSED VITICULTURAL AREAS

Viticultural area	Climate	Avg. annual rainfall (inches)	Diurnal growing season temp. change [1] (degrees)	Topography	Soil
Central Coast [2]	Maritime climate characterized by marine fog.	N/A	N/A	N/A	N/A.
Paso Robles	Maritime climate becoming more continental to the east, with growing degree-day Regions II, III and IV.	8–30	20–50	Salinas River and tributary valleys, alluvial terraces, and surrounding mountain slopes; 600–2,400+ feet.	Soils both depositional and residual derived from sedimentary rock; moderate depth.
Proposed Adelaida District.	Region II–III transitional area with modest marine influence (light sea breezes and little marine fog).	25	30	Santa Lucia Range high mountain slopes grading to foothills; 900–2200 feet.	Shallow, bedrock residual soils and patchy colluvial hillside soils from middle member of Monterey Formation and older rocks; largely calcareous soils.
Proposed Creston District	Region III with modest marine influence (moderate sea breezes and marine fog).	11.5	25	Old erosional plateau at the base of the La Panza Range; alluvial terraces and fans of Huerhuero Creek; 1,000–2,000 feet.	Old, well developed terrace and hillside soils; mix of granitic and sedimentary rocks.
Proposed El Pomar District.	Region II with pronounced marine influence (strong sea breezes and heavy marine fog).	15	20–25	High, older terraces, fans, and hills; 740–1,600 feet.	Quaternary alluvial soils, well developed loams to clay loams, some calcareous, with Monterey Formation sandstone and siltstone at depth in some areas.

COMPARISON OF THE CENTRAL COAST AND PASO ROBLES VITICULTURAL AREAS TO THE ELEVEN PROPOSED VITICULTURAL AREAS—Continued

Viticultural area	Climate	Avg. annual rainfall (inches)	Diurnal growing season temp. change [1] (degrees)	Topography	Soil
Proposed Paso Robles Estrella District.	Region III with modest marine influence.	12.5–15.5	35–40	Rolling plains of Estrella River valley and terraces; 745–1819 feet.	Quaternary alluvial soils of diverse ages across younger to older terraces, deep to moderate depth, with remnant patches of older valley fill at highest elevations.
Proposed Paso Robles Geneseo District.	Region III–IV with modest marine influence.	13–14	20–25	Upfaulted hills through old river terraces along Huerhuero-La Panza fault; 740–1,300 feet.	Old alluvial terrace and residual hillside soils of moderate depth with cementation of the gravelly Paso Robles Formation and older granites.
Proposed Paso Robles Highlands District.	Region IV with little marine influence.	12	50+	Old Pliocene-Pleistocene erosional surface across the Simmler, Monterey and Paso Robles formations below the La Panza Range; 1,160–2,086 feet.	Deep, sometimes cemented alluvial soils; old leached alkaline soils common, with younger sandy soils along active steams.
Proposed Paso Robles Willow Creek District.	Region II with pronounced marine influence.	24–30	20	High elevation mountainous bedrock slopes across a more erodible member of the Monterey Formation; 960–1,900 feet.	Mostly bedrock (residual) soils from the middle and lower members of the Monterey Formation, patches of alluvial soil along streams, largely calcareous, loams to clay loams.
Proposed San Juan Creek.	Region III–IV transition with little marine influence.	10.4	35–40	San Juan Creek younger river valleys with alluvial terraces and fans as a tributary to the upper Estrella River; 980–1,600 feet.	Well to moderately drained, deep alluvial soils, sandy loams to loams to clay loams on the highest, oldest terraces.
Proposed San Miguel District.	Region III with little marine influence.	11.4	30–35	Footslope of Santa Lucia Range, with alluvial terraces of the Salinas and Estrella rivers and small recent alluvial fans; 580–1,600 feet.	Deep, alluvial sandy loams to loams to a few clay loams (some with clay pans) from the river bottoms up onto the higher terraces.
Proposed Santa Margarita Ranch.	Region II with moderate marine influence.	29	25	High, steep mountain slopes of ancient Salinas River and upper reaches of incised contemporary Salinas River along the Rinconada Fault; 900–1,400 feet.	Deep alluvial soils derived from many lithologies and varying in texture, with patchy residual soils on mountain slopes.
Proposed Templeton Gap District.	Region II with pronounced marine influence.	20	20	Santa Lucia Range mountain slopes and broad alluvial terraces; elevations 700–1,800 feet.	Broad alluvial terraces and fans of Paso Robles Creek and the Salinas River over bedrock; alluvial soils of shallow to moderate depth and sandy to silty to clay loams; calcareous in places.

[1] The growing season referenced herein is from April 1 to October 31 in a calendar year.
[2] As described in T.D. ATF–216, 50 FR 43130, October 24, 1985, the primary feature of the Central Coast AVA is a marine-influenced climate characterized by marine fog.

Comments Received in Response to Notice No. 140

In Notice No. 140, TTB solicited comments on the accuracy of the name, boundary, climatic, and other required information submitted in support of the 11 petitions. In addition, given the proposed AVAs' location within the existing Paso Robles and Central Coast AVAs, TTB solicited comments on whether the evidence submitted in the petitions regarding the distinguishing features of the 11 proposed AVAs sufficiently differentiates them from the 2 established AVAs. TTB also asked for comments on whether the geographical features of any of the 11 proposed AVAs are so distinguishable from the surrounding Paso Robles or Central Coast AVAs that they should no longer be part of those established AVAs. Finally, TTB asked for comments regarding whether portions of the Paso Robles AVA that are not contained within any of the 11 proposed AVAs have been appropriately excluded from the proposed AVAs or whether these excluded areas should be incorporated into any of the proposed AVAs. The comment period closed on January 21, 2014.

In response to Notice No. 140, TTB received 45 comments, 2 of which were submitted by the same commenter and subsequently withdrawn at his request, making for a total of 43 comments. Among the commenters were local residents; local vineyard owners, managers, and winery owners; wine consumers; a real estate appraiser specializing in the valuation of vineyards and wineries in the Central Coast AVA; a certified professional soil scientist; a wine blogger; a wine retailer; and a major wine producing company. The comments are summarized below. None of the comments addressed the question of whether or not the 11 proposed AVAs are so distinguishable from the existing Central Coast and Paso Robles AVAs that they should no longer be part of these 2 AVAs. Additionally, TTB did not receive any comments in response to the question of whether any of the portions of the Paso Robles AVA that were not included in any of the 11 proposed AVAs should be incorporated into any of the proposed AVAs.

Comments Supporting the 11 Proposed AVAs

Thirty-five of the 43 comments specifically supported the establishment of the 11 proposed AVAs. Most of the supporting comments stated that establishing the smaller proposed AVAs—each with its own unique climate, soil, and terrain—will help consumers better understand the diversity of climates, soils, and terrains within the larger Paso Robles AVA, all of which affect the characteristics of the grapes grown in each region. Several commenters appreciated the depth of the 11 petitions, including a commenter who stated that the petitions ''accurately reflect [the] intrinsic differences'' of each of the proposed AVAs (comment 14) and another commenter stated that this action would result in ''meaningful sub-appellations'' (comment 19). A certified soil scientist stated that ''the proposal is well documented with respect to the earth science and environmental conditions within the 11 proposed viticultural areas'' (comment 17). One local vineyard owner (comment 7) noted that people who may be concerned that the 11 proposed AVAs would diminish the marketing value of the existing Paso Robles AVA name should remember that California has a conjunctive labeling law relating to the Paso Robles AVA. That law will require any label using one of the 11 proposed AVAs as an appellation of origin on its wine labels to also use the Paso Robles AVA name, unless the AVA name includes the term ''Paso Robles.''

Comments Opposing the 11 Proposed AVAs

Four comments opposed the establishment of the 11 proposed AVAs (comments 1, 6, 8, and 11). These commenters included a local grape-grower, a local winemaker, and two individuals who did not list any affiliation. Most of the opposing comments stated that the Paso Robles AVA as a whole does not contain enough unique regions to justify 11 new AVAs within it, and that the proposed boundaries were ''meaningless and arbitrary'' (comment 1) and ''determined for self-serving reasons'' (comment 8). Another comment (comment 6) stated that there are already too many AVAs in the country and not enough ''high quality wineries'' in each of the 11 proposed AVAs to warrant their establishment. One of the comments (comment 8) also opposed the 11 proposed AVAs because ''many vineyards were not personally notified of such a proposal.''

After careful review of the 11 petitions to establish the proposed AVAs, TTB has determined that each of the petitions contained enough evidence to distinguish each of the proposed AVAs from each other and from the surrounding Paso Robles AVA. TTB also notes that none of the four commenters who opposed the establishment of the proposed AVAs provided any evidence to support their claims that the boundaries are arbitrary or that the features of the proposed AVAs do not distinguish them from the surrounding regions and each other.

With regard to the comment that there are too many established AVAs, TTB notes that it does not have regulations limiting the total number of AVAs that may be established. Under 27 CFR 9.12, any member of the public may petition TTB to designate a grape-growing region as an AVA, provided that the petition includes evidence showing that the proposed AVA is known by its proposed name and showing that the proposed AVA has features affecting viticulture, such as climate, topography, geology, or soils, which distinguish it from the surrounding areas.

With regard to the comment concerning the quality of the wines produced within the 11 proposed AVAs, TTB notes that establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area. Although some AVA petitions may include descriptions of awards and recognitions received by vintners within the proposed AVA, TTB does not require AVA petitions to include evidence of the quality of wines produced in the area, nor do any such quality claims play a role in determining whether or not TTB designates the area as an AVA. TTB designates AVAs in order to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase. Any benefit derived from the use of an AVA name, as well as any attribution of quality, reputation, or characteristic of the wine, would be the result of a proprietor's efforts and consumer acceptance of wines from that AVA.

With regard to the comment stating that vineyard owners were not personally notified of the proposals contained in Notice No. 140, TTB notes that no Federal law or regulation requires agencies to individually notify all possibly-affected businesses or persons of the publication of a proposed regulation. However, in order to notify the public at large of its proposed regulations and to solicit comments on them, TTB publishes all of its notices of proposed rulemaking, such as Notice No. 140, in the **Federal Register**, as required by the Administrative Procedure Act (see 5 U.S.C. 553). TTB also notes that the use of an AVA name on a wine label is not a regulatory mandate; rather its use is entirely voluntary. The establishment of an AVA does not obligate winemakers to use that AVA as an appellation of origin on their wine labels, nor are grape growers

required to market their grapes as being grown within that AVA.

Proposed Boundary Changes

Two commenters requested changes to certain portions of the proposed AVA boundaries described in Notice No. 140. The owner of AmByth Estate vineyard stated that he believes his property is within the proposed El Pomar District AVA but has more features in common with the proposed Templeton Gap District AVA (comment 9). The commenter provided a satellite photo showing the location of his property between Lupine Lane and Redondo Road, which places his property entirely within the proposed El Pomar District AVA near the shared boundary with the proposed Templeton Gap District AVA. The commenter stated that the soils within his property are Linne Calodo soils, and that the breezes shift late in the morning to flow from the Templeton Gap and over the ridge into his vineyard. Finally, the commenter stated that his property receives the same amount of rainfall and has the same temperatures as the proposed Templeton Gap District AVA. However, the commenter did not provide any empirical evidence to support his claims of similar soil, wind patterns, rainfall, and temperature, nor did he provide any evidence that the ''Templeton Gap District'' name is associated with the region of his property.

The second comment was from the owner of Lime Ridge Vineyards (comment 15). The commenter stated that his vineyard is split between two parcels on opposite sides of State Route 41. The southeastern boundary of the proposed El Pomar District AVA follows State Route 41, which places one of his vineyard parcels within the proposed AVA and leaves the other parcel outside, within the Paso Robles AVA. The commenter requested that the boundary of the proposed El Pomar District AVA be redrawn to incorporate his entire vineyard. The commenter provided an agricultural preserve contract to show that his entire property was within the El Pomar Agricultural Preserve, which also includes the proposed El Pomar District AVA. The commenter also provided a soil survey map, a San Luis Obispo County rainfall map, and a topographic map as evidence that the soils, precipitation, and elevations within his property are identical to those of the proposed AVA.

In response to the two requests, the PRVAC submitted their own comment (comment 45). In its comment, the PRVAC stated that it has no objection to the request to modify the proposed El Pomar District AVA boundary to include the entire Lime Ridge Vineyard property, as the evidence provided by the vineyard owner indicates the physical characteristics of his property are consistent with those of the proposed El Pomar District AVA and that the ''El Pomar District'' name applies to the region of his property.

However, the PRVAC does not support modifying the proposed Templeton Gap District AVA boundary to include the AmByth Estate vineyard, as the characteristics of the vineyard are different from those of the proposed AVA. The PRVAC included a statement from Dr. Deborah Elliot-Fisk, a geography professor emeritus of the University of California–Davis, who provided PRVAC with the report on the distinguishing features of the Paso Robles AVA that became the basis for its 11 proposed AVA petitions, including the proposed Templeton Gap District and El Pomar District AVAs. In her statement, Dr. Elliot-Fisk wrote that the elevations within the AmByth Estate vineyard are lower than those of the proposed Templeton Gap District AVA, and that wind conditions within the vineyard would be different from the proposed AVA because the property is on the lee side of the ridgeline that forms the proposed boundary. Dr. Elliot-Fisk concluded that, in her scientific opinion, the conditions in the AmByth Estate vineyard are more similar to those of the proposed El Pomar District AVA, in which it currently sits, than those of the proposed Templeton Gap District AVA.

After reviewing the comments and evidence submitted by both vineyard owners as well as the comment from the PRVAC and the statement from Dr. Elliot-Fisk, TTB has determined that the owner of the Lime Ridge Vineyard provided adequate evidence that his property should be entirely included within the proposed El Pomar District AVA. Accordingly, TTB is modifying the boundaries of the proposed El Pomar District AVA. The modification will increase the size of the 21,300-acre proposed El Pomar District AVA by approximately 130 acres, including 10 acres of vineyards.

TTB also has determined that the owner of the AmByth Estate vineyard did not provide adequate evidence to support modifying the boundary of the proposed Templeton Gap District AVA, particularly in light of the statement by Dr. Elliot-Fisk that the terrain and winds of the proposed AVA are not consistent with those of the vineyard owner's property. Section 9.12 of the TTB regulations requires persons who wish to expand an AVA to submit evidence that the proposed expansion area has essentially the same distinguishing features as the original AVA. Additionally, evidence must be submitted showing that the name of the AVA applies to the proposed expansion area. The owner of the AmByth Estate stated that the soils and climate of his property are more similar to the proposed Templeton Gap District AVA than to the proposed El Pomar District AVA. However, he did not provide any empirical evidence to support his claims, such as a soil map or climate data. Additionally, the owner did not provide any evidence that his property is known more by the ''Templeton Gap District'' name than the ''El Pomar District'' name. As a result, TTB is not modifying the boundary of the proposed Templeton Gap District AVA.

Terms of Viticultural Significance

Bronco Wine Company (''Bronco'') submitted a comment in response to Notice No. 140 (comment 43). In its comment, Bronco stated that it takes no position regarding whether or not the 11 proposed AVAs should be established. However, Bronco does support TTB's proposal to designate ''Paso Robles Estrella District'' and ''Paso Robles Estrella'' as terms of viticultural significance, but not to designate ''Estrella,'' standing alone, as a term of viticultural significance. Bronco states that the company uses the trade name ''Estrella River Winery'' and the brand name ''Estrella'' on several of its wines. If TTB were also to designate the word ''Estrella,'' standing alone, as a term of viticultural significance, Bronco states that the company would no longer be able to use the brand or trade name because the wines do not meet the requirements to use ''Paso Robles Estrella District'' as an appellation of origin.

TTB agrees that the word ''Estrella,'' standing alone, should not be designated as a term of viticultural significance due to the potential for consumer confusion based on the multiple locations in the United States and other countries that are known as ''Estrella.'' TTB also agrees that designating ''Estrella,'' standing alone, as a term of viticultural significance would affect numerous wine producers who use the word ''Estrella'' in a brand name or trade name. Therefore, TTB is only designating ''Paso Robles Estrella District'' and ''Paso Robles Estrella'' as terms of viticultural significance, as proposed in Notice No. 140.

Technical Corrections

One of the 35 comments in support of the establishment of the 11 proposed

AVAs also requested an amendment to the wording of the proposed boundary descriptions for the proposed El Pomar District and Paso Robles Geneseo AVAs (comment 44). The commenter stated that the road identified as ''Branbrit Road'' in paragraphs (c)(10) and (c)(11) of the proposed Paso Robles Geneseo District AVA regulatory text and paragraphs (c)(14) and (c)(15) of the proposed El Pomar District AVA regulatory text is not actually Branbrit Road but is instead an unpaved private driveway located approximately 429 feet east of Old Ford Road. The commenter requested that TTB change the proposed boundary descriptions to refer to ''an unpaved private driveway east of Old Fort Road,'' in order to more accurately describe the boundary of the proposed AVAs.

The PRVAC submitted a comment (comment 45) that, among other things, noted technical errors in the boundary descriptions of several of the proposed AVAs. The comment pointed out that the same road was misidentified as ''Branbrit Road'' in the proposed El Pomar District AVA and Paso Robles Geneseo District AVA boundaries, as discussed in the previous paragraph. The PRVAC also noted minor errors in the distances listed in paragraphs (c)(11) and (c)(18) of the proposed Creston District AVA regulatory text, paragraph (c)(9) of the proposed Paso Robles Highlands District AVA regulatory text, and paragraph (c)(8) of the proposed Templeton Gap District AVA regulatory text, as well as a typographical error in paragraph (c)(10) of the proposed San Juan Creek AVA regulatory text. Finally, the PRVAC believed that minor changes made by TTB to paragraph (c)(9) of the proposed El Pomar District AVA boundary description resulted in a small overlap with the proposed Paso Robles Geneseo District AVA in the vicinity of Creston Road and Grand Canyon Road.

After further review, TTB agrees with the commenters. In an attempt to identify as many of the roads by name as possible, TTB incorrectly identified a private driveway as ''Branbrit Road.'' The regulatory text of this final rule correctly identifies the road in question as a private driveway and not as a named road. This correction does not change the intended location of this portion of the concurrent El Pomar District–Paso Robles Geneseo District boundary. Additionally, TTB is deferring to PRVAC on the distances described in the proposed regulatory text and has made those changes in this final rule. Finally, TTB agrees that the roads used in paragraph (c)(9) of boundary description for the proposed El Pomar District AVA did cause an inadvertent overlap with the proposed Paso Robles Geneseo District AVA. As a result, TTB has amended the El Pomar District AVA boundary to follow Creston Drive all the way to the marked telephone line near an unmarked light-duty road known locally as Golden Hill Road, instead of following Creston Drive to Grand Canyon Drive and then following Grand Canyon Drive to the marked telephone line. None of these technical changes significantly increases or decreases the size of any of the proposed AVAs.

TTB Determination

After careful review of the petition and the comments received in response to Notice No. 140, TTB finds that the evidence provided by the petitioner supports the establishment of the 11 proposed AVAs. Accordingly, under the authority of the FAA Act, section 1111(d) of the Homeland Security Act of 2002, and part 4 of the TTB regulations, TTB establishes the ''Adelaida District,'' ''Creston District,'' ''El Pomar District,'' ''Paso Robles Estrella District,'' ''Paso Robles Geneseo District,'' ''Paso Robles Highlands District,'' ''Paso Robles Willow Creek District,'' ''San Juan Creek,'' ''San Miguel District,'' ''Santa Margarita Ranch,'' and ''Templeton Gap District'' AVAs within the existing Paso Robles AVA in San Luis Obispo County, California, effective 30 days from the publication date of this document. TTB is also modifying the boundary of the ''El Pomar District'' AVA to include the Lime Ridge Vineyard and is making several minor technical corrections to the regulatory text, as previously discussed.

TTB has also determined that, based on the evidence included in the petition and summarized in the table earlier in this document, each of the 11 AVAs shares enough general characteristics with both the Paso Robles and Central Coast AVAs to remain part of both AVAs.

Boundary Description

See the narrative description of each of the boundaries of the 11 AVAs in the regulatory text published at the end of this final rule.

Maps

The petitioner provided the required maps, and they are listed below in the regulatory text.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. For a wine to be labeled with an AVA name or with a brand name that includes an AVA name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in § 4.25(e)(3) of the TTB regulations (27 CFR 4.25(e)(3)). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in compliance, and the bottler must change the brand name and obtain approval of a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler must obtain approval of a new label. Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See § 4.39(i)(2) of the TTB regulations (27 CFR 4.39(i)(2)) for details.

With the establishment of these 11 AVAs, their full names—''Adelaida District,'' ''Creston District,'' ''El Pomar District,'' ''Paso Robles Estrella District,'' ''Paso Robles Geneseo District,'' ''Paso Robles Highlands District,'' ''Paso Robles Willow Creek District,'' ''San Juan Creek,'' ''San Miguel District,'' ''Santa Margarita Ranch,'' and ''Templeton Gap District''—will be recognized names of viticultural significance under § 4.39(i)(3) of the TTB regulations (27 CFR 4.39(i)(3)). Additionally, TTB has also determined that the terms ''Paso Robles Estrella'' ''Paso Robles Geneseo'' and ''Paso Robles Highlands,'' standing alone, have viticultural significance in relation to the ''Paso Robles Estrella District,'' ''Paso Robles Geneseo District,'' and ''Paso Robles Highlands District'' AVAs respectively. The text of the regulations clarifies this point. Once this final rule becomes effective, wine bottlers using any of the 11 full AVA names, or ''Paso Robles Estrella'' standing alone, ''Paso Robles Geneseo'' standing alone, or ''Paso Robles Highlands'' standing alone, in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use the AVA name as an appellation of origin.

The establishment of these 11 AVAs will not affect any existing AVA. The establishment of the 11 AVAs will allow vintners to use ''Adelaida District,'' ''Creston District,'' ''El Pomar District,'' ''Paso Robles Estrella District,'' ''Paso Robles Geneseo District,'' ''Paso Robles Highlands District,'' ''Paso Robles Willow Creek District,'' ''San Juan Creek,'' ''San Miguel District,'' ''Santa Margarita Ranch,'' or ''Templeton Gap District'' as an appellation of origin for

wines made from grapes grown within the respective AVA, if the wines meet the eligibility requirements for the appellation. Additionally, since all 11 of these new AVAs are located within the existing Paso Robles AVA, which, in turn, is located within the existing Central Coast AVA, vintners may use ''Paso Robles'' or ''Central Coast'' as an appellation of origin for wines made from grapes grown within any of the 11 AVAs, if the wines meet the eligibility requirements for the appellation.

Regulatory Flexibility Act

TTB certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of an AVA name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

It has been determined that this rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993. Therefore, no regulatory assessment is required.

Drafting Information

Karen A. Thornton of the Regulations and Rulings Division drafted this final rule.

List of Subjects in 27 CFR Part 9

Wine.

The Regulatory Amendment

For the reasons discussed in the preamble, TTB amends title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Subpart C is amended by adding §§ 9.238 through 9.248 to read as follows:

§ 9.238 Adelaida District.

(a) *Name.* The name of the viticultural area described in this section is ''Adelaida District.'' For purposes of part 4 of this chapter, ''Adelaida District'' is a term of viticultural significance.

(b) *Approved maps.* The six United States Geological Survey (USGS) 1:24,000 scale topographic maps used to determine the boundary of the Adelaida District viticultural area are titled:

(1) Paso Robles, Calif., 1948, photorevised 1979;

(2) Templeton, Calif., 1948, photorevised 1979;

(3) York Mountain, Calif., 1948, photorevised 1979;

(4) Cypress Mountain, Calif., 1948, photorevised 1979;

(5) Lime Mountain, Calif., 1948, photorevised 1979; and

(6) Adelaida, Calif., 1948, photorevised 1978.

(c) *Boundary.* The Adelaida District viticultural area is located in San Luis Obispo County, California. The boundary of the Adelaida District viticultural area is as described below:

(1) The beginning point is on the Paso Robles map at the point where an unnamed light-duty road locally known as Wellsona Road crosses the main channel of the Salinas River, section 4, T26S/R12E. From the beginning point, proceed southerly (upstream) along the main channel of the Salinas River approximately 3.4 miles to the river's first intersection with the city of Paso Robles Corporate Boundary line, T26S/R12E; then

(2) Proceed westerly and then southerly along the meandering city of Paso Robles Corporate Boundary line, crossing onto the Templeton map, to the boundary line's intersection with Peachy Canyon Road, T26S/R12E; then

(3) Proceed westerly on Peachy Canyon Road approximately 2.6 miles, crossing to and from the Paso Robles map, to the road's intersection with an unnamed intermittent stream at the 1,100-foot elevation line near the center of section 36, T26S/R11; then

(4) Proceed south-southeasterly (downstream) along the unnamed intermittent stream approximately 1.2 miles to the stream's intersection with the R11E/R12E common boundary line, section 1, T27S/R11E; then

(5) Proceed south along the R11E/R12E common boundary line approximately 0.15 mile to the line's intersection with an unnamed light-duty road locally known as Kiler Canyon Road, section 1, T27S/R11E; then

(6) Proceed westerly on the light-duty and then unimproved Kiler Canyon Road approximately 4 miles, crossing onto the York Mountain map, to the road's intersection with Summit Canyon Road (locally known as Peachy Canyon Road), section 33, T26S/R11E; then

(7) Proceed southwesterly on Summit Canyon Road (locally known as Peachy Canyon Road) approximately 3.5 miles to the road's intersection with Willow Creek Road (locally known as Vineyard Drive), T27S/R11E; then

(8) Proceed southerly on Willow Creek Road (locally known as Vineyard Drive) approximately 0.4 mile to the road's intersection with Dover Canyon Road, T27S/R11E; then

(9) Proceed westerly on Dover Canyon Road approximately 2.8 miles to the road's intersection with an intermittent stream and an unnamed jeep trail in Dover Canyon, section 14, T27S/R10E; then

(10) Proceed west-northwesterly in a straight line approximately 5.7 miles, crossing onto the Cypress Mountain map, to the R9E/R10E common boundary line at the northwest corner of section 6, T27S/R10E; then

(11) Proceed north along the R9E/R10E common boundary line approximately 6.5 miles, crossing onto the Lime Mountain map, to the line's intersection with the second unnamed intermittent stream that crosses the western boundary line of section 31, T25S/R10E; then

(12) Proceed easterly in a straight line approximately 0.45 mile to a marked 1,165-foot peak in section 31, T25S/R10E, and then continue easterly in a straight line approximately 0.8 mile to the marked 1,135-foot peak in section 32, T25S/R10E; then

(13) Proceed due east-northeasterly in a straight line approximately 0.3 mile to the line's intersection with Dip Creek, section 32, T25S/R10E; then

(14) Proceed southeasterly and then easterly along Dip Creek approximately 6 miles, crossing onto the Adelaida map, to the creek's intersection with San Miguel Road (locally known as Chimney Rock Road), section 13, T26S/R10E; then

(15) Proceed easterly on San Miguel Road (locally known as Chimney Rock Road, then Nacimiento Lake Drive, then Godfrey Road, and then San Marcos Road) approximately 8.6 miles, crossing onto the Paso Robles map, to the road's intersection with an unnamed light-duty road locally known as Wellsona Road, section 6, T26S/R12E; then

(16) Proceed southeasterly and then easterly on Wellsona Road approximately 2.0 miles, returning to the beginning point.

§ 9.239 Creston District.

(a) *Name.* The name of the viticultural area described in this section is ''Creston District.'' For purposes of part 4 of this chapter, ''Creston District'' is a term of viticultural significance.

(b) *Approved maps.* The five United States Geological Survey (USGS) 1:24,000 scale topographic maps used to

determine the boundary of the Creston District viticultural area are titled:

(1) Creston, Calif., 1948, photorevised 1980;

(2) Shedd Canyon, Calif., 1961;

(3) Wilson Corner, CA, 1995;

(4) Camatta Ranch, CA, 1995; and

(5) Santa Margarita, Calif., 1965, revised 1993.

(c) *Boundary.* The Creston District viticultural area is located in San Luis Obispo County, California. The boundary of the Creston District viticultural area is as described below:

(1) The beginning point is located on the Creston map along the common boundary line of the Huerhuero Land Grant and section 34, T27S/R13E, at the eastern-most intersection of State Route 41 and an unnamed light-duty road locally known as Cripple Creek Road. From the beginning point, proceed northerly on Cripple Creek Road approximately 1 mile to the road's intersection with an unnamed light duty road locally known as El Pomar Drive (at BM 1052), section 27, T27S/R13E; then

(2) Proceed northeasterly in a straight line approximately 0.75 mile to the unnamed 1,142-foot elevation point, T27S/R13E; then

(3) Proceed north in a straight line approximately 1.2 miles to the line's intersection with an unnamed light duty road locally known as Creston Road at the southwest corner of section 14, T27S/R13E; then

(4) Proceed east on Creston Road approximately 0.35 mile to the road's intersection with an unnamed light-duty road known locally as Geneseo Road (at BM 1014), T27S/R13E; then

(5) Proceed north-northwesterly on Geneseo Road approximately 0.7 mile to the road's intersection with a jeep trail (locally known as Rancho Verano Place) and the western boundary line of section 14, T27S/R13E; then

(6) Proceed due east in a straight line approximately 0.2 mile to the line's intersection with the Huerhuero Land Grant boundary line, section 14, T27S/R13E; then

(7) Proceed north-northeasterly along the Huerhuero Land Grant boundary line approximately 0.7 mile to the land grant's northern-most point, and then continue east-southeasterly along the land grant's boundary line approximately 0.4 mile to the line's intersection with the northern boundary line of section 14, T27S/R13E; then

(8) Proceed east approximately 1.3 miles along the northern boundary lines of sections 14 and 13, T27S/R13E, and continue east approximately 0.25 mile along the northern boundary line of section 18, T27S/R14E, to the T-intersection of two unnamed unimproved roads; then

(9) Proceed east-southeasterly on the generally east-west unnamed unimproved road approximately 0.85 mile, crossing onto the Shedd Canyon map, to the road's intersection with the eastern boundary line of section 18, T27S/R14E; then

(10) Proceed southeasterly in a straight line approximately 1.2 miles to the 1,641-foot elevation point located at the southeast corner of section 17, T27S/R14E; then

(11) Proceed southeasterly approximately 0.55 mile in a straight line to BM 1533 (located beside Creston Shandon Road (State Route 41)) and continue southeasterly in a straight line approximately 1.8 miles to the 1,607 elevation point near the western boundary line of section 27, T27S/R14E; then

(12) Proceed east-southeasterly in a straight line approximately 1.1 miles to the 1.579-foot elevation point at the southeast corner of section 27, T27S/R14E; then

(13) Proceed east approximately 1.9 miles along the northern boundary lines of sections 35 and 36, T27S/R14E, to the section 36 boundary line's intersection with Indian Creek; then

(14) Proceed southerly (upstream) along Indian Creek approximately 5.3 miles in straight-line distance, crossing onto the Wilson Corner map, to the creek's intersection with an unnamed light-duty road locally known as La Panza Road, section 20, T28S/R15E; then

(15) Proceed southeasterly on La Panza Road approximately 0.15 mile to the road's intersection with State Route 58 at Wilson Corner, section 29, T28S/R15E; then

(16) Proceed easterly on State Route 58 approximately 1.4 miles, crossing onto the Camatta Ranch map, to the road's intersection with the eastern boundary line of section 28, T28S/R15E; then

(17) Proceed south approximately 1.5 miles along the eastern boundary lines of sections 28 and 33, T28S/R15E, to the T28S/T29S common boundary line at the southeast corner of section 33, T28S/15E; then

(18) Proceed west along the T28S/T29S common boundary line approximately 9.1 miles, crossing over the Wilson Corner map and onto the Santa Margarita map, to the boundary line's intersection with the Middle Branch of Huerhuero Creek, section 31, T28S/R14E; then

(19) Proceed north-northwesterly (downstream) along the Middle Branch of Huerhuero Creek approximately 2.3 miles in straight-line distance to the creek's intersection with the southern boundary line of section 24, T28S/R13E; then

(20) Proceed west along the southern boundary line of section 24, T28S/R13E, approximately 0.45 mile to that section's southwestern corner; then

(21) Proceed north along the western boundary line of section 24, T28S/R13E, approximately 1.0 mile to the boundary line's intersection with an unnamed unimproved road at the section's northwestern corner; then

(22) Proceed northwesterly on the unnamed unimproved road approximately 0.7 mile to the road's intersection with State Route 229 near BM 1138, section 14, T28S/R13E; then

(23) Proceed northeasterly on State Route 229 approximately 0.2 mile to the road's intersection with the Huerhuero Land Grant boundary line, section 14, T28S/R13E; then

(24) Proceed north-northwesterly along the boundary of the Huerhuero Land Grant approximately 3 miles, crossing onto the Creston map and returning to the beginning point.

§ 9.240 El Pomar District.

(a) *Name.* The name of the viticultural area described in this section is ''El Pomar District.'' For purposes of part 4 of this chapter, ''El Pomar District'' is a term of viticultural significance.

(b) *Approved maps.* The two United States Geological Survey (USGS) 1:24,000 scale topographic maps used to determine the boundary of the El Pomar District viticultural area are titled:

(1) Templeton, Calif., 1948, photorevised 1979; and

(2) Creston, Calif., 1948, photorevised 1980.

(c) *Boundary.* The El Pomar District viticultural area is located in San Luis Obispo County, California. The boundary of the El Pomar District viticultural area is as described below:

(1) The beginning point is on the southeastern portion of the Templeton map at the intersection of State Route 41 and an unnamed light-duty road locally known as Homestead Road, east-northeast of Atascadero within the Asuncion Land Grant. From the beginning point, proceed north-northwesterly on Homestead Road approximately 1.1 miles to the road's intersection with an unnamed light-duty road locally known as South El Pomar Road, Asuncion Land Grant; then

(2) Proceed north-northwesterly in a straight line approximately 0.8 mile to the 1,452-foot elevation point, and continue north-northwesterly in a straight line approximately 0.3 mile to an unnamed peak above the 1,440-foot

elevation line (marked on the map by a triangle), Asuncion Land Grant; then

(3) Proceed northeasterly in a straight line approximately 0.3 mile to the 1,344-foot elevation point, Asuncion Land Grant; then

(4) Proceed northerly in a series of straight lines, totaling approximately 1.4 miles, through the 1,338-foot and 1,329-foot elevation points to the intersection of two unnamed light-duty roads locally known as El Pomar Drive and Hollyhock Lane in the Santa Ysabel Land Grant, T27S/R12E; then

(5) Proceed north-northwesterly on Hollyhock Lane approximately 1 mile to the road's intersection with an unnamed light-duty road locally known as Neal Springs Road, Santa Ysabel Land Grant; then

(6) Proceed west on Neal Springs Road approximately 0.4 mile to the road's intersection with an unnamed light-duty road locally known as South River Road, Santa Ysabel Land Grant; then

(7) Proceed northwesterly and then northerly on South River Road approximately 2.8 miles to the road's intersection with an unnamed light-duty road locally known as Charolais Road (0.1 mile north of a marked windmill), Santa Ysabel Land Grant; then

(8) Proceed east-southeasterly on Charolais Road approximately 1.4 miles to the road's intersection with an unnamed light-duty road locally known as Creston Road, Santa Ysabel Land Grant; then

(9) Proceed north and then west-northwesterly on Creston Road approximately 1.9 miles to the road's intersection with a marked telephone line (approximately 1.3 miles due east of U.S. Route 101) in the Santa Ysabel Land Grant, T26/R12E; then

(10) Proceed easterly in a straight line approximately 2 miles, crossing onto the Creston map, to the line's intersection with the point where the R12E/R13E common boundary line crosses Huerhuero Creek, western boundary line of section 31, T26S/R13E; then

(11) Proceed southeasterly (upstream) along Huerhuero Creek approximately 2.4 miles to the creek's first confluence with an unnamed intermittent stream in the northwest quadrant of section 8, T27S/R13E; then

(12) Proceed southeasterly in a straight line approximately 1.4 miles to the 1,255-foot elevation point in the northwest quadrant of section 16, T27S/R13E; then

(13) Proceed easterly in a straight line approximately 0.75 mile to an unnamed peak above the 1,380-foot elevation line (marked on the map with a triangle), section 16, T27S/R13E; then

(14) Proceed east-southeasterly in a straight line approximately 0.6 mile to the 1,342-foot elevation point in section 15, T27S/R13E, and then continue east-southeasterly in a straight line approximately 0.6 mile to the northern end of a marked, unnamed light-duty road (locally known as a private driveway located approximately 430 feet east of Old Ford Road), section 15, T27S/R13E; then

(15) Proceed south on the marked, unnamed light-duty road (locally known as a private driveway located approximately 430 feet east of Old Ford Road) approximately 0.3 mile to the road's intersection with an unnamed light-duty road locally known as Creston Road, section 15, T27S/R13E; then

(16) Proceed east on Creston Road approximately 0.2 mile to the road's intersection with northeast corner of section 22, T27S/R13E; then

(17) Proceed southerly in a straight line approximately 1.2 miles to the 1,142 elevation point in the Huerhuero Land Grant (0.1 mile south of a pipe line), T27S/R13E; then

(18) Proceed southwesterly in a straight line approximately 0.75 mile to BM 1052 located at the intersection of two unnamed light-duty roads locally known locally as El Pomar Drive and Cripple Creek Road, section 27, T27S/R13E; then

(19) Proceed south on Cripple Creek Road approximately 1.0 mile to the road's eastern-most intersection with State Route 41, section 34, T27S/R13E; then

(20) Proceed southwesterly on State Route 41 approximately 0.5 mile to the marked 1,128-foot elevation point, section 3, T28S/R13E; then

(21) Proceed south-southwesterly in a straight line approximately 1.1 miles to the southeast corner of section 4, T28S/R13E; then

(22) Proceed east along the southern boundary of section 4 approximately 0.75 mile to the section line's intersection with State Route 41; then

(23) Proceed southwesterly on State Route 41 approximately 4.5 miles, crossing onto the Templeton map and returning to the beginning point.

§ 9.241 Paso Robles Estrella District.

(a) *Name.* The name of the viticultural area described in this section is ''Paso Robles Estrella District.'' For purposes of part 4 of this chapter, ''Paso Robles Estrella District'' and ''Paso Robles Estrella'' are terms of viticultural significance.

(b) *Approved maps.* The five United States Geological Survey 1:24,000 scale topographic maps used to determine the boundary of the Paso Robles Estrella District viticultural area are titled:

(1) Paso Robles, Calif., 1948, photorevised 1979;

(2) San Miguel, Calif., 1948, photorevised 1979;

(3) Ranchito Canyon, Calif., 1948, photorevised 1976;

(4) Estrella, Calif., 1948, photorevised 1979; and

(5) Shandon, Calif., 1961.

(c) *Boundary.* The Paso Robles Estrella District is located in San Luis Obispo County, California. The boundary of the Paso Robles Estrella District is as described below:

(1) The beginning point is on the Paso Robles map at the confluence of San Jacinto Creek and the Estrella River, section 26, T25S/R12E. From the beginning point, proceed north-northeasterly (upstream) along San Jacinto Creek approximately 6.5 miles, crossing onto the San Miguel map, to the creek's intersection with the San Luis Obispo County–Monterey County boundary line, northern boundary of section 1, T25S/R12E; then

(2) Proceed east along the San Luis Obispo County–Monterey County boundary line approximately 2.4 miles, crossing onto the Ranchito Canyon map, to the county line's intersection with an unnamed light-duty road locally known as Ranchita Canyon Road, northern boundary of section 4, T25S/R13E; then

(3) Proceed east-southeasterly in a straight line approximately 4.5 miles to the 1,819-foot elevation point in the northwestern quadrant of section 18, T25S/R14E; then

(4) Proceed southeasterly in a straight line approximately 1.6 miles, crossing over the northeastern corner of the Estrella map and then onto the Shandon map, to the 1,614-foot elevation point in the northwestern quadrant of section 20, T25S/R14E; then

(5) Proceed southeasterly in a straight line approximately 1.05 miles to the 1,601-foot elevation point in the northeastern quadrant of section 29, T25S/R14E; then

(6) Proceed east-southeasterly in a straight line approximately 2.2 miles to the 1,562-foot elevation point, section 34, T25S/R14E; then

(7) Proceed south-southeasterly in a straight line approximately 3 miles to the 1,481-foot ''Estrella'' elevation point, section 14, T26S/R14E; then

(8) Proceed southwesterly in a straight line approximately 0.95 mile to the intersection of the eastern boundary line of section 15, T26S/R14E, and U.S. 446/State Route 41 (now known as State Route 46); then

(9) Proceed south along the eastern boundary lines of sections 15 and 22,

approximately 0.55 mile, to the intersection of the section 22 boundary line and the unnamed intermittent stream that flows from Shedd Canyon, section 22, T26S/R14E; then

(10) Proceed southeasterly and then southerly (upstream) along the unnamed intermittent stream located within Shedd Canyon approximately 1.9 miles to the stream's intersection with the southern boundary line of section 26, T26S/R14E; then

(11) Proceed west along the southern boundary lines of sections 26, 27 and 28, T26S/R14E, approximately 1.9 miles to the section 28 boundary line's intersection with an unnamed unimproved road located between the 1,220- and 1,240-foot contour lines, section 28, T26S/R14E; then

(12) Proceed southwesterly along the unnamed unimproved road approximately 0.4 miles to a fork and then continue on the westerly fork of the unnamed unimproved road approximately 0.3 miles to the 1,385-foot elevation point, section 32, T26S/R14E; then

(13) Proceed west-northwesterly in a straight line approximately 1.6 miles, crossing onto the Estrella map, to the line's intersection with an unnamed unimproved road and the southern boundary of section 30, T26R/R14E; then

(14) Proceed northerly along the unnamed unimproved road approximately 2.0 miles to the road's intersection with an unnamed light-duty road known locally as River Grove Drive in Whitley Gardens, T26S/R14E; then

(15) Proceed westerly in a straight line less than 0.1 mile to the intersection of the western boundary line of section 19, T26S/R14E and State Route 46, and then continue west on State Route 46 approximately 2.1 miles to the southwest corner of section 14, T26S/R13E; then

(16) Proceed west along the southern boundary lines of sections 14, 15, 16, 17, and 18 (largely concurrent with State Route 46) approximately 4 miles to the southwest corner of section 18, T26S/R13E; then

(17) Proceed southwest in a straight line approximately 1.45 miles, crossing onto the Paso Robles map, to the line's intersection with State Route 46 at the southwestern corner of section 24, T26S/R12E; then

(18) Proceed west on State Route 46 approximately 2.4 miles to the road's intersection with the Salinas River at the city of Paso Robles, T26S/R12E; then

(19) Proceed northerly (downstream) along the main channel of the Salinas River approximately 5.2 miles in straight-line distance to the river's intersection with the northern boundary line of section 33, T25S/R12E; then

(20) Proceed east along the northern boundary lines of sections 33, 34, and 35, T25S/R12E, approximately 1.8 miles to the intersection of the section 35 boundary line with the Estrella River; then

(21) Proceed northerly (downstream) along the main channel of the Estrella River approximately 0.7 mile, returning to the beginning point.

§ 9.242 Paso Robles Geneseo District.

(a) *Name.* The name of the viticultural area described in this section is ''Paso Robles Geneseo District.'' For purposes of part 4 of this chapter, ''Paso Robles Geneseo District'' and ''Paso Robles Geneseo'' are terms of viticultural significance.

(b) *Approved maps.* The four United States Geological Survey 1:24,000 scale topographic maps used to determine the boundary of the Paso Robles Geneseo District viticultural area are titled:

(1) Paso Robles, Calif., 1948, photorevised 1979;

(2) Estrella Calif., 1948; photorevised 1979;

(3) Creston, Calif., 1948; photorevised 1980; and

(4) Templeton, Calif., 1948; photorevised 1979.

(c) *Boundary.* The Paso Robles Geneseo District is located in San Luis Obispo County, California. The boundary of the Paso Robles Geneseo District is as described below:

(1) The beginning point is on the Paso Robles map at the intersection of State Route 46 and Golden Hill Road at the northwest corner of section 26, T26S/R12E. From the beginning point, proceed east on State Route 46 for 1 mile to the southwest corner of section 24, T26S/R12E; then

(2) Proceed northeast in a straight line approximately 1.45 miles, crossing onto the Estrella map, to the northwest corner of section 19, T26S/R13E; then

(3) Proceed east along the northern boundary lines of sections 19 and 20, T26S/R13E, to the section 20 boundary line's intersection with State Route 46 and then continue east on State Route 46 to the road's intersection with the eastern boundary line of section 24, T26S/R13E; then

(4) Proceed easterly in a straight line less than 0.1 mile to the intersection of an unnamed light duty road locally known as River Grove Drive and an unnamed unimproved road in Whitley Gardens, section 19, T26S/R14E; then

(5) Proceed south on the unnamed unimproved road approximately 2 miles to the road's intersection with the southern boundary line of section 30, T26S/R14E; then

(6) Proceed west-southwesterly in a straight line approximately 1.9 miles, crossing onto the Creston map, to the intersection of an unnamed light duty road locally known as Geneseo Road and an unnamed unimproved road locally known as Dry Canyon Road (just east of a windmill within Dry Canyon), section 35, T26S/R13E; then

(7) Proceed south on Geneseo Road approximately 1 mile to the road's intersection with the eastern boundary line of section 3, T27S/R13E (near BM 1200); then

(8) Proceed south along the eastern boundary lines of sections 3, 10, and 15, T27S/R13E, approximately 1.9 miles to the first intersection of the section 15 eastern boundary line with the unnamed light-duty road locally known as Geneseo Road, section 15, T27S/R13E; then

(9) Proceed south-southeasterly on Geneseo Road approximately 0.85 mile to the road's intersection with an unnamed light duty road locally known as Creston Road, Huerhuero Land Grant, T27S/R13E; then

(10) Proceed west on Creston Road 0.5 mile to the road's intersection with a marked, unnamed light-duty road (locally known as a private driveway located approximately 430 feet east of Old Ford Road), southern boundary of section 15, T27S/R13E; then

(11) Proceed north on the marked, unnamed light-duty road (locally known as a private driveway located approximately 430 feet east of Old Ford Road) approximately 0.3 mile to the road's end, section 15, T27S/R13E; then

(12) Proceed west-northwesterly in a straight line approximately 0.6 mile to the 1,342 foot elevation point in section 15, T27S/R13E, and then continue west-northwesterly in a straight line approximately 0.6 mile to an unnamed peak above the 1,380-foot elevation line (marked on the map with a triangle), section 16, T27S/R13E; then

(13) Proceed westerly in a straight line approximately 0.75 mile to the 1,255-foot elevation point in the northwest quadrant of section 16, T27S/R13E; then

(14) Proceed northwesterly in a straight line approximately 1.4 miles to the confluence of Huerhuero Creek and an unnamed intermittent stream in the northwest quadrant of section 8, T27S/R13E; then

(15) Proceed northwesterly (downstream) along Huerhuero Creek approximately 2.4 miles to the creek's intersection with the R12E/R13E common boundary line, section 31, T26S/R13E; then

(16) Proceed westerly in a straight line approximately 2.3 miles, crossing onto the Templeton map, to the line's

intersection with the junction of a marked telephone line and an unnamed light duty road locally known as Creston Road (approximately 1.3 miles due east of U.S. Route 101 in the Santa Ysabel Land Grant, T26S/R12E; then

(17) Proceed west on Creston Road approximately 0.05 mile to the road's intersection with an unnamed light-duty road locally known as Rolling Hills Road, Santa Ysabel Land Grant; then

(18) Proceed north on Rolling Hills Road, crossing onto the Paso Robles map (where a portion of Rolling Hills Road is labeled Golden Hill Road), and continue north on Rolling Hills Road and then Golden Hill Road (a total distance of approximately 1.5 miles), returning to the beginning point.

§ 9.243 Paso Robles Highlands District.

(a) *Name.* The name of the viticultural area described in this section is ''Paso Robles Highlands District.'' For purposes of part 4 of this chapter, ''Paso Robles Highlands District'' and ''Paso Robles Highlands'' are terms of viticultural significance.

(b) *Approved maps.* The six United States Geological Survey 1:24,000 scale topographic maps used to determine the boundary of the Paso Robles Highlands District viticultural area are titled:

(1) Camatta Ranch, CA, 1995;

(2) Wilson Corner, CA, 1995;

(3) Shedd Canyon, Calif., 1961, revised 1993;

(4) Camatta Canyon, Calif., 1961, revised 1993;

(5) Holland Canyon, Calif., 1961, revised 1993; and

(6) La Panza Ranch, CA, 1995.

(c) *Boundary.* The Paso Robles Highlands District viticultural area is located in San Luis Obispo County, California. The boundary of the Paso Robles Highlands District viticultural area is as described below:

(1) The beginning point is on the Camatta Ranch map along the T28S/T29S common boundary line (also concurrent with the northern boundary line of the Los Padres National Forest) at the southwest corner of section 34, T28S/R15E. From the beginning point, proceed north along the western boundary lines of sections 34 and 27, T28S/R15E, approximately 1.5 miles to the section 27 boundary line's intersection with State Route 58; then

(2) Proceed west on State Route 58 approximately 1.5 miles, crossing onto the Wilson Corner map, to the road's intersection with an unnamed light-duty road known locally as La Panza Road at Wilson Corner, section 29, T28S/R15E; then

(3) Proceed northwest on the unnamed light-duty road known locally as La Panza Road approximately 0.15 mile to the road's intersection with Indian Creek, section 20, T28S/R15E; then

(4) Proceed north-northwesterly (downstream) along the meandering Indian Creek approximately 8.5 miles in straight-line distance, crossing onto the Shedd Canyon map, to the creek's intersection with the northern boundary line of section 13, T27S/R14E, within Shedd Canyon; then

(5) Proceed east approximately 6.2 miles along the northern boundary line of section 13, T27S/R14E, and the northern boundary lines of sections 18, 17, 16, 15, 14, and 13, T27S/R15E, crossing onto the Camatta Canyon map, to the intersection of the northern boundary line of section 13, T27S/R15E, with the 1,200-foot elevation line on the western edge of the San Juan Valley; then

(6) Proceed southerly then easterly along the 1,200-foot elevation line to the elevation line's first intersection with the eastern boundary line of section 13, T27S/R15E; then

(7) Proceed south along the eastern boundary line of section 13, T27S/R15E, approximately 0.2 mile to the section 13 boundary line's second intersection with an unnamed unimproved road; then

(8) Proceed southeasterly on the unnamed unimproved road approximately 3 miles as it follows the southwestern edge of the San Juan Valley to the road's intersection with the eastern boundary line of section 29, T27S/R16E; then

(9) Proceed south along the eastern boundary line of section 29, T27S/R16E, approximately 0.3 mile to the section line's intersection with the 1,300-foot elevation line; then

(10) Proceed southeasterly along the 1,300-foot elevation line approximately 3.7 miles as it follows the southwestern edge of the San Juan Valley, crossing onto the Holland Canyon map, to the elevation line's first intersection with the eastern boundary line of section 3, T28S/R16E; then

(11) Proceed south along the eastern boundary line of section 3, T28S/R16E, approximately 0.55 mile to the section boundary line's fifth intersection with the 1,300-foot elevation line (northwest of Pear Tree Spring); then

(12) Proceed southeasterly along the 1,300-foot elevation line approximately 1.3 miles to the elevation line's intersection with an unnamed tributary of San Juan Creek (approximately 0.35 mile east of the 1,686-foot San Juan peak), section 11, T28S/R16E; then

(13) Proceed southerly in a straight line approximately 0.6 mile, crossing onto the La Panza Ranch map, to the northwestern corner of section 13, T28S/R16E; then

(14) Proceed east along the northern boundary line of section 13, T28S/R16E, approximately 0.7 mile to the section boundary line's intersection with an unnamed unimproved road; then

(15) Proceed south-southeasterly on the unnamed unimproved road approximately 0.85 mile to the road's intersection with the eastern boundary line of section 13, T28S/R16E, which is concurrent with the R16E/R17E common boundary line; then

(16) Proceed south along the R16E/R17E common boundary line approximately 3.35 miles to the southeast corner of section 36, T28S/R16E, which is concurrent with the eastern-most intersection of the R16E/R17E and T28S/T29S common boundary lines; then

(17) Proceed west along the T28S/R29S common boundary line approximately 9.1 miles, crossing onto the Camatta Ranch map, returning to the beginning point.

§ 9.244 Paso Robles Willow Creek District.

(a) *Name.* The name of the viticultural area described in this section is ''Paso Robles Willow Creek District.'' For purposes of part 4 of this chapter, ''Paso Robles Willow Creek District'' is a term of viticultural significance.

(b) *Approved maps.* The three United States Geological Survey 1:24,000 scale topographic maps used to determine the boundary of the Paso Robles Willow Creek District viticultural area are titled:

(1) York Mountain, Calif., 1948, photorevised 1979;

(2) Templeton, Calif., 1948, photorevised 1979; and

(3) Paso Robles, Calif. 1948, photorevised 1979.

(c) *Boundary.* The Paso Robles Willow Creek District is located in San Luis Obispo County, California. The boundary of the Paso Robles Willow Creek District is as follows:

(1) The beginning point is on the York Mountain map at the intersection of Summit Canyon Road (locally known as Peachy Canyon Road), and an unnamed unimproved road locally known as Kiler Canyon Road, section 33, T26S/R11E. From the beginning point, proceed southerly and then southwesterly on Summit Canyon Road (locally known as Peachy Canyon Road) approximately 3.3 miles to the road's intersection with Willow Canyon Road (locally known as Vineyard Drive), Paso de Robles Land Grant; then

(2) Proceed southerly on Willow Creek Road (locally known as Vineyard Drive) approximately 0.35 mile to its

intersection with Dover Canyon Road; then

(3) Proceed westerly then southerly on Dover Canyon Road approximately 1 mile to the road's intersection with the common boundary line of section 18, T27S/R11E, and the Paso de Robles Land Grant; then

(4) Proceed east, south, and southeast along the Paso de Robles Land Grant Boundary line approximately 1.9 miles to the fourth crossing of an unnamed intermittent tributary of Jack Creek by the common boundary line of section 20, T27S/R11E, and the Paso de Robles Land Grant; then

(5) Proceed northerly (downstream) along the unnamed intermittent tributary of Jack Creek approximately 0.15 mile to the tributary's confluence with Jack Creek, Paso de Robles Land Grant; then

(6) Proceed southeasterly (downstream) along Jack Creek approximately 1.8 miles to the creek's intersection with an unnamed light-duty road locally known as Jack Creek Road (near BM 920), Paso de Robles Land Grant; then

(7) Proceed northeasterly and then east-southeasterly along Jack Creek Road approximately 1 mile to the road's intersection with State Route 46; then

(8) Proceed east on State Route 46 approximately 0.15 mile to the road's intersection with an unnamed light-duty road locally known as Hidden Valley Road, Paso de Robles Land Grant; then

(9) Proceed southeasterly and then easterly on Hidden Valley Road approximately 2.2 miles, crossing onto the Templeton map, to the road's intersection with an unnamed light-duty road locally known as Vineyard Drive, Paso de Robles Land Grant; then

(10) Proceed east on Vineyard Drive approximately 0.85 mile to the road's intersection with an unnamed light-duty road locally known as S. Bethel Road, Paso de Robles Land Grant; then

(11) Proceed north-northeasterly on S. Bethel Road and then N. Bethel Road approximately 1.7 miles to the road's fifth intersection with an unnamed intermittent stream, Paso de Robles Land Grant; then

(12) Proceed westerly (upstream) along the unnamed intermittent stream and then the stream's middle branch approximately 1.1 miles to the marked end of the stream, and then continue due west in a straight line approximately 0.05 mile to State Route 46 (Cayucos Road), Paso de Robles Land Grant; then

(13) Proceed northeasterly on State Route 46 (Cayucos Road) approximately 0.8 mile to BM 924, Paso de Robles Land Grant; then

(14) Proceed due north in a straight line to the southeast corner of section 12, T27S/R11E, and continue north along the eastern boundary line of section 12, a total of approximately 1.1 miles, to the section boundary line's intersection with a light-duty road locally known as Live Oak Road; then

(15) Proceed easterly on Live Oak Road approximately 0.2 mile to the road's intersection with an unnamed intermittent stream, Paso de Robles Land Grant; then

(16) Proceed northwesterly (upstream) along the unnamed intermittent stream approximately 0.35 mile to the eastern boundary line of section 12, T27S/R11E; then

(17) Proceed north along the eastern boundary line of section 12, T27S/R11E, to the section's northeast corner, and then proceed east along the southern boundary line of section 6, T27S/R11E, a total of approximately 1.3 miles, to the intersection of the section 6 boundary line with an unnamed light-duty road locally known as Arbor Road; then

(18) Proceed south-southeasterly on Arbor Road approximately 0.35 mile to the road's first intersection with an unnamed intermittent stream, Paso de Robles Land Grant; then

(19) Proceed southeasterly and then easterly (downstream) along the unnamed intermittent stream approximately 1.4 miles to the stream's intersection with an unnamed light-duty road known locally as S. Vine Street, just west of the U.S. 101/State Route 46 interchange, Paso de Robles Land Grant; then

(20) Proceed northerly along S. Vine Street (which generally parallels U.S. 101) approximately 1.8 miles to the street's intersection with the marked city of Paso Robles Corporate Boundary line (concurrent with the locally-known intersection of S. Vine and 1st Streets), Paso de Robles Land Grant; then

(21) Proceed west, north, west, and north again along the marked city of Paso Robles Corporate Boundary line approximately 1 mile to the boundary line's junction with the intersection of an unnamed light-duty road locally known as Merry Hill Road and Peachy Canyon Road, Paso de Robles Land Grant; then

(22) Proceed westerly on Peachy Canyon Road approximately 2.6 miles, crossing to and from the Paso Robles map, to the road's intersection with an unnamed intermittent stream near the center of section 36, T26S/R11E; then

(23) Proceed south-southeasterly (downstream) along the unnamed intermittent stream approximately 1.2 miles to the stream's intersection with the eastern boundary line of section 1, T27S/R11E; then

(24) Proceed south along the eastern boundary line of section 1, T27S/R11E, approximately 0.15 mile to the line's intersection with an unnamed light-duty road locally known as Kiler Canyon Road, section 1, T27S/R11E; then

(25) Proceed westerly on Kiler Canyon Road approximately 3.7 miles, crossing onto the York Mountain map, returning to the beginning point.

§ 9.245 San Juan Creek.

(a) *Name.* The name of the viticultural area described in this section is ''San Juan Creek.'' For purposes of part 4 of this chapter, ''San Juan Creek'' is a term of viticultural significance.

(b) *Approved maps.* The six United States Geological Survey 1:24,000 scale topographic maps used to determine the boundary of the San Juan Creek viticultural area are titled:

(1) Cholame, Calif., 1961, revised 1993;

(2) Camatta Canyon, Calif., 1961, revised 1993;

(3) Holland Canyon, Calif. 1961, revised 1993;

(4) La Panza Ranch, CA, 1995;

(5) Shedd Canyon, Calif., 1961, revised 1993; and

(6) Shandon, Calif., 1961, revised 1993.

(c) *Boundary.* The San Juan Creek viticultural area is located in San Luis Obispo County, California. The boundary of the San Juan Creek viticultural area is as described below:

(1) The beginning point is on the Cholame map in the Shandon Valley at the intersection of State Route 41 and San Juan Road, northern boundary of section 21, T26S/R15E. From the beginning point on the Cholame map, and crossing onto the Camatta Canyon map and then the Holland Canyon map, proceed south and then southeasterly approximately 16 miles along the eastern edge of the Shandon Valley and then the San Juan Valley by following San Juan Road (also locally known in places as Shandon San Juan Road, Camatti-Shandon Road, Bitterwater Canyon Road, and then San Juan Road again), passing the San Juan Ranch (where to road is marked as unimproved), to the road's intersection with the San Luis Obispo–Kern County boundary line at the eastern boundary line of section 12, T28S/R16E, which is also concurrent with the R16E/R17E common boundary line; then

(2) Proceed south along the R16E/R17E common boundary line approximately 1.3 miles, crossing onto the La Panza Ranch map, to the boundary line's intersection with an

unnamed unimproved road locally known as Navajo Creek Road, immediately south of the 1,340-foot elevation line, section 13, T28S/R16E; then

(3) Proceed north-northwesterly on Navajo Creek Road to the road's intersection with the southern boundary line of section 12, T28S/R16E; then

(4) Proceed west along the southern boundary line of section 12, T28S/R16E, approximately 0.7 mile to the section's southwestern corner; then

(5) Proceed northerly in a straight line approximately 0.6 mile, crossing onto the Holland Canyon map, to the intersection of the 1,300-foot elevation line and an unnamed tributary of San Juan Creek (approximately 0.35 mile east of the 1,686-foot San Juan peak), in section 11, T28S/R16E; then

(6) Proceed northwesterly along the 1,300-foot elevation line approximately 1.3 miles to the line's first intersection with the western boundary line of section 2, T28S/R16E, northwest of Pear Tree Spring; then

(7) Proceed north along the western boundary line of section 2 approximately 0.55 to the section boundary line's last intersection with the 1,300-foot elevation line, near the northwestern corner of section 2, T28S/R16E; then

(8) Proceed northwesterly along the meandering 1,300-foot elevation line approximately 3.7 miles, crossing onto the Camatta Canyon map, to the elevation line's intersection with the western boundary line of section 28, T27S/R16E; then

(9) Proceed north along the western boundary line of section 28 approximately 0.15 mile to the section boundary line's intersection with an unnamed unimproved road, section 28, T27S/R16E; then

(10) Proceed northwesterly on the unnamed unimproved road approximately 3 miles as it follows the southwestern edge of the San Juan Valley to the road's intersection with western boundary line of section 18, T27S/R16E; then

(11) Proceed north along the western boundary line of section 18, T27S/R16E, approximately 0.2 mile to the section boundary line's intersection with 1,200-foot elevation line, section 18, T27S/R16E; then

(12) Proceed westerly then northerly along the 1,200-foot elevation line to the elevation line's intersection with the southern boundary of section 12, T27S/R15E; then

(13) Proceed west approximately 6.4 miles along the southern boundary lines of sections 12, 11, 10, 9, 8, and 7, T27S/R15E, crossing onto the Shedd Canyon map, and continue west along the southern boundary lines of sections 12 and 11, T27S/R14E, to the intersection of the southern boundary line of section 11 with an unnamed unimproved road locally known as Shedd Canyon Road (within Shedd Canyon 0.1 mile west of State Route 41); then

(14) Proceed northerly on Shedd Canyon Road approximately 3.2 miles, crossing onto the Shandon map, to the road's intersection with the southern boundary line of section 26, T26S/R14E; then

(15) Proceed west along the southern boundary line of section 26, T26S/R14E, to the boundary line's intersection with the unnamed intermittent stream located within Shedd Canyon; then

(16) Proceed northerly along the unnamed intermittent stream located within Shedd Canyon approximately 1.8 miles to the stream's intersection with the western boundary line of section 23, T26S/R14E; then

(17) Proceed north along the western boundary lines of sections 23 and 14, T26S/R14E, approximately 0.6 mile to the section 14 boundary line's intersection with State Route 46; then

(18) Proceed northeasterly in a straight line approximately 0.95 mile to the 1,481-foot ''Estrella'' elevation point, section 14, T26S/R14E; then

(19) Proceed north-northwesterly in a straight line approximately 1.25 miles to the line's intersection with 1,300-foot elevation line and the northern boundary line of section 11, T26S/R14E; then

(20) Proceed east along northern section boundary lines of sections 11 and 12, T26S/R14E, and the northern boundary lines of sections 7, 8, 9, and 10, T26S/R15E, approximately 5.9 miles in total distance and crossing onto the Cholame map, to the northeast corner of section 10, T26S/R15E (adjacent to State Routes 41/46); then

(21) Proceed south along the eastern boundary line of section 10, T26S/R15E, approximately 1 mile to the section's southeast corner; then

(22) Proceed west-southwesterly in a straight line approximately 1.8 miles, returning to the beginning point.

§ 9.246 San Miguel District.

(a) *Name.* The name of the viticultural area described in this section is ''San Miguel District.'' For purposes of part 4 of this chapter, ''San Miguel District'' is a term of viticultural significance.

(b) *Approved maps.* The three United States Geological Survey 1:24,000 scale topographic maps used to determine the boundary of the San Miguel District viticultural area are titled:

(1) San Miguel, Calif., 1948, photorevised 1979;

(2) Paso Robles, Calif., 1948, photorevised 1979; and

(3) Adelaida, Calif., 1948, photorevised 1978.

(c) *Boundary.* The San Miguel District is located in San Luis Obispo County, California. The boundary of the San Miguel District is as described below:

(1) The beginning point is on the San Miguel map at the intersection of U.S. Highway 101 and the San Luis Obispo–Monterey County boundary line, section 1, T25S/R11E. From the beginning point, proceed east along the San Luis Obispo-Monterey County line approximately 5.9 miles to the county line's intersection with San Jacinto Creek, section 1, T25S/R12E; then

(2) Proceed south-southwesterly (downstream) along San Jacinto Creek for approximately 6.5 miles, crossing on to the Paso Robles map, to the creek's confluence with the Estrella River, section 26, T25S/R12E; then

(3) Proceed southerly (upstream) 0.7 mile along the main channel of the Estrella River to the river's intersection with the southern boundary line of section 26, T25S/R12E; then

(4) Proceed west along the southern boundary lines of sections 26, 27, and 28, T25S/R12E, approximately 1.85 miles to the section 28 boundary line's intersection with the Salinas River; then

(5) Proceed southerly (upstream) along the main channel of the Salinas River approximately 1.6 miles to the river's intersection with an unnamed light-duty road locally known as Wellsona Road, section 4, T26S/R12E; then

(6) Proceed west then northwesterly on Wellsona Road approximately 2 miles to the road's intersection with San Miguel Road (locally known as San Marcos Road), section 6, T26S/R12E; then

(7) Proceed west-southwesterly on San Miguel Road (locally known as San Marcos Road) approximately 2.6 miles, crossing onto the Adelaida map, to the road's intersection with the eastern boundary line of the Camp Roberts Military Reservation (approximately 400 feet east of the road's intersection with Generals Road), section 2, T26S/R11E; then

(8) Proceed northerly along the meandering eastern boundary line of the Camp Roberts Military Reservation (approximately 6.3 miles in straight line distance), crossing onto the San Miguel map, to the intersection of the military reservation's boundary line with U.S. Highway 101 near the northeast corner of section 7, T25S/R12E; then

(9) Proceed northwesterly on U.S. Highway 101 approximately 1.55 miles, returning to the beginning point.

§ 9.247 Santa Margarita Ranch.

(a) *Name.* The name of the viticultural area described in this section is ''Santa Margarita Ranch.'' For purposes of part 4 of this chapter, ''Santa Margarita Ranch'' is a term of viticultural significance.

(b) *Approved maps.* The four United States Geological Survey 1:24,000 scale topographic maps used to determine the boundary of the Santa Margarita Ranch viticultural area are titled:

(1) Santa Margarita, Calif., 1965, revised 1993;

(2) Lopez Mountain, CA, 1995;

(3) San Luis Obispo, CA, 1995; and

(4) Atascadero, CA, 1995.

(c) *Boundary.* The Santa Margarita Ranch is located in San Luis Obispo County, California. The boundary of the Santa Margarita Ranch is as follows:

(1) The beginning point is on the Santa Margarita map at the intersection of the northern boundary line of section 10, T29S/R13E, and the Salinas River. From the beginning point, proceed southerly (upstream) along the meandering Salinas River approximately 7.9 miles, crossing onto the Lopez Mountain map, to the river's intersection with the R13E/R14E boundary line, which coincides with the eastern boundary line of section 36, T29S/R13E; then

(2) Proceed south along the R13E/R14E boundary line approximately 3.2 miles to the boundary line's first intersection with the Los Padres National Forest boundary line, section 13, T30S/R13E; then

(3) Proceed northwesterly along the Los Padres National Forest boundary line approximately 4 miles to the Forest boundary line's intersection with the T29S/T30S boundary line, near the northwest corner of section 3, T30S/R13E; then

(4) Proceed west along the Los Padres National Forest boundary line and then the T29S/T30S boundary line approximately 2 miles to the southwest corner of section 32, T29S/R13E; then

(5) Proceed north along the western boundary line of section 32, T29S/R13E, and then the Los Padres National Forest boundary line to northwest corner of section 32 where the Forest boundary line makes a 90 degree turn to the west; then

(6) Proceed west along the Los Padres National Forest boundary line approximately 1.5 miles, crossing onto the San Luis Obispo map, to the point where the Los Padres National Forest boundary line first dips to the south and is no longer concurrent with the northern boundary line of section 36, T29S/R12E; then

(7) Proceed north-northwesterly in a straight line approximately 2.25 miles, crossing onto the Atascadero map, to the western-most intersection of the 1,400-foot elevation line with the northern boundary line of section 23, T29S/R12E; then

(8) Proceed west along the northern boundary line of section 23, T29S/R12E, approximately 0.6 mile to the section's northeast corner; then

(9) Proceed east along the western boundary line of section 13, T29S/R12E, to the section's northwest corner, and then continue east along the northern boundary line of section 13, T29S/R12E, to the section boundary line's intersection with the R12E/R13E common boundary line at section 13's northeast corner; then

(10) Proceed due north along the R12E/R13E common boundary line approximately 0.75 mile to the boundary line's intersection with the T-intersection of two unnamed unimproved roads, locally known as Powerline Road and Santa Margarita Road; then

(11) Proceed easterly and then east-northeasterly on Santa Margarita Road approximately 1.5 miles, crossing onto the Santa Margarita map, to the road's intersection with El Camino Real, Santa Margarita Land Grant, T29S/R13E; then

(12) Proceed southeasterly on El Camino Real approximately 300 feet to the road's intersection with an unnamed light-duty road locally known as Asuncion Road at BM 931 (just south of Santa Margarita Creek), Santa Margarita Land Grant; then

(13) Proceed northeasterly on Asuncion Road approximately 0.3 mile (crossing a railroad line) to the road's intersection with Chispa Road; then

(14) Proceed due east in a straight line approximately 0.1 mile to the line's intersection with the boundary line of the Santa Margarita Land Grant, which, at this point, is concurrent with the southwestern boundary line of section 5, T29S/R13E; then

(15) Proceed southeasterly along the Santa Margarita Land Grant boundary line approximately 0.7 mile to the boundary line's intersection with the northwest corner of section 9, T29S/R13E, and then continue east along the northern boundary lines of sections 9 and 10, T29S/R13E, approximately 1.15 miles, returning to the beginning point.

§ 9.248 Templeton Gap District.

(a) *Name.* The name of the viticultural area described in this section is ''Templeton Gap District.'' For purposes of part 4 of this chapter, ''Templeton Gap District'' is a term of viticultural significance.

(b) *Approved maps.* The two United States Geological Survey 1:24,000 scale topographic maps used to determine the boundary of the Templeton Gap District viticultural area are titled:

(1) Templeton, Calif., 1948, photorevised 1979; and

(2) York Mountain, Calif., 1948, photorevised 1979.

(c) *Boundary.* The Templeton Gap viticultural area is located in San Luis Obispo County, California. The boundary of the Templeton Gap District viticultural area is as follows:

(1) The beginning point is on the northern portion of the Templeton map at the point where the marked southern city of Paso Robles Corporate Boundary line intersects the Salinas River (now very approximate to the point where Niblick Road crosses the Salinas River). From the beginning point, proceed southerly (upstream) along the Salinas River approximately 1.1 miles to the river's confluence with the first marked unnamed intermittent stream flowing from the east, Santa Ysabel Land Grant; then

(2) Proceed southeasterly (upstream) along the unnamed intermittent stream approximately 0.4 mile to the stream's intersection with an unnamed light-duty road locally known as S. River Road, Santa Ysabel Land Grant; then

(3) Proceed southeasterly then southerly on S. River Road approximately 2.2 miles to the road's intersection with an unnamed light-duty road locally known as Neal Springs Road, Santa Ysabel Land Grant; then

(4) Proceed east on Neal Springs Roads approximately 0.4 mile to the road's intersection with an unnamed light-duty road locally known as Hollyhock Lane, Santa Ysabel Land Grant; then

(5) Proceed south-southeasterly on Hollyhock Lane approximately 0.95 mile to the road's intersection with an unnamed light-duty road locally known as El Pomar Drive, Santa Ysabel Land Grant; then

(6) Proceed southerly in a series of straight lines, totaling approximately 1.4 miles, through the 1,329-foot and 1,338-foot elevation points (crossing from the Santa Ysabel to the Asuncion Land Grants) to the 1,344-foot elevation point; then

(7) Proceed southwesterly in a straight line approximately 0.3 mile to the elevation control point (marked by a triangle) above the 1,440-foot contour line, Asuncion Land Grant; then

(8) Proceed south-southeasterly in a straight line approximately 0.3 mile to

the 1,452-foot elevation point, and continue south-southwesterly in a straight line approximately 0.3 mile to the intersection of two light-duty roads locally known as S. El Pomar Road and Homestead Road, Asuncion Land Grant; then

(9) Proceed west-southwesterly in a straight line approximately 1.1 miles to the point where an unnamed light-duty road locally known as Templeton Road intersects with an unnamed intermittent stream (where Templeton Road makes a 90 degree turn at its junction with two unnamed unimproved roads), Asuncion Land Grant; then

(10) Proceed westerly (downstream) along the unnamed intermittent stream approximately 0.5 mile to the stream's confluence with the Salinas River, Asuncion Land Grant; then

(11) Proceed westerly (downstream) along the Salinas River approximately 2.3 miles to the river's intersection with the boundary line of the Paso de Robles Land Grant; then

(12) Proceed southwesterly along the boundary line of the Paso de Robles Land Grant approximately 2.3 miles to the point where the boundary line turns sharply to the northwest; then

(13) Proceed northwesterly approximately 4.65 miles along the boundary line of the Paso de Robles Land Grant, crossing onto the York Mountain map, to the point where the boundary line turns due north (coincides with the southeast corner of section 32, T27S/R11E); then

(14) Proceed north and then north-northeasterly along the boundary line of the Paso de Robles Land Grant approximately 1.5 miles to the point where the boundary line turns sharply to the northwest (coincides with the eastern-most point of section 20, T27S/R11E); then

(15) Proceed northwesterly along the boundary line of the Paso de Robles Land Grant approximately 0.3 mile to the eastern-most fork of an unnamed three-fork tributary of the Jack Creek; then

(16) Proceed northerly (downstream) along the unnamed intermittent tributary of Jack Creek approximately 0.15 mile to the tributary's confluence with Jack Creek, Paso de Robles Land Grant; then

(17) Proceed southeasterly (downstream) along Jack Creek approximately 1.8 miles to the creek's intersection with an unnamed light-duty road locally known as Jack Creek Road (near BM 920), Paso de Robles Land Grant; then

(18) Proceed northeasterly and then east-southeasterly along Jack Creek Road approximately 1 mile to the road's intersection with State Route 46; then

(19) Proceed east on State Route 46 approximately 0.15 mile to the road's intersection with an unnamed light-duty road locally known as Hidden Valley Road, Paso de Robles Land Grant; then

(20) Proceed southeasterly and then easterly on Hidden Valley Road approximately 2.2 miles, crossing onto the Templeton map, to the road's intersection with an unnamed light-duty road locally known as Vineyard Drive, Paso de Robles Land Grant; then

(21) Proceed east on Vineyard Drive approximately 0.85 mile to the road's intersection with an unnamed light-duty road locally known as S. Bethel Road, Paso de Robles Land Grant; then

(22) Proceed north-northeasterly on S. Bethel Road and then N. Bethel Road approximately 1.7 miles to the road's fifth intersection with an unnamed intermittent stream, Paso de Robles Land Grant; then

(23) Proceed westerly (upstream) along the unnamed intermittent stream and then the stream's middle branch approximately 1.1 miles to the marked end of the stream, and then continue due west in a straight line approximately 0.05 mile to State Route 46 (Cayucos Road), Paso de Robles Land Grant; then

(24) Proceed northeasterly on State Route 46 (Cayucos Road) approximately 0.8 mile to BM 924, Paso de Robles Land Grant; then

(25) Proceed due north in a straight line to the southeast corner of section 12, T27S/R11E, and continue north along the eastern boundary line of section 12, a total of approximately 1.1 miles, to the section boundary line's intersection with a light-duty road locally known as Live Oak Road; then

(26) Proceed easterly on Live Oak Road approximately 0.2 mile to the road's intersection with an unnamed intermittent stream, Paso de Robles Land Grant; then

(27) Proceed northwesterly (upstream) along the unnamed intermittent stream approximately 0.35 mile to the eastern boundary line of section 12, T27S/R11E; then

(28) Proceed north along the eastern boundary line of section 12, T27S/R11E, to the section's northeast corner, and then proceed east along the southern boundary line of section 6, T27S/R11E, a total of approximately 1.3 miles, to the intersection of the section 6 boundary line with an unnamed light-duty road locally known as Arbor Road; then

(29) Proceed south-southeasterly on Arbor Road approximately 0.35 mile to the road's first intersection with an unnamed intermittent stream, Paso de Robles Land Grant; then

(30) Proceed southeasterly and then easterly (downstream) along the unnamed intermittent stream approximately 1.4 miles to the stream's intersection with an unnamed light-duty road known locally as S. Vine Street, just west of the U.S. 101/State Route 46 interchange, Paso de Robles Land Grant; then

(31) Proceed northerly along S. Vine Street (which generally parallels U.S. 101) approximately 1.8 miles to the street's intersection with the marked city of Paso Robles Corporate Boundary line (concurrent with the locally-known intersection of S. Vine and 1st Streets), Paso de Robles Land Grant; then

(32) Proceed east along the marked city of Paso Robles Corporate Boundary line (now very approximate to the alignment of 1st Street and then Niblick Road) approximately 0.5 mile, returning to the beginning point.

Signed: September 4, 2014.

John J. Manfreda,

Administrator.

Approved: September 9, 2014.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. 2014–24169 Filed 10–8–14; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2013–0004; T.D. TTB–124; Ref: Notice No. 135]

RIN 1513–AB96

Establishment of the Eagle Peak Mendocino County Viticultural Area and Realignments of the Mendocino and Redwood Valley Viticultural Areas

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) establishes the approximately 26,260-acre ''Eagle Peak Mendocino County'' viticultural area in Mendocino County, California. The viticultural area lies entirely within the multi-county North Coast viticultural area. TTB also modifies the boundaries of the Mendocino viticultural area and the Redwood Valley viticultural area to eliminate overlaps with the Eagle Peak Mendocino County viticultural area. TTB designates viticultural areas to

allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

DATES: This final rule is effective November 10, 2014.

FOR FURTHER INFORMATION CONTACT: Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120–01 (Revised), dated December 10, 2013, to the TTB Administrator to perform the functions and duties in the administration and enforcement of this law.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission of petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved AVAs.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features as described in part 9 of the regulations and a name and a delineated boundary as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an AVA and provides that any interested party may petition TTB to establish a grape-growing region as an AVA. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions for the establishment of AVAs. Petitions to establish an AVA must include the following:

- Evidence that the area within the proposed AVA boundary is nationally or locally known by the AVA name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed AVA;
- A narrative description of the features of the proposed AVA that affect viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed AVA distinctive and distinguish it from adjacent areas outside the proposed AVA boundary;
- A copy of the appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed AVA, with the boundary of the proposed AVA clearly drawn thereon; and
- A detailed narrative description of the proposed AVA boundary based on USGS map markings.

Eagle Peak Mendocino County Petition

TTB received three petitions on behalf of local grape growers from Ralph Jens Carter, one proposing the establishment of the ''Eagle Peak Mendocino County'' AVA and two separate companion petitions proposing the modification of the boundaries of the existing ''Mendocino'' AVA (27 CFR 9.93) and ''Redwood Valley'' AVA (27 CFR 9.153). The proposed AVA and the two existing AVAs lie entirely within Mendocino County and the multi-county North Coast AVA (27 CFR 9.30). The proposed Eagle Peak Mendocino County AVA contains approximately 26,260 acres, of which approximately 120 acres are dedicated to 16 commercially producing vineyards. The proposed AVA lies to the west of both the Redwood Valley AVA and the eastern portion of the V-shaped Mendocino AVA. According to the petition, the distinguishing features of the proposed Eagle Peak Mendocino County AVA include its marine-influenced climate, strong breezes, mountainous topography, and shallow soils with low water-holding capabilities.

As originally proposed, a small portion of the Eagle Peak Mendocino County AVA would overlap portions of the Redwood Valley and Mendocino AVAs. To eliminate the potential overlaps, the petitioner later proposed modifying the boundaries of the Redwood Valley and Mendocino AVAs. The proposed boundary modifications would eliminate the potential overlaps and would remove the overlapped areas from the Redwood Valley and Mendocino AVAs. The proposed modifications would reduce the size of the 32,047-acre Redwood Valley AVA by approximately 1,430 acres and reduce the size of the 327,437-acre Mendocino AVA by approximately 1,900 acres. The overlapping areas would then become part of the Eagle Peak Mendocino County AVA.

Notice of Proposed Rulemaking and Comments Received

TTB published Notice No. 135 in the **Federal Register** on June 27, 2013 (78 FR 38613), proposing to establish the Eagle Peak Mendocino County AVA and modify the boundaries of the Redwood Valley and Mendocino AVAs. In the notice, TTB summarized the evidence from the petition regarding the name, boundary, and distinguishing features for the proposed viticultural area. The distinguishing features of the proposed viticultural area include climate, geology, topography, and soils. The notice also compared the distinguishing features of the proposed viticultural area to the surrounding areas. For a description of the evidence relating to the name, boundary, and distinguishing features of the proposed viticultural area, and for a comparison of the distinguishing features of the proposed viticultural area to the surrounding areas, see Notice No. 135.

In Notice No. 135, TTB solicited comments on the accuracy of the name, boundary, climatic, and other required information submitted in support of the petition. In addition, given the proposed AVA's location within the existing North Coast AVA, TTB solicited comments on whether the evidence submitted in the petition regarding the distinguishing features of the proposed AVA sufficiently differentiates the proposed viticultural area from the North Coast AVA. TTB also asked for comments on whether the geographical features of the proposed viticultural area are so distinguishable from the surrounding North Coast AVA that the

proposed Eagle Peak Mendocino County AVA should no longer be part of the existing viticultural area. Finally, TTB asked for comments on the proposed modification of the Redwood Valley and Mendocino AVAs and whether the evidence presented in the proposed Eagle Peak Mendocino County AVA petition sufficiently differentiated the overlapped regions from the established AVAs to warrant removing the overlapped regions from the two AVAs and including the overlapping regions entirely within the Eagle Peak Mendocino County AVA. The comment period on Notice No. 135 closed on August 26, 2013.

In response to Notice No. 135, TTB received a total of seven comments, six of which supported the establishment of the Eagle Peak Mendocino County viticultural area and the realignment of the Redwood Valley and Mendocino AVA boundaries. Commenters included local residents, vineyard owners, and winemakers, as well as a local winery organization. None of the comments received during the comment period addressed the question of whether the Eagle Peak Mendocino County AVA is so distinguishable from the North Coast AVA that it should no longer be part of the North Coast AVA. TTB received no comments in opposition of either the Eagle Peak Mendocino County AVA, as proposed, or the proposed boundary modifications.

Only one of the seven comments specifically addressed the proposed modification of the Redwood Valley and Mendocino AVAs' boundaries (comment 3). The commenter, who owns a vineyard that is within the proposed AVA but not within the proposed realignment area, supported the proposed boundary modifications because ''[t]he Eagle Peak area is all upland, mountainous terrain with shallow soils, while Redwood Valley is mostly level with deep soils'' and the Mendocino AVA ''contains many different characteristics and is not limited to the upland area.'' TTB notes that there are two vineyards located within the proposed realignment area, and the petition included letters from both vineyard owners in support of the proposed boundary modifications.

The seventh comment (comment 7) requested an extension of the comment period so that the commenter could further review the proposed rule. The extension request was received too late for TTB to extend the original comment period. Therefore, TTB published Notice No. 135A in the **Federal Register** on August 28, 2013 (78 FR 53103), re-opening the comment period for an additional 60 days, until October 28, 2013.

Comments Received During the Re-opened Comment Period

During the re-opened comment period, TTB received six additional comments regarding the proposed establishment of the Eagle Peak Mendocino County AVA and the realignment of the Redwood Valley and Mendocino AVAs. Two of the six comments specifically supported the proposed AVA (comments 9 and 10). One of the two comments was from a wine marketing and sales consultant, and the second comment was from the United States Representative from the district that includes the proposed Eagle Peak Mendocino County viticultural area. Comment 10 also specifically supported the proposed realignment of the Redwood Valley AVA boundary, stating that the proposed realignment area consists of mountainous and hillside terrain that is more consistent with the terrain of the proposed Eagle Peak Mendocino County AVA than the flatter, lower terrain found within the majority of the Redwood Valley AVA.

Two of the comments received during the re-opened comment period did not address the substance of the proposed rulemaking. One of those two commenters stated that he neither supported nor opposed establishment of the proposed AVA or the proposed boundary modifications, but rather requested that TTB remove the periods from the township and range designations in the proposed regulatory text of § 9.93 so as to conform to the style of the current regulatory text for that section (comment 8). TTB notes that the periods in the proposed regulatory text are consistent with the style of the current regulatory text of § 9.93, and the proposed amendment to the section will be adopted as final without change. The other comment (comment 11), which was addressed to the Department of Justice, called for stronger alcohol, tobacco, firearms, and explosives transfer regulations, topics which are outside the scope of the proposed rule. Accordingly, that topic will not be addressed in this rulemaking.

Comments Regarding Proposed AVA Name

The final two comments received during the re-opened comment period addressed the proposed AVA name. One comment was in the form of a letter from an attorney on behalf of his client, Fetzer Vineyards of Hopland, California (comment 12). Fetzer Vineyards is currently owned by Viña Concha y Toro SA and is no longer associated with the Fetzer family, including Jacob and Ben Fetzer, who own Masut Vineyards, and John Fetzer, who owns Saracina Vineyards. Both Masut Vineyards and Saracina Vineyards are within the proposed Eagle Peak Mendocino County AVA, and Jacob, John, and Ben Fetzer are signatories to the petition to establish that AVA.

Comment 12 stated that Fetzer Vineyards does not object to the establishment of the proposed AVA but does object to the proposed Eagle Peak Mendocino County name. According to the comment, the petitioners failed to provide sufficient evidence to demonstrate both that the region of the proposed AVA is known as ''Eagle Peak Mendocino County'' and that the proposed name is associated with an area known for viticulture. Instead, the comment stated that the region is known as either ''Forsythe Creek'' or ''Walker Valley.'' As evidence, the comment referenced USDA soil surveys from 1910 that were included in the original petition. In those soil surveys, the region of the proposed AVA is described as a ''cohesive unit, referred to as Forsythe Creek Valley and Forsythe Creek Gap.'' The comment also noted that there is a large valley within the proposed AVA that is labeled on USGS maps as ''Walker Valley.''

Finally, comment 12 stated that if TTB established the proposed AVA with the name ''Eagle Peak Mendocino County,'' the public would confuse the AVA name with the Fetzer Vineyards' ''Eagle Peak Merlot'' brand name. Furthermore, comment 12 claimed that Fetzer Vineyards would become legally barred from continuing the use of its brand name, since it would be unable to source enough grapes from within the proposed AVA or Mendocino County.

In response to comment 12, Jacob Fetzer, owner of Masut Vineyards, submitted a comment (comment 13) on behalf of the petitioners for the proposed Eagle Peak Mendocino County AVA. Comment 13 challenged the claim that the petition failed to provide adequate evidence that the proposed AVA is known as ''Eagle Peak Mendocino County.'' The comment also disagreed with the claim that the proposed name would cause consumer confusion and force Fetzer Vineyards to abandon its ''Eagle Peak Merlot'' brand name.

After consideration of the petition and the two comments regarding the proposed name, TTB has determined that the petition to establish the Eagle Peak Mendocino County AVA contained sufficient evidence showing that the region of the proposed AVA is currently

known by that name. TTB finds that comment 12 did not provide evidence that the region of the proposed AVA is not known as Eagle Peak Mendocino County, nor did it provide any evidence that the region is currently known as either ''Forsythe Creek'' or ''Walker Valley.'' Although old USDA soil surveys do refer to the area as ''Forsythe Creek Valley'' or ''Forsythe Creek Gap,'' TTB regulations require the name evidence to show that the region of the proposed AVA is currently known by the proposed name.

With respect to the statement in comment 12 that the petition must provide evidence that the proposed AVA name has historical significance with regard to viticulture, TTB notes that its regulations (27 CFR 9.12(a)(1)) only require the petition to demonstrate that the proposed AVA name is ''currently and directly associated with an area in which viticulture exists.'' The regulations do not require that the proposed name itself be associated with viticulture, only that viticulture must be taking place within the region known by the proposed AVA name. The petition to establish the Eagle Peak Mendocino County AVA provided the names of the commercial vineyards within the proposed AVA as evidence of current viticultural activity within the region known by the proposed name.

Finally, with respect to the claim that Fetzer Vineyards would be forced to abandon its ''Eagle Peak Merlot'' brand name if the proposed AVA is established with the name Eagle Peak Mendocino County, TTB notes that Notice No. 135 explicitly proposed that only the full name of the proposed AVA be designated as a term of viticultural significance. Furthermore, Notice No. 135 specifically stated, and this rulemaking re-confirms, that any wine bottlers using ''Eagle Peak,'' standing alone, as a brand name on a wine label would be able to continue to use the brand name. The establishment of the proposed Eagle Peak Mendocino County AVA would not affect Fetzer Vineyards' ability to bottle wine under the ''Eagle Peak Merlot'' brand name, regardless of where the grapes used to make the wine were grown. TTB also believes that the proposed AVA name ''Eagle Peak Mendocino County'' is sufficiently distinct from the brand name ''Eagle Peak Merlot'' and is unlikely to cause consumer confusion.

TTB Determination

After careful review of the petition and all 13 of the comments received in response to Notice No. 135, TTB finds that the evidence provided by the petitioner supports the establishment of the approximately 26,260-acre Eagle Peak Mendocino County AVA and the modification of the boundaries of the Redwood Valley and Mendocino AVAs. Accordingly, under the authority of the FAA Act, section 1111(d) of the Homeland Security Act of 2002, and part 4 of the TTB regulations, TTB establishes the ''Eagle Peak Mendocino County'' AVA in Mendocino County, California.

TTB has also determined that the land within the AVA will remain part of the larger North Coast AVA. The Eagle Peak Mendocino County AVA experiences the marine fog and breezes that are the primary features of the North Coast AVA. However, due to its much smaller size, the soil, terrain, and climate of the Eagle Peak Mendocino County AVA are more uniform than those of the large, multi-county North Coast AVA. The uniqueness of the soil, terrain, and climate of the Eagle Peak Mendocino County AVA also distinguish the AVA from the surrounding region. Therefore, TTB is recognizing the Eagle Peak Mendocino County area as a distinct AVA within the larger North Coast AVA.

Furthermore, TTB modifies the boundaries of the Redwood Valley and Mendocino AVAs as described in Notice No. 135. TTB has determined that the mountainous terrain, shallow soils, cool growing season temperatures, and gusty winds of the realignment area described in Notice No. 135 are more consistent with the features of the Eagle Peak Mendocino County AVA than with the low level valleys, deep alluvial soils, and warm temperatures of the Redwood Valley and Mendocino AVAs. Therefore, TTB is removing the realignment area from the Redwood Valley and Mendocino AVAs and placing it entirely within the Eagle Peak Mendocino County AVA. These changes are effective 30 days from the date of publication of this document.

Boundary Description

See the narrative boundary description of the Eagle Peak Mendocino County AVA and the modified boundaries of the Redwood Valley and Mendocino AVAs in the regulatory text published at the end of this final rule.

Maps

The petitioner provided the required maps, and they are listed below in the regulatory text.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. With the establishment of this AVA, its name, ''Eagle Peak Mendocino County,'' will be recognized as a name of viticultural significance under 27 CFR 4.39(i)(3). The text of the regulation clarifies this point. Once this final rule becomes effective, wine bottlers using the name ''Eagle Peak Mendocino County'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use the viticultural name as an appellation of origin.

The establishment of the Eagle Peak Mendocino County AVA will not affect any existing viticultural area, and any bottlers using ''North Coast'' as an appellation of origin or in a brand name for wines made from grapes grown within the North Coast viticultural areas will not be affected by the establishment of this new viticultural area. The establishment of the Eagle Peak Mendocino County AVA will allow vintners to use ''Eagle Peak Mendocino County'' and ''North Coast'' as appellations of origin for wines made from grapes grown within the Eagle Peak Mendocino County AVA if the wines meet the eligibility requirements for the appellation.

For a wine to be labeled with an AVA name or with a brand name that includes an AVA name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label.

Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

Transition Period

Once this final rule to establish the Eagle Peak Mendocino County AVA and to modify the boundaries of the Redwood Valley and Mendocino AVAs becomes effective, a transition rule will apply to labels for wines produced from grapes grown in the areas that were formerly within the Redwood Valley and Mendocino AVAs. A label containing the words ''Redwood Valley'' or ''Mendocino'' (other than in the

phrase ''Mendocino County'' or ''Eagle Peak Mendocino County'') in the brand name or as an appellation of origin may be used on such wine bottled for up to two years from the effective date of this final rule, provided that such label was approved prior to the effective date of this final rule and that the wine conforms to the standards for use of the label set forth in 27 CFR 4.25 or 4.39(i) in effect prior to the final rule. At the end of this two-year transition period, if a wine is no longer eligible for labeling with the Redwood Valley or Mendocino AVA names (e.g., less than 85 percent of the wine is derived from grapes grown in the Redwood Valley or Mendocino AVAs, as modified in this final rule), then a label containing the words ''Redwood Valley'' or ''Mendocino'' (other than in the phrase ''Mendocino County'' or ''Eagle Peak Mendocino County'') in the brand name or as an appellation of origin would not be permitted on the bottle. TTB believes that the two-year period should provide affected label holders with adequate time to use up any existing labels. This transition period is described in the regulatory text for the Redwood Valley and Mendocino AVAs published at the end of this final rule. TTB notes that wine eligible for labeling with the Redwood Valley or Mendocino viticultural areas names under the new boundaries of the Redwood Valley and Mendocino AVAs will not be affected by this two-year transition period.

Regulatory Flexibility Act

TTB certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

It has been determined that this rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993. Therefore, no regulatory assessment is required.

Drafting Information

Karen A. Thornton of the Regulations and Rulings Division drafted this final rule.

List of Subjects in 27 CFR Part 9

Wine.

The Regulatory Amendment

For the reasons discussed in the preamble, TTB amends title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Amend § 9.93 by revising paragraph (c)(7), redesignating paragraphs (c)(8) through (19) as paragraphs (c)(16) through (27), and adding new paragraphs (c)(8) through (15), and adding paragraph (d) to read as follows:

§ 9.93 Mendocino.

* * * * *

(c) * * *

(7) Thence due west along the T.18N./T.17N. common line until the common line intersects with the R.13W./R.12W. common line;

(8) Thence in a straight line in a south-southwesterly direction, crossing onto the Willits map, to the intersection of the 1,600-foot contour line and Baker Creek (within McGee Canyon) along the west boundary line of Section 25, T.17N./R.13W.;

(9) Thence in a southeasterly direction (downstream) along Bakers Creek to where the creek intersects with the 1,400-foot contour line in Section 25, T.17N/R.13W.;

(10) Thence in a straight line in a southeasterly direction to the southeast corner of Section 36, T.17N./R.13W.;

(11) Thence in a straight line in a west-southwesterly direction to the intersection of U.S. Highway 101 and an unnamed road known locally as Reeves Canyon Road in Section 1, T.16N./R.13W.;

(12) Thence in a straight line in a southeasterly direction to the southeast corner of Section 1, T.16N./R.13W.;

(13) Thence in a straight line in a south-southwesterly direction to the intersection of an unnamed, unimproved road and an unnamed, intermittent stream, approximately 500 feet south of Seward Creek, in Section 12, T.16N./R.13W.;

(14) Thence in a straight line in a west-southwesterly direction to the southwest corner of Section 12, T.16N./R.13W.;

(15) Thence in a straight line in a southwesterly direction to the southwest corner of Section 14, T.16N./R.13W.;

* * * * *

(d) *Transition period.* A label containing the word ''Mendocino'' in the brand name (other than in the phrase ''Mendocino County'' or ''Eagle Peak Mendocino County'') or as an appellation of origin approved prior to November 10, 2014 may be used on wine bottled before November 10, 2016 if the wine conforms to the standards for use of the label set forth in § 4.25 or § 4.39(i) of this chapter in effect prior to November 10, 2014.

■ 3. Amend § 9.153 by revising paragraphs (c)(1) through (9) and adding paragraphs (c)(10) through (12) and (d) to read as follows:

§ 9.153 Redwood Valley.

* * * * *

(c) * * *

(1) The beginning point is in the northeastern portion of the Ukiah map at the point where State Highway 20 crosses the R11W/R12W range line along the south bank of the East Fork of the Russian River, T16N/R12W. From the beginning point, proceed north along the R11W/R12W range line, crossing onto the Redwood Valley map, to the northeast corner of section 1, T16N/R12W; then

(2) Proceed west along the northern boundary of section 1 to the section's northwest corner, T16N/R12W; then

(3) Proceed north along the eastern boundary lines of sections 35, 26, 23, 14, 11, and 2 to the T17N/T18N common boundary line at the northeast corner of section 2, T17N/R12W; then

(4) Proceed west along the T17N/T18N common line to the northwest corner of section 6, T17N/R12W; then

(5) Proceed south-southwesterly in a straight line, crossing onto the Laughlin Range map, to the intersection of the 1,400-foot contour line and Bakers Creek within McGee Canyon, section 25, T17N/R13W; then

(6) Proceed southeasterly in a straight line approximately 1.5 miles, crossing onto the Redwood Valley map, to the southeast corner of section 36, T17N/R13W; then

(7) Proceed west-southwesterly in a straight line approximately 0.55 mile, crossing onto the Laughlin Range map, to the intersection of U.S. Highway 101 and an unnamed road known locally as Reeves Canyon Road, section 1, T16N/R13W; then

(8) Proceed southeasterly in a straight line approximately 0.9 mile, crossing onto the Redwood Valley map, to the southeast corner of section 1, T16N/R13W; then

(9) Proceed south-southwesterly in a straight line approximately 0.65 mile to the intersection of an unnamed, unimproved road and an unnamed, intermittent stream, approximately 500 feet south of Seward Creek, section 12, T16N/R13W; then

(10) Proceed west-southwesterly in a straight line approximately 0.9 mile, crossing onto the Laughlin Range map, to the southwest corner of section 12, T16N/R13W; then

(11) Proceed east-southeasterly in a straight line, crossing onto the far northeastern corner of the Orrs Springs map, then continuing onto the Ukiah map, to the intersection of State Highway 20 and a road known locally as North State Street (old U.S. Highway 101), north of Calpella, T16N/R12W; then

(12) Proceed easterly along State Highway 20, returning to the beginning point.

(d) *Transition period.* A label containing the words ''Redwood Valley'' in the brand name or as an appellation of origin approved prior to November 10, 2014 may be used on wine bottled before November 10, 2016 if the wine conforms to the standards for use of the label set forth in § 4.25 or § 4.39(i) of this chapter in effect prior to November 10, 2014.

■ 4. Add § 9.237 to read as follows:

§ 9.237 Eagle Peak Mendocino County.

(a) *Name.* The name of the viticultural area described in this section is ''Eagle Peak Mendocino County''. For purposes of part 4 of this chapter, ''Eagle Peak Mendocino County'' is a term of viticultural significance.

(b) *Approved maps.* The four United States Geographical Survey (USGS) 1:24,000 scale topographic maps used to determine the boundary of the Eagle Peak Mendocino County viticultural area are titled:

(1) Laughlin Range, California, provisional edition 1991;

(2) Redwood Valley, Calif., 1960, photo revised 1975;

(3) Orrs Springs, California, provisional edition 1991; and

(4) Greenough Ridge, California, provisional edition 1991.

(c) *Boundary.* The Eagle Peak Mendocino County viticultural area is located in Mendocino County, California. The boundary of the Eagle Peak Mendocino County viticultural area is as follows:

(1) The beginning point is located on the Laughlin Range map within McGee Canyon at the point where the 1,600-foot contour line intersects with Bakers Creek near the western boundary of section 25, T17N/R13W. From the beginning point, proceed southeasterly (downstream) approximately 0.2 mile along Bakers Creek to the creek's intersection with the 1,400-foot contour line, section 25, T17N/R13W; then

(2) Proceed southeasterly in a straight line approximately 1.5 miles, crossing onto the Redwood Valley map, to the southeast corner of section 36, T17N/R13W; then

(3) Proceed west-southwesterly in a straight line approximately 0.55 mile, crossing onto the Laughlin Range map, to the intersection of U.S. Highway 101 and an unnamed road locally known as Reeves Canyon Road, section 1, T16N/R13W; then

(4) Proceed southeasterly in a straight line approximately 0.9 mile, crossing onto the Redwood Valley map, to the southeast corner of section 1, T16N/R13W; then

(5) Proceed south-southwesterly in a straight line approximately 0.65 mile to the intersection of an unnamed, unimproved road and an unnamed intermittent stream located approximately 500 feet south of Seward Creek, section 12, T16N/R13W; then

(6) Proceed west-southwesterly in a straight line approximately 0.9 mile, crossing onto the Laughlin Ridge map, to the southwest corner of section 12, T16N/R13W; then

(7) Proceed west-southwesterly in a straight line approximately 0.8 mile, crossing onto the Orrs Springs map, to the 1,883-foot elevation point in section 14, T16N/R13W; then

(8) Proceed west-southwesterly in a series of three straight lines (totaling approximately 3.15 miles in distance), first to the 1,836-foot elevation point in section 15, T16N/R13W; then to the 1,805-foot elevation point in section 16, T16N/R13W; and then to the 2,251-foot elevation point in section 20, T16W/R13W; then

(9) Proceed south-southwesterly in a straight line approximately 0.8 mile to the 2,562-foot elevation point, section 20, T16N/R13W; then

(10) Proceed north-northwesterly in a straight line approximately 0.8 mile to the 2,218-foot elevation point, section 19, T16N/R13W; then

(11) Proceed northeasterly in a straight line approximately 0.35 mile to the 2,112-foot elevation point in the southeast corner of section 18, T16N/R13W; then

(12) Proceed north-northeasterly in a straight line approximately 0.9 mile to the 2,344-foot elevation point, section 17, T16N/R13W; then

(13) Proceed northwesterly in a straight line approximately 1.8 miles, crossing onto the Laughlin Range map, to the intersection of the R13W/R14W common boundary line and an unnamed, unimproved road east of Leonard Lake, section 1, T16N/R14W; then

(14) Proceed west-northwesterly along the unnamed, unimproved road to the road's intersection with the 2,000 foot contour line between Leonard Lake and Mud Lake, section 1, T16N/R13W; then

(15) Proceed north-northwesterly in a straight line approximately 1.6 miles, crossing onto the Greenough Ridge map, to the 2,246-foot elevation point, section 26, T17N/R14W; then

(16) Proceed northerly in a straight line approximately 0.9 mile to the 2,214-foot elevation point, section 23, T17N/R14W; then

(17) Proceed northeasterly in a straight line approximately 1 mile, crossing onto the Laughlin Range map, to the peak of Impassable Rocks, section 24, T17N/R14W; then

(18) Proceed northwesterly in a straight line approximately 0.95 mile, crossing onto the Greenough Ridge map, to the 2,617-foot elevation point, section 14, T17N/R14W, and continue northwesterly in a straight line approximately 0.8 mile to the 2,836-foot elevation point of Irene Peak, section 11, T17N/R14W; then

(19) Proceed northerly in a straight line approximately 1 mile to the intersection of 3 unnamed unimproved roads approximately 0.3 mile west of the headwaters of Walker Creek (locally known as the intersection of Blackhawk Drive, Walker Lake Road, and Williams Ranch Road) section 2, T17N/R14W; then

(20) Proceed easterly along the unnamed improved road, locally known as Blackhawk Drive, approximately 1.35 miles, crossing onto the Laughlin range map, to the road's intersection with the section 2 eastern boundary line, T17N/R14W; then

(21) Proceed east-northeasterly in a straight line approximately 0.75 mile, returning to the 2,213 elevation point near the northeast corner of section 1, T17N/R14W; then

(22) Proceed southeasterly in a straight line approximately 3.55 miles to BM 1893 (0.2 mile south of Ridge) in section 16, T17N/R13W, and then continue southeasterly in a straight line approximately 0.85 mile to a radio facility located at approximately 2,840 feet in elevation in the Laughlin Range, section 15, T17N/R13W; then

(23) Proceed easterly in a straight line approximately 0.85 mile to another radio facility located at approximately 3,320 feet in elevation in the Laughlin Range, section 14, T17N/R13W; then

(24) Proceed southerly in a straight line approximately 1.5 miles to the

2,452-foot elevation point in section 26, T17N/R13W; then

(25) Proceed southeasterly in a straight line approximately 0.4 mile to the intersection of the 1,800-foot contour line with Bakers Creek within McGee Canyon, section 26, T17N/R13W; then

(26) Proceed southeasterly (downstream) approximately 0.2 mile along Bakers Creek, returning to the beginning point.

Signed: August 25, 2014.

John J. Manfreda,

Administrator.

Approved: August 29, 2014.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. 2014–24177 Filed 10–8–14; 8:45 am]

BILLING CODE 4110–31–P

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 552

RIN 1235–AA05

Application of the Fair Labor Standards Act to Domestic Service; Announcement of Time-Limited Non-Enforcement Policy

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Policy statement.

SUMMARY: The Department of Labor's (Department) October 1, 2013, Final Rule amending regulations regarding domestic service employment, which extends Fair Labor Standards Act (FLSA) protections to most home care workers will become effective on January 1, 2015. The Department is not changing this effective date. This document announces a time-limited non-enforcement policy. For six months, from January 1, 2015 to June 30, 2015, the Department will not bring enforcement actions against any employer as to violations of FLSA obligations resulting from the amended regulations. For the following six months, from July 1, 2015 to December 31, 2015, the Department will exercise prosecutorial discretion in determining whether to bring enforcement actions, with particular consideration given to the extent to which States and other entities have made good faith efforts to bring their home care programs into compliance with the FLSA since promulgation of the Final Rule. Throughout the 12-month duration of this policy, the Department will continue extensive outreach and technical assistance efforts, in particular with States regarding publicly funded home care programs.

DATES: *Enforcement of the final rule published October 1, 2013, at 78 FR 60454:* From January 1, 2015, to June 30, 2015, the Department will not bring enforcement actions against any employer as to violations of FLSA obligations resulting from the amended regulations; from July 1, 2015, to December 31, 2015, the Department will exercise prosecutorial discretion in determining whether to bring enforcement actions.

FOR FURTHER INFORMATION CONTACT: Michael Hancock, Assistant Administrator, Office of Policy, U.S. Department of Labor, Wage and Hour Division, 200 Constitution Avenue NW., Room S–3502, FP Building, Washington, DC 20210; telephone: (202) 343–5940 (this is not a toll-free number), email: *HomeCare@dol.gov.* Copies of this document may be obtained in alternative formats (Large Print, Braille, Audio Tape, or Disc), upon request, by calling (202) 693–0675 (not a toll-free number). TTY/TTD callers may dial toll-free (877) 889–5627 to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION:

I. Non-Enforcement Policy

On October 1, 2013, the Wage and Hour Division of the Department of Labor (Department) issued Application of the Fair Labor Standards Act to Domestic Service; Final Rule, 78 FR 60454 (Home Care Final Rule or Final Rule). The Final Rule amended the domestic service employment regulations under the Fair Labor Standards Act (FLSA or Act), 29 U.S.C. 201 *et seq.,* which are contained in 29 CFR Part 552. Among other changes, the Final Rule (1) modified the definition of ''companionship services'' and (2) prohibited third party employers (i.e., employers of domestic service employees other than the individuals receiving services or the individuals' families or households) from claiming either the companionship services exemption from the FLSA's minimum wage and overtime compensation requirements or the live-in domestic service employee exemption from the FLSA's overtime compensation requirement. *See* 78 FR 60463–73, 60480–83, 60557 (relevant regulatory changes to be codified at 29 CFR 552.6, 552.109).

The Department explained in the preamble to the Final Rule that the changes to the domestic service employment regulations should go into effect as soon as practicable because they were intended to serve the important purpose of extending basic labor standards to home care workers, which in turn helps ensure that individuals and their families can rely on a professional, trained workforce to provide high-quality services. 78 FR 60455, 60495. The Department also acknowledged, however, that complex Federal and State systems fund a significant portion of the home care services provided across the country, and making adjustments to operations, programs, and budgets in order to comply with the FLSA could take time. *Id.* at 60494–95. Therefore, in response to comments received in the course of the rulemaking process, the Department set an effective date of January 1, 2015, an unprecedented 15 months after the publication of the Final Rule. *Id.*[1]

Since promulgating the Final Rule, the Department has conducted extensive technical assistance for the regulated community. Specifically, the Department has directly reached thousands of people through over 100 webinars, conference calls, meetings, and presentations, engaging representatives from State governments, associations of State Medicaid and other relevant agencies, consumers, disability and senior citizens' advocates, veterans' organizations, worker representatives, and industry groups, among others. Furthermore, to help stakeholders learn more about the changes associated with the Final Rule, the Department created a home care Web page, which contains links to fact sheets, FAQs, webinar recordings, interactive web tools, and other materials, including two Administrator's Interpretations issued this year in response to stakeholder questions regarding the application of the FLSA to shared living arrangements and joint employment of home care workers by public entities in consumer-directed programs. *See www.dol.gov/whd/homecare.* Moreover, the Department has engaged in targeted outreach to the governments of all 50 States. Through this outreach, the Department has provided extensive technical assistance to States as they implement the Home Care Final Rule in publicly funded programs in an effort to encourage implementation of the Final Rule in a manner that expands wage protections for most home care workers

[1] Typically, employers subject to FLSA regulatory changes have 30 or 60 days to adjust before a rulemaking becomes effective. *See* 5 U.S.C. 553(d), 801(a)(3)(A). Prior to the Home Care Final Rule, the longest effective date delay for a Wage and Hour Division rule was 120 days. *See* 78 FR 60495 (citing 69 FR 22126 (Apr. 23, 2004)).

and ensures that Medicaid participants and their families continue to have access to the critical home and community-based services upon which they rely, particularly services delivered through innovative models of care.

Nevertheless, the Department has received requests to extend the effective date of the Home Care Final Rule, including from the National Association of Medicaid Directors (NAMD), the National Association of Directors of Developmental Disabilities Services (NASDDDS), the National Association of States United for Aging and Disabilities (NASUAD), organizations representing disability advocates, and the State of Kansas. The State of Oregon requested an extension of the effective date, or in the alternative a non-enforcement policy or waivers for certain States. The States of Maryland and Pennsylvania also requested an extension. These entities expressed the need for States to have more time to adjust their publicly funded home care programs in order to comply with the FLSA, and specifically noted that time was needed for budgetary, programmatic, and operational adjustments. The Department has also received requests to implement the Final Rule on January 1, 2015, as announced at the time of publication, including from Caring Across Generations, Direct Care Alliance, the National Domestic Workers Alliance, National Employment Law Project, Paraprofessional Healthcare Institute (PHI), the National Consumer Voice for Quality Long-Term Care, the American Geriatrics Society, and other organizations of worker advocates. These entities wish to see the nearly two million home care workers in the United States be guaranteed the basic minimum wage and overtime protections of the FLSA without delay.

The Department has carefully considered these requests and is not extending the Final Rule's effective date. When the Final Rule becomes effective, the regulated community will have had 15 months to make any adjustments necessary to fulfill new FLSA obligations. Many employers, including States, are poised to pay home care workers in compliance with the FLSA's fundamental protections on January 1, 2015. For these reasons, the Final Rule's effective date will remain January 1, 2015.

The Department recognizes, however, that the implementation of the Final Rule raises sensitive issues. In particular, the Department has been committed to assisting the regulated community in considering methods of complying with the FLSA in a manner that avoids harmful impacts on the individuals who rely on home care. Additionally, the Department has historically provided compliance assistance prior to the enforcement of new regulations, and it will continue to focus on such assistance during the initial stages of implementing the Home Care Final Rule. Given the unique effects of this rule, the Department has been committed to providing extensive compliance assistance, reaching out to all 50 states individually and providing other varied technical assistance to States and other stakeholders. Therefore, the Department is announcing that between January 1, 2015 and June 30, 2015, it will not bring enforcement actions against any employer as to violations of FLSA obligations resulting from the Final Rule. *See* 29 U.S.C. 216(c) (giving authority to the Department to bring enforcement actions, including investigating potential violations of the FLSA, supervising settlements for unpaid wages owed under the Act, or filing suit in Federal court to recover such wages); *see also* Secretary's Order No. 05–2010 (delegating this authority to the Administrator of the Wage and Hour Division). This initial non-enforcement policy will apply to all employers. During this six-month period, the Department will concentrate its resources on continuing to provide intensive technical assistance to the regulated community, in particular State agencies administering home care programs, regarding the Final Rule and the application of the FLSA to home care arrangements. Although the Department will not conduct formal investigations of potential FLSA violations during this time, any information received during this time period suggesting non-compliance with FLSA requirements will be used as an opportunity to provide additional technical assistance to States and other potential employers in order to facilitate efficient and effective implementation of the Final Rule.[2]

After July 1, 2015, the Department will commence enforcement actions for FLSA violations resulting from the Home Care Final Rule. From July 1, 2015 until December 31, 2015, however, the Department will exercise its prosecutorial discretion in a manner that is consistent with this document when making determinations on a case-by-case basis as to whether to bring enforcement actions in the home care context. During this six-month period, the Department will give strong consideration to an employer's efforts to make any adjustments necessary to implement the Final Rule, and in particular a State's efforts to bring its publicly funded home care programs into FLSA compliance, in determining how best to use its prosecutorial discretion in this area. The Department will, as always, consider a variety of other factors in making enforcement decisions, including the Department's limited resources, the extent of the violations at issue, and the impact of a particular enforcement action on compliance more broadly. The Department's intensive outreach and technical assistance efforts will continue throughout this period.

II. Regulatory Requirements

This document is non-binding guidance articulating considerations relevant to the Department's exercise of its enforcement authority under the FLSA. It is therefore exempt from the notice-and-comment rulemaking requirements under the Administrative Procedure Act pursuant to 5 U.S.C. 553(b).

Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis. 5 U.S.C. 603(a), 604(a). The Department has determined that this guidance does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring OMB approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Authority: 29 U.S.C. 216(c); Secretary's Order No. 05–2010.

Dated: October 6, 2014.

David Weil,

Administrator, Wage and Hour Division.

[FR Doc. 2014–24144 Filed 10–7–14; 4:15 pm]

BILLING CODE 4510–27–P

[2] This non-enforcement policy does not apply to FLSA violations unaffected by the Final Rule, such as those involving home care services provided by registered nurses and licensed practical nurses. *See* current 29 CFR 552.6 (providing that the companionship services exemption does not apply to services that ''require and are performed by trained personnel, such as a registered or practical nurse''); 78 FR 60469 (explaining this existing regulatory provision). Similarly, services provided in nursing homes, group homes, or other institutions in which the workers are not domestic service employees fall outside the scope of the Final Rule and therefore violations in those settings are not subject to the position described here. *See* 29 CFR 552.3 (defining ''domestic service employment'' as ''services of a household nature performed by an employee in or about a private home (permanent or temporary)''); 78 FR 60461–43 (describing the meaning of the term ''private home'').

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2014–0272]

RIN 1625–AA09

Drawbridge Operation Regulation; Saugus River, Revere and Lynn, MA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the operating schedule that governs the General Edwards SR1A Bridge across the Saugus River at mile 1.7, between Revere and Lynn, Massachusetts. The bridge owner, Massachusetts Department of Transportation, submitted a request to require a two-hour advance notice for bridge openings at all times based upon infrequent requests to open the draw during past years. It is expected that this change to the regulations will create efficiency in drawbridge operations while continuing to meet the reasonable needs of navigation.

DATES: This rule is effective November 10, 2014.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2014–0272. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type in the docket number in the ''Search'' box and click ''SEARCH.'' Click Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. John McDonald, Project Officer, First Coast Guard District Bridge Branch, 617–223–8364, *john.w.mcdonald@uscg.mil.* If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

A. Regulatory History and Information

On April 25, 2014, we published a notice of proposed rulemaking (NPRM) entitled ''Drawbridge Operation Regulation Saugus River, Revere and Lynn, Massachusetts'' in the **Federal Register** (79 FR 22911). We received no comments on the proposed rule. No public meeting was requested, and none was held.

B. Basis and Purpose

The General Edwards SR1A Bridge across the Saugus River at mile 1.7, between Revere and Lynn, Massachusetts, has a vertical clearance of 27 feet at mean high water and 36 feet at mean low water. The drawbridge operation regulations are listed at 33 CFR 117.618(b).

The waterway users are commercial lobster boats and seasonal recreational vessels of various sizes.

The owner of the bridge, Massachusetts Department of Transportation, submitted a request to the Coast Guard to change the drawbridge operating regulations that presently require the bridge to open on signal; except that, from April 1 through November 30, from midnight through 8 a.m. at least an eight hour advance notice is required for bridge openings, and at all times from December 1 through March 31, at least an eight hour advance notice is required for bridge openings.

Under this final rule the bridge will open on signal at all times if at least a two-hour advance notice is given by calling the number posted at the bridge.

C. Discussion of Comments, Changes and the Final Rule

The Coast Guard received no comments in response to the notice of proposed rulemaking. As a result, no changes have been made to this final rule.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. We believe that this rule is not a significant regulatory action because the bridge will still open for all vessel traffic at all times provided the two-hour advance notice is given.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which might be small entities: The owners or operators of vessels needing to transit through the bridge.

This action will not have a significant economic impact on a substantial number of small entities for the following reasons: The General Edwards SR1A Bridge will open on signal at all times provided at least a two hour advance notice is given.

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

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on States, on the relationship between the national government and

the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

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

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such 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 would not create an environmental risk to health or risk to safety that might 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 Concerns 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 guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule simply promulgates the operating regulations or procedures for drawbridges. This rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction.

Under figure 2–1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 117.618, paragraph (b), to read as follows:

§ 117.618 Saugus River.

* * * * *

(b) The draw of the General Edwards SR1A Bridge, mile 1.7, between Revere and Lynn, shall open on signal at all times if at least a two-hour advance notice is given by calling the number posted at the bridge.

* * * * *

Dated: July 30, 2014.

L.L. Fagan,

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

[FR Doc. 2014–24171 Filed 10–8–14; 8:45 am]

BILLING CODE 9110–04–P

LIBRARY OF CONGRESS

U.S. Copyright Office

37 CFR Part 210

[Docket No. 2012–7]

Technical Amendments to Mechanical and Digital Phonorecord Delivery Compulsory License

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Final rule; correction.

SUMMARY: The United States Copyright Office published in the **Federal Register** of September 18, 2014, a final rule implementing section 115(c)(5) of the Copyright Act of 1976, title 17 of the United States Code and prescribing by regulation the procedures for the monthly payment of royalties and preparation and service of monthly and annual statements of account by licensees pursuant to the Section 115 compulsory license for the making and distribution of phonorecords of nondramatic musical works. This document makes technical corrections to that final rule.

DATES: Effective on November 17, 2014.

FOR FURTHER INFORMATION CONTACT: Sarang V. Damle, Special Advisor to the General Counsel by email at *sdam@loc.gov,* Stephen Ruwe, Attorney-Advisor, Office of the General Counsel, or Rick Marshall, Attorney-Advisor, Office of the General Counsel, at the U.S. Copyright Office, P.O. Box 70400, Washington, DC 20024. Telephone: (202) 707–8350.

SUPPLEMENTARY INFORMATION: The United States Copyright Office published a final rule in the **Federal Register** of September 18, 2014 (79 FR 56190), which prescribed by regulation the procedures for the monthly payment of royalties and preparation and service of monthly and annual statements of account by licensees pursuant to the Section 115 compulsory license for the making and distribution of phonorecords of nondramatic musical works. The final rule updated the existing payment and statement-of-account regulations in response to legal and marketplace developments, including the Copyright Royalty Board's adoption of newer percentage-of-

revenue royalty rate structures for certain digital music services, and changes in accounting and industry practice in the years since the rules were last substantially amended.

This document corrects two inadvertent errors contained in the regulations set forth in the final rule. First, section 210.16, paragraph (c)(1)(vi), included an incorrect cross-reference to paragraph ''(a)(3),'' which does not exist. This incorrect reference is removed and replaced with a reference to paragraph ''(c)(3).'' Second, section 210.17, paragraph (h), included a clerical error that would have required copyright owners to request annual statements of account that they had not received for fiscal years ending after March 1, 2009 and before November 17, 2014, before the effective date of the regulations. This error is corrected to reflect the Office's intent to permit copyright owners to make such a request at any time within 6 months of the effective date of the regulations.

Accordingly, in the final rule FR Doc. 2014–22235 published on September 18, 2014 (79 FR 56190), the Office makes the following corrections:

■ 1. On page 56209, in the third column, § 210.16(c)(1)(vi) is corrected to read as follows:

§ 210.16 Monthly statements of account.

* * * * *

(c) * * *

(1) * * *

(vi) The phonorecord identification information required by paragraph (c)(3) of this section.

* * * * *

■ 2. On page 56215, in the second column, § 210.17(h) is corrected to read as follows:

§ 210.17 Annual statements of account.

* * * * *

(h) *Annual Statements for periods before the effective date of this regulation.* If a copyright owner did not receive an Annual Statement of Account from a compulsory licensee for any fiscal year ending after March 1, 2009 and before November 17, 2014, the copyright owner may, at any time before May 17, 2015, make a request in writing to that compulsory licensee requesting an Annual Statement of Account for the relevant fiscal year conforming to the requirements of this section. If such a request is made, the compulsory licensee shall provide the Annual Statement of Account within 6 months after receiving the request. If such a circumstance and request applies to more than one of the compulsory licensee's fiscal years, such years may be combined on a single statement.

Dated: October 1, 2014.

Maria A. Pallante,

Register of Copyrights.

James H. Billington,

Librarian of Congress.

[FR Doc. 2014–24175 Filed 10–8–14; 8:45 am]

BILLING CODE 1410–30–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2014–0214; FRL–9917–43–Region 6]

Approval and Promulgation of Implementation Plans; New Mexico; Regional Haze and Interstate Transport Affecting Visibility State Implementation Plan Revisions; Withdrawal of Federal Implementation Plan for the San Juan Generating Station

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to withdraw a Federal Implementation Plan (FIP) for New Mexico that became effective on September 21, 2011, that applies to the San Juan Generating Station (SJGS) in San Juan County, New Mexico, which is operated by the Public Service Company of New Mexico (PNM). We are removing the FIP requirements because we are taking final action today in a separate document in the **Federal Register** to approve revisions to the New Mexico State Implementation Plan (SIP), submitted by the New Mexico Environmental Department (NMED) to EPA, which address revised Best Available Retrofit Technology (BART) requirements for oxides of nitrogen (NO_X) and the requirements of the Clean Air Act (CAA) concerning non-interference with programs in other states to protect visibility.

DATES: This final rule is effective November 10, 2014.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2014–0214. 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 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 Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214–665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. A 15 cent per page fee will be charged for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area on the seventh floor at 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Feldman (6PD–L), Air Planning Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue (6PD–L), Suite 1200, Dallas, TX 75202–2733. The telephone number is (214) 665–9793. Mr. Feldman can also be reached via electronic mail at *feldman.michael@epa.gov.*

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

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I. What is the background for this action?
II. What final action is EPA taking?
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I. What is the background for this action?

The State of New Mexico adopted and transmitted an Interstate Transport SIP revision on September 17, 2007 for the purpose of addressing the ''good neighbor'' provisions of the CAA section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS and the $PM_{2.5}$ NAAQS. EPA disapproved a portion of that SIP submittal addressing the requirements with respect to visibility transport and concurrently promulgated a FIP establishing enforceable NO_X and SO_2 emission limits for the SJGS on August 22, 2011. EPA found that New Mexico sources, except the San Juan Generating Station, were sufficiently controlled to eliminate interference with the visibility programs of other states (see 76 FR 52388). EPA set SO_2 emission limits of 0.15 pounds per million British Thermal Units (lb/MMBtu) for the four units of the SJGS. EPA set enforceable NO_X emission limits of 0.05 lbs/MMBtu

based upon EPA's NO_X BART determination for SJGS, to ensure that its emissions would meet the ''good neighbor'' requirement for visibility protection, as well as the requirement for NO_X BART. (76 FR 52388, August 22, 2011). EPA's NO_X BART emission limits can be met by the installation of selective catalytic reduction (SCR) at all four units of SJGS. Among other things, the FIP also included a sulfuric acid (H_2SO_4) emission limit to minimize the contribution of this pollutant to visibility impairment, since emissions of this pollutant can potentially increase due to operation of SCR.

The background for today's final rule withdrawing that FIP and today's separate action approving the New Mexico SIP revisions is discussed in detail in our May 12, 2014 notice (see 79 FR 26909). The comment period on the proposed action was open for thirty days, and several comments were received.

II. What final action is EPA taking?

We are withdrawing the New Mexico Regional Haze (RH) and Interstate Transport (IT) FIP at 40 CFR 52.1628, which applies to Units 1, 2, 3, and 4 of PNM's San Juan Generating Station. As explained in our May 12, 2014 proposal (see 79 FR 26909), this action is possible because of our separate action to approve the New Mexico SIP revisions, which update the New Mexico RH and Visibility Transport SIP to include a revised BART determination for the units at the PNM's San Juan Generating Station, as well as enforceable SO_2 and NO_X emission limits for the SJGS that sufficiently prevent emissions from sources in New Mexico from interfering with the visibility programs of other states. New Mexico's revised SIP includes a control scenario proposed by PNM that incorporates the shutdown of two of the four units at the SJGS by December 31, 2017—a new control scenario that had not been evaluated as part of the FIP. EPA has determined that when cost, energy and non-air quality environmental impacts, and anticipated visibility benefits are taken into consideration, New Mexico's revised determination of NO_X BART for the SJGS is reasonable. The revised BART determination in the New Mexico RH SIP revision results in substantial visibility benefits and energy and non-air quality environmental benefits, and is highly cost-effective. The incremental visibility benefit of the four-SCR scenario of the FIP over the State's revised BART determination is small at most Class I areas, and New Mexico reasonably concluded that this small additional visibility benefit did not justify the increase in costs associated with installation of SCR on all four units. EPA's review of the New Mexico SIP revisions is discussed in detail in our May 12, 2014 document (see 79 FR 26909).

EPA has made the determination that the New Mexico RH and Visibility Transport SIP revisions are approvable because the plan's provisions meet all applicable requirements of the CAA and EPA implementing regulations. EPA is finalizing this action under section 110 and part C of the Act. The action to approve the SIP is in a separate action contained in today's **Federal Register**. Upon the effective date of the **Federal Register** documents, the requirements in the approved SIP apply and the FIP requirements for the SJGS are withdrawn.

III. Responses to Comments Received

We received several comments on our proposed approval of the 2013 RH SIP revisions. Copies of the comments are available in the docket for this rulemaking. A summary of the issues raised in the comment letters and our responses to these comments is included in our notice of final rulemaking concerning the approval of the New Mexico SIP revisions and is reproduced below. (Please see Docket No. EPA–R06–OAR–2014–0214 in the regulations.gov Web site).

Comment: A commenter, identified as a part owner of SJGS Unit 4, requested a 12-month extension of the SIP's compliance period for meeting the new NO_X limits. The commenter referred to the EPA proposal, ''Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units,'' subsequently published at 79 FR 34829 (June 18, 2014), and asserted that an extension would allow for adequate consideration of the impacts of the proposal relative to the investment considerations of installing SNCRs at the SJGS. The commenter stated that ownership of SJGS presently includes utilities from five Western states, and the interstate nature of ownership and emissions complicates a coordinated compliance planning process. Another commenter, identified as a part owner of SJGS Units 1 and 2, supported the costs, anticipated haze reduction, and other environmental benefits associated with the 2013 RH SIP revision, but similarly requested that EPA amend its approval and provide additional time for installation of SNCR on the basis that more time is needed to study the proposed standards for reducing carbon pollution at existing EGUs.

Response: EPA believes that CAA section 111(d) efforts and actions will tend to contribute to overall air quality improvements and thus should be complementary to criteria pollutant and regional haze SIP efforts but do not provide a basis for delaying implementation of these efforts. See 79 FR at 34931. The 111(d) proposal specifically mentions the next 10-year SIP revision for regional haze that is due by July 2018 and covers the time period through 2028, explaining that the timeframes proposed for submittal of the CAA section 111(d) state plans will allow considerable time for coordination by states in the development of their respective plans. The proposal does not suggest that further delays are warranted for implementing the regional haze requirements that were first due in December 2007. Indeed, states and affected sources will be able to take into account requirements of programs such as Regional Haze in considering the development of state plans under section 111(d).

More importantly here, EPA cannot alter an otherwise approvable SIP revision to extend a compliance date. The 2013 RH SIP revision submitted by New Mexico provides the compliance date. Moreover, the compliance dates that New Mexico set are as ''expeditious as practicable,'' as required by the CAA. See CAA section 169A(b)(2)(A), (g)(2). Because the compliance dates meet CAA requirements, EPA cannot establish different compliance dates when taking action on the SIP revision. See CAA section 110(k)(3), (*l*).

Comment: A commenter stated that unit retirements and NO_X controls at SJGS would reduce regional haze and provide other significant environmental, economic, and health benefits, and states that ''these additional benefits must be recognized.'' The commenter requested, however, that EPA's approval contain a statement reflecting EPA's willingness to consider eliminating the NO_X emission control requirements on Units 1 and 4 if, by December 31, 2016, there is a commitment to permanently retire Unit 1 and/or 4 within a reasonably short time-frame. PNM responded to this request in its own comment (although it mistakenly cited the date of December 31, 2015 when paraphrasing the comment). PNM's comment stated that EPA should reject the request for an EPA statement regarding the retirement of additional capacity because the Agency lacks any analysis or basis upon which to evaluate the efficacy or legality of the request.

Response: We decline to endorse a proposal not before us, as suggested by

the commenter. Because the 2013 RH SIP revision meets CAA requirements, we are required to approve it. See CAA section 110(k)(3), (*l*).

Comment: PNM submitted a comment supporting the proposed rule, agreeing that the 2013 RH SIP revision is reasonable, even when EPA's estimated SCR costs are used. PNM asserted, however, that its own estimated SCR capital costs were confirmed by detailed bids from engineering, procurement, and construction contractors, and that none of the bids were in the range of EPA's estimated SCR costs. PNM believed that these bids should satisfy any requirement for enhanced documentation to support higher SCR costs, but acknowledged that their cost estimates provide different treatment to items such as sorbent injection, apportionment of balanced draft costs, and fees and contingencies.

Response: We appreciate PMN's comment supporting approval. As identified by the comment, EPA's cost analysis for SCR was based on a different design (e.g., no costs for sorbent injection) than the design PNM used when soliciting bids from vendors. PNM's bids were not submitted with the comment and, based on the available documentation, we remain unable to conclude that certain line items in PNM's SCR cost estimates are well supported. While the BART Guidelines explain that data from vendor bids may be used in developing equipment cost estimates, this does not mean that bottom-line figures can serve as a substitute for a full cost analysis or that all costs included therein would be appropriate for making an assessment of cost-effectiveness. The expectation remains that the cost analysis maintain and improve consistency through adherence to the OAQPS Control Cost Manual, where possible. Moreover, the BART Guidelines state that documentation is expected, and indeed especially important, where a state believes that costs will be unreasonable even though other recent retrofits have cost-effectiveness values that are within what has been considered a reasonable range. As we established in our FIP, recent SCR retrofits at coal-fired power plants have been found to be cost-effective, and this cost effectiveness is generally validated by large emission reductions even when there are large capital costs.

Comment: NMED provided comments in support of approval and stated that they generally concur with our description and evaluation of the State Alternative for NO_X BART.

Response: We appreciate this comment.

Comment: NMED commented that states cannot be required to take a unit-specific (or unit-by-unit) approach to assessing the BART factors. In *American Corn Growers* v. *EPA,* 291 F.3d 1, 8 (D.C. Cir. 2002), a reviewing court held that it was invalid to consider visibility impacts on a multiple-source basis while employing a source-specific approach to the other four BART factors. The commenter stated that requiring states to assess visibility on a facility-wide basis while considering the other factors on a unit-by-unit basis would be similarly unsupported by the statute and would impermissibly constrain state authority.

Response: We disagree with this comment. In *American Corn Growers,* the D.C. Circuit held that EPA could not adopt a ''group-BART approach'' to the visibility factor because it could force states to require BART controls at some sources without any empirical evidence of a particular source's contribution to visibility impairment in a Class I area. As a result, the Regional Haze Rule and BART Guidelines require states to analyze the five statutory factors for each BART-eligible source without reference to the benefits that BART will achieve at other sources. Beyond this, however, the court did not opine on how the BART factors should be analyzed or weighed by states, let alone proscribe a unit-specific or prescribe a facility-wide approach to BART.

As we recently explained in our action on the Wyoming regional haze SIP, see 79 FR 5031 (Jan. 30, 2014), the BART Guidelines prescribe that states ''must conduct a visibility improvement determination for the source(s) as part of the BART determination,'' [1] and we interpret this language as requiring states to consider the visibility improvement from BART applied to the BART-eligible source as a whole. We do not believe that either the CAA or the BART Guidelines mandate either a unit-specific or a facility-wide approach to analyzing or weighing the remaining BART factors. In most circumstances, however, we believe that states should use a unit-specific approach to assessing the technical feasibility and costs of controls options, as well as the existing controls and remaining useful life of BART-eligible units. This approach is clearly contemplated by the BART Guidelines and has been used for decades in other CAA contexts, such as the evaluation of Best Available Control Technology (BACT) for new and modified major stationary sources.[2] A unit-specific approach to these factors is appropriate because the age, type, size, location, and emission characteristics of the various emission units at a source can differ greatly, and many control options by design apply to a single unit. However, in unique circumstances, such as in situations where a control strategy can be implemented facility-wide or where the benefits of unit shutdowns must be taken into account, then we believe that the CAA and BART Guidelines provide states with the flexibility to analyze and weigh the BART factors for the source as a whole, rather than for its constituent emission units.

Comment: NMED responded to a statement in the proposal that expressed some concern with the appropriateness of including SO_2 reductions from units 1 and 4 in one of the NO_X BART control options analyzed, rather than as part of the facility's baseline emissions, by explaining that the SO_2 limit of 0.10 lbs/MMBtu is required by the 2013 RH SIP revision alone and would not be required if the FIP continues to remain in force.

Response: While the inclusion of the SO_2 reductions in the SIP helps to further demonstrate non-interference with the visibility protection programs of other states, in keeping with the visibility transport requirements of CAA section 110(a)(2)(D)(i)(I), and helps in showing the overall visibility benefits of the 2013 RH SIP revision, we had noted that those reductions do not specifically lend support to a visibility improvement determination for NO_X BART through the application of NO_X controls. However, no commenters took issue with the inclusion of SO_2 reductions in the studied scenarios or insisted that refinements were necessary on this point, and it remains our view that the inclusion of the reductions did not meaningfully impact the evaluation of visibility benefits due to NO_X reductions at the facility.

Comment: The Navajo Nation submitted a comment supporting the proposal as the best scenario for meeting BART, endorsing it for having reasonable costs of compliance and a realistic timeframe. The comment also stated that the 2013 RH SIP revision addressed concerns regarding potential job losses faced by Navajo work forces at the SJGS and San Juan mine more effectively than EPA's FIP.

Response: We appreciate this comment supporting approval.

[1] 40 CFR part 51, app. Y, section IV.D.5.

[2] See New Source Review Workshop Manual (Oct. 1990), available at *http://www.epa.gov/ttn/nsr/gen/wkshpman.pdf.*

Comment: One commenter stated that the 2013 RH SIP revision appears to be an alternative consistent with the intent of 40 CFR 51.308(e)(2) and therefore needs to demonstrate greater reasonable progress than EPA's BART determination. The fact that the 2013 RH SIP revision does not demonstrate greater reasonable progress than EPA's BART determination gave the commenter concern because the commenter considered it a departure from rules and guidance. The commenter also asserted that previous EPA decisions have required a source to demonstrate its proposed alternative is better than EPA's BART determination, citing actions for Idaho and the Four Corners Power Plant.[3]

Response: We disagree that the 2013 RH SIP revision appears to be a BART alternative under § 51.308(e)(2). New Mexico explicitly stated that it was not evaluating a BART alternative when responding to comments during the state process and again when submitting comments to support our proposed approval. Therefore, New Mexico was not required to make a demonstration of greater reasonable progress. Instead, New Mexico evaluated a new, source-specific BART determination under § 51.308(e)(1). To fully account for the source owner's proposed unit shutdowns, New Mexico chose to weigh the BART factors in light of source-wide considerations. As explained in our proposal and elsewhere in our responses to comments, we believe that this approach is permissible under the CAA and the BART Guidelines. The prior EPA actions cited by the commenter are not relevant to our action on New Mexico's NO_X BART determination for SJGS. While both the Four Corners and Idaho actions contained BART alternatives that demonstrated greater reasonable progress, we are not evaluating a BART alternative here. Moreover, while the Idaho action also involved two new BART determinations that happened to be more stringent than the state's original BART determinations, neither the CAA nor our regulations require a new BART determination to be more stringent in every instance in order to supersede a prior BART determination.

Comment: One commenter argued that the CAA requires that any alternative regional haze strategy must outperform the visibility gains of the existing strategy or, in other words, be ''better than BART,'' and the 2013 RH SIP revision fails to accomplish this. Citing to CAA section 7410(a) and (*l*), the commenter argued that the characterization of the 2013 RH SIP revision as including a new BART determination is plainly unlawful because the State has not undertaken the BART analysis required by the CAA and BART Guidelines, and EPA did not provide any explanation for why the SIP revision is approvable when the FIP had a more stringent BART determination.

Response: As explained above, the 2013 RH SIP revision was not submitted to meet § 51.308(e)(2) requirements, so it is not required to be better than BART. As we stated in the proposal, the 2013 RH SIP revision contains a new, source-specific BART analysis that is based on different underlying facts than those that were present when we evaluated our FIP. Thus, the commenter's assertion that the state failed to undertake a BART analysis is clearly incorrect. Finally, contrary to the commenter's assertion, CAA section 110(*l*) does not prohibit a state from submitting a SIP that is less stringent than a FIP. Our proposal provided an analysis conducted under section 110(*l*), which showed that the 2013 RH SIP revision would not interfere with the attainment or maintenance of any NAAQS or any other CAA requirement. See 79 FR at 26920. Because New Mexico complied with the CAA's visibility protection provisions, the Regional Haze Rule, and the BART Guidelines, and made a reasonable control determination based on the weighing of the five factors, EPA is required to approve the 2013 RH SIP revision.

Comment: One commenter stated that the 2013 RH SIP revision does not comply with the mandatory unit-specific analytical approach required by the CAA. The commenter argued that the BART Guidelines require BART to be determined on a unit-specific basis because a BART emission limit must be established for each affected emission unit. The commenter also pointed out that the BART Guidelines provide an example of a unit-specific approach where they state that ''control options must be analyzed for Units B through H as well as Unit A.'' Consequently, the commenter concluded that New Mexico and EPA are required to follow the unit-specific approach.

Response: We disagree with this comment. The portion of the BART Guidelines cited by the commenter explains how all BART units at the subject to BART source must be included in the BART analysis. The 2013 SIP revision implements BART at each BART-subject unit by requiring either shutdowns or controls. Also, while the BART Guidelines clearly contemplate that states will analyze technical feasibility and cost-effectiveness on a unit-specific basis, they do not explicitly require such an approach, nor do they provide guidance for situations in which a source proposes unit shutdowns as an emission-reduction strategy. Moreover, contrary to the commenter's assertion, the CAA does not mandate any specific analytical approach. Consequently, in situations where a state is contemplating a novel control scenario not contemplated by the BART Guidelines, such as one that involves unit shutdowns, we believe that states have the flexibility to tailor their BART analyses by evaluating and weighing the BART factors on a facility-wide (i.e., ''source'') basis rather than on a unit-specific basis in order to account for the emission reductions and benefits that would directly result from the shutdowns. Moreover, while BART emission limits are also typically established for each unit that comprises the BART-eligible source, as New Mexico chose to do here, nothing in the CAA or BART Guidelines prevents a state from setting an emission limit that averages emissions across multiple units, so long as that limit is ''based on the degree of reduction achievable through the best system of continuous emission reduction for each pollutant.'' See 40 CFR 51.301.

Comment: One commenter stated that a facility-wide BART determination is inconsistent with other EPA actions. The commenter cited to EPA actions in Indiana and Montana to support this contention.[4] The commenter also pointed out that EPA used a unit-specific approach to analyzing the first four factors when promulgating its FIP for SJGS. The commenter called EPA's proposal an unexplained departure from EPA's past practice in implementing its binding guidelines.

Response: We disagree with this comment for the same reasons explained above. EPA's actions in Indiana, Montana, and our FIP for SJGS did not involve unit shutdowns and therefore are not determinative of how the BART statutory factors should be considered and weighed in this context. Also, contrary to the commenter's assertion, we explained in our proposal why New Mexico's approach was

[3] The comment provided a citation to 79 FR 23273 (April 28, 2014) relating to the Tasco facility in Idaho, and one to ''78 FR 24112,'' which we interpret as having intended to refer to 78 FR 60700 (October 2, 2013) (bearing ''FR Doc. 2013–24112'').

[4] Specifically, the commenter cited our Indiana regional haze SIP action (77 FR 3975, 3982 (Jan. 26, 2012)) for its statement that a source needs to ''implement BART at each BART-subject unit,'' and the Montana regional haze FIP (77 FR 57864, Sept. 18, 2012) for discussing statutory BART factors for units at a BART source.

reasonable in light of the unique circumstances presented and, on that basis, cannot validly be seen as any departure from past actions. As was stated, the state's approach reasonably takes into account the visibility, energy, and non-air quality environmental benefits associated with unit shutdowns. See 79 FR 26918. Furthermore, the 2013 SIP revision implements BART at each BART-subject unit by requiring either shutdowns or controls.

Comment: A commenter stated that EPA's proposal arbitrarily rejected SCR in favor of less effective pollution controls even though EPA found that an emission limitation based on SCR was BART in the FIP. The commenter explained that SCR provides the best visibility outcomes and is cost-effective.

Response: Under different factual circumstances, we determined that SCR for the four SJGS units had reasonable average cost-effectiveness values and would promote significant visibility improvements, thereby supporting the basis for the emission limits set forth in the FIP. In the 2013 RH SIP revision, New Mexico demonstrated that SNCR in tandem with shutdowns has visibility benefits on par with those anticipated from the FIP at much lower overall costs, while also reducing overall energy and non-air quality environmental impacts. Although we continue to believe that SCR is a cost-effective control and are not abandoning the legal and technical basis for our FIP, we believe that when cost, energy and non-air quality environmental impacts, and anticipated visibility benefits are all taken into consideration, New Mexico's determination that the State Alternative is BART is reasonable. While SCR remains cost-effective on a $/ton basis, the incremental visibility benefit of the four-SCR scenario of the FIP over the State Alternative is small at most Class I areas, and New Mexico reasonably concluded that this small additional visibility benefit, when considered with the difference in the energy and non-air quality environmental impacts, did not justify the large increase in costs associated with the installation of SCR on all four units.

Comment: One commenter stated that the visibility impacts of the State Alternative are significantly worse than the four-SCR scenario in the FIP. The commenter explained that the difference in visibility impacts between the two scenarios will be 0.47 dv at Mesa Verde, 0.24 dv at Canyonlands, and 0.13 dv at Weminuche. The sum of these visibility differences is 0.84 dv, which is above the 0.5 dv threshold that is used to determine ''significance.'' Also, the State Alternative will result in five more days with impacts over 1 dv at Mesa Verde, three more days at Arches, and two more days at both Canyonlands and La Garita when compared to the four-SCR scenario in the FIP.

Response: As we stated in the proposal when comparing the two scenarios, while we have some concern with the modeled visibility differences between the two control scenarios for Mesa Verde and Canyonlands, we find that the State's decision to select the State Alternative was ultimately reasonable, especially considering the costs of compliance and the energy and non-air quality environmental impacts of the two scenarios. We noted that the difference in visibility impacts between the two scenarios are negligible at most of the Class I areas examined. The average difference at the 13 other Class I areas (other than Mesa Verde, Canyonlands, and Weminuche) is less than 0.1 dv between the two control scenarios. In considering the number of days impacted, eleven Class I areas show no difference in the number of days with impacts over 1 dv. We also note that the typical application of 0.5 dv as a contribution threshold comes in the context of assessing impacts at a single Class I area, not cumulative impacts across multiple Class I areas.

Comment: One commenter stated that the CAA requires EPA to either improve the State Alternative or reject it altogether.

Response: We disagree with this comment. As we explained earlier, EPA is required to approve any SIP revision that meets CAA requirements. See CAA section 110(k)(3), (*l*). EPA does not have authority to improve a SIP revision that is otherwise approvable, and the commenter has provided no basis for EPA to disapprove the 2013 RH SIP revision.

Comment: One commenter stated that EPA based its proposed approval on a fundamentally flawed cost-benefit analysis that artificially inflated the cost and artificially reduced the benefits of SCR. The commenter also thought that New Mexico underestimated the costs of SNCR. The commenter argued that EPA had no rational basis for concluding that cost refinements would not change the result. The commenter cited to *Center for Biological Diversity v. National Highway Traffic Safety Administration,* 538 F.3d 1172, 1201–03 (9th Cir. 2008), for the proposition that EPA must re-calculate a cost value that would significantly alter the analysis. With cost corrections, the commenter believed that New Mexico's capital cost assumptions for SCR would be cut in half, demonstrating that SCR remains cost-effective at Units 1 and 4. The commenter provided an attachment that highlighted how New Mexico's cost range for SCR at SJGS was well above the cost per kilowatt for SCR demonstrated by other cost studies for comparable retrofits.

Response: We maintain our view that SCR has favorable and reasonable average cost-effectiveness values at SJGS under the technical record developed for the FIP, and we agree with the comment that New Mexico's cost range for SCR is still high compared to other cost studies. Even so, as discussed in response to comments from PNM concerning cost, the state's BART selection in this case is reasonable. New Mexico was advantaged with the full technical record that we developed to promulgate the FIP, and the state declared that it would favor the 2013 RH SIP revision even if it were to adopt and utilize the lower costs for SCR that we had relied on in promulgating the FIP. In addition, in our proposed action, we recalculated the annual cost and incremental cost-effectiveness of the four-SCR option using the cost estimates presented in the FIP. Thus, there is a significant record basis for our finding that lower SCR costs would not change the result of our action.

As to the state's alleged underestimation of SNCR costs, the comment does not provide any details to enable us to provide a response. We also considered the Ninth Circuit's decision in *Center for Biological Diversity v. National Highway Traffic Safety Administration* and do not see how it has any bearing on the issue of costs in this case. In that case, the Ninth Circuit faulted NHTSA for its failure to monetize the value of carbon emissions in setting fuel economy standards. In addition to the fact that the case did not concern BART determinations, the comment does not identify any particular line item in the state's analysis of SCR costs that has not been monetized.

Comment: One commenter stated that our proposal failed to consider the prospect of installing SCR on Units 1 and 4, while still shutting down Units 2 and 3. The commenter noted that such a scenario would lead to even greater visibility benefits. The commenter provided modeled visibility results and estimates of the level of emission reductions that would result from this scenario and concluded that the State Alternative was inferior.

Response: While we acknowledge that a scenario at SJGS involving two shutdowns and two SCRs would result in superior visibility benefits than the State Alternative or even the FIP, the

state did not present this scenario to us in the 2013 RH SIP revision. As we explained above, we are required to evaluate the SIP revision that is before us. Moreover, in situations that involve the voluntary retirement of units, states need the flexibility to analyze control scenarios that have the support of the source owner. There is no evidence in the record indicating that PNM would have volunteered to retire two of its units if SCR were required on the remaining units.

Comment: One commenter stated that the NMED's BART analysis contains a flawed visibility analysis. The commenter argued that NMED arbitrarily ignored fourteen Class I areas between 300 km and 440 km from SJGS in its cumulative visibility analysis, which was an arbitrary and unexplained departure from EPA's analytical approach that was followed in analyzing the Big Stone and Colstrip power plants. The commenter concluded that the failure to assess impacts at more distant Class I areas masked the full visibility benefit of SCR. Finally, the commenter referred to comments submitted by the National Park Service to New Mexico on their proposed SIP revision, which stated that the visibility modeling was not done according to the BART Guidelines.

Response: We disagree with this comment. In regard to selecting a model and developing a modeling protocol, the BART Guidelines refer to our Guideline on Air Quality Models [5] and the Interagency Workgroup on Air Quality Modeling (IWAQM) Phase 2 report.[6] The IWAQM report reviewed model-performance evaluations of CALPUFF as a function of distance from the source and recommended the use of CALPUFF for transport distances of order 200 km and less. The report also recommended that the use of CALPUFF for characterizing transport beyond 200 to 300 km should be done cautiously with an awareness of the likely problems involved. Consistent with this recommendation, we believe that it is reasonable to use CALPUFF to evaluate visibility impacts up to 300 km. While we agree with the commenter that emissions from SJGS may impact Class I areas at distances greater than 300 km, the IWAQM report cautions that CALPUFF results are less reliable at distances greater than 300 km. Therefore, we do not think that it is arbitrary to exclude more distant receptors from a visibility analysis or to base the visibility assessment for a BART determination on visibility impacts within 300 km from the source.

Contrary to the commenter's suggestion, this was the same approach followed when modeling the visibility benefits associated with various control scenarios at the Colstrip power plant. See 77 FR 57867–68. In regard to the Big Stone power plant, South Dakota performed modeling for Class I areas beyond 300 km only because there were no Class I areas within 300 km of the source. As a result, South Dakota worked with EPA to develop a special modeling protocol that incorporated CALPUFF's puff-splitting option despite the IWAQM report's conceptual concerns with that feature. Moreover, South Dakota expressly acknowledged that it was departing from EPA's guidance. Consequently, we believe that Big Stone presented an exception to the general rule that CALPUFF be applied to assess visibility impacts only on those Class I areas within 300 km of the source. Finally, in regard to NPS's comments concerning the visibility analysis during the state process, we agree with the response provided at the time by NMED [7] and note that NPS did not raise these concerns again in their comments on our proposed action.

Comment: A commenter stated that the proposed 0.23 lb/MMBtu limit does not apply to each unit due to a cross-unit averaging provision, so the emissions from a given unit could be higher than 0.23 lb/MMbtu.

Response: In this case, it is appropriate for the 2013 RH SIP revision to allow SJGS to average emissions across its BART-eligible emission units within the fence line. The BART Guidelines allow this approach when, as here, the reductions would be equal to those reductions that would be obtained by simply controlling each of the BART-eligible units that constitute the BART source. Because SJGS is required to demonstrate continuous compliance over a reasonable averaging time, the reductions associated with the assigned limit are assured. As part of its five-factor analysis, New Mexico evaluated the control effectiveness of SNCR and determined that SNCR could achieve an emission rate of 0.23 lb/MMBtu on each unit based on tests and an updated performance guarantee from the vendor.[8] Consistent with the BART Guidelines, the permit conditions at A112C specify the averaging time and calculation methodology for the enforceable emission limit, which must be calculated on a 30-boiler-operating-day basis, averaged across the two units. While we agree with the commenter that emissions from either unit may exceed 0.23 lb/MMBtu on a given day, the combined emissions from both units cannot exceed 0.23 lb/MMBtu over the course of the averaging period, so total emission reductions will be equal to those that would be obtained under two separate limits.

Comment: One commenter alleged that our proposal implied that PNM's decision to retire Units 2 and 3 was solely taken for the purpose of meeting BART. The commenter suggested that EPA should explicitly state whether this was the case for the record or discuss whether independent reasons would require or motivate the shutdown of the units.

Response: We fail to see how this comment is relevant to our evaluation of the 2013 RH SIP revision. Nevertheless, we note that, when developing the FIP, we assumed that the remaining useful life of all four units at SJGS exceeded 30 years, and the 2013 RH SIP revision provides no information that would change that assumption. Nor does the SIP revision provide any information to suggest that PNM had motivations other than creating a more cost-effective BART-compliance scenario when volunteering to shut down Units 2 and 3.

Comment: A commenter stated that, while our proposal implied that there will be no capacity increase elsewhere or at the SJGS to replace the lost capacity from Units 2 and 3, the final rule should make this explicit to properly give weight to the benefits from their retirement.

Response: We disagree with this comment. As an initial matter, our proposal did not imply that the retirement of Units 2 and 3 could be undertaken without the possible need to address lost capacity. Most likely, the lost capacity will be replaced through some combination of conservation, efficiency, and new capacity. More importantly, however, the CAA does not require an analysis of the statutory factors to include the consideration of hypothetical emissions increases at

[5] Appendix W to 40 CFR part 51 "Guideline to Air Quality Models" states: "It was concluded from these case studies that the CALPUFF dispersion model had performed in a reasonable manner, and had no apparent bias toward over or under prediction, so long as the transport distance was limited to less than 300 km."

[6] Environmental Protection Agency, 1998. Interagency Workgroup on Air Quality Modeling (IWAQM) Phase 2 Summary Report and Recommendations for Modeling Long-Range Transport Impacts. Publication No. EPA–454/R–98–019. Office of Air Quality Planning & Standards, Research Triangle Park, NC. (NTIS No. PB 99–121089)

[7] Available as NMED Ex. 14 of the 2013 RH SIP revision.

[8] Public Service Company of New Mexico, San Juan Generating Station, Revised SNCR Analysis, February 11, 2011 (2011 NM RH SIP, NMED Ex. 7t)

other facilities or even at the same facility due to lost capacity. We also note that any emissions units that might be constructed at SJGS in the future would likely be subject to both BACT and any applicable new source performance standards. Moreover, all emission units would be subject to analysis under the regional haze requirements for reasonable progress in future planning periods.

Comment: One commenter asserted that our proposal failed to explain how New Mexico could permissibly reach a conclusion that directly opposes EPA's conclusion in the FIP. The commenter stated that the voluntary retirement of Units 2 and 3 did not change the fact that SCR remains cost-effective at the Units 1 and 4.

Response: We disagree that the 2013 RH SIP reached a conclusion that directly opposes the conclusion we made in promulgating the FIP. Under different factual circumstances, we determined that SCR for the four SJGS units had reasonable average cost-effectiveness values and would promote significant visibility improvements, thereby supporting the basis for the emission limits set forth in the FIP. As we stated in the proposal, the 2013 RH SIP revision contains a new, source-specific BART analysis that is based on different underlying facts than those that were present when we evaluated our FIP. We were not presented with the retirement of Units 2 and 3 when we promulgated the FIP. With this information in hand, New Mexico permissibly conducted a new BART analysis using a facility-wide approach that allowed the full range of visibility, energy, and non-air quality environmental benefits associated with the shutdowns to be taken into account. While the average cost-effectiveness of SCR on Units 1 and 4 remains reasonable, New Mexico demonstrated that the incremental cost-effectiveness of the four-SCR scenario in our FIP over the State Alternative was high when compared against the additional visibility improvements from the former, while also considering the energy, and non-air quality environmental benefits associated with the State Alternative.

Comment: One commenter thought that the timeline for the installation of SNCR was too long because SNCR is a simpler technology to install than SCR.

Response: We agree that SNCR is a simpler technology to install than SCR and requires less time for installation. New Mexico determined, and we agree, that the compliance timeframe in the 2013 RH SIP revision is as expeditious as practicable, as required under 40 CFR 51.308(e)(1)(iv).

Comment: One commenter thought that the 0.05 lb/MMBtu rate used for the study of SCR as a BART control option was likely too high. The commenter suggested that many units, such as those in Dry Fork, WY and Morgantown, MD, are routinely achieving emission rates in the range of 0.02–0.04 lb/MMBtu. Reducing the studied emission limit for SCR to 0.04 lb/MMBtu would show the option to be even more cost-effective.

Response: We disagree that lower control rates needed to be evaluated for SCR. We evaluated the monthly emission data from these two facilities for the past several years (available at EPA's Air Market Program data Web site: *www.epa.gov/ampd*). All three units have monthly emission rates that sometimes exceed 0.04 lb/MMBtu. Indeed, the Morgantown units have months where the monthly emission rate is 0.05 lb/MMBtu or higher. In promulgating the FIP, we evaluated the performance of both new and retrofit SCRs and determined that 0.05 lb/MMBtu on a 30-boiler-operating-day average was the appropriate emission limit for SCR at the SJGS units. See 76 FR 491 and 76 FR 52388. New Mexico appropriately used this same rate in their cost and visibility analyses for the four-SCR scenario as part of its BART evaluation.

IV. Statutory and Executive Order Reviews

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

This type of action is exempt from review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This FIP withdrawal action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* because this FIP amendment under section 110 and part C of the Clean Air Act will not in-and-of itself create any new information collection burdens. Because this final action does not impose an information collection burden, the Paperwork Reduction Act does not apply.

C. Regulatory Flexibility Act

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

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

This rule withdraws the FIP for PNM's San Juan Generating Station, which is not a small entity, and does not create any new requirements. After considering the economic impact of this rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities.

D. Unfunded Mandates Reform Act

This FIP withdrawal action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. This action imposes no enforceable duty on any State, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA.

This FIP withdrawal action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action removes a Federal plan for PNM's San Juan Generating Station. Small governments are not impacted.

E. Executive Order 13132—Federalism

This FIP withdrawal action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The CAA establishes the scheme whereby states take the lead in developing SIPs including SIPs to attain the NAAQS and to meet other applicable CAA requirements including the Best

Available Retrofit requirements in CAA section 169(b)(2)(A) and the Visibility Impairment requirements in CAA section 110(a)(2)(D)(i)(II). This action will not modify this relationship. Thus, Executive Order 13132 does not apply to this action.

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

This FIP withdrawal action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). In this action, EPA is not addressing any Tribal Implementation Plans. This action is limited to the withdrawal of the New Mexico RH and IT FIP for PNM's San Juan Generating Station. Thus, Executive Order 13175 does not apply to this action. Consistent with EPA policy, EPA offered consultation to tribes regarding this rulemaking action.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the executive order has the potential to influence the regulation. This action is not subject to EO 13045 because EPA in withdrawing the New Mexico RH and IT FIP for PNM's San Juan Generating Station, as authorized by the CAA, EPA considers visibility and not health or safety risks.

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

This FIP withdrawal action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is exempt from review under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104—113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This FIP withdrawal action for PNM's San Juan Generating Station does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

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

This final rule 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).

K. Congressional Review Act

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

L. Petitions for Judicial Review

Under section 307(b)(1) of the 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 December 8, 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, Nitrogen dioxide, Particulate matter, Regional haze, Reporting and recordkeeping requirements, Sulfur dioxide, and Visibility.

Dated: September 26, 2014.

Gina McCarthy,

Administrator.

For the reasons stated in the preamble, Title 40, chapter I, 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.*

§ 52.1628 [Removed and Reserved]

■ 2. Section 52.1628 is removed and reserved.

[FR Doc. 2014–23905 Filed 10–8–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2014–0214; FRL–9917–63–Region 6]

Approval and Promulgation of Implementation Plans; New Mexico; Regional Haze and Interstate Transport Affecting Visibility State Implementation Plan Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action under the Clean Air Act (CAA) to approve a revision to the New Mexico Regional Haze State Implementation Plan (SIP) that addresses the Best Available Retrofit Technology (BART) requirement for oxides of nitrogen (NO_X) for the Public Service Company of New Mexico (PNM) San Juan Generating Station (SJGS) in San Juan County, New Mexico. EPA is also taking final action under the CAA to approve a revision to the New Mexico Visibility Transport SIP that addresses the CAA requirement that emissions from sources in New Mexico do not interfere with programs in other states to protect visibility. The SIP meets this requirement through emission limitations for NO_X and sulfur dioxide (SO_2) at SJGS.

DATES: This final rule will be effective November 10, 2014.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2014–0214. 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 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 Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214–665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. A 15 cent per page fee will be charged for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area on the seventh floor at 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Feldman (214) 665–9793, email *feldman.michael@epa.gov.*

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

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I. What is the background for this action?

The background for today's final rule is discussed in detail in our May 12, 2014 document, in which we proposed to approve New Mexico's SIP revisions. See 79 FR 26909. The comment period on the proposed action was open for 30 days, and several comments were received.

II. What final action is EPA taking?

We are approving New Mexico's regional haze SIP revisions submitted on October 7, 2013 and November 5, 2013 (''2013 RH SIP revision''), that build on a SIP revision submitted on July 5, 2011 (''2011 RH SIP revision'').[1] The 2013 RH SIP revision contains a new NO_X BART determination for the SJGS (referred to as the ''State Alternative''). The State Alternative consists of a previously un-contemplated control scenario involving unit shutdowns at the SJGS. With this approval, the State Alternative supersedes the State's previous NO_X BART determination that was included in the 2011 RH SIP revision. The State Alternative reflects the terms of the tentative agreement signed between the PNM, the New Mexico Environment Department (NMED), and EPA to address the regional haze requirements applicable to the SJGS. This agreement is included as Exhibit 5 of the 2013 RH SIP revision.[2] The 2013 RH SIP revision also includes a preconstruction permit submitted on November 5, 2013,[3] that sets a NO_X emission limit based upon the State Alternative, compliance schedules, a compliance deadline for the shutdown of two units, and monitoring and testing requirements. More specifically, the 2013 RH SIP revision requires the following:

- Fifteen (15) months after EPA's final approval of the 2013 RH SIP revision, but no earlier than January 31, 2016, PNM will complete installation of SNCR technology on SJGS Units 1 and 4 and meet an emission limit of 0.23 lb/MMBtu on a rolling 30-day average basis;[4]
- PNM will retire SJGS Units 2 and 3 by December 31, 2017; and
- PNM will commence a program of testing and evaluation, after the installation of the SNCRs, to determine if additional NO_X emission reductions can be achieved. The Testing Program, consisting of SNCR performance testing, fuel performance testing, and long-term performance evaluation, must be completed no later than January 31, 2017.[5]

In addition to approving New Mexico's revised enforceable NO_X BART determination for SJGS, we are also approving New Mexico's 2011 Visibility Transport SIP revision, as revised in 2013, because it demonstrates that emissions from all sources in New Mexico are sufficiently controlled to eliminate interference with the visibility programs of other states. We are also approving as part of New Mexico's SIP the operative sections of the 2013 permit for SJGS on the basis that the SO_2 and NO_X emission limits for the SJGS will sufficiently prevent emissions from sources in New Mexico from interfering with the visibility programs of other states.

New Mexico has incorporated emission limits and requirements for unit shutdowns into the 2013 preconstruction permit that was submitted as part of the SIP revisions. Specifically, as a source-specific requirement of the New Mexico SIP for regional haze and visibility transport, section A112C of the 2013 SJGS permit provides a more stringent SO_2 emission limit (i.e., than previously permitted or SIP-required) as part of the State Alternative and a NO_X emission limit reflecting the State Alternative. The permit contains three independent scenarios under section A112: A, B, and C. Consistent with the terms of the permit, our final approval puts Scenario C into effect, while the other two scenarios are now moot.

We have determined that the 2013 RH SIP revision and corresponding visibility transport SIP revisions are approvable because the revisions were adopted and submitted in accordance with the CAA and EPA's regulations regarding the regional haze program and meet the CAA provisions concerning non-interference with programs to protect visibility in other states. We are taking this final action today under section 110 and part C of the CAA. Consistent with the discussion provided in our proposal, the 2011 RH SIP provision for NO_X BART is fully superseded and/or moot with today's approval and does not constitute a SIP submittal pending EPA review and action.

In addition, as our May 12, 2014 proposal explained, the approval of the SIP submittals enables EPA to withdraw or rescind the Federal Implementation Plan (FIP) that was earlier promulgated

[1] We are acting on everything not yet acted upon in the 2011 RH SIP revision that pertains to the 2013 NO_X BART determination. The 2013 RH SIP revision explains that the revised, more recent NO_X BART determination would ''supersede'' the 2011 NO_X BART determination if EPA approves it. Certain NMED documents from the 2011 RH SIP revision are relevant to the state's 2013 conclusions regarding NO_X BART, but other information that relates solely to the 2011 NO_X BART determination is now moot with EPA's finalized approval of the superseding BART determination.

[2] Term Sheet Between the U.S. Environmental Protection Agency, Public Service Company of New Mexico and the State of New Mexico (''Term Sheet''), February 15, 2013.

[3] NSR Technical Permit Revision, NSR Permit No. 0063–M6R3, November 1, 2013.

[4] The permit conditions at A112C specify the averaging time and calculation methodology for the enforceable emission limit for NO_X on Units 1 and 4 of 0.23 lb/MMBtu on a boiler-operating-day basis, averaged across the two units.

[5] A delay may be allowed under special circumstances that would limit the number of evaluation days during both summer and winter months, as discussed in the paragraph 1(d)(iv) of the Term Sheet.

to address the same requirements. See 79 FR 26909. Accordingly, as a result of today's approval action, we are also taking action to withdraw the regional haze FIP for New Mexico at 40 CFR 52.1628. The action to withdraw the FIP is in a separate action contained in today's **Federal Register**. Upon the effective date of the **Federal Register** documents, the requirements in the approved SIP apply and the FIP requirements for the SJGS are withdrawn.

III. Response to Comments

We received several comments on our proposed approval of the 2013 RH SIP revision that were submitted by PNM, NMED, the Navajo Nation, the National Park Service, Tucson Electric Power Company, Utah Associated Municipal Power Systems, a consortium of environmental organizations,[6] Santa Fe Monthly Meeting Peace and Social Concerns Committee, and Earth Justice. Copies of the comments are available in the docket for this rulemaking. Summaries of the issues raised in the comment letters, and our responses, follow:

Comment: A commenter, identified as a part owner of SJGS Unit 4, requested a 12-month extension of the SIP's compliance period for meeting the new NO_X limits. The commenter referred to the EPA proposal, ''Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units,'' subsequently published at 79 FR 34829 (June 18, 2014), and asserted that an extension would allow for adequate consideration of the impacts of the proposal relative to the investment considerations of installing SNCRs at the SJGS. The commenter stated that ownership of SJGS presently includes utilities from five Western states, and the interstate nature of ownership and emissions complicates a coordinated compliance planning process. Another commenter, identified as a part owner of SJGS Units 1 and 2, supported the costs, anticipated haze reduction, and other environmental benefits associated with the 2013 RH SIP revision, but similarly requested that EPA amend its approval and provide additional time for installation of SNCR on the basis that more time is needed to study the proposed standards for reducing carbon pollution at existing EGUs.

Response: EPA believes that CAA section 111(d) efforts and actions will tend to contribute to overall air quality improvements and thus should be complementary to criteria pollutant and regional haze SIP efforts but do not provide a basis for delaying implementation of these efforts. See 79 FR at 34931. The 111(d) proposal specifically mentions the next 10-year SIP revision for regional haze that is due by July 2018 and covers the time period through 2028, explaining that the timeframes proposed for submittal of the CAA section 111(d) state plans will allow considerable time for coordination by states in the development of their respective plans. The proposal does not suggest that further delays are warranted for implementing the regional haze requirements that were first due in December 2007. Indeed, states and affected sources will be able to take into account requirements of programs such as Regional Haze in considering the development of state plans under section 111(d).

More importantly here, EPA cannot alter an otherwise approvable SIP revision to extend a compliance date. The 2013 RH SIP revision submitted by New Mexico provides the compliance date. Moreover, the compliance dates that New Mexico set are as ''expeditious as practicable,'' as required by the CAA. See CAA section 169A(b)(2)(A), (g)(2). Because the compliance dates meet CAA requirements, EPA cannot establish different compliance dates when taking action on the SIP revision. See CAA section 110(k)(3), (*l*).

Comment: A commenter stated that unit retirements and NO_X controls at SJGS would reduce regional haze and provide other significant environmental, economic, and health benefits, and states that ''these additional benefits must be recognized.'' The commenter requested, however, that EPA's approval contain a statement reflecting EPA's willingness to consider eliminating the NO_X emission control requirements on Units 1 and 4 if, by December 31, 2016, there is a commitment to permanently retire Unit 1 and/or 4 within a reasonably short time-frame. PNM responded to this request in its own comment (although it mistakenly cited the date of December 31, 2015 when paraphrasing the comment). PNM's comment stated that EPA should reject the request for an EPA statement regarding the retirement of additional capacity because the Agency lacks any analysis or basis upon which to evaluate the efficacy or legality of the request.

Response: We decline to endorse a proposal not before us, as suggested by the commenter. Because the 2013 RH SIP revision meets CAA requirements, we are required to approve it. See CAA section 110(k)(3),(*l*).

Comment: PNM submitted a comment supporting the proposed rule, agreeing that the 2013 RH SIP revision is reasonable, even when EPA's estimated SCR costs are used. PNM asserted, however, that its own estimated SCR capital costs were confirmed by detailed bids from engineering, procurement, and construction contractors, and that none of the bids were in the range of EPA's estimated SCR costs. PNM believed that these bids should satisfy any requirement for enhanced documentation to support higher SCR costs, but acknowledged that their cost estimates provide different treatment to items such as sorbent injection, apportionment of balanced draft costs, and fees and contingencies.

Response: We appreciate PMN's comment supporting approval. As identified by the comment, EPA's cost analysis for SCR was based on a different design (e.g., no costs for sorbent injection) than the design PNM used when soliciting bids from vendors. PNM's bids were not submitted with the comment and, based on the available documentation, we remain unable to conclude that certain line items in PNM's SCR cost estimates are well supported. While the BART Guidelines explain that data from vendor bids may be used in developing equipment cost estimates, this does not mean that bottom-line figures can serve as a substitute for a full cost analysis or that all costs included therein would be appropriate for making an assessment of cost-effectiveness. The expectation remains that the cost analysis maintain and improve consistency through adherence to the OAQPS Control Cost Manual, where possible. Moreover, the BART Guidelines state that documentation is expected, and indeed especially important, where a state believes that costs will be unreasonable even though other recent retrofits have cost-effectiveness values that are within what has been considered a reasonable range. As we established in our FIP, recent SCR retrofits at coal-fired power plants have been found to be cost-effective, and this cost effectiveness is generally validated by large emission reductions even when there are large capital costs.

[6] Western Resource Advocates, New Energy Economy, WildEarth Guardians, Conservation Voters of New Mexico, Physicians for Social Responsibility (NM), Environment New Mexico/Environment New Mexico Research and Policy Center, New Mexico Independent Power Producers Climate Change Leadership Institute, Santa Fe Innovation Park, The Global Warming Express, Chainbreaker Collective, Center for Civic Policy, Citizens' Climate Lobby, and 350.org. These stakeholders also submitted a letter that has been added to the docket as a late comment; it raises no issues not already addressed by our response to comments.

Comment: NMED provided comments in support of approval and stated that they generally concur with our description and evaluation of the State Alternative for NO_X BART.

Response: We appreciate this comment.

Comment: NMED commented that states cannot be required to take a unit-specific (or unit-by-unit) approach to assessing the BART factors. In *American Corn Growers v. EPA,* 291 F.3d 1, 8 (D.C. Cir. 2002), a reviewing court held that it was invalid to consider visibility impacts on a multiple-source basis while employing a source-specific approach to the other four BART factors. The commenter stated that requiring states to assess visibility on a facility-wide basis while considering the other factors on a unit-by-unit basis would be similarly unsupported by the statute and would impermissibly constrain state authority.

Response: We disagree with this comment. In *American Corn Growers,* the D.C. Circuit held that EPA could not adopt a ''group-BART approach'' to the visibility factor because it could force states to require BART controls at some sources without any empirical evidence of a particular source's contribution to visibility impairment in a Class I area. As a result, the Regional Haze Rule and BART Guidelines require states to analyze the five statutory factors for each BART-eligible source without reference to the benefits that BART will achieve at other sources. Beyond this, however, the court did not opine on how the BART factors should be analyzed or weighed by states, let alone proscribe a unit-specific or prescribe a facility-wide approach to BART.

As we recently explained in our action on the Wyoming regional haze SIP, see 79 FR 5031 (Jan. 30, 2014), the BART Guidelines prescribe that states ''must conduct a visibility improvement determination for the source(s) as part of the BART determination,'' [7] and we interpret this language as requiring states to consider the visibility improvement from BART applied to the BART-eligible source as a whole. We do not believe that either the CAA or the BART Guidelines mandate either a unit-specific or a facility-wide approach to analyzing or weighing the remaining BART factors. In most circumstances, however, we believe that states should use a unit-specific approach to assessing the technical feasibility and costs of controls options, as well as the existing controls and remaining useful life of BART-eligible units. This approach is clearly contemplated by the BART Guidelines and has been used for decades in other CAA contexts, such as the evaluation of Best Available Control Technology (BACT) for new and modified major stationary sources.[8] A unit-specific approach to these factors is appropriate because the age, type, size, location, and emission characteristics of the various emission units at a source can differ greatly, and many control options by design apply to a single unit. However, in unique circumstances, such as in situations where a control strategy can be implemented facility-wide or where the benefits of unit shutdowns must be taken into account, then we believe that the CAA and BART Guidelines provide states with the flexibility to analyze and weigh the BART factors for the source as a whole, rather than for its constituent emission units.

Comment: NMED responded to a statement in the proposal that expressed some concern with the appropriateness of including SO_2 reductions from units 1 and 4 in one of the NO_X BART control options analyzed, rather than as part of the facility's baseline emissions, by explaining that the SO_2 limit of 0.10 lbs/MMBtu is required by the 2013 RH SIP revision alone and would not be required if the FIP continues to remain in force.

Response: While the inclusion of the SO_2 reductions in the SIP helps to further demonstrate non-interference with the visibility protection programs of other states, in keeping with the visibility transport requirements of CAA section 110(a)(2)(D)(i)(I), and helps in showing the overall visibility benefits of the 2013 RH SIP revision, we had noted that those reductions do not specifically lend support to a visibility improvement determination for NO_X BART through the application of NO_X controls. However, no commenters took issue with the inclusion of SO_2 reductions in the studied scenarios or insisted that refinements were necessary on this point, and it remains our view that the inclusion of the reductions did not meaningfully impact the evaluation of visibility benefits due to NO_X reductions at the facility.

Comment: The Navajo Nation submitted a comment supporting the proposal as the best scenario for meeting BART, endorsing it for having reasonable costs of compliance and a realistic timeframe. The comment also stated that the 2013 RH SIP revision addressed concerns regarding potential job losses faced by Navajo work forces at the SJGS and San Juan mine more effectively than EPA's FIP.

Response: We appreciate this comment supporting approval.

Comment: One commenter stated that the 2013 RH SIP revision appears to be an alternative consistent with the intent of 40 CFR 51.308(e)(2) and therefore needs to demonstrate greater reasonable progress than EPA's BART determination. The fact that the 2013 RH SIP revision does not demonstrate greater reasonable progress than EPA's BART determination gave the commenter concern because the commenter considered it a departure from rules and guidance. The commenter also asserted that previous EPA decisions have required a source to demonstrate its proposed alternative is better than EPA's BART determination, citing actions for Idaho and the Four Corners Power Plant.[9]

Response: We disagree that the 2013 RH SIP revision appears to be a BART alternative under section 51.308(e)(2). New Mexico explicitly stated that it was not evaluating a BART alternative when responding to comments during the state process and again when submitting comments to support our proposed approval. Therefore, New Mexico was not required to make a demonstration of greater reasonable progress. Instead, New Mexico evaluated a new, source-specific BART determination under section 51.308(e)(1). To fully account for the source owner's proposed unit shutdowns, New Mexico chose to weigh the BART factors in light of source-wide considerations. As explained in our proposal and elsewhere in our responses to comments, we believe that this approach is permissible under the CAA and the BART Guidelines. The prior EPA actions cited by the commenter are not relevant to our action on New Mexico's NO_X BART determination for SJGS. While both the Four Corners and Idaho actions contained BART alternatives that demonstrated greater reasonable progress, we are not evaluating a BART alternative here. Moreover, while the Idaho action also involved two new BART determinations that happened to be more stringent than the state's original BART determinations, neither the CAA nor our regulations require a new BART determination to be more stringent in every instance in order to supersede a prior BART determination.

Comment: One commenter argued that the CAA requires that any

[7] 40 CFR part 51, app. Y, section IV.D.5.

[8] See New Source Review Workshop Manual (Oct. 1990), available at *http://www.epa.gov/ttn/nsr/gen/wkshpman.pdf.*

[9] The comment provided a citation to 79 FR 23273 (April 28, 2014) relating to the Tasco facility in Idaho, and one to ''78 FR 24112,'' which we interpret as having intended to refer to 78 FR 60700 (October 2, 2013) (bearing ''FR Doc. 2013–24112'').

alternative regional haze strategy must outperform the visibility gains of the existing strategy or, in other words, be ''better than BART,'' and the 2013 RH SIP revision fails to accomplish this. Citing to CAA section 7410(a) and (*l*), the commenter argued that the characterization of the 2013 RH SIP revision as including a new BART determination is plainly unlawful because the State has not undertaken the BART analysis required by the CAA and BART Guidelines, and EPA did not provide any explanation for why the SIP revision is approvable when the FIP had a more stringent BART determination.

Response: As explained above, the 2013 RH SIP revision was not submitted to meet section 51.308(e)(2) requirements, so it is not required to be better than BART. As we stated in the proposal, the 2013 RH SIP revision contains a new, source-specific BART analysis that is based on different underlying facts than those that were present when we evaluated our FIP. Thus, the commenter's assertion that the state failed to undertake a BART analysis is clearly incorrect. Finally, contrary to the commenter's assertion, CAA section 110(*l*) does not prohibit a state from submitting a SIP that is less stringent than a FIP. Our proposal provided an analysis conducted under section 110(*l*), which showed that the 2013 RH SIP revision would not interfere with the attainment or maintenance of any NAAQS or any other CAA requirement. See 79 FR at 26920. Because New Mexico complied with the CAA's visibility protection provisions, the Regional Haze Rule, and the BART Guidelines, and made a reasonable control determination based on the weighing of the five factors, EPA is required to approve the 2013 RH SIP revision.

Comment: One commenter stated that the 2013 RH SIP revision does not comply with the mandatory unit-specific analytical approach required by the CAA. The commenter argued that the BART Guidelines require BART to be determined on a unit-specific basis because a BART emission limit must be established for each affected emission unit. The commenter also pointed out that the BART Guidelines provide an example of a unit-specific approach where they state that ''control options must be analyzed for Units B through H as well as Unit A.'' Consequently, the commenter concluded that New Mexico and EPA are required to follow the unit-specific approach.

Response: We disagree with this comment. The portion of the BART Guidelines cited by the commenter explains how all BART units at the subject to BART source must be included in the BART analysis. The 2013 SIP revision implements BART at each BART-subject unit by requiring either shutdowns or controls. Also, while the BART Guidelines clearly contemplate that states will analyze technical feasibility and cost-effectiveness on a unit-specific basis, they do not explicitly require such an approach, nor do they provide guidance for situations in which a source proposes unit shutdowns as an emission-reduction strategy. Moreover, contrary to the commenter's assertion, the CAA does not mandate any specific analytical approach. Consequently, in situations where a state is contemplating a novel control scenario not contemplated by the BART Guidelines, such as one that involves unit shutdowns, we believe that states have the flexibility to tailor their BART analyses by evaluating and weighing the BART factors on a facility-wide (i.e., ''source'') basis rather than on a unit-specific basis in order to account for the emission reductions and benefits that would directly result from the shutdowns. Moreover, while BART emission limits are also typically established for each unit that comprises the BART-eligible source, as New Mexico chose to do here, nothing in the CAA or BART Guidelines prevents a state from setting an emission limit that averages emissions across multiple units, so long as that limit is ''based on the degree of reduction achievable through the best system of continuous emission reduction for each pollutant.'' See 40 CFR 51.301.

Comment: One commenter stated that a facility-wide BART determination is inconsistent with other EPA actions. The commenter cited to EPA actions in Indiana and Montana to support this contention.[10] The commenter also pointed out that EPA used a unit-specific approach to analyzing the first four factors when promulgating its FIP for SJGS. The commenter called EPA's proposal an unexplained departure from EPA's past practice in implementing its binding guidelines.

Response: We disagree with this comment for the same reasons explained above. EPA's actions in Indiana, Montana, and our FIP for SJGS did not involve unit shutdowns and therefore are not determinative of how the BART statutory factors should be considered and weighed in this context. Also, contrary to the commenter's assertion, we explained in our proposal why New Mexico's approach was reasonable in light of the unique circumstances presented and, on that basis, cannot validly be seen as any departure from past actions. As was stated, the state's approach reasonably takes into account the visibility, energy, and non-air quality environmental benefits associated with unit shutdowns. See 79 FR 26918. Furthermore, the 2013 SIP revision implements BART at each BART-subject unit by requiring either shutdowns or controls.

Comment: A commenter stated that EPA's proposal arbitrarily rejected SCR in favor of less effective pollution controls even though EPA found that an emission limitation based on SCR was BART in the FIP. The commenter explained that SCR provides the best visibility outcomes and is cost-effective.

Response: Under different factual circumstances, we determined that SCR for the four SJGS units had reasonable average cost-effectiveness values and would promote significant visibility improvements, thereby supporting the basis for the emission limits set forth in the FIP. In the 2013 RH SIP revision, New Mexico demonstrated that SNCR in tandem with shutdowns has visibility benefits on par with those anticipated from the FIP at much lower overall costs, while also reducing overall energy and non-air quality environmental impacts. Although we continue to believe that SCR is a cost-effective control and are not abandoning the legal and technical basis for our FIP, we believe that when cost, energy and non-air quality environmental impacts, and anticipated visibility benefits are all taken into consideration, New Mexico's determination that the State Alternative is BART is reasonable. While SCR remains cost-effective on a $/ton basis, the incremental visibility benefit of the four-SCR scenario of the FIP over the State Alternative is small at most Class I areas, and New Mexico reasonably concluded that this small additional visibility benefit, when considered with the difference in the energy and non-air quality environmental impacts, did not justify the large increase in costs associated with the installation of SCR on all four units.

Comment: One commenter stated that the visibility impacts of the State Alternative are significantly worse than the four-SCR scenario in the FIP. The commenter explained that the difference in visibility impacts between the two scenarios will be 0.47 dv at Mesa Verde, 0.24 dv at Canyonlands, and 0.13 dv at

[10] Specifically, the commenter cited our Indiana regional haze SIP action (77 FR 3975, 3982 (Jan. 26, 2012)) for its statement that a source needs to ''implement BART at each BART-subject unit,'' and the Montana regional haze FIP (77 FR 57864, Sept. 18, 2012) for discussing statutory BART factors for units at a BART source.

Weminuche. The sum of these visibility differences is 0.84 dv, which is above the 0.5 dv threshold that is used to determine ''significance.'' Also, the State Alternative will result in five more days with impacts over 1 dv at Mesa Verde, three more days at Arches, and two more days at both Canyonlands and La Garita when compared to the four-SCR scenario in the FIP.

Response: As we stated in the proposal when comparing the two scenarios, while we have some concern with the modeled visibility differences between the two control scenarios for Mesa Verde and Canyonlands, we find that the State's decision to select the State Alternative was ultimately reasonable, especially considering the costs of compliance and the energy and non-air quality environmental impacts of the two scenarios. We noted that the difference in visibility impacts between the two scenarios are negligible at most of the Class I areas examined. The average difference at the 13 other Class I areas (other than Mesa Verde, Canyonlands, and Weminuche) is less than 0.1 dv between the two control scenarios. In considering the number of days impacted, eleven Class I areas show no difference in the number of days with impacts over 1 dv. We also note that the typical application of 0.5 dv as a contribution threshold comes in the context of assessing impacts at a single Class I area, not cumulative impacts across multiple Class I areas.

Comment: One commenter stated that the CAA requires EPA to either improve the State Alternative or reject it altogether.

Response: We disagree with this comment. As we explained earlier, EPA is required to approve any SIP revision that meets CAA requirements. See CAA section 110(k)(3), (*l*). EPA does not have authority to improve a SIP revision that is otherwise approvable, and the commenter has provided no basis for EPA to disapprove the 2013 RH SIP revision.

Comment: One commenter stated that EPA based its proposed approval on a fundamentally flawed cost-benefit analysis that artificially inflated the cost and artificially reduced the benefits of SCR. The commenter also thought that New Mexico underestimated the costs of SNCR. The commenter argued that EPA had no rational basis for concluding that cost refinements would not change the result. The commenter cited to *Center for Biological Diversity v. National Highway Traffic Safety Administration,* 538 F.3d 1172, 1201–03 (9th Cir. 2008), for the proposition that EPA must re-calculate a cost value that would significantly alter the analysis. With cost corrections, the commenter believed that New Mexico's capital cost assumptions for SCR would be cut in half, demonstrating that SCR remains cost-effective at Units 1 and 4. The commenter provided an attachment that highlighted how New Mexico's cost range for SCR at SJGS was well above the cost per kilowatt for SCR demonstrated by other cost studies for comparable retrofits.

Response: We maintain our view that SCR has favorable and reasonable average cost-effectiveness values at SJGS under the technical record developed for the FIP, and we agree with the comment that New Mexico's cost range for SCR is still high compared to other cost studies. Even so, as discussed in response to comments from PNM concerning cost, the state's BART selection in this case is reasonable. New Mexico was advantaged with the full technical record that we developed to promulgate the FIP, and the state declared that it would favor the 2013 RH SIP revision even if it were to adopt and utilize the lower costs for SCR that we had relied on in promulgating the FIP. In addition, in our proposed action, we recalculated the annual cost and incremental cost-effectiveness of the four-SCR option using the cost estimates presented in the FIP. Thus, there is a significant record basis for our finding that lower SCR costs would not change the result of our action.

As to the state's alleged underestimation of SNCR costs, the comment does not provide any details to enable us to provide a response. We also considered the Ninth Circuit's decision in *Center for Biological Diversity v. National Highway Traffic Safety Administration* and do not see how it has any bearing on the issue of costs in this case. In that case, the Ninth Circuit faulted NHTSA for its failure to monetize the value of carbon emissions in setting fuel economy standards. In addition to the fact that the case did not concern BART determinations, the comment does not identify any particular line item in the state's analysis of SCR costs that has not been monetized.

Comment: One commenter stated that our proposal failed to consider the prospect of installing SCR on Units 1 and 4, while still shutting down Units 2 and 3. The commenter noted that such a scenario would lead to even greater visibility benefits. The commenter provided modeled visibility results and estimates of the level of emission reductions that would result from this scenario and concluded that the State Alternative was inferior.

Response: While we acknowledge that a scenario at SJGS involving two shutdowns and two SCRs would result in superior visibility benefits than the State Alternative or even the FIP, the state did not present this scenario to us in the 2013 RH SIP revision. As we explained above, we are required to evaluate the SIP revision that is before us. Moreover, in situations that involve the voluntary retirement of units, states need the flexibility to analyze control scenarios that have the support of the source owner. There is no evidence in the record indicating that PNM would have volunteered to retire two of its units if SCR were required on the remaining units.

Comment: One commenter stated that the NMED's BART analysis contains a flawed visibility analysis. The commenter argued that NMED arbitrarily ignored fourteen Class I areas between 300 km and 440 km from SJGS in its cumulative visibility analysis, which was an arbitrary and unexplained departure from EPA's analytical approach that was followed in analyzing the Big Stone and Colstrip power plants. The commenter concluded that the failure to assess impacts at more distant Class I areas masked the full visibility benefit of SCR. Finally, the commenter referred to comments submitted by the National Park Service to New Mexico on their proposed SIP revision, which stated that the visibility modeling was not done according to the BART Guidelines.

Response: We disagree with this comment. In regard to selecting a model and developing a modeling protocol, the BART Guidelines refer to our Guideline on Air Quality Models [11] and the Interagency Workgroup on Air Quality Modeling (IWAQM) Phase 2 report.[12] The IWAQM report reviewed model-performance evaluations of CALPUFF as a function of distance from the source and recommended the use of CALPUFF for transport distances of order 200 km and less. The report also recommended that the use of CALPUFF for characterizing transport beyond 200 to 300 km should be done cautiously with

[11] Appendix W to 40 CFR Part 51 ''Guideline to Air Quality Models'' states: ''It was concluded from these case studies that the CALPUFF dispersion model had performed in a reasonable manner, and had no apparent bias toward over or under prediction, so long as the transport distance was limited to less than 300 km.''

[12] Environmental Protection Agency, 1998. Interagency Workgroup on Air Quality Modeling (IWAQM) Phase 2 Summary Report and Recommendations for Modeling Long-Range Transport Impacts. Publication No. EPA–454/R–98–019. Office of Air Quality Planning & Standards, Research Triangle Park, NC. (NTIS No. PB 99–121089)

an awareness of the likely problems involved. Consistent with this recommendation, we believe that it is reasonable to use CALPUFF to evaluate visibility impacts up to 300 km. While we agree with the commenter that emissions from SJGS may impact Class I areas at distances greater than 300 km, the IWAQM report cautions that CALPUFF results are less reliable at distances greater than 300 km. Therefore, we do not think that it is arbitrary to exclude more distant receptors from a visibility analysis or to base the visibility assessment for a BART determination on visibility impacts within 300 km from the source.

Contrary to the commenter's suggestion, this was the same approach followed when modeling the visibility benefits associated with various control scenarios at the Colstrip power plant. See 77 FR 57867–68. In regard to the Big Stone power plant, South Dakota performed modeling for Class I areas beyond 300 km only because there were no Class I areas within 300 km of the source. As a result, South Dakota worked with EPA to develop a special modeling protocol that incorporated CALPUFF's puff-splitting option despite the IWAQM report's conceptual concerns with that feature. Moreover, South Dakota expressly acknowledged that it was departing from EPA's guidance. Consequently, we believe that Big Stone presented an exception to the general rule that CALPUFF be applied to assess visibility impacts only on those Class I areas within 300 km of the source. Finally, in regard to NPS's comments concerning the visibility analysis during the state process, we agree with the response provided at the time by NMED [13] and note that NPS did not raise these concerns again in their comments on our proposed action.

Comment: A commenter stated that the proposed 0.23 lb/MMBtu limit does not apply to each unit due to a cross-unit averaging provision, so the emissions from a given unit could be higher than 0.23 lb/MMbtu.

Response: In this case, it is appropriate for the 2013 RH SIP revision to allow SJGS to average emissions across its BART-eligible emission units within the fence line. The BART Guidelines allow this approach when, as here, the reductions would be equal to those reductions that would be obtained by simply controlling each of the BART-eligible units that constitute the BART source. Because SJGS is required to demonstrate continuous compliance over a reasonable averaging time, the reductions associated with the assigned limit are assured. As part of its five-factor analysis, New Mexico evaluated the control effectiveness of SNCR and determined that SNCR could achieve an emission rate of 0.23 lb/MMBtu on each unit based on tests and an updated performance guarantee from the vendor.[14] Consistent with the BART Guidelines, the permit conditions at A112C specify the averaging time and calculation methodology for the enforceable emission limit, which must be calculated on a 30-boiler-operating-day basis, averaged across the two units. While we agree with the commenter that emissions from either unit may exceed 0.23 lb/MMBtu on a given day, the combined emissions from both units cannot exceed 0.23 lb/MMBtu over the course of the averaging period, so total emission reductions will be equal to those that would be obtained under two separate limits.

Comment: One commenter alleged that our proposal implied that PNM's decision to retire Units 2 and 3 was solely taken for the purpose of meeting BART. The commenter suggested that EPA should explicitly state whether this was the case for the record or discuss whether independent reasons would require or motivate the shutdown of the units.

Response: We fail to see how this comment is relevant to our evaluation of the 2013 RH SIP revision. Nevertheless, we note that, when developing the FIP, we assumed that the remaining useful life of all four units at SJGS exceeded 30 years, and the 2013 RH SIP revision provides no information that would change that assumption. Nor does the SIP revision provide any information to suggest that PNM had motivations other than creating a more cost-effective BART-compliance scenario when volunteering to shut down Units 2 and 3.

Comment: A commenter stated that, while our proposal implied that there will be no capacity increase elsewhere or at the SJGS to replace the lost capacity from Units 2 and 3, the final rule should make this explicit to properly give weight to the benefits from their retirement.

Response: We disagree with this comment. As an initial matter, our proposal did not imply that the retirement of Units 2 and 3 could be undertaken without the possible need to address lost capacity. Most likely, the lost capacity will be replaced through some combination of conservation, efficiency, and new capacity. More importantly, however, the CAA does not require an analysis of the statutory factors to include the consideration of hypothetical emissions increases at other facilities or even at the same facility due to lost capacity. We also note that any emissions units that might be constructed at SJGS in the future would likely be subject to both BACT and any applicable new source performance standards. Moreover, all emission units would be subject to analysis under the regional haze requirements for reasonable progress in future planning periods.

Comment: One commenter asserted that our proposal failed to explain how New Mexico could permissibly reach a conclusion that directly opposes EPA's conclusion in the FIP. The commenter stated that the voluntary retirement of Units 2 and 3 did not change the fact that SCR remains cost-effective at the Units 1 and 4.

Response: We disagree that the 2013 RH SIP reached a conclusion that directly opposes the conclusion we made in promulgating the FIP. Under different factual circumstances, we determined that SCR for the four SJGS units had reasonable average cost-effectiveness values and would promote significant visibility improvements, thereby supporting the basis for the emission limits set forth in the FIP. As we stated in the proposal, the 2013 RH SIP revision contains a new, source-specific BART analysis that is based on different underlying facts than those that were present when we evaluated our FIP. We were not presented with the retirement of Units 2 and 3 when we promulgated the FIP. With this information in hand, New Mexico permissibly conducted a new BART analysis using a facility-wide approach that allowed the full range of visibility, energy, and non-air quality environmental benefits associated with the shutdowns to be taken into account. While the average cost-effectiveness of SCR on Units 1 and 4 remains reasonable, New Mexico demonstrated that the incremental cost-effectiveness of the four-SCR scenario in our FIP over the State Alternative was high when compared against the additional visibility improvements from the former, while also considering the energy, and non-air quality environmental benefits associated with the State Alternative.

Comment: One commenter thought that the timeline for the installation of SNCR was too long because SNCR is a simpler technology to install than SCR.

Response: We agree that SNCR is a simpler technology to install than SCR

[13] Available as NMED Ex. 14 of the 2013 RH SIP revision.

[14] Public Service Company of New Mexico, San Juan Generating Station, Revised SNCR Analysis, February 11, 2011 (2011 NM RH SIP, NMED Ex. 7t).

and requires less time for installation. New Mexico determined, and we agree, that the compliance timeframe in the 2013 RH SIP revision is as expeditious as practicable, as required under 40 CFR 51.308(e)(1)(iv).

Comment: One commenter thought that the 0.05 lb/MMBtu rate used for the study of SCR as a BART control option was likely too high. The commenter suggested that many units, such as those in Dry Fork, WY and Morgantown, MD, are routinely achieving emission rates in the range of 0.02–0.04 lb/MMBtu. Reducing the studied emission limit for SCR to 0.04 lb/MMBtu would show the option to be even more cost-effective.

Response: We disagree that lower control rates needed to be evaluated for SCR. We evaluated the monthly emission data from these two facilities for the past several years (available at EPA's Air Market Program data Web site: *www.epa.gov/ampd*). All three units have monthly emission rates that sometimes exceed 0.04 lb/MMBtu. Indeed, the Morgantown units have months where the monthly emission rate is 0.05 lb/MMBtu or higher. In promulgating the FIP, we evaluated the performance of both new and retrofit SCRs and determined that 0.05 lb/MMBtu on a 30-boiler-operating-day average was the appropriate emission limit for SCR at the SJGS units. See 76 FR 491 and 76 FR 52388. New Mexico appropriately used this same rate in their cost and visibility analyses for the four-SCR scenario as part of its BART evaluation.

IV. Statutory and Executive Order Reviews

The Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air 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, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law. Consistent with EPA policy, EPA offered consultation to tribes regarding this rulemaking action.

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 December 8, 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).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Regional haze, Reporting and recordkeeping requirements, Sulfur dioxide, and Visibility.

Dated: September 26, 2014.

Samuel Coleman,

Acting Regional Administrator, Region 6

Therefore, 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.*

■ 2. In § 52.1620:

■ a. In paragraph (d), the table titled ''EPA-Approved New Mexico Source-Specific Requirements'' is amended by adding a first entry for ''Units 1, 2, 3, & 4 of the San Juan Generating Station'' to the table.

■ b. In paragraph (e), the second table entitled ''EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the New Mexico SIP,'' is amended by revising the entry for ''Regional Haze SIP under 40 CFR 51.309, Statewide (except Bernalillo County)'' and adding a new entry at the end for ''Revision to satisfy the requirements of Clean Air Act 110(a)(2)(D)(i)(II) with respect to visibility for the 8-hour Ozone and $PM_{2.5}$ NAAQS''.

The additions and revisions read as follows:

§ 52.1620. Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED NEW MEXICO SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit number	State approval/ effective date	EPA Approval date	Explanation
Units 1, 2, 3, & 4 of the San Juan Generating Station.	NSR Permit No. 0063–M6R3, Section A112C.	11/1/2013	10/9/14 [Insert FR citation]	Ch. 10 (BART) of SIP under 40 CFR 51.309(g).

(e) * * *

* * * * *

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE NEW MEXICO SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/ effective date	EPA approval date	Explanation
* *	* *		* *	*
Regional Haze SIP under 40 CFR 51.309.	Statewide (except Bernalillo County).	6/24/2011, 10/7/2013, 11/1/2013	11/27/2012, 77 FR 70693, 10/9/14 [Insert FR citation].	
* *	* *		* *	*
Revision to satisfy the requirements of Clean Air Act 110(a)(2)(D)(i)(II) with respect to visibility for the 8-hour Ozone and $PM_{2.5}$ NAAQS.	Statewide (except Bernalillo County).	10/7/2013, 11/1/2013	10/9/14 [Insert FR citation].	

§ 52.1629 [Removed and Reserved]

■ 3. Section 52.1629 is removed and reserved.

[FR Doc. 2014–23904 Filed 10–8–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–R08–OAR–2014–0272; FRL–9917–49–Region 9]

Automatic Delegation of Authority to the States of Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming To Implement and Enforce New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action informs the public that on February 27, 2014, the EPA authorized automatic delegation to implement and enforce Clean Air Act (CAA) New Source Performance Standards (NSPS) to the states of Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming (hereafter Region 8 states). Also in this action, EPA is taking direct final action to delete the delegation status table of NSPS for Region 8 states in the Code of Federal Regulations (CFR) and replace it with a Web page address reflecting current delegation status of Region 8 states.

DATES: This rule is effective on December 8, 2014 without further notice, unless EPA receives adverse comment by November 10, 2014. If adverse comment is 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–R08–OAR–2014–0272, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: fulton.abby@epa.gov.*
- *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.
- *Hand Delivery:* Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket EPA–R08–OAR–2014–0272. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, 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 *http://www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, 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. For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: 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., 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 *http://www.regulations.gov* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Abby Fulton, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. (303) 312–6563, *fulton.abby@epa.gov.*

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *NSPS* mean or refer to New Source Performance Standards.

(iv) The initials *CBI* mean or refer to Confidential Business Information.

(v) The initials *CFR* mean or refer to Code of Federal Regulations.

(vi) The initials *IBR* mean or refer to Incorporate by Reference.

I. General Information

A. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *http://regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

b. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

d. Describe any assumptions and provide any technical information and/or data that you used.

e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

h. Make sure to submit your comments by the comment period deadline identified.

II. Delegation of Authority

The CAA section 111(c) authorizes the EPA to delegate authority to any state agency which submits adequate regulatory procedures for implementation and enforcement of the NSPS program. The NSPS are codified at 40 CFR part 60. Delegation confers primary responsibility for implementation and enforcement to the respective state agency; however, the EPA also retains the concurrent authority to enforce the standards.

Section 111(c) and an approved part 70 operating permits (title V) program authorizes states to receive automatic delegation of section 111 standards if the federal standards are incorporated by reference (IBR). The title V program approval is a demonstration that the state has the ability to implement and enforce existing section 111 standards and a commitment to implement and enforce future standards to assure the timely issuance or revision of part 70 permits. Once a state IBR's NSPS, the state then has delegation automatically to implement and enforce those standards for affected sources when the NSPS are incorporated unchanged into state rules. The EPA has determined that Region 8 state programs contain adequate and effective procedures for implementation and enforcement of those federal standards. On February 27, 2014, the EPA provided notice of automatic delegation to Region 8 state agencies to review and enforce all future NSPS standards that are incorporated into state rules. Letters (including enclosures) to each Region 8 state can be found at *http://www.regulations.gov.*

III. CFR Update

This action also replaces the EPA Region 8 delegation table in 40 CFR 60.4(c) with a Web address to inform the public of current NSPS delegations to Region 8 states. The table is being deleted because it no longer contains accurate information regarding NSPS delegations. A current delegation summary of NSPS delegations to Region 8 states is posted under the ''Delegations of Authorities'' link at: *http://www2.epa.gov/region8/air-program.* Future delegation updates will be provided at this link on the EPA Region 8 Web site. The Web site will be updated on a quarterly basis and will replace the **Federal Register** Notice notifying the public of current NSPS delegation status of Region 8 states.

IV. Final Action

This action informs the public of NSPS delegations made to Region 8 states and replaces the delegation table in 40 CFR 60.4(c) with a Web address directing the public to current EPA Region 8 NSPS delegations.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments since the action simply replaces a table in the CFR with a Web address in order to provide the public with more accurate information regarding NSPS delegations. However, in the Proposed Rules section of today's **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the revision if adverse comments are filed. This rule will be effective December 8, 2014 without further notice unless the Agency receives adverse comments by November 10, 2014. If the EPA receives adverse comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must 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.

V. Statutory and Executive Order Review

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, Nov. 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, Aug. 10, 1999). This action merely delegates authority to implement and enforce Federal standards, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it delegates Federal standards.

In delegating authority to states, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, voluntary consensus standards (VCS) are not a requirement for a state to accept delegation authority. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 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 *December 8, 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 60

Environmental protection, Administrative practice and procedure, Air pollution control, Aluminum, Ammonium sulfate plants, Batteries, Beverages, Carbon monoxide, Cement industry, Chemicals, Coal, Copper, Dry cleaners, Electric power plants, Fertilizers, Fluoride, Gasoline, Glass and glass products, Grains, Graphic arts industry, Heaters, Household appliances, Incorporation by reference, Insulation, Intergovernmental relations, Iron, Labeling, Lead, Lime, Metallic and nonmetallic mineral processing plants, Metals, Motor vehicles, Natural gas, Nitric acid plants, Nitrogen dioxide, Paper and paper products industry, Particulate matter, Paving and roofing materials, Petroleum, Phosphate, Plastics materials and synthetics, Polymers, Reporting and recordkeeping requirements, Sewage disposal, Steel, Sulfur oxides, Sulfuric acid plants, Tires, Urethane, Vinyl, Volatile organic compounds, Waste treatment and disposal, Zinc.

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

Dated: September 18, 2014.

Shaun L. McGrath,

Regional Administrator, Region 8.

40 CFR part 60 is amended as follows:

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

■ 1. The authority citation for part 60 continues to read as follows:

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

Subpart A—General Provisions

■ 2. Section 60.4 is amended by revising paragraph (c) to read as follows:

§ 60.4 Address.

* * * * *

(c) The delegation status table for New Source Performance Standards for Region VIII can be found online at *http://www2.epa.gov/region8/air-program.*

* * * * *

[FR Doc. 2014–23765 Filed 10–8–14; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register

Vol. 79, No. 196

Thursday, October 9, 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 ENERGY

10 CFR Parts 429 and 430

[Docket No. EERE–2014–BT–TP–0043]

RIN 1904–AD36

Energy Conservation Program: Test Procedures for External Power Supplies

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Department of Energy is proposing to revise its test procedure for external power supplies. These proposed revisions, if adopted, would harmonize the instrumentation resolution and uncertainty requirements with the second edition of the International Electrotechnical Commission (IEC) 62301 standard when measuring standby power along with other international standards programs. The proposal would also clarify certain testing set-up requirements. Finally, DOE is proposing an optional test to measure the active-mode efficiency at a 10% loading condition and an optional recording of power factor at this loading condition and each of the other required loading conditions.

DATES: DOE will accept comments, data, and information regarding this notice of proposed rulemaking no later than December 8, 2014. See section V, ''Public Participation,'' for details. DOE will hold a public meeting on this proposed test procedure if one is requested by October 24, 2014.

ADDRESSES: Any comments submitted must identify the NOPR for Test Procedures for External Power Supplies, and provide docket number EERE–2014–BT–TP–0043 and/or regulatory information number (RIN) number 1904–AD36. Comments may be submitted using any of the following methods:

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

2. *Email: ExtPowerSupplies2014TP0043@ee.doe.gov.* Include the docket number and/or RIN in the subject line of the message.

3. *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a CD. It is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD. It is not necessary to include printed copies.

For detailed instructions on submitting comments and additional information on the rulemaking process, see section V of this document (Public Participation).

Docket: The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at regulations.gov. All documents in the docket are listed in the regulations.gov index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

A link to the docket Web page can be found at: *http://www1.eere.energy.gov/buildings/appliance_standards/product.aspx?productid=23* . This Web page will contain a link to the docket for this notice on the regulations.gov site. The regulations.gov Web page will contain simple instructions on how to access all documents, including public comments, in the docket. See section V for information on how to submit comments through regulations.gov.

For further information on how to submit a comment, review other public comments and the docket, or to request a public meeting, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information may be sent to Mr. Jeremy Dommu, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–9870.

Email: battery_chargers_and_external_power_supplies@EE.Doe.Gov.

For legal issues, please contact Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–8145. Email: *Michael.Kido@hq.doe.gov.*

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I. Authority and Background

Title III of the Energy Policy and Conservation Act of 1975 (42 U.S.C. 6291, et seq.; ''EPCA'' or, in context, ''the Act'') sets forth a variety of provisions designed to improve energy efficiency. (All references to EPCA refer to the statute as amended through the American Energy Manufacturing Technical Corrections Act (AEMTCA), Pub. L. 112–210 (Dec. 18, 2012).) Part B of title III, which for editorial reasons was re-designated as Part A upon incorporation into the U.S. Code (42 U.S.C. 6291–6309, as codified), establishes the ''Energy Conservation Program for Consumer Products Other Than Automobiles.'' External power supplies are among the products affected by these provisions.

Under EPCA, the energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. The testing requirements consist of test procedures that manufacturers of covered products must use as the basis for (1) certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA, and (2) making representations about the efficiency of those products. Similarly, DOE must use these test procedures to determine whether the products comply with any relevant standards promulgated under EPCA.

General Test Procedure Rulemaking Process

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE follows when prescribing or amending test procedures for covered products. EPCA provides in relevant part that any test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure the energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use and shall not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

In addition, when DOE determines that a test procedure requires amending, it publishes a notice with the proposed changes and offers the public an opportunity to comment on the proposal. (42 U.S.C. 6293(b)(2)) As part of this process, DOE determines the extent to which, if any, the proposed test procedure would alter the measured energy efficiency of any covered product as determined under the existing test procedure. (42 U.S.C. 6293(e)(1)) If DOE determines that the amended test procedure would significantly alter the measured efficiency of a covered product, DOE would amend the applicable energy conservation standard accordingly. (42 U.S.C. 6293(e)(2))

Section 135 of the Energy Policy Act of 2005 (EPACT 2005), Pub. L. No. 109–58 (Aug. 8, 2005), amended sections 321 and 325 of EPCA by adding certain provisions related to external power supplies (EPSs). Among these provisions were new definitions defining what constitutes an EPS and a requirement that DOE prescribe ''definitions and test procedures for the power use of battery chargers and external power supplies.'' (42 U.S.C. 6295(u)(1)(A)) DOE complied with this requirement by publishing a test procedure final rule on December 8, 2006, that, among other things, established a new appendix Z to subpart B of part 430 (''appendix Z'') to address the testing of EPSs to measure their energy efficiency and power consumption. See 71 FR 71340 (codified at 10 CFR part 430, subpart B, appendix Z ''Uniform Test Method for Measuring the Energy Consumption of External Power Supplies'').

Congress further amended EPCA's EPS provisions through its enactment of the Energy Independence and Security Act of 2007 (EISA 2007), Public Law 110–140 (Dec. 19, 2007). That law amended sections 321, 323, and 325 of EPCA. These changes are noted below.

Section 301 of EISA 2007 amended section 321 of EPCA by modifying the EPS-related definitions found in 42 U.S.C. 6291. While EPACT 2005 defined an EPS as ''an external power supply circuit that is used to convert household electric current into DC current or lower-voltage AC current to operate a consumer product,''[1] 42 U.S.C. 6291(36)(A), section 301 of EISA 2007 further amended this definition by creating a subset of EPSs called Class A External Power Supplies. EISA 2007 defined this subset of products as those EPSs that, in addition to meeting several other requirements common to all EPSs, are ''able to convert [line voltage AC] to only 1 AC or DC output voltage at a time'' and have ''nameplate output power that is less than or equal to 250 watts.'' (42 U.S.C. 6291(36)(C)(i)) As part of these amendments, EISA 2007 prescribed minimum standards for these products and directed DOE to publish a final rule by July 1, 2011, to determine whether to amend these standards. See 42 U.S.C. 6295(u)(3)(A) and (D).

Section 310 of EISA 2007 amended section 325 of EPCA by defining the terms ''active mode,'' ''standby mode,'' and ''off mode.'' Each of these modes corresponds to the operational status of a given product—i.e., whether it is (1) plugged into AC mains and switched ''on'' and performing its intended function, (2) plugged in but not performing its intended function (i.e., simply ''standing by'' to be operated), or (3) plugged in but switched ''off'' if a manual on-off switch is present. Section 310 also required DOE to amend its test procedures to ensure that standby and off mode energy consumption are measured. It also authorized DOE to amend, by rule, any of the definitions for active, standby, and off mode as long as the DOE considers the most current versions of Standards 62301 (''Household Electrical Appliances—Measurement of Standby Power'') and 62087 (''Methods of Measurement for the Power Consumption of Audio, Video and Related Equipment'') of the International Electrotechnical Commission (IEC). See 42 U.S.C. 6295(gg)(2)(A) (incorporating EISA 2007 amendments related to standby and off mode energy). Consistent with these provisions, DOE issued a final rule that defined and added these terms and definitions to 10 CFR part 430, subpart B, appendix Z (''appendix Z''). See 74 FR 13318 (March 27, 2009).

DOE further amended appendix Z by adding a test method for multiple-voltage EPSs. 76 FR 31750. The amendments also revised the definition of ''active power'' and clarified how to test EPSs that have a current-limiting function along with those devices that either (1) combine this function with the ability to communicate with their loads or (2) can communicate with their loads but without combining that capability with a current-limiting function. A current-limited EPS is one that can significantly lower its output voltage once an internal, output-current limit has been exceeded, while an EPS that communicates with its load refers to an EPS's ability to identify or otherwise exchange information with its load (i.e., the end-use product to which it is connected). These revisions were necessary to provide manufacturers with sufficient clarity on how to conduct the test and how to report the measured energy use for these types of EPSs.

After releasing a preliminary analysis and issuing a proposed set of energy

[1] The terms ''AC'' and ''DC'' refer to the polarity (*i.e.,* direction) and amplitude of current and voltage associated with electrical power. For example, a household wall socket supplies alternating current (AC), which varies in amplitude and reverses polarity. In contrast, a battery or solar cell supplies direct current (DC), which is constant in both amplitude and polarity.

conservation standards, DOE published a final rule prescribing new standards for non-Class A EPSs and amended standards for some Class A EPSs. See 79 FR 7845 (Feb. 20, 2014). Manufacturers of the affected products must meet these standards by 2016.

Since the publication of those standards, DOE has received follow-up questions and requests for clarification regarding the testing of EPSs. To ensure that manufacturers have sufficient clarity regarding the testing of their products, particularly in light of the fact that they will soon be required to certify those products as being compliant with the new standards, DOE is proposing to make certain clarifications to appendix Z to eliminate any testing ambiguity when measuring the efficiency of an EPS. These proposed changes would update references to the latest version of IEC 62301 and clarify DOE's test methods to better reflect evolving technologies.

II. Summary of the Notice of Proposed Rulemaking

This proposal seeks to make several changes to the current test procedure for measuring the energy efficiency of EPSs.

First, it would harmonize DOE's test procedure with the latest version of IEC 62301 by providing specific resolution and measurement tolerances. These specifications will assist in ensuring that testing is performed with equipment that is capable of reaching these tolerances and that the resulting measurements are consistent.

Second, the proposal would define and clarify how to test adaptive EPSs (also referred to as ''adaptive-charging'', ''smart-charging'' or ''quick-charging'' EPSs). Because these types of EPSs were not considered when the current test procedure was first adopted, Appendix Z does not provide the means to address the unique characteristics of these types of EPSs fully and consistently without the addition of certain clarifications that DOE is proposing. These proposed clarifications will provide a standardized method for all manufacturers and testing laboratories to follow when testing an adaptive EPS.

Third, DOE is proposing to add test configurations that can be used to avoid potential losses caused by testing cables. Appendix Z does not clearly outline how multiple measurement devices that operate simultaneously should be connected to a unit under test (UUT). These changes would remove the potential for electrical energy losses in the measurement cables and guarantee accurate, repeatable, and reproducible results.

Fourth, DOE would clarify that when testing an EPS that is incapable of being tested at one or more of the loading conditions used to calculate the average active-mode efficiency, such conditions will be omitted when calculating this metric. Instead, the average active-mode efficiency will be determined by averaging the efficiency results at each of the loading conditions that can be measured.

Fifth, the proposal would add an optional procedure for measuring the active-mode efficiency of a unit under test that would occur at the 10 percent loading condition to gain a broader understanding of EPS efficiency at low load levels and increase the flexibility of the test procedure. Adding this optional provision would enable DOE, manufacturers, and testing labs to gain familiarity with the measurement of this additional loading point. This additional condition would affect both single-voltage and multiple-voltage EPSs but would not be used for purposes of calculating the average active-mode efficiency that a manufacturer must report for compliance purposes. Reporting of the test results of this loading condition also would not be required as part of the compliance certification. It may, however, be used in helping develop future EPS energy conservation standards should DOE decide that amending these standards would meet the statutory requirements.

Sixth, DOE is proposing to add a provision to permit the optional recording of power factor during testing. Power factor is a measurement of the transfer of electrical power to a given device—with a higher power factor signaling a more efficient system for delivering real power and a lower power factor pointing to a less efficient one. Adding this optional measurement would assist DOE in its understanding of EPS efficiency on a system level. In the case of an EPS, a lower power factor in a given design mainly impacts the amount of transmission line loss within the building where the EPS is operating. By recording the power factor at each load condition, manufacturers may be willing to provide DOE with more data regarding how these losses may impact the total efficiency profile of an EPS. This additional information, similar to the data obtained through the use of the additional loading point data noted above, could be used by the agency in subsequent rulemakings to help craft a more precise and accurate means of evaluating EPS efficiency that will enable manufacturers to produce more effective and efficient EPSs while ensuring that consumer needs continue to be met. By adding this optional provision, manufacturers, DOE, and testing labs will also gain familiarity with measuring and recording this element during testing.

Seventh, DOE is proposing to add clarifying language to the EPS standards published in § 430.32 (''Energy and water conservation standards and their compliance dates''). DOE believes that further detail is necessary to help clarify which standards apply to each type of EPS. To this end, DOE proposes to insert a summary table to enable one to more readily identify which standards apply to which type of EPS. While these revisions will not affect either the current or February 2016 EPS standards, they will aid manufacturers in complying with the new regulations.

Finally, DOE is proposing to expand the scope of its sampling plan for Class A EPSs to apply to those that will be subject to standards for the first time in 2016. DOE is proposing these revisions to consolidate all EPSs within the scope of federal standards under one sampling plan and to provide manufacturers with the necessary procedures they will need to follow when certifying their EPSs as compliant with the applicable standards. Previously, DOE only provided a sampling plan for Class A EPSs and reserved a second sampling plan for non-Class A EPSs. By adopting a single sampling plan that would apply to all EPSs, DOE would be creating a single approach for ensuring that a given EPS basic model complies with the applicable standards.

TABLE II.1—SUMMARY OF PROPOSED CHANGES AND AFFECTED SECTIONS OF 10 CFR PART 430

[Appendix Z to subpart B of part 430—uniform test method for measuring the energy consumption of external power supplies]

Existing section in 10 CFR part 430	Summary of modifications
1. Scope	• No Change.
2. Definitions	• Inserting definitions for ''average active-mode efficiency'' and ''adaptive external power supply''.

TABLE II.1—SUMMARY OF PROPOSED CHANGES AND AFFECTED SECTIONS OF 10 CFR PART 430—Continued

[Appendix Z to subpart B of part 430—uniform test method for measuring the energy consumption of external power supplies]

Existing section in 10 CFR part 430	Summary of modifications
3. Test Apparatus and General Instructions.	• Insert exceptions to the test method of 3(a) within subsections 3(a)(i) and 3(a)(ii). • Incorporate by reference the uncertainty and resolution requirements of the IEC 62301 (2nd Ed.) standard in 3(a)(i)(A).
4. Test Measurement	• Modify 4(a)(i) to include a table of the required loading conditions and an additional optional loading point at a 10 percent loading condition • Insert an optional power factor measurement at each loading condition in 4(a)(i). • Clarify the necessary connections when using multiple measurement devices (4(a)(i)). • Clarify how to test when one or more loading conditions cannot be sustained (4(a)(i)(B)). • Modify 4(a)(ii) to refer to the appropriate loading conditions in Table 1. • Modify several sections of 4(b)(i) to refer to an updated Table 2. • Revising 4(b)(i)(A)(5) to refer to a new Table 2, which contains a list of prescribed loading conditions to use, including a new 10 percent loading condition. • Modify 4(b)(ii) to refer to the updated loading conditions in new Table 2.

III. Discussion

A. Measurement Accuracy and Precision

On June 13, 2005, the IEC published its first edition of testing standard IEC 62301, which provided a method for measuring standby power of household appliances. The standard quantified minimum resolution requirements for energy measurement instruments and outlined the necessary procedures to ensure stable energy readings for any unit under test (UUT). The standard also set limits on the uncertainties associated with any measurement taken that is meant to represent the energy consumption of a household device. It has since become recognized by many regulatory bodies as the default guideline for any power or energy measurement required for formal certification. DOE subsequently adopted instrumentation resolution and measurement uncertainty requirements identical to those in the IEC 62301 standard and codified these requirements at 10 CFR 430, subpart B, appendix Z on June 1, 2011. 76 FR 31750.

The IEC published Edition 2.0 of IEC 62301 in January 2011. This revised version of the testing standard refined the test equipment specifications, measuring techniques, and uncertainty determination to improve the method for measuring loads with high crest factors and/or low power factors, such as the low power modes typical of EPSs operating in no-load mode. These provisions were contained in Section 4 of IEC 62301, with informative guidance provided in Annex B and Annex D on measuring low power modes and determining measurement uncertainty.

To ease the overall burden involved with the testing of EPSs, and to continue to improve DOE's efforts at harmonizing its testing requirements where feasible to do so, DOE is proposing to incorporate by reference the second edition of IEC 62301 for the application of testing EPS energy consumption. This proposed action would include the resolution parameters for power measurements and uncertainty methodologies found in Section 4 (General conditions for measurements) as well as the associated references to Annexes B (Notes on the measurement of low power modes) and D (Determination of uncertainty of measurement) within that section of the second edition of the IEC 62301 standard. DOE seeks comment on the merits of incorporating these revisions into the current EPS test procedure in appendix Z.

B. Test Set-up

DOE had previously proposed, and ultimately finalized, requirements in 2006 that incorporated by reference certain sections of a test procedure adopted by the California Energy Commission (CEC) into appendix Z. See generally, 71 FR 71339 (Dec. 8, 2006) (final rule incorporating elements of the CEC test procedure for EPSs). That procedure—''Test Method for Calculating the Energy Efficiency of Single-Voltage External AC–DC and AC–AC Power Supplies (August 11, 2004)''—contained a number of provisions, including one (''Measurement Approach'') that outlined how UUTs should be conditioned and connected to metering equipment to perform the test properly regardless of the type of load. While this provision generally describes the testing set-up to follow, it also contains gaps that could lead to ambiguous results when testing an EPS. In particular, the procedure does not specify how to connect metering equipment in certain EPS configurations.

As described in section 4 (''General Conditions for Measurement'') of the CEC procedure, power measurements can be made using either power analyzers or suitably calibrated voltmeters and ammeters. When using voltmeters and ammeters, the active-mode efficiency at each loading condition can be calculated using the output voltage measurement from the voltmeter and the output current measurement from the ammeter. DOE has found that resistive losses can be inadvertently introduced into the test set-up, which can affect the results and the overall calculated average, active load efficiency. These losses would not occur when using an EPS to power an end-use product. They do occur, however, if the voltmeter and ammeter are not physically and electrically connected to the output terminal of the EPS. Specifically, lower voltage measurements can result when connecting the voltmeter after the series ammeter connection as opposed to physically and electrically connecting the voltmeter directly to the output. Although, in theory, the ammeter acts as a dead short (i.e., a short circuit having zero resistance) and does not introduce electrical resistance during the measurement, in practice, the testing leads can introduce resistive losses that vary based on, among other factors, the wire gauge of the leads, the length of the leads, and the frequency of the signal being measured. At higher current loads, these losses become even more pronounced and can lead to significant resistive losses within the signal path despite the low impedance nature of ammeters. The existence of these losses results in an inaccurate output power calculation (and inaccurate efficiency measurements) under all loading conditions, as the voltmeter measures a lower voltage than the EPS is actually producing.

To illustrate this point, DOE tested a single EPS unit using two different testing configurations. In the ''loss-producing'' (or ''lossy'') configuration, DOE used a voltmeter to measure the voltage at the load after the ammeter measurement using 10 AWG [2] banana cable interconnects rated for 10 amps and 600 volts. This testing setup resulted in significantly lower efficiency measurements across all loading conditions than the ''lossless'' configuration where the voltage was measured at the output connector of the EPS. As expected, the difference in the efficiency measurements was even more pronounced as the current load was increased. The results comparing the two different testing configurations are summarized in Table III–1.

TABLE III–1—EPS EFFICIENCY TESTING VARIATION RESULTS

	25% Load	50% Load	75% Load	100% Load	Average active-mode efficiency
SETUP #1* (LOSS-PRODUCING):					
Input Power (W)	10.37	20.57	30.89	41.36	.....
Output Voltage (V)	11.69	11.12	10.37	9.83	.....
Output Current (A)	0.75	1.5	2.25	3	.....
Efficiency	84.5%	81.1%	75.5%	71.3%	78.1%
SETUP #2* (LOSSLESS):					
Input Power (W)	10.37	20.57	30.89	41.36	.....
Output Voltage (V)	12.01	11.85	11.6	11.53	.....
Output Current (A)	0.75	1.5	2.25	3	.....
Efficiency	86.9%	86.4%	84.5%	83.6%	85.3%
Difference	2.3%	5.3%	9.0%	12.3%	7.2%

* All testing results are based on the results collected from a 12V, 3A external power supply.

DOE believes that most technicians are already setting up their test equipment to connect directly to the output to avoid these resistance losses. However, based on the test results presented in Table III–1 and because the CEC test method does not specifically explain how to attach measurement equipment, DOE believes that additional details on how to set up the test equipment should be provided to ensure such losses are not introduced.

Accordingly, DOE proposes to amend section 4(a)(i) of appendix Z to require that any equipment necessary to measure the active-mode efficiency of a UUT at a specific loading condition must be connected directly to the output cable of the unit. This step will remove any unintended losses in the test measurement introduced by the metering equipment because both meters will be measuring directly from the output connector of the EPS rather than at different points in the signal path. DOE seeks comment on whether these additional clarifications regarding the testing set-up when using voltmeters and ammeters would help to clarify the test method and ensure testing accuracy.

C. EPSs With Current Limits

The EPS test procedure produces five output values that are used to determine whether a tested EPS complies with Federal standards. These output values (or metrics) are outlined in sections 4(a)(i) and 5(b)(i)(A)(5) of appendix Z and include active-mode efficiency measurements at 25 percent, 50 percent, 75 percent, and 100 percent load, as well as the total power consumption of an EPS at 0 percent load. The four loaded efficiencies (i.e., 25 percent through 100 percent) are averaged to determine the overall EPS conversion efficiency. This average efficiency can be compared to the federal standard, which is an equation that determines the minimum required efficiency based on the nameplate output power of the EPS under consideration. However, some EPSs, like those used for radios and LED applications, are designed to drive the output voltage to zero under specific loading conditions either to protect the EPS from damage, or overstress, or because the end-use application was never designed to operate in those states. Thus, it is not possible to measure the efficiency at these specific loading conditions. (This type of feature or technology is commonly referred to as ''output-current-limiting'' or ''current-limiting'' because of the device's actions to limit the output current to the connected device that the EPS serves.) Prior to the publication of the June 2011 test procedure final rule, DOE solicited comments from interested parties concerning how to test EPSs that utilize output-current-limiting techniques at 100 percent load using the test procedure in appendix Z. 75 FR at 16973. Based on the comments received and to ensure that these types of EPSs could be tested for compliance with the federal standards, DOE amended section 4(a)(i) to allow manufacturers with products that limit the output current at 100 percent load to test and certify affected individual units using active-mode efficiencies measured at 25 percent, 50 percent, and 75 percent loads. 76 FR at 31771.

Since these amendments were made, DOE has become aware of other EPS designs, specifically those that operate LED drivers, which employ current-limiting circuitry at loading conditions under 100 percent as a form of fault protection and reset. These EPSs will drive the output voltage down to zero to eliminate any power delivery when the end-use product demands less than a certain percentage of the nameplate output current. Once the output has been reduced to zero, the EPS will periodically check the output load conditions by momentarily reestablishing the nameplate output voltage and monitoring the resulting current draw. If the minimum output current is not reached during these periods, the output is driven to zero again and the EPS output power drops to zero. This technique is commonly referred to as ''hiccup protection'' and it serves to protect both the EPS and the end-use product from damage if the product begins to operate in a range outside its intended design. Additionally, hiccup protection can be used to minimize energy consumption

[2] American Wire Gauge (AWG) is a standardized wire gauge system to quantify the diameter of electrically conducting wire.

by quickly putting the EPS into a standby state if the end-use product requires only a constant current load to operate and the current demand falls below the minimum current load threshold. Similar to EPSs that limit output current at maximum load, these EPSs cannot be tested and certified properly under the current DOE test procedure when testing at a 25 percent load. At this loading condition, EPSs with hiccup protection that are designed for lower load conditions would not provide any output power to measure efficiency.

To quantify the active-mode efficiency of these EPSs, DOE proposes to amend section 4(a)(i)(C) of appendix Z (which includes a procedure to test those EPSs that list both an instantaneous and continuous output current) to require that in cases where an EPS cannot sustain output at one or more of the four loading conditions, these loading conditions would not be measured. Instead, for these EPSs, the average efficiency would be the average of the loading conditions for which it can sustain output. In addition to this provision, DOE proposes to define the ''average active-mode efficiency'' of an EPS as the average of the loading conditions (100 percent, 75 percent, 50 percent, and 25 percent of its nameplate output current) for which the EPS can sustain the output current. Defining average active mode efficiency will assist manufacturers in preparing certification reports and provide additional clarity as to which metrics are considered for compliance with the current federal standards. By including the necessary loading points within the definition, there will be a clearer distinction between the outputs of the test procedure and the data points required for certification. DOE seeks comment on the benefits or burdens of representing the average active-mode efficiency of these devices as the average of the efficiencies at the loading conditions that can be tested and on the proposed definition for average active mode efficiency. Among the issues of interest to DOE is what impact, if any, the proposed changes would have on the results from testing and whether the proposed changes would resolve the identified issues.

D. Power Factor

Power factor is a relative measure of transmission losses between the power plant and an item plugged into AC mains (i.e., a wall outlet). Due to nonlinear and energy-storage circuit elements such as diodes and inductors, electrical products often draw currents that are not proportional to the line voltage. These currents are either distorted or out of phase in relation to the line voltage, resulting in no active power drawn by the EPS or transmitted to the load.

However, although the EPS itself consumes no active power, these currents are real and cause power dissipation from conduction losses in the transmission and distribution wiring, which is referred to as reactive power. The power factor of a given device is represented as a ratio of the active power delivered to the device relative to the combination of this reactive power and active power. An ideal load will have a power factor of 1, where all the power generated is delivered to the load as active power. For a given nameplate output power and efficiency, products with a lower power factor cause greater power dissipation in the transmission wiring, an effect that also becomes more pronounced at higher input powers.

As the National Resources Defense Council (NRDC) noted in its primer on additional energy efficiency opportunities for EPSs, a device with a power factor of 0.4 draws 2.5 times more current than a device with a power factor of 1 and can cause building wire losses to be 6.25 times greater in the worst case scenario.[3] In this scenario, the amount of electricity required by the device is far greater than the real (i.e., active) power delivered, resulting in poor system efficiency. The significance of power factor's role in overall energy consumption has also been recognized by the Environmental Protection Agency (EPA). Its voluntary ENERGY STAR program previously included provisions that restricted the minimum power factor at 100 percent load for EPSs with nameplate output powers greater than or equal to 100 watts,[4] which helped to reduce I^2R (i.e., electrical resistance) losses in building distribution wiring as part of their efficiency program for EPSs. These provisions also aligned with version 4 of the EPA's prior program requirements for internal computer power supplies.

DOE has acknowledged the grid-level impact of power factor when it comes to EPS design, but stated that it would be difficult to accurately quantify transmission losses because they would depend on the length of the transmission wires, which differ for each residential consumer. See 79 FR at 7869. However, DOE believes that power factor is a critical component in establishing the overall efficiency profile of EPSs. Most of the efficient power supplies available on the market today use switched-mode topologies (i.e., power transfer circuits that use switching elements and electromagnetic fields to transmit power) that draw current in short spikes from the power grid. These current spikes can cause the voltage and current input waveforms of the EPS to be significantly out of phase, resulting in a low power factor and putting more stress on the power grid to deliver real power. While switched-mode power supplies have served to dramatically improve the achievable efficiencies of EPSs, the fact that power factor has gone unexamined during their widespread adoption has brought overall system efficiency into consideration. Therefore, DOE believes that in order to capture a representative average use cycle for EPSs, power factor should be taken into consideration at each loading condition. However, at this time DOE is proposing to make power factor measurements optional within the test procedure and will not require any power factor measurements recorded during testing to be submitted in any certification report. Modifying the test procedure in this way will increase testing flexibility with minimal additional testing burden should technicians choose to conduct the additional measurements, as most modern power analyzers are capable of measuring true power factor. Because DOE requires direct meter readings of input and output power at each loading condition, the power factor at each loading condition can be collected at the same time as the efficiency measurements with virtually no added test time or equipment. However, DOE also recognizes the variability associated with measuring power factor. EPSs that lack any sort of corrective power factor circuitry can have varying power factors depending on the conditions surrounding the transmission lines in the testing area as well as the input impedance. These variables could affect the repeatability of any power factor measurements in EPSs that do not contain corrective circuitry. As such, DOE is seeking comment on the impacts and testing burdens related to including optional power factor measurements at each loading condition as well as any potential pitfalls related to repeatability in EPSs without power factor correction.

[3] NRDC: External Power Supplies—Additional Efficiency Opportunities, *http://www.appliance-standards.org/sites/default/files/Next_Efficiency_Opportunities_for_External_Power_Supplies_NRDC.pdf*

[4] EPA: ENERGY STAR® Program Requirements for Single Voltage External AC-DC and AC-AC Power Supplies Eligibility Criteria (Version 2.0), *http://www.energystar.gov/ia/partners/prod_development/revisions/downloads/eps_spec_v2.pdf*

E. Adaptive EPSs

DOE is proposing that EPSs capable of adjusting their output voltage be tested at both the highest and lowest output voltage for loading conditions where output current is greater than 0% (currently, loading conditions 1 to 4). For the 0% loading condition (currently, loading condition 5), DOE is proposing to add clarifying language stating that the EPS under test be placed in no-load mode and any additional signal connections to the unit be disconnected prior to measuring input power. Several considerations led DOE to propose this particular approach.

The newly amended Federal efficiency standards for EPSs determine the minimum mandatory average active-mode efficiency for an EPS using a series of equations and the product's nameplate output power. 79 FR at 7848–7849. Typically, an EPS will have a nameplate output voltage, nameplate output power, and/or a nameplate output current listed so that, among other reasons, original equipment manufacturers (OEMs) can utilize them as off-the-shelf designs for their products. DOE uses these metrics to determine the necessary loading conditions for testing and ultimately how to determine the average active-mode efficiency and no-load power measurement of the EPS. The average active-mode efficiency is calculated by determining the average of the efficiencies measured at loading conditions of 100%, 75%, 50%, and 25% of the rated nameplate output current (loading conditions 1 to 4). No-load mode power is equal to the active input power at the loading condition which is 0% of nameplate output current (currently referred to as loading condition 5).

As was noted in chapter 11 of the technical support document (TSD) to the standards final rule for EPSs published on February 10, 2014, one of the largest applications of EPSs within the consumer marketplace is in portable computing devices, such as tablets and mobile phones. Since the publication of the final rule, DOE has become aware of a new charging technology where EPSs designed around the current universal charging solution (UCS) utilize a specific communication protocol with their end-use devices to draw higher charging currents than the universal serial bus (USB) standard specifies when the battery is significantly depleted. This technology enables the use of a faster charging rate, which effectively decreases the overall charging time needed to replenish the discharged battery. In many cases, this means increasing the output voltage as well as the output power of the EPS to recharge a deeply discharged battery within the end-use product. This technique is commonly referred to as ''quick charging'' or ''adaptive charging'', but manufacturers may refer to this charging methodology in several different ways.

DOE's current understanding is that the faster charge rate only occurs when the communication protocol between the EPS and the device is activated, which could not occur via a user-initiated action because the user is not given access to change the charging rate. Instead, charging is activated through communication lines between the charger and the charge control chip embedded in the end-use device. The user remains unaware of this communication for the duration of the charge. Only certain products paired with the necessary chargers will be able to communicate and have the EPS provide higher charging current, whereas the same charger would provide a lower charging current when paired with a device not capable of this communication. Provided that these EPSs would produce only one output voltage at a time, they would be considered single-voltage EPSs and not multiple voltage EPSs under the definitions established for single-voltage and multiple-voltage EPSs in appendix Z. However, DOE proposes to further classify these types of EPSs in appendix Z as ''adaptive external power supplies'' and define them as single-voltage external power supplies that can alter their output voltage during active mode based on an established communication protocol with the end-use application without any user-generated action. DOE is seeking comment on whether the proposed definition of an adaptive external power supply accurately describes this new type of EPS and on any potential improvements that could be made to the proposed definition to eliminate any ambiguities.

While DOE previously examined the issue of EPSs that communicate with their loads in its June 1, 2011 rule, only recently has it been made aware that proprietary communication protocols can result in a higher power consumption for certain end-use consumer products rather than others. 76 FR at 31752–31753 and 31770–31771. Additionally, DOE believes that manufacturers may list multiple output voltages, multiple output currents, and/or multiple output powers to categorize all the potential states of the EPS, making the correct testing and certification conditions difficult to discern. Such an EPS may provide the standard USB protocol ratings of 5 volts at 1 amp, but have the capability to elevate the charging voltage to 12 volts at 1 amp under the right conditions. This is only one practical example because manufacturers can tailor their communication protocols to generate multiple voltage, ampere, and output power ranges under different operating conditions for these types of EPSs. While these varying states may result in faster charging and increased utility, the technology makes testing and quantifying the average active-mode efficiencies of these devices difficult.

DOE is seeking input regarding how adaptive EPSs should be tested and certified. Specifically, DOE is seeking input on how to determine the loading conditions in which to test these EPSs. Since adaptive EPSs can be used to power other devices that are not capable of communicating with a load, it is important to consider the efficiency of the EPS when load-communicating does not occur. However, when the EPS communicates with a load and varies the output voltage or current to decrease an end-use product's charging time, the test procedure should be able to capture the efficiencies at the various output conditions in which it will operate. This could be performed by conducting the test twice at each loading condition—once at the highest achievable output voltage that is utilized while communicating with a load and once at the lowest achievable output voltage utilized during load communication regardless of what may be stated on the nameplate in both conditions. Due to the nature of EPS design, the points in between the highest and lowest output voltage will be no less efficient than either extreme.[5] Therefore, DOE proposes to test adaptive EPSs at both the highest and lowest voltage it can achieve at all measured loading conditions with output current greater than 0%. DOE has been informed by stakeholders that these adaptive EPSs will either have multiple voltage and current ranges printed on the nameplate or may not indicate the operating ranges at all. However, DOE seeks comment on whether the range of voltages utilized while an EPS is communicating with its load is printed on the EPS nameplate or if there are other methods available to determine the highest and lowest voltage utilized during load

[5] At higher output voltages, EPSs typically have greater efficiency due to a lower loss ratio of the fixed voltage drops in the conversion circuitry to the nominal output voltage. These losses do not increase linearly with output voltage, so higher output voltages typically provide greater conversion efficiency.

communication, if it is not indicated on the nameplate of the EPS.

DOE also has concerns regarding the accuracy and repeatability of no-load measurements recorded when testing an adaptive EPS. As part of the test procedure, DOE requires that an input power measurement taken at the 0 percent loading condition (currently, loading condition 5) is measured and recorded as no-load mode power consumption. Appendix Z defines no-load mode as the mode of operation when an EPS is connected to the main electricity supply and the output is (or ''all outputs are'' for a multiple-voltage EPS) not connected to a load (or ''loads'' for a multiple-voltage EPS). However, the test procedure for single-voltage EPSs does not instruct technicians to explicitly remove any external loads or to put the EPS into ''no-load mode'' in order to conduct the test at a 0% loading condition. The language in the test procedure only states that the load must be decreased to zero percent and the AC input power must be recorded. This ambiguity would permit the test to be conducted by either removing the load in order to achieve the 0% loading condition or decreasing the current demand to 0% while the test load is still physically connected. As such, variability in test measurements may arise when testing adaptive EPSs because the output voltage fluctuates according to the communication between the EPS and the end-use product.

Based on its examination of a variety of adaptive EPSs and their accompanying end-use products, DOE suspects that if the load is not disconnected from the EPS entirely, but instead, the current demand is decreased to zero electronically with the load still physically connected, that the output voltage may remain artificially high and impact the results of the no-load power measurement. This higher output voltage would not be representative of the voltage this EPS would operate under in no-load mode, because an adaptive EPS would only output a higher voltage when requested via the adaptive communication protocol.

To clarify the testing methodology for all types of EPSs in no-load mode, DOE is proposing to add language to the single-voltage test procedure stating that any EPS under test must be placed into no-load mode and any additional single connection be disconnected before taking a measurement at zero percent load. While this language is absent from the single-voltage EPS test procedure, DOE notes that the test procedure at appendix Z already specifically states in section 4(b)(i)(A)(6) that any multiple-voltage EPS under test should be placed in no-load mode and any additional signal connections to the unit be disconnected before measuring input power at the zero percent loading condition. DOE is seeking comment on whether such additional clarification is also warranted for testing the no-load of single-voltage EPSs, including adaptive EPSs.

The additional clarifications DOE is proposing in this NOPR for testing adaptive EPSs will not alter the current methodology for testing active-mode efficiency or no-load power. Rather, they are meant to provide guidance on how to test and certify these EPSs given the recent advancements in EPS technology. The average active-mode efficiency will still be based on the average of the four loading conditions used to measure single-voltage efficiency. Under DOE's proposal, manufacturers of adaptive EPSs will generate two average active-mode efficiency metrics for each EPS—one based on the average of the efficiencies recorded at the lowest voltage achieved during the charging cycle and one based on the average of the efficiencies recorded at the highest voltage achieved during the charging cycle. This testing approach closely parallels DOE's testing approach for switch-selectable EPSs. However, unlike switch-selectable EPSs, DOE is requiring only one no-load power measurement because the EPS will be disconnected from any load during the measurement and will, as a result, not be communicating—thereby removing any chance of raising or lowering the output voltage. Because this approach will yield a static output voltage in no-load mode, one no-load power measurement for adaptive EPSs will be sufficient. As a result, DOE proposes to amend 10 CFR 429.37 to state that manufacturers will be required to submit average active-mode efficiencies at both the highest and lowest output voltages as well as a single no-load power measurement for adaptive EPSs. DOE is seeking comment on the most appropriate method to report and certify adaptive EPSs.

F. EPS Loading Points

DOE currently requires that efficiency measurements be recorded by manufacturers at 0 percent, 25 percent, 50 percent, 75 percent, and 100 percent of the nameplate output current load. See 10 CFR 430, subpart B, appendix Z. The last four measurements are averaged to determine the overall active-mode efficiency of an EPS. While these measurements span the majority of an EPS's loading profile, consumer loads are increasingly utilizing standby modes to minimize power consumption during periods of inactivity, a development that has resulted in many EPSs spending more time in loading conditions below 25 percent where the EPS active-mode efficiency tends to rapidly decrease due to the increase in the ratio of fixed losses to the output power. This decrease is due in large part to a higher loss ratio where the fixed losses represent a higher percentage of the overall power consumed when compared to the output power.

Regarding these lower load states, NRDC noted that industry has already performed significant research to improve the conversion efficiency of EPSs at these states.[6] As part of its research, NRDC compared a standard computer EPS complying with the Level V requirements of the international efficiency marking protocol against a reference design from a major power supply integrated circuit manufacturer. While the computer EPS and the reference design remained relatively similar across all the loading points considered in the DOE test procedure (i.e., 25%, 50%, 75%, and 100%), the EPSs diverged significantly below 25 percent load. The reference design showed as much as a 25 percent increase in active-mode efficiency over the computer EPS at loads below those required by the EPS test procedure. While this is just one example, DOE has also been informed by interested parties and during manufacturer interviews that the industry aims to prevent the energy gains made by smarter consumer loads from being offset by EPS designs that cannot maintain flatter efficiency profiles over the full load range. Again, as noted by the NRDC, consumer products are increasingly spending a significant portion of their operating time in lower power modes or standby states where the EPS load-demand is below 25 percent. Since EPS efficiency tends to fall off at these lower loads, improving the active-mode efficiency of EPSs at loading points below 25 percent to levels similar to the achievable efficiencies at higher loading points would create a more constant efficiency level, regardless of the load demand. This approach will ensure that the overall system remains efficient when consumer loads fall below a 25 percent load rather than relying on an inefficient EPS that hampers system efficiency.

Other standards-setting bodies have recognized the potential energy savings

[6] NRDC: External Power Supplies—Additional Efficiency Opportunities, *http://www.appliance-standards.org/sites/default/files/Next_Efficiency_Opportunities_for_External_Power_Supplies_NRDC.pdf.*

from reducing lower-load losses. Significantly, on October 29, 2013, the European Union published Version 5 of its Code of Conduct on Energy Efficiency of External Power Supplies (Code of Conduct).[7] That document lays out the foundation for a set of voluntary guidelines for individual manufacturers to meet and includes specifications regarding EPS coverage, energy efficiency, and monitoring provisions. The energy efficiency levels in the Code of Conduct have been revised to reflect the same four loading point measurements required by DOE, but also include a separately calculated performance level using an additional loading point at a lower 10 percent load. See European Comm'n, Code of Conduct on Energy Efficiency of External Power Supplies, Version 5, Annex (Oct. 29, 2013). The energy efficiency provisions are further divided into two groupings—Tier 1 and Tier 2. These tiers delineate two separate sets of standards with two unique effective dates. Tier 1 went into effect in January 2014, while the more stringent standards in Tier 2 will take effect in January 2016. Like DOE's test procedure at Appendix Z, the new Code of Conduct provides that manufacturers measure the efficiency at each loading condition along with a no-load power consumption metric in accordance with the CEC's test procedure for single voltage EPSs. Also like appendix Z, the Code of Conduct's prescribed energy efficiency levels at the specified five loading points for both Tier 1 and Tier 2 rely on equations that generate a minimum average active-mode efficiency based on the nameplate output power of an EPS.

Although the revised Code of Conduct includes the additional loading point measurement at 10% load, this data point is not included when calculating the average active-mode efficiency of a given EPS. Instead, the Code of Conduct continues to rely on the four loading points on which DOE's standards are based—i.e., 25%, 50%, 75%, and 100% load—for this metric. The Code of Conduct sets a separate performance standard at 10% load, but, like DOE, relies on an equation based on the nameplate output power of an EPS to determine the minimum applicable standard at this loading point.

Based on the research conducted by NRDC and the efforts of the European Commission to improve light load efficiency, additional energy savings opportunities for EPSs may be possible given the increase in low-power states in smart devices. In order to increase the flexibility of the EPS test procedure should DOE decide to incorporate such a measurement into an efficiency standard in the future, DOE proposes to add a sixth, optional, loading condition at 10 percent of the nameplate output current to the EPS test procedure. Similar to the power factor measurements, recording the active-mode efficiency at this loading condition would be optional and would not be part of the mandatory submissions on any certification report. Data voluntarily gathered by manufacturers at this additional loading point could serve to inform DOE on the current efficiency landscape of EPSs below 25 percent load while also attempting to harmonize with the efforts of the European Commission.

While DOE is proposing to add this new, but optional, 10% loading point to the test procedure, DOE is not proposing to use this new loading condition as part of the calculation of average-active mode efficiency should manufacturers decide to record the active-mode efficiency at the new loading condition. The average-active mode efficiency metric will continue to be calculated by averaging the efficiencies at the 25%, 50%, 75%, and 100% loading conditions. In the future, DOE may consider whether future revisions to the energy conservation standards for EPSs should include the efficiency at the new loading condition either as part of the calculation of average active-mode efficiency or as a separate independent standard. This proposed change will have no impact on measuring compliance with the current energy conservation standards for Class A EPSs or the recently promulgated standards for direct operation EPSs that manufacturers must meet beginning in 2016.

No additional testing burden would be placed on manufacturers as a result of this proposed change because the 10% loading condition test is optional. However, should manufacturers elect to make this measurement, DOE believes the additional testing burden would be minimal. Measuring the efficiency at this new loading point would require no additional equipment. The tester would only have to adjust the resistive or electronic load to the correct conditions. This additional test would increase the overall testing time by no more than ten minutes even after adhering to the given minute stability criteria at the new load condition. Because DOE only requires direct meter readings to record the measurements, testing at this additional loading condition would have a minimal increase in burden and duration of the test. DOE seeks comment on the benefits and burdens of adding an additional loading condition to the EPS test procedure as an optional measurement. The other loading conditions will remain the same as has been previously stated under this proposal.

G. Energy Conservation Standards

On February 10, 2014, DOE issued new and amended standards for EPSs; compliance with these standards is required by February 10, 2016. 79 FR 7845. These new standards will require many EPSs already subject to standards as Class A EPSs to meet more stringent requirements. Additionally, the new regulations established efficiency standards for some types of EPSs, such as multiple-voltage and high power EPSs, which had not previously been required to meet any efficiency standard. In updating these regulations, DOE established two new definitions—direct operation and indirect operation EPSs. As defined in DOE's regulations at 10 CFR 430.2, a ''direct operation EPS'' is an EPS that can operate a consumer product that is not a battery charger without the assistance of a battery, whereas an ''indirect operation EPS'' is an EPS that cannot operate a consumer product (other than a battery charger) without the assistance of a battery. DOE intended that these terms be mutually exclusive and collectively exhaustive, so that any EPS would be either a direct or indirect operation EPS, but not both. The new regulations required that any direct-operation EPS (regardless of whether it was also a Class A EPS) would have to meet these new standards. Any indirect operation EPS would not be required to meet the new standards, but would still be required to comply with the Class A efficiency requirements if that EPS meets the definition of a Class A EPS. The Class A EPS definition is found in 42 U.S.C. 6291(36). DOE also updated the International Efficiency Marking Protocol to add a new mark, ''VI,'' to indicate compliance with the new efficiency requirements established for direct operation EPSs.

The following chart summarizes the energy conservation standards and marking requirements based on whether the EPS is (1) a Class A or non-Class A EPS and (2) direct or indirect operation.

[7] European Union: Code of Conduct on External Power Supplies Version 5 (available at *http://iet.jrc.ec.europa.eu/energyefficiency/sites/energyefficiency/files/code_of_conduct_for_ps_version_5_-_draft_120919.pdf*).

TABLE III–2—APPLICABLE STANDARDS OF CLASS A AND NON-CLASS A EPSS

	Class A EPS	Non-Class A EPS
Direct Operation EPS	Level VI: 10 CFR 430.32(w)(1)(ii)	Level VI: 10 CFR 430.32(w)(1)(ii).
Indirect Operation EPS	Level IV: 10 CFR 430.32(w)(1)(i)	No Standards.

To clarify these requirements, DOE is proposing to add the above table to a new 10 CFR 430.32(w)(1)(iii).

H. Indirect Operation EPSs

To distinguish between a direct and indirect operation EPS, the definition of an indirect operation EPS includes a specific method to determine whether an EPS is an indirect operation EPS. First, if the EPS can be connected to a battery-operated consumer product with removable batteries, then the batteries should be removed. Then, the EPS should be connected to mains power and an attempt to operate the product should be made. If the product cannot operate without the batteries, it is an indirect operation EPS. If the batteries cannot be removed, then the time necessary for a product in ''off-mode'' to turn on and become operational should be recorded when (1) the battery is completely charged and (2) when the battery is completely discharged. If the difference in these two conditions is greater than 5 seconds, then the EPS is an indirect operation EPS.

Stakeholders asked whether an EPS that can be used with multiple end-use applications—some of which are operated directly and others indirectly—would be treated by DOE as an indirect or direct operation EPS. So long as an EPS can operate any consumer product directly, DOE considers it to be a direct operation EPS. If an EPS is shipped with a consumer product that the EPS can only operate indirectly, but that same EPS can also be used to directly operate another consumer product, DOE would still consider that EPS to be a direct operation EPS and subject to the applicable direct operation EPS efficiency standards.

Stakeholders also asked whether an EPS that can operate a battery charger contained in a separate physical enclosure from the end-use product is considered an indirect or direct operation EPS. DOE notes that a battery charger is considered a consumer product in and of itself, and DOE is currently undertaking a rulemaking to consider establishing efficiency standards for battery chargers. With this in mind, DOE excluded battery chargers as a type of consumer product that a direct operation EPS can operate as part of the definition for a direct operation EPS in the external power supply and battery charger NOPR published on March 27, 2012. See 77 FR 18478. This was due in large part to the fact that the efficiency of an EPS that can only operate a battery charger, but not any other consumer product, may be covered by future efficiency standards for battery chargers. Therefore, an EPS that can only operate a battery charger in a separate physical enclosure from the end-use product, but not any other consumer product, would not be considered a direct operation EPS, and would therefore, not be subject to the efficiency standards for direct operation EPSs. See 79 FR at 7929. DOE is proposing to modify the indirect operation EPS definition to clearly include within its scope those EPSs that can only operate battery chargers contained in physical enclosures separate from the end-use products (but not other consumer products). The modified definition would specify that an indirect operation EPS is an EPS that (1) cannot operate a consumer product (that is not a battery charger) without the assistance of a battery or (2) solely provides power to a battery charger that is contained in a separate physical enclosure from the end-use product. DOE seeks feedback on this proposed amendment.

I. Scope of Coverage

Congress established the definition of an external power supply to mean ''an external power supply circuit that is used to convert household electric current into DC current or lower-voltage AC current to operate a consumer product'' (10 CFR 430.2). This definition outlines the distinguishing criteria for a product to be considered an EPS and, therefore, to be considered a covered product. While a covered product may be subject to energy conservation standards, DOE has established standards only for certain types of EPSs to date. So, while an EPS is a covered product, not all EPSs are subject to energy conservation standards. Currently, a Class A EPS must meet the standards prescribed in 10 CFR 430.32. Beginning in 2016, energy conservation standards will also apply to direct operation EPSs.

Any product that meets the statutory definition of a Class A external power supply is currently subject to the no-load mode power and average active-mode efficiency requirements in 10 CFR 430.32(w). This definition specifies that a Class A EPS is one with the following six characteristics: [8]

- Designed to convert line voltage AC input into lower voltage AC or DC output;
- able to convert to only 1 AC or DC output voltage at a time;
- sold with, or intended to be used with, a separate end-use product that constitutes the primary load;
- contained in a separate physical enclosure from the end-use product;
- connected to the end-use product via a removable or hard-wired male/female electrical connection, cable, cord, or other wiring; and
- nameplate output power that is less than or equal to 250 watts.

DOE has received numerous inquiries from manufacturers requesting additional guidance on applying these six criteria. In order to ensure clarity and consistency for stakeholders and manufacturers, the following subsections discuss some of the most commonly asked questions about the definition of a Class A EPS.

1. Solid State Lighting

DOE has received specific inquiries from manufacturers asking whether ''transformers'' used with solid state lighting (SSL), such as LED drivers used for landscape lighting, lighting strings, portable luminaries, and other lighting applications are subject to the Class A external power supply energy conservation standards. Provided the product meets all six characteristics of a Class A EPS, then it would be subject to the Class A EPS energy conservation standards, regardless of the end-use application. As discussed in the February 10, 2014 final rule, DOE has determined that there are no technical differences between the EPSs that power certain SSL (including LED) products and those that are used with other end-use applications. 79 FR 7845. As such,

[8] Two exclusions apply to the Class A External Power Supply definition. Devices that require Federal Food and Drug Administration listing and approval as a medical device in accordance with section 513 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(c)) or devices that power the charger of a detachable battery pack or charge the battery of a product that is fully or primarily motor operated are not considered Class A External Power Supplies. See 42 U.S.C. 6291(36)(C)(ii).

DOE believes that many drivers, or transformers, used for SSL applications would meet the definition of a Class A EPS and would therefore be subject to the applicable energy conservation standards.

2. Convert to Only One AC or DC Output Voltage at the Same Time

DOE has also received questions related to the Class A EPS criterion specifying that a given device can ''convert to only AC or DC output voltage at a time''. This requirement would be met if an EPS can provide two or more outputs at the same voltage at the same time or if it can provide two or more different output voltages, but not at the same time. These criteria would not be met if the EPS can provide more than one nominal lower-voltage AC or DC output at the same time; such an EPS would not be considered a Class A EPS, but would be considered a multiple-voltage EPS because it is designed to convert line voltage AC input into more than one simultaneous lower-voltage output. Direct operation multiple-voltage EPSs are subject to conservation standards beginning in 2016.

3. Power Over Ethernet

DOE has also been asked about how the criterion requiring that a Class A EPS be connected to the end-use product via a removable or hard-wired male/female electrical connection, cable, cord, or other wiring would apply to a Power over Ethernet (PoE) device. PoE describes a system which passes electrical power along with data on Ethernet cabling allowing a single cable to provide both data connection and electrical power. Specifically, stakeholders have asked if PoE Injectors, components that provide power to an Ethernet cable, or EPSs that are connected to the end-use product by an Ethernet cable would be considered Class A external power supplies. An EPS may be considered a Class A EPS if it connects to the end-use application using any type of electrical connection, cable, cord, or other wiring, including both removable and hard-wired connections. An Ethernet cable would meet these criteria, so an EPS that connects to the end-use product via an Ethernet cable would still be considered a Class A EPS and would be subject to the applicable energy conservation standards if it meets the other five criteria of a Class A EPS.

4. Security or Life Safety Alarm or Surveillance Systems

Finally, DOE has received questions on the exemption from the no-load mode energy consumption standards for certain EPSs manufactured before July 1, 2017. Under 42 U.S.C. 6295(u)(3)(E), an EPS that (1) is an AC-to-AC EPS; (2) has a nameplate output of 20 watts or more, and (3) is certified to the Secretary as being designed to be connected to a security or life safety alarm or surveillance system component does not have the meet the no-load mode requirements, provided it is manufactured before July 1, 2017 and is marked in accordance with the International Efficiency Marketing Protocol.[9] *See also* 10 CFR 430.32(w)(5) (codifying the statutory requirements of 42 U.S.C. 6295(u)(3)(E)). Per 10 CFR 430.2, a security or life safety alarm or surveillance system means equipment designed and marketed to perform certain functions on a continuous basis, such as monitoring intrusion to real property, providing notification of threats to life safety or physical property, controlling access to real property or physical assets, or preventing unauthorized removal of physical assets. The term security or life safety alarm or surveillance system does not include any product with a principal function other than life safety, security, or surveillance that is designed and marketed with a built-in alarm or theft-deterrent feature or does not operate necessarily and continuously in active mode.

Examples of products that would meet this definition of security or life safety alarm or surveillance systems include home security system consoles, keyless entry electronic door locks, and smoke detectors because these products are designed and marketed to continuously monitor intrusion or access to real property, control access to property, and monitor threats to real property. On the other hand, landscape lighting with motion sensors, video cameras, and smart phones with theft deterrent features are examples of products with principal functions other than life safety, security, or surveillance that are designed and marketed with built-in alarm or theft deterrent features or that do not operate necessarily and continuously in active mode. These products would not be exempt from the no-load mode energy consumption standards. It should be noted that EPSs that receive the exemption are still required to meet the average active-mode efficiency requirements and that this exemption expires on July 1, 2017, so EPSs manufactured after this date will also be required to comply with the applicable no-load limits.

J. Sampling Plan

For certification and compliance, manufacturers are required to rate each basic model according to the sampling provisions specified in 10 CFR Part 429. The sampling plan for Class A EPSs can be found in 10 CFR 429.37, which requires that any represented value of the estimated energy consumption of a basic model of a Class A EPS for which consumers would favor a lower value shall be greater than or equal to the higher of the mean of the sample or the upper 97.5 percent confidence limit of the true mean divided by 1.05. DOE is also proposing to require manufacturers to provide the output current in ampere (A), which is currently only required if that information is not provided on the nameplate.

Given that the recent energy conservation standards rule applies to both Class A EPSs and direct operation EPSs that do not meet the Class A definition, there is no longer a need to differentiate between Class A and non-Class A EPSs for the purposes of part 429. Instead, DOE proposes to amend 10 CFR 429.37 so that the sampling plan, which currently applies only to Class A EPSs, would be applied to any EPS subject to energy conservation standards. DOE seeks comment on this proposal to apply the sampling plan requirements to all EPSs subject to an energy conservation standard, regardless of whether they meet the Class A definition.

K. Effective Date and Compliance Date of Test Procedure

If adopted, the effective date for this test procedure would be 30 days after publication of the test procedure final rule in the **Federal Register**. At that time, the new metrics and any other measure of energy consumption relying on these metrics may be represented pursuant to the final rule. Consistent with 42 U.S.C. 6293(c), energy consumption or efficiency representations by manufacturers must be based on the new test procedure and sampling plans starting 180 days after the date of publication of the test procedure final rule. Starting on that date, any such representations, including those made on marketing materials, Web sites (including qualification with a voluntary or State program), and product labels would be based on results generated using the proposed procedure as well as the sampling plan in 10 CFR part 429.

[9] Energy Efficiency and Renewable Energy Office (EERE): International Efficiency Marking Protocol for External Power Supplies Version 3.0 (available at *http://www.regulations.gov/#!documentDetail;D=EERE-2008-BT-STD-0005-0218*).

L. Impacts From the Test Procedure

When proposing to amend a test procedure, DOE typically determines the extent to which, if any, the proposed test procedure would alter the measured energy efficiency of any covered product when compared to the existing test procedure. (42 U.S.C. 6293(e)(1)) If DOE determines that the amended test procedure would alter the measured efficiency of a covered product to a significant extent, DOE would amend the applicable energy conservation standard accordingly. (42 U.S.C. 6293(e)(2)).

The proposed amendments would not alter the measured efficiency of EPSs. DOE expects that the rated values of EPSs tested under the current test method codified in Appendix Z would still be obtained when tested using today's proposed method because the proposal is not modifying the methods used to measure or calculate the rated values of an EPS that are used to determine whether that EPS would satisfy the regulatory conservation standards for average active-mode efficiency and no-load power. In other words, there should be no change in the measured results under the proposal. Rather, the proposed amendments would (1) harmonize DOE's procedure with the latest version of IEC 62301 concerning the measurement equipment resolution and measurement uncertainties; (2) define and clarify how to test adaptive EPSs; (3) clarify the testing configurations to avoid introducing additional losses in testing cables; (4) clarify the testing of EPSs that are not capable of being tested at one or more loading conditions; (5) add an optional test for active-mode efficiency measurements at a 10 percent loading condition for both single-voltage and multiple-voltage EPSs; (6) add an optional measurement for output power factor; and (7) revise the sampling plan to include EPSs that will be covered by Federal efficiency standards as of 2016.

In DOE's view, none of the proposed modifications will impact the measured energy use of tested EPSs because the fundamental testing methodology and certification process remains unchanged—i.e., the calculation of average active-mode efficiency or no-load power consumption would remain unchanged. Additionally, DOE's proposed steps to address how to connect test equipment to an EPS to avoid introducing electrical energy losses would clarify the test procedure to ensure accurate and repeatable results.

DOE does not anticipate that the additional burden posed by these proposed changes, if any, are likely to be significant. None of these proposed amendments would involve changing the necessary testing equipment or add significant increases in testing time. Measuring the active-mode efficiency of the new 10-percent loading condition is optional. But even if this test is performed, it will not require any additional equipment that would be unnecessary for measuring the active-mode efficiency of the other loading conditions and will increase the total testing time for each unit by approximately 10 minutes. Similarly, the revised uncertainty and resolution requirements will not mandate any changes to the necessary testing equipment.

DOE does not believe the updated procedure will impose increased testing burden or alter the measured average active-mode efficiency or no-load power. While the proposed amendments would be required to be used beginning 180 days after publication of a final rule, manufacturers may begin using the amended test procedure immediately after a final rule is published.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget (OMB) has determined that test procedure rulemakings do not constitute ''significant regulatory actions'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) requires preparation of an initial regulatory flexibility analysis (IFRA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site: *http://energy.gov/gc/office-general-counsel.*

For manufacturers of EPSs, the Small Business Administration (SBA) has set a size threshold, which defines those entities classified as ''small businesses'' for the purposes of the statute. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. 65 FR 30836, 30848 (May 15, 2000), as amended at 65 FR 53533, 53544 (Sept. 5, 2000) and codified at 13 CFR part 121. The size standards are listed by North American Industry Classification System (NAICS) code and industry description and are available at *http://www.sba.gov/content/summary-size-standards-industry.* EPS manufacturing is classified under NAICS 335999, ''All Other Miscellaneous Electrical Equipment and Component Manufacturing.'' The SBA sets a threshold of 500 employees or less for an entity to be considered as a small business for this category.

DOE reviewed the proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. This proposed rule prescribes certain limited clarifying amendments to an already-existing test procedure that will help manufacturers and testing laboratories to consistently conduct that procedure when measuring the energy efficiency of an EPS, including in those instances where compliance with the applicable Federal energy conservation is being assessed. DOE has tentatively concluded that the proposed rule would not have a significant impact on a substantial number of small entities.

DOE notes that there are no domestic manufacturers of EPSs. Given the absence of any domestic manufacturers of these products, there are no small business impacts to evaluate for purposes of the Regulatory Flexibility Act.

In addition, DOE expects any potential impact from its proposal to be minimal. As noted earlier, DOE's EPS test procedure has existed since 2005 and the modest clarifications in the proposal are unlikely to create a burden on any manufacturers. These proposed revisions, if adopted, would harmonize the instrumentation resolution and uncertainty requirements with the second edition of the International Electrotechnical Commission (IEC) 62301 standard when measuring standby power along with other international standards programs. They would also include modifications to the measurements specified by IEC 62301, including changes that would address active-mode efficiency loading points

and require that power factor be recorded for each loading condition. The proposal would also clarify certain testing set-up requirements. These updates would not are expected to increase the testing burden on EPS manufacturers.

For these reasons, DOE certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE will transmit the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the SBA for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of EPS must certify to DOE that their products comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the DOE test procedures for EPSs including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including external power supplies. (76 FR 12422 (March 7, 2011)) The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

DOE has determined that this proposal, which would add clarifying amendments to an existing test procedure, falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this proposed rule would amend the existing test procedures without affecting the amount, quality or distribution of energy usage, and, therefore, would not result in any environmental impacts. Thus, this rulemaking is covered by Categorical Exclusion A6 under 10 CFR part 1021, subpart D, which applies to any rulemaking that interprets or amends an existing rule without changing the environmental effect of that rule. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of today's proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Pub. L. No. 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a)–(b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *http://energy.gov/gc/office-general-*

counsel. DOE examined this proposed rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (March 18, 1988), that this proposed regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This regulatory action to amend the test procedure for measuring the energy efficiency of external power supplies is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; FEAA) Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition.

Certain of the proposed amendments would incorporate testing methods contained in the following standard: IEC Standard 62301 ''Household electrical appliances—Measurement of standby power.'' It would also incorporate a testing method developed by the State of California, section 1604(u)(1) of the CEC 2007 Appliance Efficiency Regulations. DOE has evaluated these testing standards and tentatively concludes that the IEC standard complies with the requirements of section 32(b) of the Federal Energy Administration Act, (i.e., that they were developed in a manner that fully provides for public participation, comment, and review). DOE will consult with the Attorney General and the Chairman of the FTC concerning the impact of these test procedures on competition, prior to prescribing a final rule.

V. Public Participation

DOE will accept comments, data, and information regarding this proposed rule no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this notice.

Submitting comments via regulations.gov. The regulations.gov Web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies 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). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment 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. 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 regulations.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 through regulations.gov cannot be claimed as CBI. Comments received through the Web site will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through regulations.gov before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the

comment tracking number that regulations.gov provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery, or mail. Comments and documents submitted via email, hand delivery, or mail also will be posted to regulations.gov. 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 on 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, please provide all items on a CD, if feasible. It is not necessary to submit printed copies. No facsimiles (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 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.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. According 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 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.

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).

A. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

1. DOE seeks comment on its proposal to incorporate the accuracy and precision requirements found in the current version of IEC 62301 (2nd ed.) as part of DOE's external power supply test procedure. Would the incorporation of these requirements be sufficient to ensure that the measurements obtained during testing when following the procedure are accurate, consistent, and repeatable? What potential problems, if any, could occur if DOE were to incorporate these requirements into its test procedure?

2. DOE seeks comment on its proposed clarification regarding the test set-up when measuring output power with a combination of a voltmeter and ammeter. Is the additional language sufficient to ensure that tests are repeatable and that the testing set-up is unambiguous? Are there any potential problems with mandating this type of connection that could negatively impact the efficiency measurement and ultimately a manufacturer's ability to comply with the federal standard?

3. DOE seeks comment on allowing manufacturers with products that limit the current under certain loading conditions to certify their products using an average efficiency metric of all the load conditions in the DOE test procedure that can be tested. Would allowing manufacturers to certify their products in this fashion lead to gaming of the test procedure or a circumvention of the standard? Would issuing waivers on a case-by-case basis be a preferable alternative? What is the likelihood that manufacturers will design around certain loading conditions to take advantage of this new approach in order to more easily comply with the federal standard?

4. DOE seeks comment on its proposal to optionally measure power factor at each loading condition. Does this put unnecessary additional burden on manufacturers for testing? Does DOE need to establish a methodology for measuring power factor beyond what is outlined in IEC 62301 (2nd Ed.)? How significant is power factor in determining the overall efficiency of an EPS? Would power factor measurements be repeatable?

5. DOE seeks comment on whether the proposed definition of an adaptive external power supply accurately describes this new type of EPS. Is the definition too broad such that other single-voltage operation EPSs or battery chargers may now be considered adaptive EPSs? Is there a more appropriate term than ''adaptive''?

6. DOE seeks comment on its proposed approach to testing adaptive EPSs. Should such products be considered EPSs? Can these types of EPSs be tested using a test jig provided by the manufacturer? If so, what output power rating should be considered for certification? If not, are there methods DOE should consider to improve the test procedure in regards to EPSs that communicate with their loads?

7. DOE seeks comment on how to determine the highest and lowest voltages on adaptive EPSs. Should these numbers be required for submission during certification? Should the test procedure be modified to measure such values?

8. DOE is seeking comment on adding language to clarify the testing set-up at 0 percent load. Is stating that the EPS must be in no-load mode before the EPS is tested at 0 percent load necessary? For adaptive EPSs, is there potential to capture different results when the EPS is disconnected versus if the load was simply reduced to zero but still physically connected to the output of the EPS?

9. DOE seeks comment on how to rate and certify adaptive EPSs. Is requiring that manufacturers submit data at both voltage extremes overly burdensome? Are there any technical limitations to requiring that these measurements be taken and submitted? Are there more appropriate ways of rating such EPSs?

10. DOE seeks comment on including an additional, optional loading condition at 10 percent of the rated nameplate output power of the unit

under test in the EPS test procedure. Would testing an EPS at 10 percent load more completely represent the achievable efficiencies of the EPS under test? Would the efficiencies recorded at this loading point be significantly lower from those taken at the loading points in the current DOE test procedure?

11. DOE seeks comment on its proposed revision to the definition of ''indirect operation external power supply''. Do these changes more accurately define what is meant by an indirect operation EPS? Is there the potential for this new definition to increase the scope of coverage of the EPS standard?

12. DOE seeks comment on creating a single sampling plan for both Class A and non-Class A EPSs. Is there any reason that all EPSs within the scope of federal standard should not be subject to the same sampling requirements? Are the manufacturing variations somehow different between different groups of EPSs that would necessitate separate sampling requirements?

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this proposed rule.

List of Subjects

10 CFR Part 429

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Reporting and recordkeeping requirements.

10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Issued in Washington, DC, on October 2, 2014.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE is proposing to amend parts 429 and 430 of Chapter II of Title 10, Code of Federal Regulations as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

■ 2. Section 429.37 is amended by revising the section heading and paragraph (b)(2) to read as follows:

§ 429.37 External Power Supplies.

* * * * *

(b) * * *

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information:

(i) External power supplies: The average active mode efficiency as a percent (%), no-load mode power consumption in watts (W), nameplate output power in watts (W), and the output current in amperes (A) of the basic model or the output current in amperes (A) of the highest- and lowest-voltage models within the external power supply design family.

(ii) Switch-selectable single-voltage external power supplies: The average active mode efficiency as a percentage (%) value, no-load mode power consumption in watts (W), at the lowest and highest selectable output voltages, nameplate output power in watts (W), and the output current in amperes (A).

(iii) Adaptive single-voltage external power supplies: The average active mode efficiency at the highest achievable output voltage as a percentage (%) value, the average active mode efficiency at the lowest achievable output voltage as a percentage (%) value, nameplate output power in watts (W), and the output current in amperes (A) at the highest and lowest achievable output voltages. No-load mode power consumption in watts (W).

(iv) External power supplies that are exempt from no-load mode requirements under § 430.32(w)(1)(iii): A statement that the product is designed to be connected to a security or life safety alarm or surveillance system component, the average active mode efficiency as a percentage (%) value, the nameplate output power in watts (W), and the certification report must also include the output current in amperes (A) of the basic model or the output current in amperes (A) of the highest- and lowest-voltage models within the external power supply design family.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 3. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 4. Section 430.2 is amended by revising the introductory text of the definition of ''Indirect operation external power supply'' to read as follows:

§ 430.2 Definitions.

* * * * *

Indirect operation external power supply means an EPS that cannot operate a consumer product (that is not a battery charger) without the assistance of a battery, as determined by the steps in paragraphs (1)(i) through (v) of this definition, or an EPS that solely provides power to a battery charger that is contained in a separate physical enclosure from the end-use product:

* * * * *

§ 430.3 [Amended]

■ 5. Section 430.3 is amended by removing from paragraph (o)(4), ''and X'' and adding ''X, and Z'' in its place.

■ 6. Section 430.32 is amended by adding paragraph (w)(iii) to read as follows:

§ 430.32 Energy and water conservation standards and their compliance dates.

* * * * *

(w) * * *

(iii) The following table summarizes the energy conservation standards that are applicable to external power supplies beginning on February 10, 2016.

	Class A EPS	Non-Class A EPS
Direct Operation EPS	Level VI: 10 CFR 430.32(w)(1)(ii)	Level VI: 10 CFR 430.32(w)(1)(ii).
Indirect Operation EPS	Level IV: 10 CFR 430.32(w)(1)(i)	No Standards.

* * * * *

■ 7. Appendix Z to subpart B of part 430 is amended:

■ a. In section 2., Definitions, by

■ ii. Redesignating paragraphs (d) and (e) as (e) and (f), and paragraphs (f) through (x) as paragraphs (h) through (z), respectively; and

■ iii. Adding new paragraphs (d) and (g);

■ b. In section 3, Test Apparatus and General Instructions, by

■ i. Revising paragraphs (a), and (b)(i)(A); and

■ ii. Removing paragraphs (b)(i)(B) and (b)(i)(C);

■ c. In section 4, Test Measurement, by:

■ i. Revising paragraphs (a)(i), and (a)(ii);

■ ii. Adding a new paragraph (a)(i)(D); and

■ iii. Revising paragraphs (b)(i)(A)(3), (b)(i)(A)(5), (b)(i)(A)(6), (b)(i)(B)(2), (b)(i)(C), (b)(i)(E), (b)(i)(F), and (b)(ii).

The revisions and additions read as follows:

Appendix Z to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of External Power Supplies

* * * * *

2. *Definitions.* * * *

* * * * *

(d) Adaptive external power supply means an external power supply that can alter its output voltage during active mode based on an established communication protocol with the end-use application without any user-generated action.

* * * * *

(g) Average Active Mode Efficiency means the average of the loading conditions (100 percent, 75 percent, 50 percent, and 25 percent of its nameplate output current) for which it can sustain the output current.

* * * * *

3. *Test Apparatus and General Instructions:*

(a) Single-Voltage External Power Supply. The test apparatus, standard testing conditions, and instructions for testing external power supplies shall conform to the requirements specified in section 4, ''General Conditions for Measurement,'' of the CEC's ''Test Method for Calculating the Energy Efficiency of Single-Voltage External AC–DC and AC–AC Power Supplies,'' August 11, 2004, (incorporated by reference, see § 430.3) with the following two exceptions.

(i) In section 4.b of the CEC test method, ''Measuring Equipment'', measurements shall conform to the uncertainty requirements specified in section 4.4.1 of the second edition of IEC 62301 (incorporated by reference, see § 430.3).

(ii) When following section 4.d of the CEC test method, ''Test Voltage'', the applied test voltage shall only be 115 volts, 60 Hz.

(b) *Multiple-Voltage External Power Supply.* * * *

(i) Verifying Accuracy and Precision of Measuring Equipment

(A) Any power measurements recorded, as well as any power measurement equipment utilized for testing, shall conform to the uncertainty and resolution requirements outlined in Section 4, ''General conditions for measurements'', as well as Annexes B, ''Notes on the measurement of low power modes'', and D, ''Determination of uncertainty of measurement'', of IEC 62301 (2nd Ed.) (incorporated by reference, see § 430.3).

* * * * *

4. *Test Measurement:*

(a) * * *

(i) Standby Mode and Active Mode Measurement — When measuring standby mode (i.e., no-load mode) energy consumption and active mode efficiency, follow the steps specified in section 5, ''Measurement Approach'' of the CEC's ''Test Method for Calculating the Energy Efficiency of Single-Voltage External Ac-Dc and Ac-Ac Power Supplies,'' August 11, 2004, (incorporated by reference, see § 430.3) EXCEPT use the loading conditions listed in Table 1 of this section. Power factor may be measured at each Loading Condition (1, 2, 3, 4, and 5 in Table 1 of this section) and be recorded separately. For Loading Condition 6, place the unit under test in no-load mode, disconnect any additional signal connections to the unit under test, and measure input power. In section 5.b, the loading conditions are:

TABLE 1—LOADING CONDITIONS FOR A SINGLE-VOLTAGE UNIT UNDER TEST

	Percentage of Nameplate Output Current
Load Condition 1.	100% of Nameplate Output Current ± 2%
Load Condition 2.	75% of Nameplate Output Current ± 2%.
Load Condition 3.	50% of Nameplate Output Current ± 2%.
Load Condition 4.	25% of Nameplate Output Current ± 2%.
Load Condition 5.	10% of Nameplate Output Current ± 2% (optional).
Load Condition 6.	0%.

Test switch-selectable single-voltage external power supplies twice—once at the highest nameplate output voltage and once at the lowest. Test adaptive external power supplies twice—once at the highest achievable output voltage and once at the lowest. Any additional metering equipment such as voltmeters and/or ammeters used in conjunction with resistive or electronic loads as described in section 5.c must be connected directly to the end of the output cable of the UUT.

* * * * *

(D) If an external power supply cannot sustain output at one or more of loading conditions 1–4 as specified in Table 1 of this section, the external power supply should only be tested at the loading conditions for which it can sustain output. In these cases, the average active-mode efficiency shall be the average of the loading conditions for which it can sustain the output. In the case where the external power supply lists both an instantaneous and continuous output current, it shall be tested at the continuous condition only.

(ii) Off-Mode Measurement—If the external power supply unit under test incorporates manual on-off switches, the unit under test shall be placed in off mode, and its power consumption in off mode measured and recorded. The measurement of the off mode energy consumption shall conform to the requirements specified in section 5, ''Measurement Approach,'' of the CEC's ''Test Method for Calculating the Energy Efficiency of Single-Voltage External Ac-Dc and Ac-Ac Power Supplies,'' August 11, 2004 (incorporated by reference, see § 430.3), with two exceptions. In section 5.a, ''Preparing UUT [Unit Under Test] for Test,'' all manual on-off switches shall be placed in the ''off'' position for the measurement. In section 5.d, ''Testing Sequence,'' the technician shall consider the UUT stable if, over 5 minutes with samples taken at least once every second, the AC input power does not drift from the maximum value observed by more than 1 percent or 50 milliwatts, whichever is greater. The only loading condition that will be measured for off mode is ''Load Condition 6'' in Table 1 of this appendix. for switch-selectable single-voltage external power supplies, measure the off mode power consumption twice— once at the highest nameplate output voltage and once at the lowest.

(b) Multiple-Voltage External Power Supply. * * *

(i) * * *

(A) * * *

(3) After this warm-up period, the technician shall monitor AC input power for a period of 5 minutes to assess the stability of the unit under test. If the power level does not drift by more than 1 percent from the maximum value observed, the unit under test can be considered stable and measurements can be recorded at the end of the 5-minute period. Measurements at subsequent loading conditions, listed in Table 2 of this section, can then be conducted under the same 5-minute stability instructions. Only one warm-up period of 30 minutes is required for each unit under test at the beginning of the test procedure.

* * * * *

(5) The unit under test shall be tested at the loading conditions listed in Table 2 of this section, de-rated per the proportional allocation method presented in the subsection immediately following Table 2.

TABLE 2—LOADING CONDITIONS FOR A MULTIPLE-VOLTAGE UNIT UNDER TEST

	Percentage of Nameplate Output Current
Load Condition 1.	100% of De-rated Nameplate Output Current ± 2%.
Load Condition 2.	75% of De-rated Nameplate Output Current ± 2%.
Load Condition 3.	50% of De-rated Nameplate Output Current ± 2%.
Load Condition 4.	25% of De-rated Nameplate Output Current ± 2%.

TABLE 2—LOADING CONDITIONS FOR A MULTIPLE-VOLTAGE UNIT UNDER TEST—Continued

Load Condition 5.	10% of De-rated Nameplate Output Current ± 2% (optional).
Load Condition 6.	0%.

(6) Input and output power measurements shall be conducted in sequence from Loading Condition 1 to Loading Condition 5, as indicated in Table 2 of this section. For Loading Condition 6, place the unit under test in no-load mode, disconnect any additional signal connections to the unit under test, and measure input power.

(B) * * *

(2) If $D \geq 1$, then loading every bus to its nameplate output current does not exceed the overall nameplate output power for the power supply. In this case, each output bus will simply be loaded to the percentages of its nameplate output current listed in Table 2 of this section. However, if $D < 1$, it is an indication that loading each bus to its nameplate output current will exceed the overall nameplate output power for the power supply. In this case, and at each loading condition, each output bus will be loaded to the appropriate percentage of its nameplate output current listed in Table 2, multiplied by the derating factor *D*.

(C) Minimum output current requirements. Depending on their application, some multiple-voltage power supplies may require a minimum output current for each output bus of the power supply for correct operation. In these cases, ensure that the load current for each output at Loading Condition 4 in Table 2 of this section is greater than the minimum output current requirement. Thus, if the test method's calculated load current for a given voltage bus is lower than the minimum output current requirement, the minimum output current must be used to load the bus. This load current shall be recorded in the test report.

* * * * *

(E) Efficiency calculation and data recordation. The efficiency of a unit under test shall be calculated by dividing the measured active output power of that unit at a given loading condition by the active AC input power measured at that loading condition. The average active-mode efficiency of the unit shall be calculated by averaging the efficiency of the unit under test as calculated at Loading Conditions 1 through 4, unless output cannot be sustained at one of those loading conditions. In that case, average-active mode efficiency is calculated as described in paragraph (a)(i)(D) of this section. Additionally, an optional calculation and individual recording of the efficiency at Loading Condition 5 (specified in Table 2 in paragraph (b)(i)A)(5) of this section) may also be performed. Power factor for Loading Conditions 1 through 5 (as specified under the same Table 2) may also be recorded, but these measurements are not mandatory. The efficiency at each loading condition and the power factor at each loading condition shall be individually recorded.

(F) Power consumption calculation. Power consumption of the unit under test at Loading Conditions 1, 2, 3, 4, and 5 is the difference between the active output power at that Loading Condition and the active AC input power at that Loading Condition. The power consumption of Loading Condition 6 (no-load) is equal to the AC active input power at that Loading Condition.

(ii) Off Mode Measurement—If the multiple-voltage external power supply unit under test incorporates any on-off switches, the unit under test shall be placed in off mode and its power consumption in off mode measured and recorded. The measurement of the off mode energy consumption shall conform to the requirements specified in paragraph (b)(i) of this section. The only loading condition that will be measured for off mode is ''Loading Condition 6'' in paragraph (b)(i)(A), ''Loading conditions and testing sequence'', except that all manual on-off switches shall be placed in the off position for this measurement.

[FR Doc. 2014–24180 Filed 10–8–14; 8:45 am]

BILLING CODE 6450–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Parts 1260 and 1274

RIN 2700–AE12

Removal of Procedures for Delegation of Administration of Grants and Cooperative Agreements; Withdrawal

AGENCY: National Aeronautics and Space Administration

ACTION: Proposed rule; withdrawal.

SUMMARY: NASA hereby provides notice of the cancellation of a proposed rule without further action.

DATES: The proposed rule published in the **Federal Register** of November 14, 2013 (78 FR 68376) is withdrawn as of October 9, 2014.

FOR FURTHER INFORMATION CONTACT: Leigh Pomponio, NASA, Office of Procurement, Contract Management Division (Suite 2P77), 300 E Street SW., Washington DC, 30546–0001; email: *leigh.pomponio@nasa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

On November 14, 2013, NASA published a proposed rule (78 FR 68376) to remove internal procedures for delegation of grant administration from the regulation at 14 CFR 1260.70 and 1274.301. The action was published with an incorrect RIN number (2700–AE11). On December 26, 2013, a correction was published (78 FR 78305) to indicate that the correct RIN number is 2700–AE12. No public comments were received on the proposed rule. NASA will not proceed to finalize this action at this time. NASA is currently preparing guidance and regulations to implement OMB's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (78 FR 78589, Dec 26, 2013). Because implementation of OMB's guidance will necessitate major changes to NASA's Grant Handbook, NASA will make changes to internal delegation of administration procedures concurrent with or following the implementation of OMB's uniform requirements.

Cynthia Boots,

Alternate Federal Register Liaison.

[FR Doc. 2014–22693 Filed 10–8–14; 8:45 am]

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DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 620

RIN 1205–AB63

Federal-State Unemployment Compensation Program; Middle Class Tax Relief and Job Creation Act of 2012 Provision on Establishing Appropriate Occupations for Drug Testing of Unemployment Compensation Applicants

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Employment and Training Administration (ETA) of the U.S. Department of Labor (Department) proposes to establish in regulation, for State Unemployment Insurance (UI) program purposes, occupations that regularly conduct drug testing. These regulations would implement the Middle Class Tax Relief and Job Creation Act of 2012 (the Act) amendments to the Social Security Act (SSA), permitting States to enact legislation that would allow State UI agencies to conduct drug testing on unemployment compensation (UC) applicants for whom suitable work (as defined under the State law) is *only* available in an occupation that regularly conducts drug testing (as determined under regulations issued by the Secretary of Labor (Secretary)). States may deny UC to an applicant who tests positive for drug use under these circumstances. The Secretary is required under the SSA to issue regulations determining those occupations that regularly conduct drug testing.

DATES: To be ensured consideration, comments must be submitted in writing on or before December 8, 2014.

ADDRESSES: You may submit comments, identified by Regulatory Information Number (RIN) 1205–AB63, by one of the following methods:

Federal e-Rulemaking Portal: *http://www.regulations.gov.* Follow the Web site instructions for submitting comments.

Mail and hand delivery/courier: Written comments, disk, and CD–ROM submissions may be mailed to Adele Gagliardi, Administrator, Office of Policy Development and Research, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–5641, Washington, DC 20210.

Instructions: Label all submissions with ''RIN 1205–AB63.''

Please submit your comments by only one method. Please be advised that the Department will post all comments received that that related to this NPRM on *http://www.regulations.gov* without making any change to the comments or redacting any information. The *http://www.regulations.gov* Web site is the Federal e-rulemaking portal and all comments posted there are available and accessible to the public. Therefore, the Department recommends that commenters remove personal information such as Social Security Numbers, personal addresses, telephone numbers, and email addresses included in their comments as such information may become easily available to the public via the *http://www.regulations.gov* Web site. It is the responsibility of the commenter to safeguard personal information.

Also, please note that due to security concerns, postal mail delivery in Washington, DC may be delayed. Therefore, the Department encourages the public to submit comments on *http://www.regulations.gov.*

Docket: All comments on this proposed rule will be available on the *http://www.regulations.gov* Web site and can be found using RIN 1205–AB63. The Department also will make all the comments it receives available for public inspection by appointment during normal business hours at the above address. If you need assistance to review the comments, the Department will provide appropriate aids such as readers or print magnifiers. The Department will make copies of this proposed rule available, upon request, in large print and electronic file on computer disk. To schedule an appointment to review the comments and/or obtain the proposed rule in an alternative format, contact the Office of Policy Development and Research at (202) 693–3700 (this is not a toll-free number). You may also contact this office at the address listed below.

Comments under the Paperwork Reduction Act: In addition to filing comments with ETA, persons wishing to comment on the information collection aspects of this rule may send comments to: 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, Fax: 202–395–6881 (this is not a toll-free number), email: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Adele Gagliardi, Administrator, Office of Policy Development and Research, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–5641, Washington, DC 20210; telephone (202) 693–3700 (this is not a toll-free number).

Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The preamble to this proposed rule is organized as follows:

I. Background—provides a brief description of the development of the proposed rule
II. Section-by-Section Review—summarizes and discusses the proposed regulations
III. Administrative Information—sets forth the applicable regulatory requirements

I. Background

On February 22, 2012, President Obama signed the Act, Public Law 112–96. Title II of the Act amended section 303, SSA, to add a new subsection (l) permitting States to drug test UC applicants as a condition of UC eligibility under two specific circumstances. The first circumstance is if the applicant was terminated from employment with the applicant's most recent employer because of the unlawful use of a controlled substance. (Section 303(l)(1)(A)(i), SSA.) The second circumstance is if the only available suitable work (as defined in the law of the State conducting the drug testing) for an individual is in an occupation that regularly conducts drug testing (as determined in regulations by the Secretary). A State may deny UC to an applicant who tests positive for drug use under these circumstances. (Section 303(l)(1)(A)(ii), SSA.) This proposed rule defines those occupations that regularly conduct drug testing as required by section 303(l)(1)(A)(ii), SSA. The Department of Labor will, separately from this rulemaking, issue further guidance to States to address other issues related to the implementation of drug testing under 303(l), SSA.

Consultations With Other Federal Agencies

The Department consulted with a number of Federal agencies with expertise in drug testing to inform this proposed regulation. Specifically, we consulted with the Substance Abuse and Mental Health Services Administration (SAMHSA) in the U.S. Department of Health and Human Services (HHS); the U.S. Department of Transportation (DOT); the U.S. Department of Defense (DOD); the U.S. Department of Homeland Security (DHS); DOL's Bureau of Labor Statistics (BLS); and DOL's Occupational Safety and Health Administration (OSHA). These agencies were consulted because they have experience with required drug testing. DOD and DHS defer to SAMHSA for interpretation of the drug testing requirements. Therefore, the Department gave deference to the SAMHSA guidance when developing this rule. The Department also canvassed State laws to develop an understanding of what occupations require regular drug testing at the State level.

SAMHSA: The Department consulted with SAMHSA because it is the Federal agency mandated to oversee Federal workplace drug testing by Pub. L. 100–71 and, further, by E.O. 12564, entitled Drug-Free Federal Workplace. E.O. 12564 requires that the head of each Federal agency ''shall establish a program to test for the use of illegal drugs by employees in sensitive positions.'' Public Law 100–71 directed HHS to establish scientific and technical guidelines and ensure that comprehensive standards are published to govern the drug testing of Federal employees. SAMHSA provides oversight for:

➢ The Federal Drug-Free Workplace Program, which aims to eliminate illicit drug use in the Federal workforce; and

➢ The National Laboratory Certification Program, which certifies laboratories to conduct forensic drug testing for the Federal agencies and for some Federally-regulated industries.

In order to oversee Federal workplace drug testing, SAMHSA reviews Federal agencies' drug testing designated positions (TDPs), which SAMSHA requires Federal agencies to designate.

OSHA: ETA consulted with DOL's OSHA because of its knowledge of employer drug testing programs. OSHA also was instrumental in identifying

expertise in other Federal agencies that proved valuable to the development of the NPRM.

DOT: ETA consulted with DOT partly because DOT has a number of occupations designated as TDPs by SAMHSA, and more significantly because DOT regulations at 49 CFR part 40 identify public and private employment in transportation industries as being subject to drug testing. These regulations require that the Secretary of Transportation ensure drug and alcohol testing policies are developed and carried out in a consistent, efficient, and effective manner within the transportation industries for the ultimate safety and protection of the traveling public.

BLS: ETA consulted with BLS and determined that currently no statistical collections exist that relate to occupations where employers regularly drug test.

Review of State Drug Testing Laws

ETA's consultation did not reveal any single reliable and current source of occupations that regularly drug test. Therefore, ETA relied on current Federal and State laws as the primary sources to determine what occupations regularly drug test for purposes of implementing Section 303(l), SSA. Some States have not enacted workplace drug and alcohol testing laws. Others have enacted laws that permit and encourage employers to conduct drug testing of applicants and/or employees, but they are not based on occupations and therefore do not fall within the scope of this rulemaking. For example, most States allow a private employer to decide whether and when to test job applicants and employees, often in accordance with a written policy created by the employer according to State law. In some instances, State law specifies that the employer may test job applicants and current employees for any job-related purpose consistent with business necessity and the terms of the employer's written policy. If States do provide restrictions on workplace drug testing, then they commonly provide more protection to employees than to job applicants. For example, a State's law may permit employers to require all job applicants with conditional offers of employment to take drug tests, but they permit an employer to require a drug test of an employee only if the employer has reasonable suspicion that use of drugs is impairing the employee's job performance or has probable cause to believe that the employee, while on the job, is using or is under the influence of drugs. These provisions are not relevant to this rulemaking, which must, under section 303(l)(1)(A)(ii), SSA, determine what occupations are ''regularly'' drug tested.

Many States also provide various discounts and credits to employers that adopt drug-free workplace programs. Some States' programs require drug testing of applicants and/or employees as part of these programs, while others do not. Some States that require participating employers to test job applicants nevertheless allow the employers to limit such testing based on reasonable classifications of job positions. Employer sponsorship of a drug-free workplace program is usually voluntary but may be required of state contractors.

State laws that clearly fall within the scope of this regulation include those that identify types of positions for which employers may conduct drug testing. For example, a State's law may permit drug testing only of individuals ''employed in safety-sensitive positions'' or if the ''employee serves in an occupation which has been designated as a high-risk or safety-sensitive occupation.'' At least one State permits testing of individuals who ''participate in activities upon which pari-mutuel wagering is authorized.''

State laws that identify specific classes of positions for which drug testing of applicants and/or employees is required also fall affirmatively within the scope of this regulation. State laws most commonly require drug testing of drivers of school transportation vehicles and commercial motor vehicles. States may also require certain types of private employers to conduct at least some drug testing of employees and/or job applicants (*e.g.,* nursing homes and home health agencies, residential childcare facilities, public works projects contractors, corrections facilities, and nuclear and radioactive storage and transfer facilities).

In conclusion, ETA's research of some Federal and State laws related to drug testing found that they refer to classes of positions (*e.g.,* any position requiring an employee to carry a firearm) that are required to be drug tested, rather than occupations as defined by BLS in the Standard Occupational Classification System. Therefore, this NPRM defines (as explained below) an ''occupation'' to mean a position or class of positions identified as subject to drug testing under specified Federal or State laws as described in these proposed regulations.

Summary of the Proposed Rule

We concluded from our research of what it means in Federal or State law to ''regularly'' drug test that no consistent standard applies across classes of positions or occupations to determine that ''regular'' drug testing occurs. While some State laws might permit, but not require, drug testing of certain ''occupations,'' whether drug testing is ''regularly'' conducted when merely permitted can vary widely across occupations and industries and trades, and regularity also can change over time. Thus, we believe it would be overbroad to include occupations for which State law merely permits, but does not require, drug testing. However, it is a given that any occupation for which drug testing is required is one that is drug tested ''regularly.'' Therefore, occupations that ''regularly'' require drug testing are limited in these regulations to those for which drug testing is required, not merely permitted. Therefore, this proposed regulation identifies classes of positions, or ''occupations,'' that are required to be drug tested in Federal or State law as the standard for determining ''occupations'' that ''regularly'' drug test.

Accordingly, we propose that an applicant may be drug tested by the State in order to be eligible to receive State UC if the applicant's only suitable work, as defined under the State UC law, is in a position or class of positions, *i.e.,* an ''occupation,'' for which Federal law or that State's law requires employee drug testing in that occupation. Additionally, we propose that only those State laws which identify occupations or positions (*e.g.,* school bus drivers) may be the basis for such testing; this regulation excludes, as the basis for testing, State laws that go beyond the scope of identifying occupations or position classifications, and instead identify types of employers (*e.g.,* public works projects contractors) or permit testing at the employer discretion (*e.g.,* in connection with a drug free workplace policy that applies to all applicants).

We also propose that classes of positions, or ''occupations,'' requiring drug testing under Federal and State laws be limited to those identified in Federal and State laws already in effect at the date of the publication of this NPRM. Because drug testing as a condition of UC eligibility is a new policy and has the potential to be implemented in ways that may have unintended consequences, the Department considers it prudent to apply Federal and State law drug testing requirements currently in place, to be able to assess and evaluate most effectively the impact of this new policy. The Department recognizes that Federal and State laws may evolve in identifying which positions or

occupations are required to drug test. The Department will monitor such changes and may amend this regulation accordingly in the future. The Department encourages comments on methods to refresh the list of occupations that regularly drug test.

For Federal laws requiring drug testing, SAMHSA has designated some classes of positions as ''presumptive'' TDPs, *i.e.,* positions that may be designated as requiring a drug test without the agency being required to justify the designation to SAMHSA. A list of presumptive TDPs is included in the HHS publication ''2010 Guidance for Selection of Testing Designated Positions,'' April 5, 2010, available on the SAMHSA Web site at *http://workplace.samhsa.gov/federal.html.* These classes of positions include those that require carrying a firearm, motor vehicle operators carrying passengers, aviation flight crew members and air traffic controllers, and railroad operating crews. This NPRM proposes that these classes of positions be deemed ''occupations'' that regularly drug test.

In addition, DOT requires drug testing for classes of positions in various transportation industries in 49 CFR Part 40,[1] Procedures for Transportation Workplace Drug and Alcohol Testing Programs. These regulations require the Secretary of Transportation to ensure drug and alcohol testing policies are developed and carried out in a consistent, efficient, and effective manner within the transportation industries for the ultimate safety and protection of the traveling public. DOT's Office of Drug and Alcohol Policy and Compliance provides guidance to the Federal agencies covered by DOT on the drug testing policy of covered employees (*i.e.,* those subject to drug testing). The regulations apply to safety-sensitive classes of positions in the transportation industries including aviation, trucking, mass transit, railroads, pipelines, and other vital transportation related industries. Mandatory drug testing requirements are identified in the sections of the CFR that apply to the specific Federal agencies that regulate these industry sectors. Federal agency regulations that implement the drug testing requirements of 49 CFR part 40 for the industries these agencies regulate are as follows: Federal Aviation Administration, 14 CFR part 120; Federal Motor Carrier Safety Administration, 49 CFR part 382; Federal Railroad Administration, 49 CFR part 219; Federal Transit Administration, 49 CFR part 655; Pipeline and Hazardous Materials Safety Administration, 49 CFR part 199; and crewmembers and maritime credential holders by the Coast Guard, 46 CFR part 16. The proposed regulation identifies the specific sections of these regulations that identify the classes of positions that are subject to drug testing.

[1] DOT was granted authority to establish regulations at 49 CFR Part 40 by the Omnibus Transportation Employee Testing Act of 1991, Public Law 102–143.

II. Section-by-Section Review

What is the purpose of the proposed regulation? (§ 620.1)

Proposed § 620.1 explains that the purpose of the NPRM is to implement section 303(l)(A)(ii), SSA, permitting drug testing UC applicants for the use of controlled substances where suitable work (as defined under the State's UC law) is only available in an occupation for which drug testing is regularly conducted (as determined under this part 620).

What definitions apply to this part? (§ 620.2)

''Applicant'' means an individual who files an initial claim for UC under State law. ''Applicant'' excludes an individual already found initially eligible and filing a continued claim. This is consistent with common usage of the term ''applicant'' in UC nomenclature.

''Controlled substance,'' as defined by Section 303(l)(2)(B), SSA, has the same meaning given such term in section 102 of the Controlled Substances Act (Pub. L. 91–513, 21 U.S.C. 801 *et seq.*). ''Controlled substance'' means a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V of part B of 21 U.S.C. 801 *et seq.* The term does not include distilled spirits, wine, malt beverages, or tobacco, as those terms are defined or used in subtitle E of the Internal Revenue Code of 1986.

''Occupation'' means a position or class of positions. As discussed above, Federal and State laws on drug testing do not specify or refer to ''occupations'' requiring drug testing, but rather identify positions or classes of positions, in descriptive terms such as, for example, positions requiring the carrying of a firearm. Because we propose to refer to specific provisions of law in defining ''occupations'' for purposes of UC drug testing, the proposed definition of occupation identifies the specific provisions of law in the later section.

''Suitable Work'' means suitable work as defined under the UC law of the State against which the claim is filed. This is the same definition of ''suitable work'' under that State law as the State otherwise uses for determining UC eligibility based on seeking work or refusal of work.

''Unemployment Compensation'' is defined in Section 303(l)(2)(A), SSA, to have the same meaning given to the term in Section 303(d)(2)(A), SSA, which states that the term unemployment compensation means ''any unemployment compensation payable under the State law (including amounts payable pursuant to an agreement under a Federal unemployment compensation law.)'' Section 3306(h) of the Federal Unemployment Tax Act (26 U.S.C. 3306(h)) defines compensation to mean ''cash benefits payable to individuals with respect to their unemployment.''

What are the occupations for which drug testing is regularly conducted for purposes of this part 620? (§ 620.3)

Proposed § 620.3 identifies occupations for which drug testing is regularly conducted. These occupations are those that require the employee to carry a firearm. They also include classes of positions/occupations identified by SAMHSA as presumptive drug testing positions; classes of positions/occupations for which employers are required to drug test employees as identified in DOT's regulations at 49 CFR parts 199, 219, 382, and 655; classes of positions/occupations for which drug testing is required under United States Coast Guard regulations at 46 CFR part 16; and classes of positions/occupations in which an employee must be tested under Federal Aviation Administration regulations at 14 CFR part 120. As explained above, these occupations are limited to those identified in these regulations as of the date of the publication of the proposed rule. They also include occupations for which drug testing was required already under State law in effect at the date of publication of this NPRM. States are not required to drug test as a condition of UC eligibility for any of these occupations; however, they may not, except as permitted by section 303(l)(1)(A)(i), SSA, (governing drug testing of individuals terminated for the unlawful use of a controlled substance) drug test for any occupation that does not meet the definition in § 620.3. As noted previously, it is the Department's intent to monitor Federal and State legislation in relation to classes of positions or occupations that are required to drug test and consider changes to the regulation as appropriate.

DOL seeks comments on how to refresh the list of occupations.

What are the parameters for the testing of applicants for the unlawful use of a controlled substance? (§ 620.4)

Proposed § 620.4, consistent with section 303(l), SSA, provides that a State may require applicants to take and pass a drug test for the illegal use of controlled substances as a condition of initial eligibility for UC under specified conditions. Applicants may be denied UC based on the results of these tests.

Proposed paragraph (a) provides that an applicant, as defined in proposed § 620.2, may be tested for the unlawful use of controlled substances, as defined in proposed § 620.2, as an eligibility condition for UC if the individual is one for whom suitable work, as defined by that State's UC law, is only available in an occupation that regularly conducts drug testing, as determined under proposed § 620.3. The reference to ''applicant,'' ensures that only an applicant who is filing an initial UC claim, and not a claimant filing a continued claim, may be subject to drug testing.

Proposed paragraph (b) provides that a State requiring drug testing as a condition of UC eligibility may apply drug testing to any one or more of the occupations listed under § 620.3, but is not required to apply drug testing to any of them. The Act does not require a State to conduct drug tests at all, and consistent with the partnership nature of the Federal-State UC system, the Department proposes to allow States flexibility to decide which permitted occupations may be subject to State-conducted drug testing.

Proposed paragraph (c) provides that the standards which a State establishes relating to drug testing of applicants for UC must be in accordance with guidance issued by the Department. While section 303(l), SSA, requires the Secretary to issue regulations on the occupations that regularly conduct drug testing, the Secretary will address all other issues relating to section 303(l), SSA, in later guidance such as program letters and other issuances.

What are the consequences of failing to implement a drug testing program in accordance with these regulations? (§ 620.5)

Section 620.5 explains that implementation of drug testing of UC applicants as authorized under State laws must be in conformity with these regulations in order for States to be certified under Section 302 of the SSA (42 U.S.C. 502), with respect to whether a State is eligible to receive Federal grants for the administration of its UC program.

III. Administrative Information

Executive Orders 12866 and 13563: Regulatory Planning and Review

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. For a ''significant regulatory action,'' E.O. 12866 asks agencies to describe the need for the regulatory action and explain how the regulatory action will meet that need, as well as assess the costs and benefits of the regulation.[2] This regulation is necessary because of the statutory requirement contained in new section 303(l)(1)(A)(ii), SSA, which requires the Secretary to determine the occupations that regularly conduct drug testing for the propose of determining which applicants may be drug tested when applying for State unemployment compensation. The Department considers this rule to be a ''significant regulatory action'' as defined in section 3(f) of E.O. 12866, because it raises novel legal or policy issues arising out of legal mandates. Before the amendment of Federal law to add new section 303(l)(1), SSA, drug testing of applicants for UC as a condition of eligibility was prohibited.

The Department believes this is not an economically significant rulemaking within the definition of E.O. 12866 because it is not an action that is likely to result in the following: An annual effect on the economy of $100 million or more; an adverse or material effect on a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities; serious inconsistency or interference with an action taken or planned by another agency; or a material change in the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof. In addition, since the rule is entirely voluntary on the part of the States and since Section 303(l), SSA is written so narrowly that the number of UI applicants eligible to be tested will be small, the Department believes it is unlikely that many States will establish a testing program because they won't deem it cost effective to do so. The Department seeks comment from interested stakeholders on this assumption.

There are limited data on which to base estimates of the cost associated with establishing a testing program. Only one of the two States that have enacted a conforming drug testing law issued a fiscal note. That State is Texas, which estimated that the 5-year cost of administering the program would be $1,175,954. This includes both one-time technology personnel services for the first year to program the system and ongoing administrative costs for personnel. The Texas analysis estimated a potential savings to the Unemployment Trust Fund of $13,700,580 over the 5-year period, resulting in a net savings of approximately $12.5 million. The Department believes it would be inappropriate to extrapolate the Texas analysis to all States in part because of differences in the Texas law and the requirements in this proposed rule. The Department has included this information about Texas for illustrative purposes only and emphasizes that by doing so, it is not validating the methodology or assumptions in the Texas analysis. Under the proposed rule, States will be prohibited from testing applicants for unemployment compensation who do not meet the narrow criteria established in the law. The Department requests that interested stakeholders with data on the costs of establishing a state-wide testing program; the number of applicants for unemployment compensation that fit the narrow criteria established in the law; and estimates of the number of individuals that would subsequently be denied unemployment compensation due to a failed drug test submit it during the comment period.

In the absence of data, the Department is unable to quantify the administrative costs States will incur if they choose to implement drug testing pursuant to this rule. States may need to find funding to implement a conforming drug testing program for unemployment compensation applicants. No additional funding has been appropriated for this purpose and current Federal funding for the administration of State unemployment compensation programs may be insufficient to support the additional costs of establishing and operating a drug testing program. Permissible alternative funding sources are not readily available. States will need to fund the cost of the drug tests,

[2] Executive Order No. 12866, section 6(a)(3)(B).

staff costs for administration of the drug testing function, and technology costs to track drug testing outcomes. States will incur ramp up costs that will include implementing business processes necessary to determine whether an applicant is one for whom drug testing is permissible pursuant to the law; developing a process to refer and track applicants referred for drug testing; and the costs of testing that meets the standards required by the Secretary of Labor. States will also have to factor in increased costs of adjudication and appeals of both the determination of applicability of the drug testing to the individual and of the resulting determinations of benefit eligibility based on the test results.

To date, very few States have expressed interest in drug testing unemployment compensation applicants. Only two States have enacted conforming legislation. Only six other States introduced conforming drug testing bills so far and none of them were passed by the house of introduction.

Benefits of the rule are equally hard to determine. As discussed above, the provisions will impact a very limited number of applicants for unemployment compensation benefits.

Paperwork Reduction Act

The purposes of the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* include minimizing the paperwork burden on affected entities. The PRA requires certain actions before an agency can adopt or revise a collection of information, including publishing a summary of the collection of information, a brief description of the need for and proposed use of the information, and a request for comments on the information collections.

A Federal agency may not conduct or sponsor a collection of information unless it is approved by OMB under the PRA, and displays a currently valid OMB control number, and the public is not required to respond to a collection of information unless it displays a currently valid OMB control number. Also, notwithstanding any other provisions of law, no person shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number (44 U.S.C. 3512).

The Department has determined that this proposed rule does not contain a ''collection of information,'' as the term is defined. *See* 5 CFR 1320.3(c). DOL expressly seeks comments on this determination.

Executive Order 13132: Federalism

Section 6 of Executive Order 13132 requires Federal agencies to consult with State entities when a regulation or policy may have a substantial direct effect on the States or the relationship between the National Government and the States, or the distribution of power and responsibilities among the various levels of government, within the meaning of the Executive Order. Section 3(b) of the Executive Order further provides that Federal agencies must implement regulations that have a substantial direct effect only if statutory authority permits the regulation and it is of national significance.

This proposed rule does not have a substantial direct effect on the States or the relationship between the National Government and the States, or the distribution of power and responsibilities among the various levels of Government, within the meaning of the Executive Order. This is because drug testing authorized by the regulation is voluntary on the part of the State, not required.

Unfunded Mandates Reform Act of 1995

This regulatory action has been reviewed in accordance with the Unfunded Mandates Reform Act of 1995 (the Reform Act). Under the Reform Act, a Federal agency must determine whether a regulation proposes a Federal mandate that would result in the increased expenditures by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any single year. The Department has determined that since States have an option of drug testing UC applicants and can elect not to do so, this proposed rule does not include any Federal mandate that could result in increased expenditure by State, local, and Tribal governments. Drug testing under this rule is purely voluntary, so that any increased cost to the States is not the result of any mandate. Accordingly, it is unnecessary for the Department to prepare a budgetary impact statement.

Plain Language

The Department drafted this proposed rule in plain language.

Effect on Family Life

The Department certifies that this proposed rule has been assessed according to section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681) for its effect on family well-being. The Department certifies that this proposed rule does not adversely impact family well-being as discussed under section 654 of the Treasury and General Government Appropriations Act of 1999.

Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act

The Regulatory Flexibility Act (RFA) at 5 U.S.C. 603(a) requires agencies to prepare and make available for public comment an initial regulatory flexibility analysis which will describe the impact of the proposed rule on small entities. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities. This rule does not affect small entities as defined in the RFA. Therefore, the rule will not have a significant economic impact on a substantial number of these small entities. The Department has certified this to the Chief Counsel for Advocacy, Small Business Administration, pursuant to the Regulatory Flexibility Act.

List of Subjects in 20 CFR Part 620

Unemployment compensation.

For the reasons stated in the preamble, the Department proposes to amend 20 CFR chapter V by adding part 620 to read as follows:

PART 620—OCCUPATIONS THAT REGULARLY CONDUCT DRUG TESTING FOR STATE UNEMPLOYMENT COMPENSATION ELIGIBILITY DETERMINATION PURPOSES

Sec.
620.1 Purpose.
620.2 Definitions.
620.3 Occupations that regularly conduct drug testing for purposes of determining which applicants may be drug tested when applying for state unemployment compensation.
620.4 Testing of unemployment compensation applicants for the unlawful use of a controlled substance.
620.5 Conformity and substantial compliance.

Authority: 42 U.S.C. 1302(a); 42 U.S.C. 503(l)(1)(ii)

§ 620.1 Purpose.

The regulations in this part implement section 303(l) of the Social Security Act (SSA) (42 U.S.C. 503(l)). Section 303(l), SSA, permits States to enact legislation to provide for the State-conducted testing of an unemployment compensation applicant for the

unlawful use of controlled substances, as a condition of unemployment compensation eligibility, if the applicant was discharged for unlawful use of controlled substances by his or her most recent employer, or if suitable work (as defined under the State unemployment compensation law) is only available in an occupation for which drug testing is regularly conducted (as determined under this part 620). Section 303(l)(1)(A)(ii), SSA, requires the Secretary of Labor to issue regulations determining the occupations that regularly conduct drug testing. These regulations are limited to that requirement.

§ 620.2 Definitions.

As used in this part—

Applicant means an individual who files an initial claim for unemployment compensation under State law. *Applicant* excludes an individual already found initially eligible and filing a continued claim.

Controlled substance means a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V of part B of 21 U.S.C. 801 *et seq.,* as defined in section 102 of the Controlled Substances Act (Pub. L. 91–513, 21 U.S.C. 801 *et seq.*). The term does not include distilled spirits, wine, malt beverages, or tobacco, as those terms are defined or used in subtitle E of the Internal Revenue Code of 1986.

Occupation means a position or class of positions. Federal and State laws governing drug testing refer to the classes of positions that are required to be drug tested rather than occupations, such as those defined by the Bureau of Labor Statistics in the Standard Occupational Classification System. Therefore, for purposes of this regulation, a position or class of positions will be considered the same as an ''occupation.''

Suitable work means suitable work as defined by the unemployment compensation law of a State against which the claim is filed. It must be the same definition the State law otherwise uses for determining the type of work an individual must seek given the individual's education, experience and previous level of remuneration.

Unemployment compensation means any cash benefits payable to an individual with respect to their unemployment under the State law (including amounts payable under an agreement under a Federal unemployment compensation law.)

§ 620.3 Occupations that regularly conduct drug testing for purposes of determining which applicants may be drug tested when applying for State unemployment compensation.

Occupations that regularly conduct drug testing, for purposes of § 620.4, are:

(a) An occupation that requires the employee to carry a firearm;

(b) An occupation identified in 14 CFR 120.105 (as in effect on October 9, 2014) by the Federal Aviation Administration, in which the employee must be tested (Aviation flight crew members and air traffic controllers);

(c) An occupation identified in 49 CFR 382.103 (as in effect on October 9, 2014) by the Federal Motor Carrier Safety Administration, in which the employee must be tested (Commercial drivers);

(d) An occupation identified in 49 CFR 219.3 (as in effect on October 9, 2014) by the Federal Railroad Administration, in which the employee must be tested (Railroad operating crew members);

(e) An occupation identified in 49 CFR 655.3 (as in effect on October 9, 2014) by the Federal Transit Administration, in which the employee must be tested (Public transportation operators);

(f) An occupation identified in 49 CFR 199.2 (as in effect on October 9, 2014) by the Pipeline and Hazardous Materials Safety Administration, in which the employee must be tested (Pipeline operation and maintenance crew members);

(g) An occupation identified in 46 CFR 16.201(as in effect on October 9, 2014) by the United States Coast Guard, in which the employee must be tested (Crewmembers and maritime credential holders on a commercial vessel);

(h) An occupation specifically identified as requiring an employee to be tested for controlled substances in a State law that took effect no later than October 9, 2014, and still remains in effect. DOL seeks comments specifically on how to refresh the list of occupations.

§ 620.4 Testing of unemployment compensation applicants for the unlawful use of a controlled substance.

(a) States may conduct a drug test on an unemployment compensation applicant, as defined in § 620.2 of this part, for the unlawful use of controlled substances, as defined in § 620.2, as a condition of eligibility for unemployment compensation if the individual is one for whom suitable work, as defined in State law, as defined in § 620.2, is only available in an occupation that regularly conducts drug testing under § 620.3 of this part. Drug testing is permitted only of an applicant, and not of an individual filing a continued claim for unemployment compensation after initially being determined eligible. No State is required to apply drug testing to UC applicants under this part 620.

(b) A State conducting drug testing as a condition of unemployment compensation eligibility as provided in paragraph (a) of this section may apply drug testing only to the occupations listed under § 620.3, but is not required to apply drug testing to any of them.

(c) State standards governing drug testing of UC applicants must be in accordance with guidance, in the form of program letters or other issuances, issued by the Department of Labor.

§ 620.5 Conformity and substantial compliance.

(a) *In general.* A State law implementing the drug testing of applicants for unemployment compensation must conform with, and the law's administration must substantially comply with, the requirements of this part 620 for purposes of certification under section 302 of the SSA (42 U.S.C. 502), of whether a State is eligible to receive Federal grants for the administration of its UC program.

(b) *Resolving issues of conformity and substantial compliance.* For the purposes of resolving issues of conformity and substantial compliance with the requirements of this part 620, the following provisions of 20 CFR 601.5 apply:

(1) Paragraph (b) of 20 CFR 601.5, pertaining to informal discussions with the Department of Labor to resolve conformity and substantial compliance issues, and

(2) Paragraph (d) of 20 CFR 601.5, pertaining to the Secretary of Labor's hearing and decision on conformity and substantial compliance.

(c) *Result of failure to conform or substantially comply.* Whenever the Secretary of Labor, after reasonable notice and opportunity for a hearing to the State UC agency, finds that the State UC law fails to conform, or that the State or State UC agency fails to comply substantially, with the requirements of title III, SSA (42 U.S.C. 501–504), as implemented in this part 620, then the Secretary of Labor must notify the Governor of the State and such State UC agency that further payments for the administration of the State UC law will not be made to the State until the Secretary of Labor is satisfied that there is no longer any such failure. Until the Secretary of Labor is so satisfied, the

Department of Labor will not make further payments to such State.

Portia Wu,

Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2014–24098 Filed 10–8–14; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Chapter II

[Docket No. FR–5817–N–01]

Federal Housing Administration (FHA): Solicitation of Comment on Streamline Refinance Provisions in the FHA Single Family Housing Policy Handbook

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Solicitation of comment.

SUMMARY: On September 30, 2014, FHA issued the FHA Single Family Housing Policy Handbook section for Title II Insured Housing Programs Forward Mortgages: Origination through Post-Closing/Endorsement, Handbook 4000.1. The goal of the new FHA Single Family Housing Policy Handbook (Handbook) is to streamline and ease the implementation of FHA's various programs by consolidating and organizing all of FHA's Single Family policy into one document. FHA will be issuing other individual sections of the Handbook as they are completed. As part of the consolidation of policy pertaining to streamline refinance transactions, FHA has taken the opportunity to integrate the language pertaining to streamline refinance transactions in Mortgagee Letters 2013–29, 2011–11, 2009–32 and 2008–40 into a refined mortgage payment history and calculation of the maximum insurable mortgage for the streamline refinance program. Prior to adopting in the Handbook as final this refined maximum insured mortgage calculation for streamline refinance transactions, HUD seeks public comment on this language as presented in the Handbook.

DATES: *Comment Due Date:* November 10, 2014.

ADDRESSES: Interested persons are invited to submit comments regarding this document to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the document.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an appointment to review the public comments must be scheduled in advance by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Elissa Saunders, Deputy Director, Office of Single Family Program Development, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 9278, Washington, DC 20410; telephone number 202–708–2121 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: Payment history standards related to streamline refinances are currently found in Handbook HUD 4155.1, entitled Mortgage Credit Analysis for Mortgage Insurance on One- to Four-Unit Mortgage Loans, in sections 3.A.1.h., but have subsequently been modified by Mortgagee Letters, including those referenced above. The Maximum Insurable Mortgage Calculation for streamline refinances is found in section 3.C.2.c.

In an effort to ease program implementation and reduce burden on lenders, servicers, borrowers, and interested members of the public, FHA, as noted in the Summary of this document, is consolidating and reorganizing its guidance into a new, comprehensive FHA Single Family Housing Policy Handbook (Handbook), which, once effective, will supersede all mortgagee letters and prior handbook provisions whose content has been incorporated into the Handbook. This consolidation and reorganization alleviates unnecessary burdens on lenders, servicers, and borrowers who have had to keep track of individual policy changes published in individual mortgagee letters, and gives all interested parties one place to find important program requirements.

The Handbook section for Title II Insured Housing Programs Forward Mortgages—Origination through Post-Closing/Endorsement was issued on September 30, 2014, at *http://portal.hud.gov/hudportal/documents/huddoc?id=40001HSGH.pdf* and will be effective for case numbers assigned on or after June 15, 2015. Due to the timing of the pre-scheduled release of the Handbook and the complexity of incorporating and organizing the various guidance documents for streamline refinances noted above, and eliminating extraneous examples, HUD has opted, in an abundance of caution, to seek public comment on the refined maximum mortgage amount calculation provision and payment history for the streamline refinance program which can be found in Paragraphs (4)(b) and (j) of II.A.8.d.vi.(C) ''Streamline Refinances'' in the Title II Insured Housing Programs Forward Mortgages section of the Handbook. The public comments received on these provisions will be given consideration, and notification will be provided of changes, if any, made to this section of the Handbook.

Given the significant transition period that FHA is providing between the posting of the Handbook and the effective date of the Handbook, FHA does not anticipate having to change the effective date as a result of any changes

that may be made to the streamline refinance section of the Handbook.

Dated: October 3, 2014.

Carol J. Galante,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2014–24069 Filed 10–8–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Parts 81 and 82

[BIA–2014–0006; K00103 12/13 A3A10; 134D0102DR–DS5A300000–DR.5A311.IA000113]

RIN 1076–AE93

Secretarial Election Procedures

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs is proposing to amend its regulations governing Secretarial elections and procedures for tribal members to petition for Secretarial elections. This proposed rule reflects changes in the law and the requirement that regulations be written in plain language.

DATES: Comments must be received on or before December 17, 2014. See the **SUPPLEMENTARY INFORMATION** section of this document for dates of tribal consultations.

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

—*Federal rulemaking portal: http://www.regulations.gov.* The rule is listed under the agency name ''Bureau of Indian Affairs.'' The rule has been assigned Docket ID: BIA–2014–0006.

—*Email: laurel.ironcloud@bia.gov.* Include ''Part 81'' in the subject line of the message.

—*Mail or hand-delivery:* Chief, Division of Tribal Government Services, Office of Indian Services, Bureau of Indian Affairs, Department of the Interior, 1849 C Street NW., Mail Stop 4513–MIB, Washington, DC 20240.

Comments on the Paperwork Reduction Act information collections contained in this rule are separate from comments on the substance of the rule. Submit comments on the information collection requirements in this rule to the Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov* or by facsimile at (202) 395–5806. Please also send a copy of your comments to *laurel.ironcloud@bia.gov.*

See the **SUPPLEMENTARY INFORMATION** section of this document for locations of tribal consultation sessions.

FOR FURTHER INFORMATION CONTACT: Laurel Iron Cloud, Chief, Division of Tribal Government Services, Central Office, Bureau of Indian Affairs at telephone (202) 513–7641. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 4 p.m. Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Background

The Bureau of Indian Affairs (BIA) is amending 25 CFR parts 81 (Secretarial Elections) and 82 (Petitioning Procedures), combining them into one Code of Federal Regulations part at 25 CFR part 81. The Secretarial Elections regulations were originally adopted in 1964, and the Petitioning Procedures regulations were originally adopted in 1967. *See* 29 FR 14359 (October 17, 1964); 32 FR 11779 (August 16, 1967). The Department has not updated either of these regulations since 1981. *See* 46 FR 1668 (January 7, 1981).

A Secretarial election is a Federal election conducted by the Secretary of the Interior (Secretary) under a Federal statute or tribal governing document under 25 CFR part 81. *See Cohen's Handbook of Federal Indian Law* section 4.06[2][a]–[b], at 286–297 (Nell Jessup Newton ed., 2012). *See also Cheyenne River Sioux Tribe* v. *Andrus,* 566 F. 2d 1085 (8th Cir. 1977), *cert. denied,* 439 U.S. 820 (1978). The proposed rule:

- Responds to the amendments made to section 16 of the Indian Reorganization Act (IRA) (June 18, 1934, 48 Stat. 984) (25 U.S.C. 476), as amended, which established time frames within which the Secretary must call and conduct Secretarial elections and provided that all elections will be handled by mailout ballot unless polling places are expressly required by the amendment or adoption article of the tribe's governing document.
- Responds to the amendments made to Section 17 of the IRA by the Act of May 24, 1990 (104 Stat. 207) (25 U.S.C. 477) under which additional tribes may petition for charter of incorporation and removes the requirement of an election to ratify the approval of new charters issued after May 24, 1990, unless required by tribal law.
- Reflects the 1994 addition of two subsections to section 16 of the IRA by Technical Corrections Act of 1994 (108 Stat. 707) (25 U.S.C. 476(f) & (g)) that prohibit the government from making a regulation or administrative decision ''that classifies, enhances, or diminishes the privileges and immunities available to a federally recognized Indian tribe relative to the privileges and immunities available to other federally recognized tribes by virtue of their status as Indian tribes.''

When Congress enacted Oklahoma Indian Welfare Act (OIWA) in 1936, the language it used to guarantee the right of tribes to organize and adopt constitutions and bylaws was different from that used in the IRA. The OIWA language requires the Secretary to approve the constitution before it is submitted to the tribal membership for a vote to ratify it. These regulations reflect the difference in language between the IRA and the OIWA.

The proposed rule includes language clarifying that a tribe reorganized under the IRA may amend its governing document to remove the requirement for Secretarial approval of future amendments. Once the requirement for Secretarial approval is removed through a Secretarial election, Secretarial approval of future amendments is not required.

The proposed rule also clarifies that the Secretary will accept petitions for Secretarial elections only from federally recognized tribes included on the list of recognized tribes published by the Secretary pursuant to section 479a–1.

II. Comments From Tribal Representatives

As discussed in section III of this document, we held several tribal consultation sessions on draft regulations addressing Secretarial elections and petitioning procedures. The following summarizes comments received during that consultation process.

Definitions

Several tribes questioned the definition of ''Indian'' included in the consultation draft. Because the term is not used in the body of the regulation other than as defined in the IRA, we have deleted this definition. We have also clarified the definition of ''tribe'' as those federally recognized tribes included on the list of recognized tribes published by the Secretary pursuant to Section 479a–1.

One tribe questioned the definition of ''member'' because the consultation draft included an additional provision stating that, in the absence of the tribe's written criteria for membership, a member is a person the tribal members recognize as belonging to that tribe. The tribe noted that there may not be

agreement among tribal members as to who belongs to the tribe. For this reason, we deleted that portion of the definition, so that a member is a person who is duly enrolled in the tribe.

One tribe suggested adding a definition of ''notary.'' We were unable to locate a definition of this term in other regulations and determined that the term is self-evident. This tribe also asked if a tribe can enact an ordinance authorizing people to become notaries, rather than being confined to using State-authorized notaries. Tribes presumably have the inherent power to create notary regimes. If a tribe has established an adequate regulatory framework to ensure the integrity of their notary process, we would approve use of the tribe's notaries in lieu of other established notaries. If a tribe has a question about whether its notary process is adequately regulated, it should contact us.

We received a few comments asking about the definition for ''reorganized tribe'' in the consultation draft. Under the consultation draft, ''reorganized tribe'' would mean a tribe whose members have adopted a governing document under a Federal statute.

Tribes also requested clarification of the definitions of ''reservation'' and ''Rancheria.'' The proposed rule deletes the definition of ''Rancheria'' because it is not used in the body of the regulation. The proposed rule deletes the definition of ''reservation'' because its meaning is self-evident where used.

Several tribes noted there is no definition for ''resident.'' We did not define this term because it is not used in the regulation. A tribe asked how tribal governing document's definitions of residency will affect who may vote in a Secretarial election. We have clarified at § 81.8 of the proposed rule when tribal governing document qualifications (such as residency) for voting govern who may vote in a Secretarial election.

Tribal Choice To Require Secretarial Approval

One tribe asked about the consequences to a tribe of removing the requirement for Secretarial approval of future amendments from its governing document. As explained by a Federal representative at the consultation, removing the requirement for Secretarial approval of future amendments means that Secretarial approval will no longer be required for additional amendments to the tribe's governing document.

One tribe asked whether a tribe that has reorganized under the IRA and decides to remove the requirement for a Secretarial election must hold a Secretarial election to remove that requirement. The tribe must hold a Secretarial election to remove the requirement for a Secretarial election from its governing document if a tribal law or Federal statute requires such an election. Section 81.2(h) of the proposed rule addresses this issue.

Who May Vote in a Secretarial Election

Several tribes asked questions regarding who may vote in a Secretarial election. For example, at least one tribe asked for language stating that the tribe's governing documents may establish eligibility for voting. Secretarial elections are Federal elections, and, as such, anyone who is 18 years of age or older and otherwise qualified is eligible to vote, even if the tribal governing document requires voters to be 21 to be eligible to vote in tribal elections. The 26th Amendment to the Federal constitution lowered the minimum voting age for Federal elections from 21 to 18. This provision is at § 81.9 of the proposed rule.

Another tribe asked under what circumstances only the class of citizens who voted on the original tribal charter or governing document may vote. If the tribe's governing documents do not establish qualifications for voting, then the only members who may vote are those who meet the same qualifications as those entitled to vote in the Secretarial Election that effected the tribe's reorganization.

A few tribes noted that there are no provisions for voting by tribal members who are serving in the military, at college, or incarcerated. These individuals may be eligible to vote by mail or by absentee ballot if they otherwise meet the requirements of § 81.9 of the proposed rule.

Absentee Voting

Several tribes asked about who may vote by absentee ballot. The proposed regulation provides that all Secretarial election voting is to be done by mail with use of a mailout ballot, except where the amendment or adoption articles of the tribe's governing document require in-person voting. (*See* § 81.35 of the proposed rule.) If polling places are required, an absentee ballot may be requested.

A tribe asked that the regulations specify that voters can request a new absentee ballot, if necessary. *See* § 81.40 of the proposed rule.

A tribe asked that the regulations specify whether voters receiving an absentee ballot may choose to vote in person. *See* § 81.40 of proposed rule.

A tribe asked if the envelope for absentee ballots will be pre-addressed and have prepaid postage. The proposed regulations clarify that the envelope will be pre-addressed but will not have prepaid postage. *See* § 81.23 of proposed rule.

Registered Voters and Registration to Vote

Tribes asked for clarification on the ''registered voter'' definition and its difference from ''eligible voter.'' We simplified these definitions and explain the registered voters list further in §§ 81.26 through 81.32 of the proposed rule. A tribe also asked about the definition of ''qualified voter'' in the consultation draft. We have deleted the definition of ''qualified voter'' because it was unnecessary.

A few tribes asked whether the registration process is required and noted that it is a task for voters to register for Secretarial elections in addition to other elections. Section 81.29 describes why the Registered Voters List is necessary.

A tribe asked what happens if the tribe does not have a registration process. The Secretarial Election Board is responsible for the registration process for Secretarial elections.

Request for Secretarial Election

The consultation draft of the regulations stated that the tribe must provide an ''appropriate request'' to request a Secretarial election. A tribe requested clarification of that definition. The proposed regulation instead uses the term ''tribal request'' and clarifies what qualifies as such a request at § 81.4.

Tribes also questioned the procedures set out in the consultation draft, which included an initial request for election and then a final request for election, and the timing of those procedures. The proposed rule simplifies the process by requiring only one request for Secretarial election.

Ballots

There were several questions on the different types of ballots. The consultation draft had mentioned spoiled, damaged, mutilated, valid and invalid ballots. We determined that the only necessary category is ''spoiled'' ballots and describe the effect of a spoiled ballot in Sections 81.39 and 81.40. (See definition for ''spoiled'' ballot in § 81.4.)

Timelines

One tribe asked what a tribe's recourse is if BIA does not act within the 90-day deadline for calling and holding an election on a constitutional amendment. If BIA fails to act within

the 90-day deadline, the affected tribe may bring suit, after exhausting its administrative remedies, if any, to compel agency action under the Administrative Procedure Act.

The consultation draft included a provision that stated that if BIA failed to act on an authorization to conduct an election within 90 days, then the authorization is considered void. Several tribes commented that this expiration punishes the tribe for BIA's failure to act. Since the tribal representatives on the Secretarial Election Board charged with the responsibility for calling and holding the election outnumber the BIA representative, the expiration of the authorization was not intended to punish the tribe in any way but rather simply to ensure that the tribal request had not become stale. The legal authority to call and conduct a valid election does not disappear after 90 days so we have deleted this provision.

A tribe noted that the regulations do not hold the Secretarial Election Board accountable for holding the election within 90 days. The deadline for holding an election is established by statute; the proposed rule does not restate the deadline, but the Secretarial Election Board remains subject to it.

Several tribes asked for clarification on the time frame in which results of an election may be challenged. Section 81.43 of the proposed rule clarifies that challenges must be received within three days (which are defined to be calendar days) after the Certificate of Results of Election is posted. If the third day falls on the weekend or a holiday, the challenge must be received by the close of business (COB) the next business day.

One tribe suggested that three business days, rather than calendar days, be the time frame allotted for challenges. Another tribe stated that indicating business days in some provision but calendar days in others is inconsistent and may result in confusion. For this reason, the proposed rule counts all days as calendar days.

Several tribes had questions about the consultation draft's timeframes with regard to the 90-day deadline for calling and holding an election for an amendment, and the 180-day deadline for calling and holding an election for a new proposed governing document, including an amendment to a governing document in the nature of an entire substitute, or revocation of a governing document. These timelines are statutorily established (25 U.S.C. 476(c)(1) and are reflected in the regulation. (*See* § 81.19(a) of proposed rule.)

Secretarial Election Board

Several tribes asked questions regarding the Secretarial Election Board. One tribe asked whether there are any restrictions on who may be appointed to the Secretarial Election Board. The only restriction is that those persons be members of the tribe with the exception of the Chairman of the Secretarial Election Board, who must be a BIA employee.

Another asked who makes the determination as to who serves on the Secretarial Election Board. The Authorizing Official appoints a BIA employee as the chair of the Secretarial Election Board. The tribal governing body chooses at least two tribal members to serve on the Secretarial Election Board. If the tribe declines to appoint two tribal members then the Local BIA Official would make the appointments.

A tribe asked for clarification on whether the chair is Federal or tribal official. The Authorizing Official will appoint a BIA employee to serve as the Federal chair of the Secretarial Election Board. (See § 81.19(b) of proposed rule.) This tribe also asked whether there are limits to the appointment. Because the Secretarial Election Board is established for a single Secretarial election, it dissolves after it completes all the duties associated with that election. The tribe also asked for clarification on whether ''recognized governing body'' means the governor or the tribal council. ''Recognized governing body'' refers to the representative body that has legislative authority. Ordinarily, it would be neither the tribal governor, chief, nor chair; nor would it be the entire adult membership of the tribe.

One tribe asked for clarification on the Secretarial Election Board's duties. Duties are clarified in § 81.22 of the proposed rule.

One tribe asked what the criteria are for the Board to deny an applicant status as a registered voter. The Board may deny an applicant registered voter status only if the applicant does not meet the requirements to cast a vote or if the registration form was not submitted before the deadline.

Privacy Concerns

Several tribes expressed concern about the privacy of individuals whose names are listed on the registration list, because the registration list is posted. The proposed rule provides that the registration list contains only the individuals' names and voting districts, if applicable. We believe that this information is the minimum necessary to a meaningful opportunity to challenge the eligibility of a voter and therefore does not constitute an unwarranted intrusion into the individual's privacy.

Several tribes asked what happens to election information after the election is closed and who has access to the information. Sections 81.45(d) and 81.50(d) establish that BIA will forward certain documents to the tribe and retain a copy of records as required by the Federal Records Act. Those records may be subject to exemptions from the Freedom of Information Act for personal privacy and confidentiality. The records retained by the BIA will be available for inspection and copying in accordance with the Freedom of Information Act and the Privacy Act.

Another tribe expressed concern about the Secretarial Election Board keeping registration packets confidential. The registration packets contain general election information that is sent to all tribal members 18 years of age or older at their last known address. These packets are not confidential. However, the returned registration forms contain personal information that is covered by the Privacy Act and may be subject to exemptions from the Freedom of Information Act for personal privacy and confidentiality.

Challenges

Several tribes asked who may challenge the Registered Voters List. Under § 81.32 of the proposed rule, any tribal member may challenge the inclusion or exclusion of a name from the Registered Voters List as long as he or she provides supporting documentation for the challenge.

A tribe asked for clarification on the time period for challenges to the Registered Voters List. The Secretarial Election Board establishes the time period for challenges. (*See* § 82.33 of proposed rule.)

A tribe asked how much time the election board has to rule on a challenge. The proposed rule, at § 81.33, clarifies that the Secretarial Election Board has three days after the challenge deadline to rule on the challenge.

Petitioning

Several tribes questioned why petitions had to be signed by at least 60 percent of the tribe's eligible voters where the tribe is not reorganized (i.e., where the tribe is adopting a governing document under Federal statute for the first time). The 60 percent requirement was adopted in 1981. *See* 46 FR 1669 (January 7, 1981). We have re-examined this requirement in light of the questions raised at consultation, and are

now proposing that petitions must be signed by at least 20 percent of the tribe's eligible voters where the tribe is not reorganized. The rationale for lowering the threshold to 20 percent is that a smaller percentage should be entitled to raise the question to a vote by petition than the percentage required to vote for an election to be valid. The IRA requires only 30 percent of eligible voters to vote for an election to be valid. *See* 25 U.S.C. 478a. We are specifically seeking comment on this proposed revision.

Several tribes objected to posting the petition because individuals' addresses are included on the petition. Addresses are redacted before posting.

Several tribes asked for additional information on what makes a petition valid and/or a checklist to ensure that petitions are complete. Sections 81.58 and 81.65 explain how the BIA reviews petitions.

One tribe asked for confirmation that the Authorizing Official's determination as to the validity of the petition is final for the Department of the Interior. For the purposes of calling and conducting the Secretarial Election the regulations establish that this determination is final at § 81.65.

Other Comments

One tribe stated that 25 U.S.C. 476(h), which establishes that each tribe has inherent sovereign power to adopt governing documents under procedures other than those specified in the IRA, is not expressly addressed in the regulations. The regulations govern procedures for Secretarial elections; they do not diminish tribes' inherent sovereign power to adopt governing documents when Secretarial elections are not required.

One tribe stated that applicability of the regulations needs to be clearer. We have attempted to clarify applicability at § 81.2 of the proposed rule.

One tribe asked for clarification on when technical assistance is available for the tribe and for petitioners. The proposed rule clarifies this availability in § 81.6.

Several tribes requested additional information on charters. We clarify the applicability of the regulations to charters in § 81.2.

One tribe asked whether Secretarial elections must follow tribal law. Secretarial Elections are governed by Federal law. The Secretary shall defer to specific variations noted in the adoption or amendment articles of a tribe's governing document that are not otherwise inconsistent with Federal law.

A tribe expressed concern about how to prevent one individual from casting multiple votes. Similarly, a tribe asked whether votes hand-delivered by one individual on behalf of several need to be scrutinized. The proposed regulation includes several safeguards to ensure that each individual receives only one ballot, and mailout or absentee ballots require the registered voter to sign a certification on the back of the return envelope.

A tribe suggested the regulations include consequences for violating the ban on electioneering. Tribes may enact and enforce tribal law governing the orderly conduct of elections, which would apply to Secretarial elections to the extent they do not conflict with these regulations. Interference in a Secretarial election may be a violation of Federal civil rights and voting laws and punishable under Federal law, as well as tribal law.

A tribe asked what happens if the Secretarial Election Board itself is involved in voter fraud. Anyone who commits fraud in connection with the conduct of a Secretarial election may be subject to prosecution under Federal law. If actual election fraud makes it impossible to determine the results of the election, the Secretary must disapprove the election results and call for a new election as soon as corrective action can be taken. Election fraud which does not change the ultimate results of an election does not require disapproval of the election results. For example, if 80 of 100 eligible voters cast votes in the affirmative and election fraud was shown with regard to 20 votes, the Secretary would not need to disapprove the election as those 20 votes would not change the ultimate results of the election.

A tribe suggested that the regulations address assistance for illiterate voters. The proposed regulations describe the types of assistance available at § 81.12; an illiterate voter may request reasonable accommodations, which may include having the interpreter read to the voter, audio aids, or some other accommodation.

One tribe stated that it should be a requirement to hold education meetings with the public regarding each Secretarial election and the process. We have considered this comment but determined it is not appropriate to include an express requirement for educational meetings in the regulation because of the wide variety of governing documents and possible amendments that tribes may want to consider. We strongly encourage tribes, however, to conduct their own voter education programs.

A few tribes asked that the proposed rule include a cross-reference to 25 CFR 1.2, which allows for waivers of requirements when in the best interest of the Indians. These regulations are intended to establish procedures in the conduct of Federal elections that by statute include specific deadlines. Therefore, the Secretary's authority to grant waivers would be limited. It is not anticipated that waivers would routinely be appropriate and the regulations themselves are being drafted so that they are effective in the vast majority of cases; thus, 25 CFR 1.2 is not cross-referenced.

We received a number of suggestions for items to add to a handbook including: how to verify or authenticate signatures, what are acceptable forms of registration (email, mail, etc.), how the Secretarial Election Board handles hand-delivered ballots, a chart outlining the petitioning process and the Secretarial election process, template letters regarding the status of the request, checklists to help meet timeframes, and information on challenges to petition signatures based on an allegation of forgery. We will consider including these items following finalization of the regulations.

III. Consultations

A. Past Consultations

Efforts to revise this regulation date back to 1992, when the first consultations were held. The Department most recently hosted a set of tribal consultation sessions in 2009 and 2010. These sessions were held on December 1, 2009, in Anchorage, Alaska; Brooks, California, on January 12, 2010; Minneapolis, Minnesota, on January 20, 2010; Oklahoma City, Oklahoma, on January 26, 2010; Pala, California, on February 2, 2010; and Albuquerque, New Mexico, on February 4, 2010. The Department also accepted written comments to the regulations. The Department reviewed the comments and made significant changes to the draft in response to tribes' comments and suggestions. Publication of this proposed rule triggers an additional tribal consultation period where tribes may submit additional comments orally at tribal consultation sessions, or in writing.

B. Future Consultations

We will hold consultations at the following locations on the dates and times specified:

Date	Time (all times local)	Location	Venue
Sunday, October 26, 2014	1 p.m.–4 p.m.	Atlanta, GA	National Congress of American Indians (NCAI) Annual Convention Hyatt Regency Atlanta 265 Peachtree St NE Atlanta, GA 30303.
Tuesday, November 18th, 2014	8:30 a.m.–12 p.m.	Oklahoma City, OK	Embassy Suites Oklahoma City Airport 1815 S. Meridian Ave. Oklahoma City, OK 73108.

The Department will provide tribes with notice of any additional tribal consultation sessions.

IV. Procedural Matters

A. Regulatory Planning and Review (E.O. 12866)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant. E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements. This rule is also part of the Department's commitment under the Executive Order to reduce the number and burden of regulations and provide greater notice and clarity to the public.

B. Regulatory Flexibility Act

The Department certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It does not change current funding requirements or regulate small entities.

C. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. It will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year. Secretarial elections are funded by the BIA. Nor will this rule have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the U.S.-based enterprises to compete with foreign-based enterprises.

D. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

E. Takings (E.O. 12630)

Under the criteria in Executive Order 12630, this proposed rule does not affect individual property rights protected by the Fifth Amendment nor does it involves a compensable ''taking.'' A takings implication assessment is not required.

F. Federalism (E.O. 13132)

Under the criteria in Executive Order 13132, this proposed rule has no 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. This rule clarifies the procedures for conducting a Secretarial election, which is a Federal election, for federally recognized Indian tribes.

G. Civil Justice Reform (E.O. 12988)

This proposed rule complies with the requirements of Executive Order 12988. Specifically, this rule has been reviewed to eliminate errors and ambiguity and written to minimize litigation; and is written in clear language and contains clear legal standards.

H. Consultation With Indian Tribes (E.O. 13175)

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments,'' Executive Order 13175 (59 FR 22951, November 6, 2000), and 512 DM 2, we have held several consultation sessions with representatives of federally recognized tribes throughout the development of this proposed rule. Details on these consultation sessions and the comments received are described above.

I. Paperwork Reduction Act

The Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* prohibits a Federal agency from conducting or sponsoring a collection of information that requires OMB approval, unless such approval has been obtained and the collection request displays a currently valid OMB control number. Nor is any person required to respond to an information collection request that has not complied with the PRA. In accordance with 44 U.S.C. 3507(d), BIA has submitted the information collection and recordkeeping requirements of this proposed rule to OMB for review and approval. The following describes the information collection requirements in each section of the proposed rule and any changes from the current rule.

Title: Secretarial elections (25 CFR part 81)

OMB Control Number: 1076–NEW

Requested Expiration Date: Three years from the approval date.

Summary: This information collection requires tribes that are requesting a Secretarial election to provide a formal request for election, including the language to be voted on and a certified list of tribal members who will be age 18 at the time of the Secretarial election and their current addresses or a certified Eligible Voters List with addresses. This list is necessary to ensure that all eligible voters receive notice of the Secretarial election and the opportunity to register and vote in the election. This information collection also requires that tribal members who petition for a

Secretarial election provide certain information in the petition, that tribal members who wish to vote in the election to register for the election, that registered voters submit a ballot to vote in the election, and that anyone wishing to challenge the results of an election provide substantiating evidence for the challenge.

Frequency of Collection: On occasion.

Description of Respondents: Indian tribes, Indian tribal members.

Total Annual Responses: 252,041.

Total Annual Burden Hours: 64,305 (1,280 hours for tribal submissions, 63,025 hours for member submissions).

Total Annual Cost Burden: $110,880.

The BIA invites comments on the information collection requirements of this proposed rule. You may submit comments to the Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov* or by facsimile at (202) 395–5806. Please also send a copy of your comments to BIA at the location specified under the heading **ADDRESSES.**

You can receive a copy of BIA's submission to OMB by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section, or by requesting the information from the Indian Affairs Information Collection Clearance Officer, Office of Regulatory Affairs & Collaborative Action, 1849 C Street NW., MS–4141, Washington, DC 20240. You may also view the information collection request as submitted to OMB at *www.reginfo.gov.*

Comments should address: (1) Whether the collection of information is necessary for the proper performance of the Program, including the practical utility of the information to the BIA; (2) the accuracy of the BIA's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

J. National Environmental Policy Act

This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment.

K. Information Quality Act

In developing this proposed rule we did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Pub. L. 106–554).

L. Effects on the Energy Supply (E.O. 13211)

This proposed rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

M. Clarity of This Regulation

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you believe that we have not met these requirements, send us comments by one of the methods listed in the ''COMMENTS'' section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you believe lists or tables would be useful, etc.

N. Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

We cannot ensure that comments received after the close of the comment period (see **DATES**) will be included in the docket for this rulemaking and considered. Comments sent to an address other than those listed above will not be included in the docket for this rulemaking.

O. Drafting Information

The primary authors of this document are De Springer, Former Acting Chief, Division of Tribal Government Services, Bureau of Indian Affairs; Karen Ketcher, Former Deputy Regional Director, Eastern Oklahoma Region, Bureau of Indian Affairs; Suzanne Chaney, Former Community Services Officer, Southern Plains Region, Bureau of Indian Affairs; Danelle Daugherty, Deputy Regional Director for Indian Services, Great Plains Region, Bureau of Indian Affairs; and Elizabeth Appel, Director, Office of Regulatory Affairs & Collaborative Action—Indian Affairs, Department of the Interior.

List of Subjects in 25 CFR Parts 81 and 82

Indians—tribal government.

For the reasons given in the preamble, under the authority of 5 U.S.C. 301 and 25 U.S.C. 2 and 9, the Department proposes to amend chapter I, title 25, as follows:

■ 1. Revise part 81 to read as follows:

PART 81—SECRETARIAL ELECTION PROCEDURES

Subpart A—Purpose and Scope

Sec.
81.1 What is the purpose of this part?
81.2 When does this part apply?
81.3 Information collection.

Subpart B—Definitions

81.4 What terms do I need to know?

Subpart C—General Provisions

81.5 What should a tribe do when anticipating adopting or amending its governing document?
81.6 What technical assistance will the Bureau provide?
81.7 What happens if a governing Federal statute and this part disagree?
81.8 Will the Secretary give deference to the Tribe's interpretation of its own documents?
81.9 Who may cast a vote in a Secretarial Election?
81.10 May a tribe establish a voting age different from 18 years of age for Secretarial elections?
81.11 What type of electioneering is allowed before and during a Secretarial Election?
81.12 What types of voting assistance are provided for a Secretarial Election?
81.13 May Secretarial elections be scheduled at the same time as tribal elections?
81.14 How are conflicting proposals to amend a single document handled?
81.15 Who pays for holding the Secretarial Election?
81.16 May a tribe use its funds to pay non-Federal election officials?
81.17 Who can withdraw a request for a Secretarial Election?

Subpart D—The Secretarial Election Process Under the Indian Reorganization Act (IRA)

81.18 How is a Secretarial Election requested?
81.19 What does the Bureau do after receiving a request for a Secretarial Election?
81.20 What is the first thing that the Chair of the Election Board does?
81.21 Who conducts the Secretarial Election?

81.22 How is the Secretarial Election conducted?
81.23 What documents are included in the Secretarial Election Notice Packet?
81.24 What information must be included on the Secretarial Election notice?
81.25 Where will the Secretarial Election Notice be posted?
81.26 How does BIA use the information I provide on the registration form?
81.27 Do I have to re-register if I have already registered for a tribal or Secretarial Election?
81.28 How do I submit my registration form?
81.29 Why does the Secretarial Election Board compile a Registered Voters List?
81.30 What information is contained in the Registered Voters List?
81.31 Where is the Registered Voters List posted?
81.32 May the Registered Voters List be challenged?
81.33 How does the Secretarial Election Board respond to challenges?
81.34 How are the official ballots prepared?
81.35 When must the Secretarial Election Board send ballots to voters?
81.36 What will the mailout or absentee ballot packet include?
81.37 How do I cast my vote at a polling site?
81.38 When are ballots counted?
81.39 How does the Board determine whether the required percentage of registered voters have cast ballots?
81.40 What happens if a ballot is spoiled before it is cast?
81.41 Who certifies the results of the Election?
81.42 Where are the results of the Election posted?
81.43 How are the results of the Election challenged?
81.44 What documents are sent to the Authorizing Official?
81.45 When are the results of the Secretarial Election final?

Subpart E—The Secretarial Election Process Under the Oklahoma Indian Welfare Act (OIWA)

81.46 What should a tribe do to adopt or amend its governing document?
81.47 What technical assistance does the Bureau provide?
81.48 What does the Bureau do upon receiving the request for an Election?
81.49 How is the Secretarial Election conducted?
81.50 When are the results of the Election final?

Subpart F—Formulating Petitions To Request a Secretarial Election

81.51 What is the purpose of this subpart?
81.52 Who must follow these requirements?
81.53 How do tribal members circulate a petition to adopt or amend the tribe's governing document?
81.54 What technical assistance will the Bureau provide?
81.55 Who may initiate a petition?
81.56 Who may sign a petition?
81.57 Who is authorized to submit a petition to the Secretary?
81.58 How is the petition formatted and signed?
81.59 Do petitions have a minimum or maximum number of pages?
81.60 How do I find out how many signatures are needed for a petition to be valid?
81.61 How long do tribal members have to gather the signatures?
81.62 How does the spokesperson file a petition?
81.63 How does the Local Bureau Official process the petition?
81.64 How can signatures to the petition be challenged?
81.65 How is the petition validated?
81.66 May the same petition be used for more than one Secretarial Election?

Authority: 25 U.S.C. 473a, 476, 477, as amended, and 503.

Subpart A—Purpose and Scope

§ 81.1 What is the purpose of this part?

This part prescribes the Department's procedures for authorizing and conducting elections when Federal statute or the terms of a tribal governing document require the Secretary to conduct and approve an election to:

(a) Adopt, amend, or revoke tribal governing documents; or

(b) Adopt or amend charters.

§ 81.2 When does this part apply?

This part applies only to federally recognized tribes, in the circumstances shown in the following table.

If a tribe wants to . . .	And . . .
(a) Adopt a new governing document to reorganize under Federal statute.	The Federal statute requires an election before or after Secretarial approval.
(b) Adopt a new governing document to reorganize outside Federal statute.	The governing document requires approval under the Secretary's general authority to approve.
(c) Amend or revoke a governing document adopted under Federal statute.	The Federal statute requires an election and approval for amendment or revocation.
(d) Amend or revoke a governing document adopted outside Federal statute.	The governing document requires Secretarial approval of an amendment or revocation.
(e) Ratify a federal charter of incorporation	The charter requires Secretarial approval or is being ratified under the Oklahoma Indian Welfare Act (OIWA).
(f) Amend a federal charter of incorporation	(1) The charter was ratified before the May 24, 1990, amendments to the Indian Reorganization Act (IRA); or (2) The charter was ratified after May 24, 1990, amendments to the Indian Reorganization Act (IRA), and the charter requires a Secretarial Election to amend.
(g) Take other action	A Federal statute or tribal law requires a Secretarial Election in order to take that action.
(h) Remove the requirement for a Secretarial approval from a governing document.	A Federal statute or tribal law requires a Secretarial Election in order to take that action.

§ 81.3 Information collection.

The information collection requirements contained in this part are approved by the Office of Management and Budget under the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), and has been assigned OMB control number 1076–XXX. This information is collected when, under Federal statute or the tribe's governing documents, the Secretarial Election is authorized to adopt, amend, or revoke governing documents; or adopt or amend charters. This information is required to obtain or retain benefits. A Federal agency may not collect or sponsor an information collection without a valid OMB control number.

Subpart B—Definitions

§ 81.4 What terms do I need to know?

For purposes of this part:

Absentee or Mailout ballot means a ballot the Secretarial Election Board provides to a registered voter to allow him or her to vote by mail.

Amendment means any modification or change to one or more provisions of an existing governing document or charter.

Applicable law means any treaty, statute, Executive Order, regulation, opinion of the Solicitor or final decision of the Interior Board of Indian Appeals or a Federal court, which is applicable to the tribe.

Authorizing Official means the Bureau official with delegated Federal authority to authorize a Secretarial Election.

Bureau means the Bureau of Indian Affairs, Department of the Interior.

Cast means the action of a registered voter, when the ballot is received through the mail by the Secretarial Election Board, or placed in the ballot box at the polling site, when polling sites are required by the amendment or adoption articles of the tribe's governing document.

Charter means a charter of incorporation issued under a Federal statute and ratified by the governing body in accordance with tribal law or, if adopted before May 24, 1990, by a majority vote in an election conducted by the Secretary.

Day means a calendar day. A Secretarial Election may be held on a Saturday, Sunday or Federal holiday.

Department means the Department of the Interior.

Director means the Director of the Bureau of Indian Affairs or his or her authorized representative.

Electioneering means campaigning for or against the adoption, ratification, revocation or amendment of a proposed governing document or a charter.

Eligible voter means a tribal member who will be 18 years of age or older on the date of the Secretarial Election.

Eligible Voters List means a list of eligible voters, including their birthdates and their last known mailing addresses. The Eligible Voters List is compiled and certified by the tribe's governing body or the Bureau if the Bureau maintains the current membership roll for the tribe.

Federal statute means the Indian Reorganization Act (IRA), 25 U.S.C. 476, 477, as amended, the Oklahoma Indian Welfare Act (OIWA), 25 U.S.C. 503, and any tribe-specific statute that requires a Secretarial Election for the adoption of a governing document.

Governing document means any written document which prescribes the extent, limitations, and manner in which the tribe exercises its sovereign powers.

Local Bureau office means the local administrative office of the Bureau.

Local Bureau Official means the Superintendent, Field Representative, or other official having delegated Federal administrative responsibility under this part.

Member means any person who meets the written criteria of and is duly enrolled with a tribe.

Petition means the official document submitted by the petitioners to the Secretary to call a Secretarial Election for the purpose of adopting or ratifying a new governing document, amending the tribe's existing governing document, or revoking the tribe's existing governing document.

Polling site ballot means the ballot the Secretarial Election Board provides to a registered voter, allowing him or her to vote when polling sites are required by the amendment and adoption article of the tribe's governing document.

Recognized governing body means the tribe's governing body recognized by the Bureau for the purposes of government-to-government relations.

Registered Voter means an eligible voter who has registered to vote in the Secretarial Election.

Registered Voters List means the list of all Registered Voters. A redacted version showing only names, and where applicable voting districts, shall be used for posting purposes.

Registration means the process by which an eligible voter is determined eligible to vote in the Secretarial Election.

Revocation means that act whereby the registered voters of a tribe vote to revoke their current governing document.

Secretarial Election means a Federal election conducted by the Secretary under a Federal statute or tribal governing document under this part.

Secretarial Election Board means the body of officials appointed by the Bureau and the tribe to conduct the Secretarial Election.

Secretary means the Secretary of the Interior or his or her authorized representative.

Spoiled ballot means the ballot is mismarked, mutilated, rendered impossible to determine the voter's intent, or marked so as to violate the secrecy of the ballot.

Spokesperson for the petitioners means a tribe's eligible voter who provides a document signed by tribal members that provides him or her authority to speak or submit a petition on their behalf.

Tribal request means a request composed of all of the following:

(1) A duly adopted tribal resolution, tribal ordinance, other appropriate tribal document requesting the Secretary to call a Secretarial Election, or, in the absence of an existing governing document or if authorized or required by the existing governing documents, a petition that has been verified by the Bureau as having the minimum required signatures of tribal members;

(2) The exact document or amended language to be voted on; and

(3) A list of all Tribal members who will be 18 years age or older within 120 days of the date of this request, submitted in an electronically sortable format with names, last known addresses, dates of birth, and voting district, if any.

Tribe means any Indian or Alaska Native tribe, band, nation, pueblo, village or community that is listed in the **Federal Register** under 25 U.S.C. 479a–1(a), as recognized and receiving services from the Bureau of Indian Affairs.

Voting district means a geographic area established to facilitate the voting process, if required, by the amendment and adoption articles of the tribe's governing document.

Subpart C—General Provisions

§ 81.5 What should a tribe do when anticipating adopting or amending its governing document?

The tribe should submit the proposed document to the Local Bureau Official for review and comment. Bureau personnel may help the tribal government in drafting governing documents, bylaws, charters, amendments and revocations. They will also explain the Secretarial Election process.

§ 81.6 What technical assistance will the Bureau provide?

(a) Upon completing the initial review of the proposed document or amendment, the Local Bureau Official will make a recommendation on the proposed document or amendment, prepare background information on the tribe, and submit to the Authorizing Official.

(b) The Authorizing Official must do all of the following:

(1) Review the proposed governing document or amendment and offer technical assistance and comments to the tribe.

(2) Consult with the Office of the Solicitor to determine whether any of the provisions of the proposed governing document or amendment may be contrary to applicable law.

(3) Notify the tribe in writing if a provision is or may be contrary to applicable law. This notification must:

(i) Explain how the provision may be contrary to applicable law; and

(ii) Be sent to the tribe promptly but in no case less than 30 days before calling the election.

(c) Once the tribe has responded to the Bureau's technical assistance, comments and notice of any provision that may be contrary to applicable law, it may submit a tribal request for a Secretarial Election.

§ 81.7 What happens if a governing Federal statute and this part disagree?

If a conflict appears to exist between this part and a specific requirement of the Federal statute, this part must be interpreted to conform to the statute.

§ 81.8 Will the Secretary give deference to the Tribe's interpretation of its own documents?

The Secretary will give deference to the tribe's reasonable interpretation of the amendment and adoption articles of the tribe's governing documents. The Secretary retains authority, however, to interpret tribal law when necessary to carry out the government-to-government relationship with the tribe or when a provision, result, or interpretation may be contrary to Federal law.

§ 81.9 Who may cast a vote in a Secretarial Election?

If the tribe:	Then the following individuals may cast a vote:
(a) Is reorganizing under Federal statute for the first time,	Any member of the tribe who: (1) Will be 18 years of age or older on the date of the Secretarial Election; and (2) Has duly registered, regardless of residence or other qualifications contained in the tribe's governing documents or charter.
(b) Is already reorganized under Federal statute,	Any member of the tribe who: (1) Will be 18 years of age or older on the date of the Secretarial Election; and (2) Otherwise meets the qualifications established by the tribe's governing documents or charter or, if the tribe's governing documents and charter do not define the qualifications for voting in a Secretarial Election, then meets the same qualifications as those entitled to vote in the Secretarial Election that effected the tribe's reorganization; and (3) Has duly registered.
(c) Is not organized under a Federal statute but tribal law requires a Secretarial Election.	Any member of the tribe who: (1) Will be 18 years of age or older on the date of the Secretarial Election; and (2) Otherwise meets the qualifications, if any, established by the tribe's governing documents or charter or, if the tribe's governing documents and charter do not define the qualifications for voting in a Secretarial Election; and (3) Has duly registered.

§ 81.10 May a tribe establish a voting age different from 18 years of age for Secretarial elections?

No. A Secretarial Election is a Federal election. According to the 26th Amendment of the U.S. Constitution, adopted July 1, 1971, all individuals 18 years of age and older must be able to vote in Federal elections.

§ 81.11 What type of electioneering is allowed before and during Secretarial election?

There shall be no electioneering within 50 feet of the entrance of a polling site.

§ 81.12 What types of voting assistance are provided for a Secretarial Election?

If polling sites are required by the amendment or adoption article of the tribe's governing document, the Chair of the Secretarial Election Board will:

(a) Appoint interpreters;

(b) Ensure that audio or visual aids for the hearing or visually impaired are provided;

(c) Ensure that reasonable accommodations are made for others with impairments that would impede their ability to vote; and

(d) Allow the interpreter or Secretarial Election Board member to explain the election process and voting instructions. At the request of the voter, the interpreter or Board member may accompany the voter into the voting booth, but must not influence the voter in casting the ballot.

§ 81.13 May Secretarial elections be scheduled at the same time as tribal elections?

The Secretarial Election Board will, generally, avoid scheduling Secretarial Elections at the same time as tribal elections to avoid confusion. If the Secretarial Election Board decides to schedule a Secretarial Election at the same time as a tribal election, the Secretarial Election Board must clearly inform eligible voters of any differences between the tribal election and the Secretarial Election and separate ballots must be used for each type of election.

§ 81.14 How are conflicting proposals to amend a single document handled?

When conflicting proposals to amend a single provision of a tribal governing document or charter provision are submitted, the proposal first received by the Local Bureau Official, if properly submitted as a complete tribal request, must be voted on before any consideration is given other proposals. Other proposals must be considered in order of their receipt if they are resubmitted following final action on the first submission. This procedure applies regardless of whether the proposal is a new or revised tribal governing document.

§ 81.15 Who pays for holding the Secretarial Election?

A Secretarial Election is a Federal election; therefore, Federal funding will be used to cover the cost. The Bureau will pay for the costs, unless the tribe has received funding through contracts or self-governance compacts entered into under the Indian Self-Determination and Education Assistance Act, as amended, 25 U.S.C. 450f, *et seq.*

§ 81.16 May a tribe use its funds to pay non-Federal election officials?

A tribal recognized governing body may use tribal funds to compensate non-Federal personnel to protect the tribe and respond to the needs of the tribal government in the conduct of the Secretarial Election.

§ 81.17 Who can withdraw a request for a Secretarial Election?

The tribe or spokesperson for the petitioners may withdraw the request for Secretarial Election in the same manner in which the Secretarial Election was requested. However, the request for a Secretarial Election cannot be withdrawn after the established deadline for voter registration.

Subpart D—The Secretarial Election Process Under the Indian Reorganization Act (IRA)

§ 81.18 How is a Secretarial Election requested?

A tribe may make a request to the Local Bureau Official for a Secretarial Election by submitting:

(a) A tribal request from the recognized governing body, or

(b) A petition from the spokesperson for the petitioners.

§ 81.19 What does the Bureau do after receiving a request for a Secretarial Election?

(a) Upon receiving a request for a Secretarial election, the Authorizing Official will issue a memorandum to the Local Bureau official. The memorandum will do all of the following:

(1) Direct the Local Bureau official to call and conduct a Secretarial Election by one of the following deadlines:

(i) If the tribal request is to amend an existing governing document, within 90 days from the date of receipt of the request;

(ii) If the tribal request is to adopt a new governing document (including an amendment to a governing document in the nature of an entire substitute) or to revoke an existing governing document, within 180 days after receiving the request.

(2) Include as an attachment the document or proposed language to be voted upon;

(3) Include as an attachment the Certificate of Results of Election with instructions to return it after the Secretarial Election. The Certificate shall read as follows:

CERTIFICATE OF RESULTS OF ELECTION

Under a Secretarial Election authorized by (name and title of authorizing official) on (date), the attached [insert: Governing document and Bylaws, charter of incorporation, amendment or revocation] of the (official name of tribe) was submitted to the registered voters of the tribe and on (date) duly (insert: adopted, ratified, rejected or revoked) by a vote of (number) for and (number) against and (number) cast ballots found spoiled in an election in which at least 30 percent (or such ''percentages'' as may be required to amend according the governing document) of the (number) registered voters cast their ballot in accordance with (appropriate Federal statute).

Signed: _____
(by the Chair of the Secretarial Election Board and Board Members)

Date: _____; and

(4) Advise that no changes or modifications can be made to any attached document, without the Authorizing Official's prior approval.

(b) The Local Bureau Official will appoint a Bureau employee to serve as the Chair of the Secretarial Election Board and notify the tribe of the need to appoint at least two tribal members to the Secretarial Election Board. If the tribe declines or fails for any reason to make this appointment within10 days after the notice letter is issued, the Chair of the Secretarial Election Board must appoint two representatives on the 11th day after the notice letter is issued.

§ 81.20 What is the first thing that the Chair of the Election Board does?

Within 5 days after the Secretarial Election Board representatives are appointed, the Chair must hold the first meeting of the Secretarial Election Board to set the election date.

§ 81.21 Who conducts the Secretarial Election?

The Secretarial Election Board conducts the Secretarial Election.

§ 81.22 How is the Secretarial election conducted?

The Secretarial Election Board:

(a) Uses the list provided in the tribal request to create an Eligible Voters List;

(b) Assembles and mails the Secretarial Election Notice Packet at least 60 days before the date of the Secretarial Election to all persons on the Eligible Voters List;

(c) Confirms that registration forms were received on or before the deadline date;

(d) Retains the completed registration form as part of the record;

(e) Develops the Registered Voters List for posting;

(f) Notes on a copy of the Registered Voters List, by the individual's name, the date his or her ballot request was received, the date the ballot was mailed, and the date the ballot was returned; and

(g) If polling sites are required by the amendment or adoption article of the tribe's governing document, notes on a copy of the Registered Voters List, by the individual's name, the date his or her absentee ballot request was received, the date the absentee ballot was mailed, and the date the absentee ballot was returned.

§ 81.23 What documents are included in the Secretarial Election Notice Packet?

The Secretarial Election Notice Packet includes the following.

(a) Mailout Balloting	(b) Polling Sites (if required by the amendment or adoption ar ticles of the tribe's governing document).
(1) The Secretarial Election notice;	(1) The Secretarial Election notice;
(2) A registration form with instructions for returning the completed form by mail;.	(2) A registration form with instructions for returning the completed form by mail;
(3) An addressed envelope with which to return the completed registration form; and.	(3) An absentee ballot request form with instructions for returning the completed form by mail;
(4) A copy of the proposed document.	(4) An addressed envelope with which to return the completed registration fo rm and absentee ballot request form; and
	(5) A copy of the proposed document.

§ 81.24 What information must be included on the Secretarial Election notice?

The Secretarial Election notice must contain all of the following items.

(a) The date of the Secretarial Election;

(b) The date which registration forms must be received by the Secretarial Election Board;

(c) A description of the purpose of the Secretarial Election;

(d) A description of the statutory and tribal authority under which the Secretarial Election is held;

(e) The deadline for filing challenges to the Registered Voters List;

(f) The date a ballot request must be received by the Secretarial Election Board;

(g) A statement as to whether the Secretarial Election is being held entirely by mailout ballot or with polling sites, in accordance with the tribe's governing document's amendment or adoption articles; and

(h) The locations and hours of established polling sites, if any.

§ 81.25 Where will the Secretarial Election notice be posted?

The Secretarial Election notice will be posted at the local Bureau office, if any, the tribal headquarters, and other public places determined by the Secretarial Election Board.

§ 81.26 How does BIA use the information I provide on the registration form?

We use the information you provide on the registration form to determine whether you may be register for and vote in the Secretarial Election. The registration form must include the following statements:

(a) Completing and returning this registration is necessary if you desire to vote in the forthcoming Secretarial Election;

(b) This form, upon completion and return to the Secretarial Election Board,

will be the basis for determining whether your name will be placed upon the list of registered voters, and therefore may receive a ballot, and

(c) Completion and return of this form is voluntary, but failure to do so will prevent you from participating in the Secretarial election.

§ 81.27 Do I have to re-register if I have already registered for a tribal or Secretarial Election?

Yes. A Secretarial Election is a Federal election and you must register for each Secretarial Election.

§ 81.28 How do I submit my registration form?

You must submit your registration form to the Secretarial Election Board by mail.

§ 81.29 Why does the Secretarial Election Board compile a Registered Voters List?

The Registered Voters List is a list of eligible voters who have registered and are, therefore, entitled to vote in the Secretarial Election. We use this list, after all challenges have been resolved, to determine whether voter participation in the Secretarial Election satisfies the minimum requirements of the tribe's governing documents and Federal law.

§ 81.30 What information is contained in the Registered Voters List?

The Registered Voters List must contain the names, in alphabetical order, of all registered voters and their voting districts, if voting districts are required by the tribe's governing document's amendment or adoption articles.

§ 81.31 Where is the Registered Voters List posted?

A copy of the Registered Voters List, showing names only, must be posted at the local Bureau office, if any, the tribal headquarters, and other public places the Secretarial Election Board designates.

§ 81.32 May the Registered Voters List be challenged?

(a) It is possible to challenge in writing the inclusion or exclusion or omission of a name on the Registered Voters List. The written challenge must be received by the Secretarial Election Board by the established deadline and include the following:

(1) The individual whose name does or does not appear on the Registered Voters List;

(2) The reason why the individual's name should or should not be included; and

(3) Supporting documentation.

(b) Failure to register on time is not a valid basis for an individual to challenge the omission of his/her name from the list.

§ 81.33 How does the Secretarial Election Board respond to challenges?

All challenges must be resolved within three days of the challenge deadline established by the Secretarial Election Board and all determinations of the Secretarial Election Board are final for the purpose of determining who can vote in the Secretarial Election.

(a) If the challenge was received after the deadline, the Secretarial Election Board must deny the challenge.

(b) If the challenge was received on or before the deadline, the Secretarial Election Board will decide the challenge by reviewing the documentation submitted. Thereafter, the Secretarial Election Board will include the name of any individual whose name should appear or remove the name of any individual who should not appear on the Registered Voters List.

§ 81.34 How are the official ballots prepared?

(a) The Secretarial Election Board must prepare the official ballot so that it is easy for the voters to indicate a choice between adopting or rejecting the proposed language. Separate ballots should be prepared for each proposed amendment or a single ballot for adoption of a proposed document (with a reference to the document provided in the Secretarial Election notice).

(b) The following information must appear on the face of the mailout or absentee ballot:

OFFICIAL BALLOT
(Facsimile Signature)
CHAIR, SECRETARIAL ELECTION BOARD

(c) When polling places are required by the tribe's governing document, the official ballot may be a paper ballot, voting machine ballot, or other type of ballot supporting the secret ballot process.

§ 81.35 When must the Secretarial Election Board send ballots to voters?

(a) The Secretarial Election Board must send mailout or absentee ballots to registered voters:

(1) When the list of Registered Voters is complete; or

(2) Any time a request for an absentee ballot is received before Secretarial Election date if polling sites are required by the amendment or adoption articles of the tribe's governing document.

(b) All mailout or absentee ballot transactions must be via U.S. Mail before the date of the Secretarial Election.

§ 81.36 What will the mailout or absentee ballot packet include?

The mailout or absentee ballot packet contains:

(a) A mailout or absentee ballot;

(b) Instructions for voting by mailout or absentee ballot including the date the ballot must be received by the Secretarial Election Board;

(c) An inner envelope with the words ''Mailout Ballot'' or ''Absentee Ballot'' printed on the outside;

(d) A copy of the proposed governing document or amendment, if the full text is not printed on the mailout ballot; and

(e) A pre-addressed outer envelope with the following certification printed on the back:

I, (print name of voter), hereby certify I am a registered voter of the (name of Tribe); I will be 18 years of age or older on the day of the Secretarial Election; I am entitled to vote in the Secretarial Election to be held on (date of Secretarial Election). I further certify that I marked the enclosed mailout ballot in secret.

Signed: _____ (voter's signature)

§ 81.37 How do I cast my vote at a polling site?

If polling sites are required by the tribe's governing document's amendment or adoption articles, the Secretarial Election Board will establish procedures for how polling site ballots will be presented and collected, including, but not limited to, paper ballots, voting machines, or other methods supporting a secret ballot.

§ 81.38 When are ballots counted?

The ballots will be counted under the supervision of the Secretarial Election Board, after the deadline established for receiving all ballots or closing of the polls, if polling sites are required by the tribe's governing document's amendment or adoption articles.

§ 81.39 How does the Board determine whether the required percentage of registered voters have cast ballots?

The Secretarial Election Board must count the number of valid ballots and cast spoiled ballots to determine total voter participation. The Board must take the total voter participation and divide it by the total number of Registered Voters. This total is used to determine whether the percentage of Registered Voters who cast votes meets the requirements of the tribe's governing documents or Federal statute that requires at least 30 percent voter participation. For example:

(a) If there were 200 registered voters of which 75 cast valid ballots and 5 cast spoiled ballots for a total of 80 cast ballots (75 + 5 = 80). The percentage of

voter participation would be determined as follows:

Total number of votes cast (80) divided by the total number registered voters (200) or 80 ÷ 200 = 0.40 or 40 percent voter participation.

(b) This example meets the Federal statutory requirement of at least 30 percent voter participation.

§ 81.40 What happens if a ballot is spoiled before it is cast?

If a ballot is spoiled before it is cast, this section applies.

(a) The registered voter may return the spoiled ballot to the Secretarial Election Board by mail or in person with a request for a new ballot before the election date. The new ballot will be promptly provided to the registered voter. The Secretarial Election Board must retain all ''spoiled uncast ballots'' for recordkeeping purposes.

(b) If polling sites are required, the voter may return the spoiled ballot to the polling site worker and request a new ballot. Upon receiving the new ballot, the voter must then complete the voting process. The polling site worker will mark the spoiled ballot ''spoiled uncast'' and record that the ballot has been spoiled. The polling site worker must retain all ''spoiled uncast ballots'' for recordkeeping purposes.

§ 81.41 Who certifies the results of the Election?

The Chair and all members of the Secretarial Election Board must be present during the counting of the ballots and must sign the Certificate of Results of Election.

§ 81.42 Where are the results of the Election posted?

The Secretarial Election Board must post a copy of the Certificate of Results of Election at the local Bureau office, the tribal headquarters, and at other public places listed in the Election notice.

§ 81.43 How are the results of the Election challenged?

Any person who submitted a voter registration form may challenge the results of the Secretarial Election. The written challenge, with substantiating evidence, must be received by the Chairman of the Secretarial Election Board within 3 days after the Certificate of Results of Election is posted. Challenges received after the deadline for filing challenges will not be considered. If the third day falls on a weekend or holiday, the challenge must be received by close of business on the next business day.

§ 81.44 What documents are sent to the Authorizing Official?

The Chair of the Secretarial Election Board must transmit all documents pertaining to the Secretarial Election to the Authorizing Official, including:

(a) The original text of the material voted on;

(b) The Eligible Voters List;

(c) The Registered Voters List;

(d) The Secretarial Election Notice Packet;

(e) Any challenges to the Secretarial Election results; and

(f) The Certificate of Results of Election.

§ 81.45 When are the results of the Election final?

The Authorizing Official will review election results and challenges, if any, as follows:

(a) If a challenge is sustained and may have an impact on the outcome of the election, the Authorizing Official must authorize a recount or call for a new Secretarial Election. The Authorizing Official will take the appropriate steps necessary to provide for a recount or a new Secretarial Election. The results of the recount or new Secretarial Election will be final for the Department.

(b) If all challenges are denied or dismissed, the Authorizing Official will review and make a decision based on the following:

(1) The percentage of total votes cast was at least 30 percent, or other percentages required according to the tribe's governing document's amendment or adoption articles.

(2) The voters rejected or accepted the proposed document or each proposed amendment; and

(3) The proposed documents or amendments are not contrary to Federal law.

(c) The Authorizing Official must notify, in writing, the recognized governing body of the tribe, and the Director of the Bureau, of the following:

(1) The decisions on challenges;

(2) The outcome of the voting;

(3) Whether the proposed governing document, proposed amendment(s) or charter or charter amendments are approved or ratified, or if the proposed documents contain language that is contrary to Federal law and, therefore, disapproved; and

(4) That the decision is final for the Department.

(d) The Authorizing Official must:

(1) Forward the original text of the document, Original Certificate of Approval or Disapproval, and the Certificate of Results of Election to the tribe and a copy of all documents to the Bureau Director; and

(2) Retain, as required by the Records Disposition Schedule, a copy of all document(s) relevant to the Secretarial Election.

(e) If the certified election results show that the tribal members ratified the documents, but the Authorizing Official does not approve or disapprove the governing document or amendment within 45 days of the Secretarial Election, the Secretary's approval of the documents must be considered as given.

Subpart E—The Secretarial Election Process Under the Oklahoma Indian Welfare Act (OIWA)

§ 81.46 What should a tribe do to adopt or amend its governing document ?

If a tribe expects to adopt or amend its governing document, it should submit the proposed document to the Local Bureau Official for review and comment. The Bureau may help the tribal government in drafting governing documents, bylaws, charters, amendments and revocations. The Bureau will also explain the Secretarial Election process.

§ 81.47 What technical assistance does the Bureau provide?

(a) Upon completing the initial review of the proposed document or amendment, the Local Bureau Official will make a recommendation on the proposed document or amendment, prepare background information on the tribe, and submit it to the Authorizing Official.

(b) The Authorizing Official will:

(1) Review the proposed governing document or amendment and offer technical assistance and comments to the tribe;

(2) Consult with the Office of the Solicitor to determine if any of the provisions of the proposed governing document or amendment may be contrary to applicable law; and

(3) If it appears that a provision is or may be contrary to applicable law, notify the tribe in writing how the provision may be contrary to applicable law.

(c) The Authorizing Official must promptly notify the tribe under paragraph (b)(3) of this section at least 30 days before calling the election;

(d) Once the tribe has responded to the Bureau's technical comments, and any notice of a provision that may be contrary to applicable law, the Authorizing Official may approve the proposed document. The tribe may then submit a request for a Secretarial Election. The Authorizing Official may not authorize a Secretarial Election on any proposed document that contains

provisions that may be contrary to applicable law.

§ 81.48 What does the Bureau do upon receiving the request for an Election?

(a) The Authorizing Official will issue a memorandum to the Local Bureau Official:

(1) Approving the proposed document or proposed amendments;

(2) Authorizing the Local Bureau Official to call and conduct a Secretarial Election, within 90 days from the date of receiving the tribal request;

(3) Attaching the document or proposed language to be voted upon;

(4) Attaching the Certificate of Results of Election, with instructions to return it at the conclusion of the Secretarial Election. The Certificate shall read as follows:

CERTIFICATE OF RESULTS OF ELECTION

Under a Secretarial Election authorized by (name and title of authorizing official) on (date), the attached [insert: Governing document and Bylaws, charter of incorporation, amendment or revocation] of the (official name of tribe) was submitted to the registered voters of the tribe and on (date) duly (insert: adopted, ratified, rejected or revoked) by a vote of (number) for and (number) against and (number) cast ballots found spoiled in an election in which at least 30 percent (or such ''percentages'' as may be required to amend according the governing document) of the (number) registered voters cast their ballot in accordance with (appropriate Federal statute).

Signed: _____
(by the Chair of the Secretarial Election Board and Board Members)

Date: _____.; and

(5) Advising that no changes or modifications can be made to any of the attached documents, without prior approval from the Authorizing Official.

(b) The Local Bureau Official will appoint the Chair of the Secretarial Election Board and notify the tribe of the need to appoint at least two tribal members to the Secretarial Election Board. If the tribe fails to make such appointment within 10 days after the notice letter is issued, the Chair of the Secretarial Election Board must appoint two representatives on the eleventh day after the notice letter is issued.

§ 81.49 How is the Secretarial Election conducted?

After the Chair of the Election Board receives the authorization of the Election, the Chair of the Secretarial Election Board will conduct the election following the procedures set out in §§ 81.19 through § 81.45.

§ 81.50 When are the results of the Election final?

(a) If a challenge is sustained and has an effect on the outcome of the election, the Authorizing Official must authorize a recount or call for a new Secretarial Election. The Authorizing Official will take the appropriate steps necessary to provide for a recount or a new Secretarial Election. The results of the recount or new Secretarial Election will be final for the Department.

(b) If the challenges are denied or dismissed, the Authorizing Official will review and determine whether:

(1) The percentage of total votes cast was at least 30 percent, or such percentages as may be required according to the tribe's governing document's amendment or adoption articles; and

(2) The voters ratified or rejected the proposed document, proposed amendment or revocation.

(c) The Authorizing Official must notify, in writing, the recognized governing body of the tribe, and the Director of the Bureau, of the following:

(1) The decisions on challenges;

(2) The outcome of the voting;

(3) That the proposed document, proposed amendments or revocation becomes effective as of the date of the Secretarial Election; and

(4) That the decision is final for the Department.

(d) The Authorizing Official must:

(1) Forward the original text of the document, Original Certificate of Approval, and the Certificate of Results of Election to the tribe and a copy of all documents to the Director of the Bureau; and

(2) Retain, as required by the Records Disposition Schedule, a copy of all document(s) relevant to the Secretarial Election.

Subpart F—Formulating Petitions To Request a Secretarial Election

§ 81.51 What is the purpose of this subpart?

This subpart establishes requirements for formulating and submitting petitions to request the Secretary to call a Secretarial Election as required by the governing documents or charters of incorporation of tribes issued under the Indian Reorganization Act (IRA), 25 U.S.C. 476 and 477, as amended, and the Oklahoma Indian Welfare Act (OIWA), 25 U.S.C. 503. This Subpart may also be used by a federally recognized tribe that is adopting a governing document, under Federal statute, for the first time.

§ 81.52 Who must follow these requirements?

Any tribe meeting the criteria in paragraphs (a) or (b) of this section must follow the requirements of this subpart.

(a) A tribe whose governing document or charter of incorporation provides for petitioning the Secretary to call a Secretarial Election for any of the following purposes:

(1) Amending or revoking the governing document;

(2) Amending a charter of incorporation ratified under 25 U.S.C. 477 of the IRA before May 24, 1990;

(3) Amending or ratifying a charter of incorporation under 25 U.S.C. 503 of the OIWA; or

(4) Taking any other action authorized by the governing document or charter of incorporation.

(b) A federally recognized tribe, without an existing governing document, adopting a governing document under Federal statute, for the first time.

§ 81.53 How do tribal members circulate a petition to adopt or amend the tribe's governing document?

Tribal members wishing to circulate a petition to adopt or amend the tribe's governing document should submit the proposed document to the Local Bureau Official for review and comment. This may help the petitioners in drafting governing documents, bylaws, charters, amendments and revocations. The Bureau will also explain the Secretarial Election process.

§ 81.54 What technical assistance will the Bureau provide?

(a) The Bureau will provide technical assistance for a petition only upon request of the spokesperson. Bureau personnel will provide a courtesy copy to the tribe's governing body of all correspondence regarding technical assistance to the petitioners. The spokesperson will be responsible for obtaining the approval of the tribal members it represents on changes to the content of the petition.

(b) Upon completing the initial review of the proposed document or amendment, the Local Bureau Official will make a recommendation on the proposed document or amendment, prepare background information on the tribe, and submit his recommendation to the Authorizing Official.

(c) The Authorizing Official will:

(1) Review the proposed governing document or amendment and offer technical assistance and comments to the tribe;

(2) Consult with the Office of the Solicitor to determine if any of the provisions of the proposed governing document or amendment may be contrary to applicable law; and

(3) If it appears that a provision is or may be contrary to applicable law,

notify the tribe in writing how the provision may be contrary to applicable law.

(d) The Authorizing Official must promptly notify the tribe under paragraph (b)(3) of this section at least 30 days before calling the election;

(e) Once the petitioners have responded to the Bureau's technical assistance, comments and notice of any provision that may be contrary to applicable law, they may submit their petition requesting a Secretarial Election.

§ 81.55 Who may initiate a petition?

A member of the tribe who is 18 years of age or older whose governing document or charter of incorporation permits tribal members to petition the Secretary to authorize a Secretarial Election.

§ 81.56 Who may sign a petition?

A member of the tribe who is 18 years of age or older.

§ 81.57 Who is authorized to submit a petition to the Secretary?

The petitioners must designate a spokesperson to submit the petition and act on their behalf for the petitioning process.

§ 81.58 How is the petition formatted and signed?

(a) Each page of the petition must contain:

(1) A summary of the purpose of the petition, or proposed document, or proposed amendment language;

(2) Numbered lines for each individual to print their legal name, current mailing address, date, and signature, and;

(3) The following declaration at the bottom of each page to confirm the collector was present when each signature was collected:

"I, *(Collector's Printed Name)*, hereby declare that each individual whose name appears above signed and dated the petition. To the best of my knowledge, the individual signing the petition is a member of the tribe and is 18 years or older.
(Signature of Collector)
(Notary Certification)",

(b) Each individual must print their legal name, current mailing address, date, and sign on a numbered line.

(c) Each collector must complete and sign the declaration on each page in front of a notary, who will sign and certify.

§ 81.59 Do petitions have a minimum or maximum number of pages?

A petition can have as many pages as necessary to obtain the required signatures, however, each page must have the information shown in § 81.58.

§ 81.60 How do I find out how many signatures are needed for a petition to be valid?

(a) For a tribe whose governing document or charter of incorporation provides for petitioning the Secretary to call a Secretarial Election:

(1) The spokesperson for the petitioners may ask the tribe or the Local Bureau Official how many signatures are required.

(2) The Local Bureau Official will:

(i) Contact the tribal governing body to obtain the current number of tribal members, 18 years of age or older, to determine the number of tribal members who must sign a petition as required by the tribe's governing document; and

(ii) Notify the petitioners' spokesperson how many signatures are required and that the number is valid for 180 days from the date of this notification.

(b) For a federally recognized tribe adopting a governing document under Federal statute for the first time, the petition must have signatures of 20 percent of the tribal members who are 18 years of age or older.

§ 81.61 How long do tribal members have to gather the signatures?

Tribal members have one year from the date of the first signature to gather the required signatures.

§ 81.62 How does the spokesperson file a petition?

The spokesperson must submit the original petition to the Local Bureau Official.

§ 81.63 How does the Local Bureau Official process the petition?

(a) The Local Bureau Official must, on the date of receipt, date stamp the petition to record the Official Filing Date, and make three copies of the petition for use as follows:

(1) Posting at the local Bureau office for 30 days from the Official Filing Date, including a statement of the proposal contained in the petition and instructions for filing a challenge;

(2) Use in determining sufficiency of petition; and

(3) For viewing at the Local Bureau Office by a member of the tribe, 18 years of age or older.

(b) The Local Bureau Official must, within one week of the Official Filing Date:

(1) Provide the spokesperson written acknowledgment of receiving the petition, which contains the Official Filing Date, the exact number of signatures submitted on the petition, and the statement "The petitioners may not add or withdraw any signatures from the petition after the Official Filing Date"; and

(2) Provide a copy of the written acknowledgment of receipt and petition to the recognized tribal governing body.

(c) The Local Bureau Official must:

(1) Consult with the Office of the Solicitor to determine if any of the provisions that are the subject of the petition are or may be contrary to applicable law; and

(2) If it appears that a provision is or may be contrary to applicable law, notify the petitioner's spokesperson in writing how the provision may be contrary to applicable law.

(d) The Local Bureau Official must promptly notify the petitioners of any problems identified under paragraph (c) of this section at least 30 days before calling the election.

§ 81.64 How can signatures to the petition be challenged?

Any member of the tribe, 18 years of age or older, may challenge in writing the signatures appearing on the petition. The challenge must be submitted to the Local Bureau Official, within 30 days of the Official Filing Date of the petition and must:

(a) Identify the page and line on which a signature appears; and

(b) Provide documentation supporting a challenge that at least one of the following is true:

(1) A signature was forged;

(2) An individual was ineligible to sign the petition;

(3) A petition page is inconsistent or improperly formatted; or

(4) A petition page contains an incomplete declaration statement.

§ 81.65 How is the petition validated?

(a) The Local Bureau Official must:

(1) Confirm the petition has the required number of signatures;

(2) Indicate any signatures appearing more than once and include only one in the count;

(3) Make recommendations regarding any challenge to the validity of signatures based upon the documentation provided by the challenger; and

(4) Verify the petitioning procedures complied with this Subpart.

(5) Transmit within 45 calendar days of the Official Filing Date the original petition, challenges, and recommendations to the Authorizing Official.

(b) The Authorizing Official must within 60 calendar days of the Official Filing Date:

(1) Determine whether the petition complies with the requirements of this Subpart;

(2) Inform the spokesperson for the petitioners and the recognized tribal governing body, in writing, whether the petition is valid, the basis for that determination, and a statement that the decision of the Authorizing Official is final for the Department.

(i) If the petition is determined valid for the purposes of calling a Secretarial election, the Authorizing Official will instruct the Local Bureau Official to call and conduct the Secretarial Election in accordance with §§ 81.19 through 81.45.

(ii) If the petition is determined invalid, the Authorizing Official will notify the spokesperson for the petitioners, with a courtesy copy to the tribe's governing body, that the petition was not valid and a Secretarial Election will not be called.

§ 81.66 May the same petition be used for more than one Secretarial Election?

No. A petition may not be used for more than one Secretarial Election. Each request for a Secretarial Election requires a new petition.

PART 82—[REMOVED AND RESERVED]

■ 2. Remove and reserve part 82.

Dated: October 3, 2014.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

[FR Doc. 2014–24118 Filed 10–8–14; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 5

[Docket No. MSHA–2014–0016]

RIN 1219–AB82

Fees for Testing, Evaluation, and Approval of Mining Products

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule.

SUMMARY: The Mine Safety and Health Administration (MSHA) proposes to amend the Agency's regulations for administering fees for testing, evaluation, and approval of products manufactured for use in mines. This proposed rule would revise the fees charged for these services. The proposed rule also would include a fee for approval services that MSHA provides to applicants or approval holders under the existing rule, but for which the Agency currently does not charge a fee, and for other activities required to support the approval process.

DATES: Comments must be received or postmarked by midnight Eastern Daylight Saving Time on November 10, 2014.

ADDRESSES: Submit comments and informational materials, identified by RIN 1219–AB82 or Docket No. MSHA–2014–0016, by one of the following methods:

- *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments for Docket No. MSHA–2014–0016.
- *Electronic mail: zzMSHA-comments@dol.gov.* Include RIN 1219–AB82 or Docket No. MSHA–2014–0016 in the subject line of the message.
- *Mail:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939.
- *Facsimile:* 202–693–9441.
- *Hand Delivery or Courier:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia, between 9:00 a.m. and 5:00 p.m. Monday through Friday, except Federal holidays. Sign in at the receptionist's desk on the 21st floor.
- *Instructions:* All submissions must include RIN 1219–AB82 or Docket No. MSHA–2014–0016. Do not include personal information that you do not want publicly disclosed; MSHA will post all comments without change to *http://www.regulations.gov,* and *http://www.msha.gov/currentcomments.asp,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Sheila A. McConnell, Acting Director, Office of Standards, Regulations, and Variances, MSHA, at *mcconnell.sheila.a@dol.gov* (email); 202–693–9440 (voice); or 202–693–9441 (facsimile). (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

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MSHA is including the following outline to assist the public in finding information in this preamble.

I. Availability of Information
II Background
III. Section-by-Section Analysis
IV. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
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VI. Regulatory Flexibility Act, Small Business Regulatory Enforcement Fairness Act, and Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking
VII. Paperwork Reduction Act of 1995
VIII. Other Regulatory Considerations

I. Availability of Information

Docket: For access to the docket to read comments received, go to *http://www.regulations.gov* or *http://www.msha.gov/currentcomments.asp.* To read background documents, go to *http://www.regulations.gov.* Review the docket in person at MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia, between 9:00 a.m. and 5:00 p.m. Monday through Friday, except Federal Holidays. Sign in at the receptionist's desk on the 21st floor.

Email notification: To subscribe to receive an email notification when MSHA publishes rules in the **Federal Register** go to *http://www.msha.gov/subscriptions/subscribe.aspx.*

II. Background

As part of the U.S. Department of Labor, under the Federal Mine Safety and Health Act of 1977 (Mine Act), as amended, MSHA's mission is to prevent death, disease, and injury from mining and promote safe and healthy workplaces for the Nation's miners. Since 1911, MSHA and its predecessor agencies have evaluated and tested products for use in mines to prevent fires, explosions, and accidents.

Under various authorities,[1] MSHA historically has collected fees for its services in evaluating, testing, and approving products. Originally, the U.S. Bureau of Mines, an MSHA predecessor agency, billed applicants for approval services using published individual fee schedules, e.g., each approval part in Title 30, Chapter I, provided a list of flat fees for different tests, evaluations, and other services performed for approval activities (30 FR 3752–3757). On May 8, 1987, MSHA eliminated the individual fee schedules and established part 5 which created an hourly rate for administration and calculation of fees for services in Title 30, Chapter I, Subchapter B, *Testing, Evaluation, and Approval of Mining Products* (52 FR 17506). On August 9, 2005, MSHA revised part 5 and its fee procedures. That rule eliminated the application fee, allowed preauthorization of expenditures for processing applications, and allowed outside organizations conducting part 15 testing

[1] These authorities are: Public Law 61–525, Ch. 285, 36 Stat. 1419 (1911); Public Law 62–386, Ch. 72, Sec. 5, 37 Stat. 682 (1913); Public Law 72–212, Ch. 314, Sec. 311, 47 Stat. 410 (1932); 30 U.S.C. 961(c)(2); and Title V of the Independent Offices Appropriations Act of 1952, Public Law 82–137, 65 Stat. 290 (1951), as amended, 31 U.S.C. 9701.

on MSHA's behalf to set fees (70 FR 46336).

Section 205 of the Chief Financial Officers Act of 1990 (CFO Act) and Office of Management and Budget (OMB) Circular No. A–25 Revised, User Charges (7/8/1993), require agencies to review the user charges in their programs to ensure that charges reflect the full costs of the services provided. Traditionally, MSHA reviews its user charges annually. MSHA last revised its hourly rate under part 5 to $97.00 on December 29, 2010 (75 FR 82074).

Section 1503 of the Consolidated and Further Continuing Appropriations Act, 2013 (Pub. L. 113–6) provided new authority for MSHA to collect fees for the approval and certification of equipment, materials, and explosives for use in mines. That law also provided that MSHA may retain up to $2,499,000 of fees collected. The Department of Labor Appropriations Act, 2014 (Pub. L. 113–76), provides authority for MSHA to collect and retain these fees. 30 U.S.C. 966. Prior to this change, MSHA could retain up to $1,499,000 of fees collected.

In this proposal, the term ''approval'' includes approvals, certifications, acceptances, and evaluations MSHA issues under Title 30, Chapter I, Subchapter B, *Testing, Evaluation, and Approval of Mining Products.*

Under the proposed rule, MSHA would (1) revise the hourly rate to include all costs associated with the approval program and (2) include internal quality control activities and post-approval product audits in the fees charged to applicants and approval holders.

Under the proposed rule, MSHA would continue to charge an hourly rate based on costs of the Agency's overall approval activities. The approval program includes: Application processing; testing and evaluation; approval decisions; post-approval activities; and termination of approvals. These Approval and Certification Center (A&CC) activities are necessary to assure that approved mine products are designed, manufactured, and maintained so their use will not cause a fire, an explosion, or other accident.

MSHA proposes to calculate the hourly rate by dividing the total approval program costs (direct and indirect) by the number of direct hours worked on all approval program activities. Under the proposal, the hourly rate would increase from $97 under the existing rule to $121. Using FY 2012 data, MSHA estimates that the increased hourly rate would have resulted in approximately $1.5 million in fees collected, an increase of $300,000 from that collected under the existing rule.

In addition to increasing the hourly rate, MSHA also proposes to charge a fee for two services for which the Agency does not charge under the existing rule: (1) Internal quality control activities and (2) post-approval product audits. Internal quality control activities are an important part of the approval process. MSHA uses internal quality control activities to monitor and improve its testing and evaluation processes. Post-approval product audits are necessary to assure that mining products continue to be manufactured as approved. For this reason, MSHA is proposing to charge for these activities. Using FY 2012 data, internal quality control activities and post-approval product audits would have resulted in approximately $1.2 million in additional fees at the proposed rate of $121 per hour.

Under this proposed rule, MSHA estimates that the Agency would collect approximately $2.7 million in total fees (based on FY 2012 approvals). MSHA recognizes that the FY 2013 and FY 2014 appropriations language provides MSHA the authority to retain only up to $2,499,000 of fees collected. Any fees collected by MSHA above the $2,499,000 will be credited to the Treasury general fund.

III. Section-by-Section Analysis

MSHA is proposing the following changes to its existing regulation addressing fees for testing, evaluation, and approval of mining products.

A. § 5.10 Purpose and Scope

Existing § 5.10 would be revised by redesignating paragraph (a) as an undesignated paragraph, and by moving and revising existing § 5.10(b) and (c) to proposed § 5.30. Paragraph § 5.10(b) would be redesignated as § 5.30(c) and paragraph § 5.10(c) would be redesignated as paragraph § 5.30(d). Additionally, MSHA would move paragraph § 5.10(c)(5) (post-approval product audits) from those services for which ''fees are not charged'' to proposed § 5.30(c)(4) ''fees are charged''.

Proposed § 5.10 would provide the purpose and scope of this part: To establish a system under which MSHA charges a fee for approval program services for mining products manufactured for use in mines.

The approval program represents all the activities necessary for MSHA to assure that products approved for use in mines are designed, manufactured, and maintained in accordance with approval requirements. The approval program includes: (1) Application processing; (2) testing and evaluation; (3) approval decisions; (4) post-approval activities; and (5) the termination of approvals.

Application processing begins when an applicant files a new application for approval. MSHA administratively reviews each new application and, on determining that the application is complete, prepares a maximum fee estimate and sends it to the applicant. The applicant must agree to pay the estimated fee before MSHA will begin testing, as appropriate, and evaluating the product.

Testing and evaluation includes technical evaluation, analysis, test set up, testing, test tear down, any consultation on the application, and internal quality control activities. To assure that approved products continue to be designed, manufactured, and maintained in accordance with approval requirements, the Agency uses internal quality control programs to monitor and improve its testing and evaluation processes (e.g., internal administrative and technical reviews, internal audits, and calibration, repair, and maintenance of test equipment).

Following testing and evaluating a product, MSHA makes an approval decision and notifies the applicant by letter of its findings and decision. If the product is approved, the letter identifies the approved specifications for the design, construction, maintenance, and conditions of use for the product. If the product is not approved or if the application is cancelled, the letter identifies the reasons for the decision. All approval documentation is kept on file at MSHA.

MSHA also conducts various post-approval activities: changing approvals (e.g., extensions [2] of approvals, field modifications, modification through the Revised Acceptance Modification Program), conducting post-approval product audits, field audits, responding to complaints, investigating product failures, monitoring regional or nationwide product recall or retrofit programs, and conducting administrative actions such as transfer of approval numbers.

Termination of an approval may occur when an approval holder voluntarily requests termination of an approval, when MSHA revokes an approval because of compliance or safety issues, or when MSHA issues regulations that make an approval obsolete.

[2] An extension of the approval is a document MSHA issues that states that a change to the product previously approved by MSHA is approved and authorizes the continued use of the approval marking with the appropriate extension number added.

B. § 5.30 Fee Calculation

Proposed § 5.30 would address the hourly rate calculation, the activities for which MSHA would charge a fee, activities that are not subject to a fee, the fee estimate, and any changes to the fee estimate.

Under proposed § 5.30(a), MSHA would continue to charge a fee based on an hourly rate for approval program activities and other associated costs such as travel expenses and Part 15 fees. Part 15 fees for services provided to MSHA by other organizations would be set by those organizations.

Proposed paragraph § 5.30(b) is derived from existing § 5.30(a) and identifies the costs MSHA incurs in administering the approval program. Under the proposed rule, the hourly rate would be calculated to reflect the costs of the overall approval program. Under the existing rule, the hourly rate includes only the application processing, testing and evaluation, and approval decision costs.

Also under the existing rule, some post-approval activities, such as changes to approvals, are included in the approval program costs used in calculating the hourly rate. However, the costs of monitoring to assure approved products continue to be safe and manufactured and maintained as approved (e.g., post-approval product audits) are excluded because MSHA historically considered these activities to be enforcement activities rather than approval program activities (52 FR 17507–17508). OMB Circular No. A–25 requires that agencies recover the full costs of services rendered. In light of the increase in authority to retain fees and to more accurately account for costs, MSHA proposes to include the direct and indirect cost of these activities in the hourly rate because these activities are an important part of the approval program to assure that products continue to be designed, manufactured, and maintained in accordance with the approval requirements.

Under the proposed rule, MSHA would continue to determine an hourly rate to cover direct and indirect costs. MSHA would base the hourly rate on all approval program costs the Agency incurred during a prior fiscal year. The hourly rate would be the total approval program costs (direct and indirect) divided by the number of direct hours spent on all approval program activities. Proposed paragraph § 5.30(b) lists the approval program costs that MSHA would include in the hourly rate calculation.

Proposed paragraph § 5.30(b)(1) defines direct costs as consisting of compensation and benefit costs for all hours worked in support of the approval program and is derived, in part, from existing § 5.10(b)(1) and (b)(2). These costs include approval program activities such as testing and evaluation, including internal quality control, and post-approval activities, including post-approval product audits.

Proposed paragraph § 5.30(b)(2) defines indirect costs and is derived, in part, from existing § 5.10(b)(3) and (b)(4). Indirect costs include the approval program's proportionate share of the hours worked to manage and operate the A&CC. These costs are associated with activities required for information technology (IT) and A&CC management and administration. Indirect costs would also include the approval program's proportionate share of depreciation for buildings, their improvements, and equipment; a proportionate share of utilities, equipment rental, facility and equipment maintenance, security, supplies and materials, and other costs necessary for the operation and maintenance of the A&CC; and a proportionate share of Department of Labor-provided services that would include financial systems, and audit and IT support.

Proposed § 5.30(c) is derived from existing § 5.10(b) and includes activities for which MSHA would charge a fee.

These activities would continue to include application processing (e.g., administrative and technical review of applications, computer tracking and status reporting); testing and evaluation (e.g., analysis of drawings, technical evaluation, testing, test set up and test tear down, and internal quality control activities); approval decisions (e.g., consultation on applications, records control and security, document preparation); and post-approval activities such as changes to approvals.

Under the proposed rule, MSHA would begin to charge applicants and approval holders a fee for internal quality control activities. These activities are part of the approval program. MSHA uses internal quality control activities to monitor and improve the Agency's testing and evaluation processes and quality control. These internal quality control activities assure applicants and approval holders that consistent, accurate, and up-to-date scientific methods are used when MSHA is evaluating and testing products. For example, MSHA has standard procedures to repair, maintain, and calibrate laboratory equipment in accordance with the manufacturers' specifications. Each applicant and approval holder receives a benefit from these internal quality control activities: MSHA would distribute the hours worked and costs of internal quality control, based on the hours worked on each application. However, hours worked on specific internal quality control activities are not charged to a particular application. Instead, MSHA would charge each applicant a prorated share. MSHA proposes to calculate the prior year's quality control hours as a percentage of total hours, multiply that percentage by the number of direct hours worked on a particular application, and add the result to the number of direct hours worked on the application.

Under the proposed rule, MSHA also would begin charging approval holders for the Agency's post-approval product audits, but would not include investigations or audits based on complaints about the products. Post-approval product audits are part of the approval program (post-approval activities) because they are necessary to assure that products have been manufactured as approved. Under existing 30 CFR parts 7, 14, and 15, approval holders are subject to a post-approval product audit upon request by MSHA. The Agency also would continue charging approval holders for changes to approvals.

Internal quality control activities and post-approval audits assure that products are and continue to be designed, manufactured, and maintained in accordance with the approval requirements to ensure the health and safety of miners. For these reasons, MSHA is proposing to charge a fee for these activities.

Existing § 5.10(c)(1), (c)(2), (c)(3), and (c)(4) would be revised and redesignated, in part, as proposed § 5.30(d).

Proposed § 5.30(d) would address the activities for which MSHA would not charge a fee. These include technical assistance not related to approval applications; technical programs including development of new technology programs; participation in research conducted by other government agencies or private organizations; and regulatory review activities, including participation in the development of health and safety standards, regulations, and legislation.

Existing § 5.30(b), § 5.30(c), and § 5.30(d) would be redesignated as proposed § 5.30(e), § 5.30(f), and § 5.30(g) under the Fee Calculation section.

Proposed paragraph § 5.30(e) would be revised by renumbering paragraphs § 5.30(b)(1) and (b)(2) as § 5.30(e)(1) and

(e)(2), respectively. Proposed paragraphs § 5.30(f) and (g) would remain unchanged.

C. § 5.40 Fee Administration

Proposed § 5.40 is revised by adding ''approval holders'' to entities to be billed and replacing ''processing of the application is completed'' with ''approval program activities are completed.'' MSHA would continue to charge applicants a fee for approvals and some post-approval activities (e.g., modification to approvals), and proposes to charge approval holders a fee for post-approval product audits when the approval program activities are completed.

D. § 5.50 Fee Revisions

Proposed § 5.50 is amended by replacing ''fee schedule'' with ''hourly rate'' because MSHA no longer has a fee schedule.

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

Executive Orders (E.O.) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. To comply with these Executive Orders, MSHA has included the following impact analysis.

Section 3(f) of the E.O. 12866 defines a significant regulatory action as an action that is likely to result in a rule that: (1) Has an annual effect on the economy of $100 million or more, or adversely and materially affects a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) creates serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlement grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. OMB has determined that this is a significant regulatory action.

The proposed rule would not have an annual effect of $100 million or more on the economy and, under E.O. 12866, is not considered economically significant. MSHA has not prepared a separate preliminary regulatory economic analysis for this rulemaking. Rather, the analysis is presented below.

A. Overview

MSHA proposes to continue to charge a fee for approval services based on an hourly rate. As under the existing rule, MSHA's hourly rate would include direct costs and indirect costs. However, under the proposed rule, MSHA would calculate the hourly rate by dividing all approval program costs incurred by the Agency during a prior fiscal year by the number of direct hours spent on approval program activities for the same period.

The proposed rule would increase the hourly rate from $97 to $121, an increase of $24.

MSHA would also begin to charge a fee for internal quality control activities and post-approval product audits. In FY 2012, MSHA collected approximately $1.2 million in fees. Under this proposed rule, MSHA estimates that the Agency would have collected a total of $2.7 million in fees in FY 2012, an increase of $1.5 million.

The charges under the proposed rule are fees and are considered under OMB Circular No. A–4, Regulatory Analysis (09/17/2003) as transfer payments, not costs. Transfer payments are payments from one group to another that do not affect total resources available to society. Under the proposed rule, the applicant or the approval holder pays for services for which they receive a benefit. These services are currently paid for by the taxpayer.

Because the fees MSHA collects are a transfer, there are zero costs and zero benefits regardless of the discount rate (OMB Circular No. A–4, Regulatory Analysis (09/17/2003,) Section (G) Accounting Statement).

B. Benefits

The rule would not produce any quantifiable benefits because the only impact is the transfer payment.

C. Projected Impacts

MSHA analyzed A&CC invoice data from Fiscal Year (FY) 2012. Using the U.S. Economic Census North American Industry Classification System (NAICS) data, MSHA estimated the impact of the proposed rule on mining and non-mining industries. NAICS is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy (*http://www.census.gov/eos/www/naics/*).

From the A&CC post-approval product audit data and FY 2012 invoices, MSHA identified 30 industries that received A&CC approval program services. MSHA grouped this data into three general industry categories: Coal Mining, Other Mining, and Non-Mining.

MSHA estimated the fees that would be collected under this proposed rule by summing the impact of the hourly rate increase and the increase from charging for internal quality control activities and post-approval product audits. Under this proposed rule, fees would increase by approximately $1.5 million annually ($0.3 million from the hourly rate increase + $1.1 million for internal quality control activities + $0.1 million for post-approval product audit activities). Of the $1.5 million, the increase in fees for the mining industries would total approximately $0.9 million annually. The remaining $0.6 million would be distributed among the non-mining industries that seek product approval from MSHA.

MSHA estimated the fee increase from the proposed hourly rate by multiplying the number of chargeable hours for FY 2012 (12,189), by the proposed hourly rate of $121. In 2012, MSHA estimated that the proposed hourly rate would have resulted in approximately $1.5 million in fees collected, an increase of $300,000 (($121 new rate − $97 old rate) × 12,189 hours)).

MSHA also estimated the fees from charging for internal quality control activities. MSHA uses internal quality control activities to monitor and improve the Agency's testing and evaluation processes. These activities include internal process reviews, maintaining laboratory equipment, and repairing, maintaining, and calibrating laboratory equipment to assure the equipment produces reliable and accurate results. In FY 2012, MSHA spent 9,015 hours on these activities. MSHA multiplied the 9,015 hours by the proposed $121 hourly rate. This results in an estimated annual impact of $1.1 million.

In addition, MSHA analyzed post-approval product audit data from 2008 to 2012 to estimate the increase in fees from charging for these services. In any given year, post-approval product audits are completed only on a subset of the total products approved by the A&CC. In 2012, MSHA spent approximately 1,000 hours on 125 post-approval product audits. Multiplying the 1,000 hours by the proposed $121 hourly rate results in an estimated annual impact of $121,000. The average estimated impact would

have been $970 for each approval holder audited in 2012.

V. Feasibility

MSHA concludes that the proposed rule would be economically feasible.

MSHA has traditionally used a revenue screening test—whether the annualized compliance costs of a regulation are less than one percent of revenues (dollar change/revenue), or are negative (i.e., provide net cost savings) to establish presumptively that compliance with the regulation is economically feasible. MSHA relies on Agency data to identify revenue for covered mining entities and the 2007 Economic Census data to identify revenue by NAICS industry categories for non-mining entities.

MSHA performed the revenue screening test comparing the annual impact to annual revenues for all three categories and found that the percentage impact rounds to zero percent of revenue in each case. Given the relatively small impact compared to industry total revenues, any further analysis would not be productive.

Because the estimated impacts are below one percent of estimated annual revenue of the impacted industries, MSHA concludes that compliance with the provisions of the proposed rule is economically feasible.

VI. Regulatory Flexibility Act, Small Business Regulatory Enforcement Fairness Act, and Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking

The Regulatory Flexibility Act of 1980 (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 and other statutes, and E.O. 13272 requires agencies to consider the effects of their proposed and existing regulations on small entities and to examine alternatives that would minimize the small entity impacts while still meeting the regulations' purposes. MSHA has reviewed the proposed rule to assess the potential impact on small businesses, small governmental jurisdictions, and small organizations.

The applicants who would be affected by the proposed rule represent 30 industries. The SBA size standard for a small entity (13 CFR 121.201) differs by industry code. For mining, SBA defines a small entity as one with 500 or fewer employees. For non-mining industries that would be impacted by this rule, SBA defines a small entity as one that has revenues of $7.5 million or less.

MSHA used the FY 2012 invoice data and NAICS industry data to evaluate the small business impact. For the non-mining industries, the affected industries represent small business revenues of approximately $474 billion. The proposed rule would increase fees for non-mining industries by approximately $0.5 million. The impact from an increase in fees is essentially zero percent of revenue ($0.5 million/ $474 billion).

For the mining industries, MSHA data shows small coal mine revenues of $31 billion. The proposed rule would increase fees for coal mines by approximately $0.9 million. MSHA data shows other than coal small mine revenues of $57 billion. The proposed rule would increase fees for mines other than coal by approximately $6,000. The impact from an increase in fees is zero percent for both mining categories. Approximately $100,000 in increased fees is primarily attributable to foreign entities. MSHA concludes that the impact on the U.S. economy and its businesses would be *de minimis.*

Given that the maximum possible impact for both mining and non-mining categories rounds to zero percent, the Agency concludes that, using either the SBA definition of small mines (500 or fewer employees) or using MSHA's traditional definition of small mines (1–19 employees), it can certify that the proposed rule would not have a significant economic impact on a substantial number of small entities.

VII. Paperwork Reduction Act of 1995

This proposed rule contains no information collections subject to review by OMB under the Paperwork Reduction Act of 1995.

VIII. Other Regulatory Considerations

A. The Unfunded Mandates Reform Act of 1995

MSHA has reviewed the proposed rule under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*). MSHA has determined that this proposed rule does not include any federal mandate that may result in increased expenditures by State, local, or tribal governments; nor would it increase private sector expenditures by more than $100 million (adjusted for inflation) in any one year or significantly or uniquely affect small governments. Accordingly, under the Unfunded Mandates Reform Act, no further Agency action or analysis is required.

B. The Treasury and General Government Appropriations Act of 1999: Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 (5 U.S.C. 601 note), as amended, requires agencies to assess the impact of agency action on family well-being. MSHA has determined that this proposed rule would have no effect on family stability or safety, marital commitment, parental rights and authority, or income or poverty of families and children. Accordingly, MSHA certifies that this proposed rule would not impact family well-being.

C. Executive Order 12630: Government Actions and Interference With Constitutionally Protected Property Rights

Executive Order 12630 requires Federal agencies to ''identify the takings implications of proposed regulatory actions . . .'' MSHA has determined that this proposed rule would not include a regulatory or policy action with takings implications. Accordingly, under E.O. 12630, no further Agency action or analysis is required.

D. Executive Order 12988: Civil Justice Reform

Executive Order 12988 contains requirements for Federal agencies promulgating new regulations or reviewing existing regulations to minimize litigation by eliminating drafting errors and ambiguity, providing a clear legal standard for affected conduct rather than a general standard, promoting simplification, and reducing burden. MSHA has reviewed this proposed rule and has determined that it would meet the applicable standards provided in E.O. 12988 to minimize litigation and undue burden on the Federal court system.

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

MSHA has determined that this proposed rule would have no adverse impact on children. Accordingly, under E.O. 13045, no further Agency action or analysis is required.

F. Executive Order 13132: Federalism

MSHA has determined that this proposed rule does not have federalism implications because it would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, under E.O. 13132, no further Agency action or analysis is required.

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

MSHA has determined that this proposed rule does not have tribal implications because it would not have substantial direct effects 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. Accordingly, under E.O. 13175, no further Agency action or analysis is required.

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

MSHA has reviewed this proposed rule for its impact on the supply, distribution, and use of energy because it applies to the coal mining industry. Insofar as the proposed rule would result in an increase to the yearly transfer of $0.9 million for the coal mining industry relative to annual revenues of $45 billion in 2011 (latest full year of data), it is not a ''significant energy action'' because it is not ''likely to have a significant adverse effect on the supply, distribution, or use of energy (including a shortfall in supply, price increases, and increased use of foreign supplies).'' Accordingly, under E.O. 13211, no further Agency action or analysis is required.

List of Subjects in 30 CFR Part 5

Mine safety and health.

Dated: October 6, 2014.

Joseph A. Main,

Assistant Secretary for Mine Safety and Health.

For the reasons set out in the preamble, and under the authority of the Federal Mine Safety and Health Act of 1977, as amended, MSHA is proposing to amend Chapter I of Title 30 of the Code of Federal Regulations as follows:

Subchapter B—Testing, Evaluation, and Approval of Mining Products

PART 5—FEES FOR TESTING, EVALUATION, AND APPROVAL OF MINING PRODUCTS

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

Authority: 30 U.S.C. 957.

■ 2. Revise § 5.10 to read as follows:

§ 5.10 Purpose and scope.

This part establishes a system under which MSHA charges a fee for services provided. This part includes the management and calculation of fees for the approval program which includes: application processing, testing and evaluation, approval decisions, post-approval activities, and termination of approvals.

■ 3. Revise § 5.30 to read as follows:

§ 5.30 Fee calculation.

(a) *Fee calculation.* MSHA charges a fee based on an hourly rate for approval activities and other associated costs such as travel expenses and Part 15 fees. Part 15 fees for services provided to MSHA by other organizations may be set by those organizations.

(b) *Hourly rate calculation.* The hourly rate consists of direct and indirect costs of the approval program, divided by the number of direct hours worked on all approval program activities.

(1) Direct costs are compensation and benefit costs for hours worked on approval program activities.

(2) Indirect costs are a proportionate share of the following costs:

(i) Compensation and benefit hours worked in support of all activities of the Approval and Certification Center;

(ii) Building and equipment depreciation costs of the Approval and Certification Center;

(iii) Utilities, facility and equipment maintenance, and supplies and materials of the Approval and Certification Center; and

(iv) Information Technology and other services centrally provided by MSHA to the Approval and Certification Center.

(c) Fees are charged for:

(1) Application processing (e.g., administrative and technical review of applications, computer tracking and status reporting);

(2) Testing and evaluation (e.g., analysis of drawings, technical evaluation, testing, test set up and test tear down, and internal quality control activities);

(3) Approval decisions (e.g., consultation on applications, records control and security, document preparation); and

(4) Post-approval activities: Changes to approvals and post-approval product audits.

(d) Fees are not charged for:

(1) Technical assistance not related to processing an approval application;

(2) Technical programs including development of new technology programs;

(3) Participation in research conducted by other government agencies or private organizations; and

(4) Regulatory review activities, including participation in the development of health and safety standards, regulations, and legislation.

(e) *Fee estimate.* Except as provided in paragraphs (e)(1) and (e)(2) of this section, on completion of an initial administrative review of the application, the Approval and Certification Center will prepare a maximum fee estimate for each application and will begin the technical evaluation once the applicant authorizes the fee estimate.

(1) The applicant may pre-authorize an expenditure for services, and may further choose to pre-authorize either a maximum dollar amount or an expenditure without a specified maximum amount. All applications containing a pre-authorization statement will be put in the queue for the technical evaluation upon completion of an initial administrative review. MSHA will concurrently prepare a maximum fee estimate for applications containing a statement pre-authorizing a maximum dollar amount, and will provide the applicant with this estimate. Where MSHA's estimated maximum fee exceeds the pre-authorized maximum dollar amount, the applicant has the choice of cancelling the action and paying for all work done up to the time of the cancellation, or authorizing MSHA's estimate.

(2) Under the Revised Acceptance Modification Program (RAMP), MSHA expedites applications for acceptance of minor changes to previously approved, certified, accepted, or evaluated products. The applicant must pre-authorize a fixed dollar amount, set by MSHA, for processing the application.

(f) If unforeseen circumstances are discovered during the evaluation, and MSHA determines that these circumstances would result in the actual costs exceeding either the pre-authorized expenditure or the authorized maximum fee estimate, as appropriate, MSHA will prepare a revised maximum fee estimate for completing the evaluation. The applicant will have the option of either cancelling the action and paying for services rendered or authorizing MSHA's revised estimate, in which case MSHA will continue to test and evaluate the product.

(g) If the actual cost of processing the application is less than MSHA's maximum fee estimate, MSHA will charge the actual cost.

■ 4. Revise § 5.40 to read as follows:

§ 5.40 Fee administration.

Applicants and approval holders will be billed for all fees, including actual travel expenses, if any, when approval program activities are completed. Invoices will contain specific payment instruction, including the address to

mail payments and authorized methods of payment.

■ 5. Revise § 5.50 to read as follows:

§ 5.50 Fee revisions.

The hourly rate will remain in effect for at least one year and be subject to revision at least once every three years.

[FR Doc. 2014–24130 Filed 10–8–14; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

30 CFR Parts 550, 551, 556, 581, 582 and 585

[Docket ID: BOEM–2013–0058; MMAA104000]

RIN 1010–AD83

Risk Management, Financial Assurance and Loss Prevention

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Advance Notice of Proposed Rulemaking—Extension of Public Comment Period.

SUMMARY: BOEM has recognized the need to develop a comprehensive program to assist in identifying, prioritizing, and managing the risks associated with industry activities on the Outer Continental Shelf (OCS). BOEM intends to design and implement a more robust and comprehensive risk management, financial assurance and loss prevention program to address the complex issues and cost differences associated with offshore operations. As part of its overall effort to establish this program and associated changes to regulations, BOEM is seeking stakeholder comments regarding various risk management and monitoring activities pertaining to financial risks to taxpayers that may result from activities on the OCS.

BOEM currently requires lessees to provide performance bonds and/or one of various alternative forms of financial assurance to ensure compliance with the terms and conditions of leases, Rights-of-Use and Easements and Pipeline Rights-of-Way. BOEM is seeking comments on who is best suited to mitigate risks and whether other forms of financial assurance should be used, as well as whether, or to what extent, the current forms of financial assurance are adequate and appropriate.

BOEM has received comments to its Advance Notice of Proposed Rulemaking (ANPR) indicating that the number of issues being addressed and the complexity of the topics being considered would justify a longer comment period. Various groups have also requested that additional time be provided to review and analyze the ANPR. For these reasons, BOEM has agreed to extend the comment period by an additional 30 days. The new comment period will elapse 90 days from August 19, 2014, the date of the original of publication of the ANPR.

DATES: BOEM published the ANPR on August 19, 2014 (79 FR 49027) with a sixty day comment period. With this extension, comments must be received by November 17, 2014.

ADDRESSES: You may submit comments on the rulemaking by any of the following methods. Please use the Regulation Identifier Number (RIN) 1010–AD83 as an identifier in your submission.

- Federal eRulemaking Portal: *http://www.regulations.gov.* In the entry entitled, ''Enter Keyword or ID,'' enter BOEM–2013–0058, then click search. Follow the instructions to submit public comments and view supporting and related materials available for this rulemaking. BOEM will post all comments received during the comment period.
- Mail or hand-carry comments to the Department of the Interior; Bureau of Ocean Energy Management; Attention: Terry Scholten at *terry.scholten@boem.gov* (504–810–2078) or Donna Dixon at *Donna.Dixon@boem.gov* (504–731–1527), or by mail at 1201 Elmwood Park Boulvard, GM364D, New Orleans, LA 70123. For issues related to the rulemaking process or timetable, contact Peter Meffert at *peter.meffert@boem.gov* (703–787–1610), or by mail at 381 Elden Street, Herndon, VA 20170. Please reference ''Risk Management, Financial Assurance and Loss Prevention.''
- In your comments include your name and return address so that we may contact you if we have questions regarding your submission.

Public Availability of Comments: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

FOR FURTHER INFORMATION CONTACT: Questions regarding the risk management, financial assurance or loss prevention aspects of this ANPR should be directed to Terry Scholten or Donna Dixon, using the contact information listed above.

Dated: September 30, 2014.

Janice M. Schneider,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 2014–24165 Filed 10–8–14; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2014–0281]

RIN 1625–AA09

Drawbridge Operation Regulations; Oceanport Creek, Oceanport, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking; withdrawal.

SUMMARY: The Coast Guard is withdrawing its notice of proposed rulemaking concerning the New Jersey Transit Rail Operations (NJTRO) Bridge across Oceanport Creek at mile 8.4, at Oceanport, New Jersey. The bridge owner submitted a request to require a four-hour advance notice for bridge openings year-round based upon infrequent requests to open the draw over the last three years.

The Coast Guard is withdrawing this notice of proposed rulemaking because the data supporting the bridge owner's request was based upon the past three years of bridge openings; however, we received comments in response to our notice of proposed rulemaking that advised us that the Fort Monmouth Marina and Restaurant, located upstream from the bridge, was closed during the three year time period when the bridge opening data was collected. Subsequently, marina and restaurant has re-opened and it is now anticipated that the number of bridge opening requests will significantly increase.

As a result of the above information we do not believe that a four-hour advance notice for bridge openings is justified at this time and that a four-hour advance notice for bridge openings would not meet the reasonable needs of navigation.

DATES: The notice of proposed rulemaking is withdrawn on October 9, 2014.

ADDRESSES: The docket for this deviation, [USCG–2014–0281] 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 about this notice, call or email Mr. Joe Arca, Project Officer, First Coast Guard District Bridge Branch, 212–668–7165, *joe.m.arca@uscg.mil.* If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

A. Basis and Purpose

On May 1, 2014, we published a notice of proposed rulemaking (NPRM) entitled ''Drawbridge Operation Regulation Oceanport Creek, Oceanport, New Jersey'' in the **Federal Register** (79 FR 24654).

The proposed rulemaking concerned the New Jersey Transit Rail Operations (NJTRO) Bridge across Oceanport Creek at mile 8.4, at Oceanport, New Jersey.

The owner of the bridge, NJTRO, submitted a request to the Coast Guard to change the drawbridge operating regulations to allow the bridge to open year-round if at least a four-hour advance notice was given. This request to change the regulations was based on the past three years of bridge opening data which indicated the bridge only received eight requests to open during that time period.

The Coast Guard received three comment letters in response to our notice of proposed rulemaking. The comment letters requested that the Coast Guard deny the bridge owner's request to change the Drawbridge Operation Regulations for the NJTRO Bridge because it would have a detrimental effect on upstream businesses.

The Fort Monmouth Marina and Restaurant located upstream from the NJTRO Bridge recently re-opened as The Marina at Oceanport. The marina was closed for the past three years as a result of damage sustained from Hurricane Sandy.

The bridge opening data used to support the bridge owner's proposal to allow the NJTRO Bridge to require a four-hour advance notice year-round based on the reduced number of bridge opening requests received during the past three years was collected during the time period when the marina located upstream was closed following Hurricane Sandy.

B. Withdrawal

We are withdrawing this proposed rule as a result of the comments and information received. It is anticipated that the number and frequency of bridge opening requests will significantly increase now that the marina has re-opened. As a result, we do not believe that a four-hour advance notice requirement for bridge openings is justifiable and that it would not meet the reasonable needs of navigation.

Authority: This action is taken under the authority of 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

Dated: September 19, 2014.

V.B. Gifford, Jr.,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 2014–24170 Filed 10–8–14; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2014–0206; FRL–9917–59–Region 5]

Approval and Promulgation of Implementation Plans; Wisconsin; Nitrogen Oxide Combustion Turbine Alternative Control Requirements for the Milwaukee-Racine Former Nonattainment Area

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; supplemental.

SUMMARY: On February 24, 2014, the Wisconsin Department of Natural Resources (WDNR) submitted revisions to the limits found in its nitrogen oxides (NO_X) combustion turbine rule for the Milwaukee-Racine area formerly nonattainment for the 1997 ozone standard. This revision is contained in ''2013 Wisconsin Act 91—Senate Bill 371,'' which provides for alternative NO_X requirements, subject to Environmental Protection Agency (EPA) approval on a case-by-case basis, to determine whether these alternative limits satisfy the reasonably available control technology (RACT) requirements of the Clean Air Act (CAA). EPA proposed to approve this rule as a revision to the State Implementation Plan on April 30, 2014 and received adverse comments. EPA is issuing this supplemental proposal to revise and expand the basis for proposing approval of the SIP revision. This supplemental proposal addresses the issue of whether the SIP revision satisfies certain anti-backsliding requirements of the CAA. EPA is seeking comment only on the potential anti-backsliding issue, and is not re-opening for comment other issues raised in its prior proposal.

DATES: Comments must be received on or before October 23, 2014.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2014–0206, 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 No. EPA–R05–OAR–2014–0206. 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 Steven Rosenthal, Environmental Engineer, at (312) 886–6052 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6052, *rosenthal.steven@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 is the background for this supplemental proposal?
II. On which specific issue is EPA taking comment?
III. What action is EPA taking?
IV. Statutory and Executive Order Reviews

I. What is the background for this supplemental proposal?

A detailed background is contained in the April 30, 2014 direct final rule (79 FR 24337), which can also be found in the docket for this action.

Under Wisconsin's current SIP approved NR 428 NO_X control program, existing simple cycle combustion turbines larger than 84 megawatts (MW) that undergo a major modification after February 2001 must meet the emission limitations set forth in s. NR 428.04(2)(g)1.a. and 2.a. This provision sets NO_X emission limits of 12 or 25 parts per million dry volume (ppmdv) at 15% oxygen (O_2), on a 30-day rolling basis, when firing natural gas or distillate oil, respectively.

The WDNR originally set the NO_X emission limitations for combustion turbines, in NR 428.04(2)(g)1.a. and 2.a., based on the mistaken assumption that dry low NO_X (DLN) combustion technology was both feasible and available for new and modified combustion turbines and that such technology was capable of meeting the established emission limitations. As previously stated, the emission limitations in NR 428.04(2)(g)1.a. and 2.a. apply to simple cycle combustion turbines that are larger than 84 MW (of which there are only four in the Milwaukee-Racine maintenance area) and undergo a major modification. These four combustion turbines are the model 11N turbines that were manufactured by ASEA Brown-Boveri (ABB) and operated by We Energies at its Paris generating facility. These four combustion turbines were designed and manufactured to use water injection instead of DLN technology to control NO_X emissions. Use of water injection limits NO_X emissions to the alternate levels provided by Wisconsin Act 91 (25 and 65 ppmdv), but cannot achieve the emission limits required by NR 428.04(2)(g), Wis. Admin. Code (12 and 25 ppmdv). These combustion turbines are all located in an area that is designated attainment for both the 1997 and 2008 ozone standards, although there is currently a monitor in the area with a design value that exceeds the 2008 ozone standard.

For reasons described in the April 30, 2014 direct final rule (79 FR 24337), WDNR has determined that the previously-approved SIP NO_X emission limits for simple cycle combustion turbines that undergo a major modification in the Milwaukee-Racine area are not feasible for the four existing combustion turbines to which these limits could apply. EPA agrees with this determination. The Wisconsin legislature adopted s. 285.27 (3m), which became effective on December 15, 2013, to establish feasible RACT limits in the event of a major modification. EPA believes that these limits reflect RACT and issued both a direct final rule and a proposed rule to approve the rule into the SIP.

In response to EPA's rulemakings, the Sierra Club and Midwest Environmental Defense Center provided comments objecting to the proposed revision on the grounds that two units had undergone modifications in 2002, making them subject to the lower limits of s. NR 428.04(2)(g)1.a. and 2.a. The comments stated that the SIP revision was thus relaxing the limits for these units and that ''EPA has done no analysis of whether this increase would result in problems maintaining compliance with ozone standards or 1-hour NO_2 standards.''

In response to this comment, EPA withdrew the direct final rule and is providing this supplemental notice to explain its basis for concluding that the SIP revision satisfies the anti-backsliding requirements of section 110(l) of the CAA.

II. On which specific issue is EPA taking comment?

EPA notes the point raised by the commenters that, although the rule is not expected to result in any units operating at higher emissions rates than in the past, the rule would increase the emissions limits applicable to these sources under the SIP.[1] Section 110(l) of the CAA provides in part that, ''The Administrator shall not approve a revision of a [SIP] if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 7501 of this title), or any other applicable requirement of [the Act].''

In order to avoid any potential for interference with attainment or maintenance of the NAAQS for ozone and nitrogen dioxide, Wisconsin has identified contemporaneous, offsetting emission reductions of NO_X from a different emission source to compensate for the change in the SIP limits for NO_X proposed in the rule at issue.[2] We explain below how Wisconsin calculated the appropriate amounts of offsets, and the source of the offsets.

The theoretical emissions increase being addressed for anti-backsliding is the difference between the emissions that would occur annually if the Paris combustion turbines meet the 12 ppmdv requirement compared to emissions allowable under the proposed SIP revision.[3] In order to quantify this differential in terms of tons per year, Wisconsin identified that the maximum fuel use for each individual CT occurred

[1] As noted above, EPA believes that the emissions rates in the SIP are technically infeasible for these sources to meet.

[2] As the offset is for NO_X emissions, the analysis is equally applicable to the NAAQS for ozone and nitrogen dioxide.

[3] Although the SIP revision would continue to allow use of fuel oil, we have analyzed the change in emissions with respect to natural gas because at least since 2009 (and probably longer) these sources have only fired natural gas for electricity generation, and, in light of current pricing and industry practice, we do not expect this to change.

in 2005,[4] and converted the emissions standards from ppmdv @15% O_2 to a lbs/mmbtu equivalent.

To determine the amount of emissions that needs to be offset, the difference between the 2005 maximum allowable emission rate of 25 ppmdv @15% O_2 (converted to 0.092 lbs/mmbtu) minus 12 ppmdv @15% O_2 (converted to 0.0442 lbs/mmbtu) was multiplied by the heat input for each combustion turbine in 2005. This calculation results in a total of 54.6 tons per year for which equivalent reductions must be obtained. This is a conservative estimate of the amount of offsetting credits needed because it is based upon the year within a 13-year period with the highest fuel use.

Wisconsin has identified enforceable emission reductions to be used in offsetting the 54.6 tons per year of excess emissions in order to offset any backsliding. These emission reductions are generated by enforceable emission limitations currently in place for the South Oak Creek (SOC) Unit 5 electric generating facility, which operates in the Milwaukee-Racine former ozone nonattainment area. Under the Wisconsin Ozone SIP, SOC Unit 5 is required to meet a NO_X emission limitation of 0.18 lbs/mmbtu. However, the same unit has also been required to meet an emission limitation of 0.10 lbs/mmbtu since 2013 under a Jnauary 18, 2012 consent decree (Civil Action No. 03–C–0371) entered between EPA and We Energies, the operator of the SOC facility.[5] Paragraph No. 107 of the consent decree allows the use of emission reductions generated by the decree ''for the purpose of attainment demonstrations . . . or in determining impacts on NAAQS.'' Wisconsin determined the emissions in excess to the SIP by multiplying the difference in the SIP and consent decree emission limits (0.18—0.10 lbs/mmbtu) by the unit's heat input in 2013. The unit's heat input for 2013 was obtained from the CAMD database. This calculation yields a total of 334.3 tons per year of excess emission reductions, which have not been allocated as offsets for any other purpose. Notably, the heat input for SOC Unit 5 was the lowest in 2013 since 2001. Using this value thus represents the most conservative value since 2001 for heat input in calculating excess emissions reductions.

Wisconsin submitted to EPA 54.6 tons per year of excess emission credits generated by the SOC Unit 5 generating facility to be used to address potential backsliding under this SIP revision. Wisconsin also notes that a total of 61,970 tons of NO_X was emitted in the Milwaukee-Racine ozone area from all sources in 2011. The emission reductions of 54.6 tons per year being addressed here for anti-backsliding represents less than 0.07% of that total.

III. What action is EPA taking?

EPA is seeking comment only on the section 110(l) issue described above and is not reopening comment on any other issues.

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, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed 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).

This rule is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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, Reporting and recordkeeping requirements, Nitrogen oxides.

Dated: September 30, 2014.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2014–24172 Filed 10–8–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–R08–OAR–2014–0272; FRL–9917–48–Region 8]

Automatic Delegation of Authority to the States of Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming To Implement and Enforce New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action informs the public that on February 27, 2014, the EPA authorized automatic delegation to implement and enforce Clean Air Act New Source Performance Standards (NSPS) to the states of Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming (hereafter Region 8 states). Also in this action, we propose to delete the delegation status table of NSPS for Region 8 states in the Code of Federal Regulations at 40 CFR part 60.4(c) and replace it with a Web page address reflecting current delegation status of Region 8 states.

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[4] Wisconsin selected 2005 based on a review of historic emissions from 2001 through 2013 as reported in EPA's Clean Air Markets Division (CAMD) emissions database. This timeframe reflects that the 12 ppmdv requirement was first created in January 2001.

[5] Thus, these compensating reductions are contemporaneous with the emissions limits in Wisconsin statute 285.27 (3m), which was enacted by the Wisconsin legislature in December 2013.

DATES: Written comments must be received on or before November 10, 2014.

ADDRESSES: Submit your comments, identified by Docket number EPA–R08–OAR–2014–0272, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: fulton.abby@epa.gov.*
- *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.
- *Hand Delivery:* Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

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

FOR FURTHER INFORMATION CONTACT: Abby Fulton, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. (303) 312–6563, *fulton.abby@epa.gov.*

SUPPLEMENTARY INFORMATION: In the ''Rules and Regulations'' section of this **Federal Register**, EPA is approving the revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must 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. See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations Section of this **Federal Register**.

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

Dated: September 18, 2014.

Shaun L. McGrath,

Regional Administrator, Region 8.

[FR Doc. 2014–23766 Filed 10–8–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[GN Docket No. 12–268; DA 14–1395]

Media Bureau Seeks Comment on Draft TV Broadcaster Relocation Fund Reimbursement Form

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; request for comment.

SUMMARY: In this Document, the Media Bureau of the Federal Communications Commission (''Commission'') seeks comment on a draft TV Broadcaster Relocation Fund Reimbursement Form (''Reimbursement Form''), which broadcasters that are reassigned to new channels following the Incentive Auction and MVPDs will submit to provide information needed to obtain expense reimbursement. The Media Bureau also seeks comment on whether any information submitted on the Reimbursement Form should be kept confidential.

DATES: Comments are due on October 27, 2014.

ADDRESSES: You may submit comments, identified by GN Docket No. 12–268, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *Mail:* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Pamela Gallant, Media Bureau, Video Division at 202–418–0614.

SUPPLEMENTARY INFORMATION: This is a summary of the FCC's document, GN Docket No. 12–268, DA 14–1395 (released September 25, 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.*

Summary

In this document (Public Notice available at *http://www.fcc.gov/document/media-bureau-seeks-comment-incentive-auction-reimbursement-form*), the Media Bureau seeks comment on a draft Reimbursement Form, which broadcasters and MVPDs will use to submit: Information needed to establish an account with the Department of Treasury for payment purposes; an estimate of their eligible relocation costs; actual cost documentation throughout the construction period, as they incur expenses; and their total expenses incurred. In order to ensure fairness, efficiency, and transparency of process for reimbursing broadcasters for relocation costs related to the Incentive Auction, and the associated costs of MVPDs, we are providing the opportunity for stakeholders to comment on a draft Reimbursement Form and instructions well in advance of the commencement of the Incentive Auction. The comments we receive will assist us in designing a form that facilitates the reimbursement process for all parties while also ensuring that we are efficient stewards of limited reimbursement funds, and guardians against waste, fraud and abuse. Consistent with the process set out in the *Incentive Auction Order,* broadcasters and MVPDs will file the Reimbursement Form no later than three months following the release of the *Channel Reassignment Public Notice,* at which time they will submit their overall estimate of the cost of completing their transition. At that time, broadcasters and MVPDs will indicate whether they plan to modify current

equipment or purchase new equipment and will identify the existing equipment that must be modified or replaced. The Commission's reimbursement process provides for an initial allocation of funds based on broadcasters' and MVPDs' estimated costs. Prior to the deadline for filing cost estimates, broadcasters and MVPDs will need to establish a U.S. Treasury account for receiving payment from the TV Broadcaster Relocation Fund. Submitting this information via the Reimbursement Form before the deadline for filing estimated costs will allow entities to start the process of establishing an account well before they receive their initial allocation of funds.

Once an initial amount is allocated for each entity, and broadcasters and MVPDs begin purchasing equipment and services, they will submit an updated Reimbursement Form along with cost documentation demonstrating their actual costs each time they seek reimbursement for an expense against their allocation. This process will allow broadcasters and MPVDs to use federal funds to pay their expenses as they are incurred. Finally, all entities that receive an allocation must submit a final Reimbursement Form showing their total expenses upon completing construction or by a specific deadline prior to the end of the three-year reimbursement period to be announced by the Media Bureau, whichever is earlier. Some stations with longer construction deadlines and some MVPDs might still have outstanding expenses by that deadline; these entities must provide a final accounting of expenses on the Reimbursement Form upon completing the transition, even if this occurs after the end of the reimbursement period. Entities need complete and submit only the relevant sections of the form as they proceed through each phase of the reimbursement process.

As contemplated by the *Incentive Auction Order,* the Media Bureau will make public the amounts distributed from the Reimbursement Fund to each broadcaster and MVPD. However, we seek specific comment on whether any of the other data submitted on the Reimbursement Form should be considered confidential or not subject to public disclosure. Although the *Incentive Auction Order* states that entities can submit a request for confidential treatment of data submitted on the Reimbursement Form pursuant to § 0.459 of the Commission's rules, we seek comment on whether the Media Bureau should automatically treat certain specific information provided on the Reimbursement Form as confidential. If so, we invite parties to specify which information fields should be deemed confidential and which provision of the Commission's rules permits such a blanket non-disclosure presumption.

Release of a draft Reimbursement Form (Attachment A) (available at *http://www.fcc.gov/article/da-14-1395a2*) and instructions (Attachment B) (available at *http://www.fcc.gov/article/da-14-1395a3*) well in advance of the commencement of the Incentive Auction is an important first step in the process of designing a form with the input of stakeholders that promotes fairness, efficiency and transparency of process. The draft form is a representation of the data fields to be included in the electronic form and illustrates the information to be collected. The public will have additional opportunity to comment on this data collection, as required by the Paperwork Reduction Act of 1995, after it is submitted to the Office of Management and Budget.

Federal Communications Commission.

William T. Lake,

Chief, Media Bureau.

[FR Doc. 2014–24203 Filed 10–8–14; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 79, No. 196

Thursday, October 9, 2014

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

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

[OMB Control Number: 3002–0006]

Information Collection Request: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery (Reinstatement Without Change)

AGENCY: Administrative Conference of the United States.

ACTION: Sixty-day notice requesting comments on reinstatement without change of a previously approved information collection.

SUMMARY: Pursuant to the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 et. seq.), the Administrative Conference of the United States is requesting public comments on the reinstatement without change by the Office of Management and Budget (OMB) of a previously approved Information Collection Request (ICR), 3002–0006, ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.'' This collection was developed as part of a Federal Government-wide effort to streamline the process for seeking feedback from the public on service delivery. This notice announces our intent to submit this collection to OMB for approval and solicits comments on specific aspects for the proposed information collection.

The draft supporting statement is essentially unchanged from the supporting statement for the previously approved ICR, other than to note that the proposed ICR is a reinstatement without change. The supporting statement previously submitted is available by inserting the above OMB control number at *www.reginfo.gov/public/do/PRASearch.*

DATES: Consideration will be given to all comments received by December 8, 2014.

ADDRESSES: Interested persons may submit written comments to either of the following:

(1) *Email: info@acus.gov,* with ICR Comments in the subject line.

(2) *Mail:* ICR Comments, Administrative Conference of the United States, 1120 20th Street NW., Suite 706 South, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: David Pritzker, Deputy General Counsel, Administrative Conference of the United States, Suite 706 South, 1120 20th Street NW., Washington, DC 20036; Telephone 202–480–2080, Email: *dpritzker@acus.gov.*

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Abstract: The proposed information collection activity provides a means to garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

The solicitation of feedback will target areas such as: timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on the Agency's services will be unavailable.

The Agency will only submit a collection for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are non-controversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
- Information gathered will be used only internally for general service improvement and program management purposes and is not intended for release outside of the agency;
- Information gathered will not be used for the purpose of substantially informing influential policy decisions; and
- Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

Feedback collected under this generic clearance provides useful information, but it does not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: the target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be

eligible for submission for other generic mechanisms that are designed to yield quantitative results.

As a general matter, information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

Current Actions: Reinstatement without change of a previously approved collection of information.

Type of Review: Reinstatement without change.

Affected Public: Individuals and households, businesses and organizations, State, Local or Tribal Government.

Below we provide projected average estimates for the next three years:

Average expected annual number of activities: 6.

Average number of respondents per activity: 110.

Annual responses: 660.

Frequency of response: Once per request.

Average minutes per response: 6–60.

Burden hours: 210–285.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

All written comments will be available for public inspection at the offices of the Administrative Conference of the United States, at the address shown above.

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 Office of Management and Budget control number.

Dated: October 3, 2014.

Shawne C. McGibbon,

General Counsel.

[FR Doc. 2014–24031 Filed 10–8–14; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of Commission Field Briefing

DATES: *Date and Time:* Friday, October 17, 2014; 9:00 a.m. EDT.

ADDRESSES: *Place:* Rosen Plaza Hotel, The Grand Ballroom, 9700 International Drive, Orlando, Florida 32819.

FOR FURTHER INFORMATION CONTACT: Lenore Ostrowsky, Acting Chief, Public Affairs Unit (202) 376–8591.

Hearing-impaired persons who will attend the briefing and require the services of a sign language interpreter should contact Pamela Dunston at (202) 376–8105 or at *signlanguage@usccr.gov* at least seven business days before the scheduled date of the meeting.

SUPPLEMENTARY INFORMATION:

BRIEFING AGENDA—9:00 a.m.–3:30 p.m.

This briefing is open to the public.

Topic: *Stand Your Ground Laws and Its Impact*

I. Introductory Remarks by Chairman Castro

II. Issue Panel I—9:05 a.m.–10:45 a.m.: SYG laws and its impact

Speakers' Remarks and Questions from Commissioners

III. Issue Panel II—10:45 a.m.–12:25 p.m.: Data Collection: What we have and what we need

Speakers' Remarks and Questions from Commissioners

IV. LUNCH—12:30 p.m.–1:30 p.m.

V. Issue Panel IV—1:35 p.m.–3:10 p.m.: SYG: Pros and Cons

Speakers' Remarks and Questions from Commissioners

VI. Adjourn Briefing

Dated: October 7, 2014.

Marlene Sallo,

Staff Director.

[FR Doc. 2014–24210 Filed 10–7–14; 11:15 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Membership of the Office of the Secretary Performance Review Board

AGENCY: Department of Commerce.

ACTION: Notice of Membership on the Office of the Secretary Performance Review Board.

SUMMARY: In accordance with 5 U.S.C. 4314(c)(4), Department of Commerce (DOC) announces the appointment of persons to serve as members of the Office of the Secretary (OS) Performance Review Board (PRB). The OS PRB is responsible for reviewing performance ratings, pay adjustments and bonuses of Senior Executive Service (SES) members. The term of the new members of the OS PRB will expire December 31, 2016.

DATES: *Effective Date:* The effective date of service of appointees to the Office of the Secretary Performance Review Board is upon publication of this notice.

FOR FURTHER INFORMATION CONTACT: Denise A. Yaag, Director, Office of Executive Resources, Office of Human Resources Management, Office of the Director, 14th and Constitution Avenue NW., Washington, DC 20230, (202) 482–3600.

SUPPLEMENTARY INFORMATION: The names, position titles, and type of appointment of the members of the OS/PRB are set forth below by organization: Department of Commerce, Office of the Secretary, 2014–2016, Performance Review Board Membership.

Office of the Secretary

Theodore Constantine Johnston, Director, Office of White House Liaison (Noncareer)

Office of the Chief Financial Officer and Assistant Secretary for Administration

Frederick E. Stephens, Deputy Assistant Secretary for Administration (Noncareer)

Suzan J. Aramaki, Director, Office of Civil Rights (Career)

Narahari Sastry, Deputy Assistant Secretary for Resources Management, Office of Security (Career)

Teresa S. Coppolino, Director, Financial Management Systems (Career)

Gordon T. Alston, Director, Financial Reporting and Internal Controls (Career)

Michael E. Phelps, Director, Office of Budget (Career)
Lisa Casias, Director for Financial Management and Deputy Chief Financial Officer (Career)

Office of the General Counsel

Barbara S. Fredericks, Assistant General Counsel for Administration (Career)

Economics and Statistics Administration

Kenneth A. Arnold, Associate Under Secretary for Management (Career)

Bureau of the Census

Douglas R. Clift, Senior Advisor for Project Management (Career)
Carol M. Rose, Chief Budget Division (Career)
Joanne Buenzli Crane, Associate Director for Administration and Chief Financial Officer (Career)

International Trade Administration

Kurt Bersani, Deputy Chief Financial and Administrative Officer (Career)

National Oceanic and Atmospheric Administration

Russell F. Smith, III, Deputy Assistant Secretary for International Fisheries (Noncareer)
William R. Callender, Deputy Assistant Administrator for Ocean Services & CoastalZone Management (Career)

National Telecommunications and Information Administration

Leonard M. Bechtel, Chief Financial Officer and Director for Administration (Career)

National Technical Information Service

Bruce E. Borzino, Director, National Technical Information Service (Career)

Dated: October 2, 2014.

Denise A. Yaag,

Director, Office of Executive Resources.

[FR Doc. 2014–23955 Filed 10–8–14; 8:45 am]

BILLING CODE 3510–BS–M

DEPARTMENT OF COMMERCE

Membership of the Departmental Performance Review Board

AGENCY: Department of Commerce.

ACTION: Notice of Membership on the Departmental Performance Review Board.

SUMMARY: In accordance with 5 U.S.C., 4314(c)(4), Department of Commerce (DOC) announces the appointment of persons to serve as members of the Departmental Performance Review Board (DPRB). The DPRB provides an objective peer review of the initial performance ratings, performance-based pay adjustments and bonus recommendations, higher-level review requests and other performance-related actions submitted by appointing authorities for Senior Executive Service (SES) members whom they directly supervise, and makes recommendations based upon its review. The term of the new members of the DPRB will expire December 31, 2016.

DATES: *Effective Date:* The effective date of service of appointees to the Departmental Performance Review Board is based upon publication of this notice.

FOR FURTHER INFORMATION CONTACT: Denise A. Yaag, Director, Office of Executive Resources, Office of Human Resources Management, Office of the Director, 14th and Constitution Avenue NW., Washington, DC 20230, (202) 482–3600.

SUPPLEMENTARY INFORMATION: The names and position titles of the members of the DPRB are set forth below by organization:

Department of Commerce, Departmental Performance Review Board Membership, 2014–2016

Office of the Secretary

Theodore C.Z. Johnston, Director, Office of White House Liaison (Noncareer)

Office of General Counsel

Barbara S. Fredericks, Assistant General Counsel for Administration (Career)
Barry K. Robinson, Chief Counsel for Economic Affairs (Career)

Office of the Chief Financial Officer and Assistant Secretary for Administration

Gordon T. Alston, Director, Financial Reporting and Intemal Controls (Career)
Tammy L. Journet, Deputy for Procurement Management, Policy and Performance Excellence (Career)
Michael E. Phelps, Director, Office of Budget (Career)
Gay G. Shrum, Director for Administrative Programs (Career)
Frederick E. Stephens, Deputy Assistant Secretary for Administration (Noncareer)

Bureau of Industry and Security

Kathryn Chantry, Chief Financial Officer and Director of Administration (Career)

Bureau of the Census

Douglas R. Clift, Senior Advisor for Project Management (Career)
Joanne Buenzli Crane, Associate Director for Administration and Chief Financial Officer (Career)
Michael L. Palensky, Chief, Acquisition Division (Career)
Nancy Potok, Deputy Director (Career)

Economics and Statistics Administration

Kenneth A. Arnold, Associate Under Secretary for Management (Career)

Economics and Development Administration

Thomas Guevara, Deputy Assistant Secretary for Regional Affairs (Career)

International Trade Administration

Kenneth J.E. Hyatt, Deputy Under Secretary for International Trade (Career)
Maureen R. Smith, Deputy Assistant Secretary for Industry and Analysis (Career)

Minority Business Development Agency

Alejandra Y. Castillo, Deputy Director (Noncareer)
Edith J. McCloud, Associate Director for Management (Career)

National Oceanic and Atmospheric Administration

Holly A. Bamford, Assistant Administrator for Ocean Services and Coastal Zone Management (Career)
Edward C. Horton, Chief Administrative Officer (Career)
Mark S, Paese, Deputy Assistant Administrator, NESDIS (Career)
Lois J. Schiffer, General Counsel, NOAA
Holly A. Bamford, Assistant Administrator for Ocean Services and Coastal Zone Management (Noncareer)
Russell F. Smith, III, Deputy Assistant Secretary for International Fisheries (Noncareer)

National Technical Information Service

Bruce E. Borzino, Director, National Technical Information Service (Career)

National Telecommunications and Information Administration

Leonard M. Bechtel, Chief Financial Officer and Director for Administration (Career)

National Institute of Standards and Technology

Richard F. Kayser, Jr., Chief Safety Officer (Career)
Mary H. Saunders, Associate Director for Management Resources (Career)

Dated: October 2, 2014.

Denise A. Yaag,

Director, Office of Executive Resources.

[FR Doc. 2014–23957 Filed 10–8–14; 8:45 am]

BILLING CODE 3510–BS–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–70–2014]

Foreign-Trade Zone 40—Cleveland, Ohio, Application for Reorganization, (Expansion of Service Area) Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Cleveland Cuyahoga County Port Authority, grantee of Foreign-Trade Zone 40, requesting authority to reorganize the zone to expand its service area under the alternative site framework (ASF) adopted by the FTZ Board (15 CFR 400.2(c)). The ASF is an option for grantees for the establishment or reorganization of zones and can permit significantly greater flexibility in the designation of new subzones or ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the FTZ Board's standard 2,000-acre activation limit for a zone. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on October 1, 2014.

FTZ 40 was approved by the FTZ Board on September 29, 1978 (Board Order 135, 43 FR 46886, 10/11/1978) and reorganized under the ASF on September 17, 2013 (Board Order 1916, 78 FR 59650, 9/27/2013). The zone currently has a service area that includes Cuyahoga, Geauga and Lorain Counties, Ohio.

The applicant is now requesting authority to expand the service area of the zone to include Lake County, Ohio, as described in the application. If approved, the grantee would be able to serve sites throughout the expanded service area based on companies' needs for FTZ designation. The proposed expanded service area is adjacent to the Cleveland Customs and Border Protection Port of Entry

In accordance with the FTZ Board's regulations, Elizabeth Whiteman of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is December 8, 2014. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to December 23, 2014.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.*

FOR FURTHER INFORMATION CONTACT: Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: October 1, 2014.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2014–24090 Filed 10–8–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Sensors and Instrumentation Technical Advisory Committee; Notice of Partially Closed Meeting

The Sensors and Instrumentation Technical Advisory Committee (SITAC) will meet on October 28, 2014, 9:30 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution and Pennsylvania Avenues NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to sensors and instrumentation equipment and technology.

Agenda

Public Session

1. Welcome and Introductions.
2. Remarks from the Bureau of Industry and Security Management.
3. Industry Presentations.
4. New Business.

Closed Session

5. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov* no later than October 21, 2014.

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that the materials be forwarded before the meeting to Ms. Springer.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on September 23, 2013 pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § 10(d), that the portion of this meeting dealing with pre-decisional changes to the Commerce Control List and U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information contact Yvette Springer on (202) 482–2813.

Dated: October 3, 2014.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2014–24082 Filed 10–8–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Materials Processing Equipment Technical Advisory Committee; Notice of Partially Closed Meeting

The Materials Processing Equipment Technical Advisory Committee (MPETAC) will meet on October 29, 2014, 9:00 a.m., Room 3884, in the Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials processing equipment and related technology.

Agenda

Open Session:

1. Opening remarks and introductions.

2. Presentation of papers and comments by the Public.

3. Discussions on results from last, and proposals from last Wassenaar meeting.

4. Report on proposed and recently issued changes to the Export Administration Regulations.

5. Other business.

Closed Session:

6. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov,* no later than October 22, 2014.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via email.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 27, 2014, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § 10(d)), that the portion of the meeting dealing with matters the premature disclosure of which would be likely to frustrate significantly implementation of a proposed agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Dated: October 3, 2014.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2014–24086 Filed 10–8–14; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Emerging Technology and Research Advisory Committee; Notice of Partially Closed Meeting

The Emerging Technology and Research Advisory Committee (ETRAC) will meet on October 23 and 24, 2014, 8:30 a.m., at the University of California, San Diego Supercomputer Center Auditorium, 10100 Hopkins Drive, La Jolla, CA 92093. The Committee advises the Office of the Assistant Secretary for Export Administration on emerging technology and research activities, including those related to deemed exports.

Agenda:

Thursday, October 23:

Closed Session:

Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

Friday, October 24:

Open Session:

1. Welcome Remarks
   Dr. Pradeep K. Khosla, Chancellor, University of California-San Diego
2. Introductory Remarks
   Tom Tierney, ETRAC Co-Chair
3. Developments in Export Control Reform, Technology and Deemed Export Update, by Assistant Security for Export Administration, Bureau of Industry and Security
4. Status Report: ECCN Review
   Review by ETRAC Committee members of their ''self-identified'' taskings EAR revisions
5. Upcoming Emerging Technologies and Issues for Review:
   —Synthetic biology—3D Bioprinting and genetic synthesis and gene editing—industry presentations
   —ASTM Standards Development Activities by Pat Picariello, Director of Development Operations
   —Report: Intelligence Advanced Research Projects Activity—FUSE application
   —Report: Dept. of Defense Better Buying Power 3.0 involving technologies
   —Fundamental Research and public domain
   —Additive Manufacturing—3D Printed Rocket Engines & DARPA
   —Frequently Asked Questions on technology/deemed exports—revision to the EAR
   —Exports to Dual-Third Country nationals
   —Deemed Re-exports Guidance
   —Strategic Trade Authorizations and Deemed Exports
   —Harmonization of Definitions on Technology Controls between ITAR and EAR
   —Satellite Rule
   —Enhancement of the Consolidated Screening Lists
6. Remarks—Roy Paulson—Chair of the Outreach Sub-Committee, President's Export Council Subcommittee on Export Administration and Dr. Carlos Romero—University of New Mexico

Survey on export controls status

7. Public Comments
8. Kevin Pollpeter, Deputy Director, Study of Innovation and Technology in China University of California Institute on Global Conflict and Cooperation
9. Tour of UCSD Supercomputer facilities
10. Administrative Issues
    —recruitment status of members and requirements
    —schedule of future meeting dates
    —ETRAC Charter renewal
    —ETRAC Annual Report
11. Conclusion and Final Remarks

The open sessions will be accessible via teleconference to 25 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov* no later than, October 16, 2014.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via email.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on October 2, 2014, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended, that the portion of the meeting dealing with matters the of which would be likely to frustrate significantly implementation of a proposed agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)1 and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Dated: October 3, 2014.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2014–24097 Filed 10–8–14; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–016]

Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China: Postponement of Preliminary Determination of Antidumping Duty Investigation

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

DATES: *Effective* October 9, 2014.

FOR FURTHER INFORMATION CONTACT: Emily Halle, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0176.

SUPPLEMENTARY INFORMATION:

Background

On July 14, 2014, the Department of Commerce (the Department) initiated the antidumping duty (AD) investigation of certain passenger vehicle and light truck tires from the People's Republic of China.[1] Currently, the preliminary determination is due no later than December 1, 2014.

Postponement of Preliminary Determination

Section 733(b)(1)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.205(b)(1) require the Department to issue the preliminary determination in an AD investigation no later than 140 days after the date on which the Department initiated the investigation.

Pursuant to section 733(c)(1)(B) of the Act and 19 CFR 351.205(b)(2), the Department concludes that because of the extraordinary complexity of this case and the number of firms whose activities we must investigate, including over 80 separate rate applications, it is not practicable to complete the preliminary determination by the current deadline. Therefore, in accordance with section 733(c)(1)(B) of the Act and 19 CFR 351.205(b)(2), the Department is postponing the deadline for the preliminary determination to no later than 190 days after the date on which it initiated this investigation. As a result of this postponement, the deadline for completion of the preliminary determination is now January 20, 2015.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: October 3, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2014–24167 Filed 10–8–14; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Initiation of Antidumping Duty Investigation,* 79 FR 42292 (July 21, 2014).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–954]

Certain Magnesia Carbon Bricks From the People's Republic of China: Preliminary Results and Partial Rescission of the Antidumping Duty Administrative Review; 2012–2013

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

SUMMARY: The Department of Commerce (the ''Department'') is conducting the third administrative review of the antidumping duty order on certain magnesia carbon bricks (''bricks'') from the People's Republic of China (''PRC''),[1] for the period of review (''POR''), September 1, 2012, to August 31, 2013. The Department preliminarily determines that there are no reviewable entries during the POR. The Department invites interested parties to comment on these preliminary results.

DATES: *Effective* October 9, 2014.

FOR FURTHER INFORMATION CONTACT: Jerry Huang, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4047.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The merchandise subject to the order includes certain magnesia carbon bricks. Certain magnesia carbon bricks that are the subject of this order are currently classifiable under subheadings 6902.10.1000, 6902.10.5000, 6815.91.0000, 6815.99.2000 and 6815.99.4000 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.[2]

Background

On September 3, 2013, the Department published an opportunity to request an administrative review of the antidumping duty order for bricks from the PRC.[3] In September 2013, the Department received timely requests from interested parties to conduct an administrative review of the antidumping duty order on bricks from the PRC.[4] Based upon these requests, on November 8, 2013, the Department published a notice of initiation of an administrative review of the *Order* covering 162 companies.[5]

Partial Rescission of the Administrative Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if all parties who requested the review withdraw their requests within 90 days of the date of publication of notice of initiation of the requested review. On January 31, 2014, Petitioner and Magnesita timely withdrew their request for an administrative review for all but two companies.[6] Because ANH did not withdraw its request for review for three companies, requests for review for a total of five companies remain. Two of the companies for which Petitioner and Magnesita withdrew their request, RHI Refractories Liaoning Co., Ltd. (''RHI'') and Yingkou New Century Refractories Ltd. (''New Century''), previously

[1] *See Certain Magnesia Carbon Bricks From Mexico and the People's Republic of China: Antidumping Duty Orders,* 75 FR 57257 (September 20, 2010) (''*Order*'').

[2] For a full description of the scope of the *Order, see* Memorandum from Christian Marsh, Deputy Assistant Secretary, AD/CVD Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, ''Decision Memorandum for Preliminary Results of Third Antidumping Duty Administrative Review: Certain Magnesia Carbon Bricks From the People's Republic of China,'' (''Preliminary Decision Memorandum'') dated concurrently with these results and hereby adopted by this notice.

[3] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 78 FR 54235, (September 3, 2013).

[4] *See* Letter to the Department from Resco Products, Inc. (''Petitioner'') and Magnesita Refractories Company (''Magnesita''), ''Certain Magnesia Carbon Bricks From the People's Republic of China: Antidumping Duty Administrative Review'' (September 30, 2013); Letter to the Department from ANH Refractories Company (''ANH''), ''Certain Magnesia Carbon Bricks From the People's Republic of China: Request for Administrative Review'' (September 30, 2013).

[5] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 78 FR 67104 (November 8, 2013) (''*Initiation Notice*'').

[6] *See* Letter to the Department from Petitioner and Magnesita, ''Certain Magnesia Carbon Bricks From the People's Republic of China: Antidumping Duty Administrative Review: Withdrawal Requests'' (January 31, 2014).

established their entitlement to a separate rate in a prior segment of this proceeding. No other party requested a review of RHI and New Century. Accordingly, the Department is rescinding this administrative review with respect to RHI and New Century in accordance with 19 CFR 351.213(d)(1).

For those companies named in the *Initiation Notice* for which all review requests have been withdrawn, but which were not eligible for separate-rate status at the initiation of this review, the Department's practice is to refrain from rescinding the review with respect to these companies at this time.[7] While the request for review of these companies was timely withdrawn, we preliminarily determine that the companies remain part of the PRC-wide entity. Those companies are listed at Appendix I. The PRC-wide entity is under review for these preliminary results as noted below.[8] Thus, we are not rescinding this review with respect to these companies, but the Department will make a determination with respect to the PRC-wide entity at the conclusion of this review.

Fedmet stated that although the *Initiation Notice* included Fedmet as a producer of subject merchandise, it is not a PRC producer but a U.S. importer.[9] Fedmet provided information from this and a previous segment to demonstrate its status as an importer.[10] Based on the information available, the Department preliminarily determines that Fedmet's entries will be subject to the appropriate exporter's cash deposit requirements and assessment rates, as outlined below. Accordingly, we are preliminarily rescinding this review for Fedmet.

[7] *See, e.g., Narrow Woven Ribbons With Woven Selvedge From the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review,* 77 FR 47363, 47365 (August 8, 2012), unchanged in *Narrow Woven Ribbons With Woven Selvedge From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010–2011,* 78 FR 10130 (February 13, 2013).

[8] A change in practice with respect to the conditional review of the PRC-wide entity is not applicable to this administrative review. *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65964, 65969–70 (November 4, 2013).

[9] *See* Letter to the Department from Fedmet, ''Magnesia Carbon Bricks From the People's Republic of China, Case No. A–570–954: Entry of Appearance and APO Application'' (November 18, 2013).

[10] *Id.*

Separate Rate Status

For the five companies whose review requests remain,[11] we preliminarily determine that only Fengchi demonstrated its continued eligibility for a separate rate because, as discussed below, it demonstrated that it had no shipments during the POR and thus will maintain its separate rate status from the date of the initiation of this administrative review. Puyang, Fengchi Mining Co., Ltd. of Haicheng City, and Fengchi Refractories Corp. did not submit a separate rate application or certification. Therefore, these four companies have not established their eligibility for a separate rate, and the Department preliminarily determines that they be considered part of the PRC-wide entity. Accordingly the PRC-wide entity is under review.

Preliminary Finding of No Shipments

Fengchi submitted a timely-filed certification that it had no shipments of subject merchandise to the United States during the POR.[12] The Department queried the import data from U.S. Customs and Border Protection (''CBP'') and found no suspended antidumping or countervailing duty entries for Fengchi. The Department issued a no-shipment inquiry to CBP with respect to Fengchi, asking CBP to provide any information contrary to our findings of no suspended entries of subject merchandise exported by Fengchi during the POR. We received no contradictory information from CBP, indicating that there were suspended entries of subject merchandise into the United States exported by Fengchi. Therefore, we preliminarily determine that Fengchi had no shipments of subject merchandise during the POR. Because Fengchi submitted a timely no-shipment certification and CBP data indicated that there were no suspended antidumping or countervailing duty entries for Fengchi during the POR, we preliminarily determine that Fengchi will retain its separate-rate status from the date of the initiation of this administrative review.

Methodology

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. A list of the topics discussed in the Preliminary Decision Memorandum is attached to this notice in Appendix II. The Preliminary Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). IA ACCESS is available to registered users at *http://iaaccess.trade.gov,* and is available to all parties in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/index.html.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

[11] Fedmet Resources Corporation (''Fedmet''), Puyang Refractory Co., Ltd. (''Puyang''), Fengchi Imp. and Exp. Co., Ltd. of Haicheng City (''Fengchi''), Fengchi Mining Co., Ltd. of Haicheng City, and Fengchi Refractories Corp.

[12] *See* Fedmet's letter dated January 2, 2014.

Preliminary Results of Review

The Department preliminarily determines that the following weighted-average dumping margins exist for the period September 1, 2012, through August 31, 2013:

Exporter	Weighted-average dumping margin (percent)
PRC-Wide Entity [13]	236.00

Public Comment & Opportunity To Request a Hearing

Interested parties may submit case briefs within 30 days after the date of publication of these preliminary results of review.[14] Rebuttals to case briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the time limit for filing case briefs.[15] Parties who submit arguments are requested to submit with the argument (a) a statement of the issue, (b) a brief summary of the argument, and (c) a table of authorities.[16] Parties submitting briefs should do so pursuant to the Department's electronic filing system, IA ACCESS.

Any interested party may request a hearing within 30 days of publication of this notice.[17] 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.

[13] The PRC-wide entity includes the companies listed in Appendix I.

[14] *See* 19 CFR 351.309(c)(1)(ii).

[15] *See* 19 CFR 351.309(d)(1)–(2).

[16] *See* 19 CFR 351.309(c)(2), (d)(2).

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

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, 14th Street and Constitution Avenue NW., Washington, DC 20230.[18]

The Department intends to issue the final results of this administrative review, which will include the results of our analysis of all issues raised in the case briefs, within 120 days of publication of these preliminary results in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[19] The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. We intend to instruct CBP to liquidate entries containing subject merchandise exported by the PRC-wide entity at a rate equal to the weighted-average dumping margin specified above.

The Department announced a refinement to its assessment practice in NME cases. Pursuant to this refinement in practice, for entries that were not reported in the U.S. sales data submitted by companies individually examined during the administrative review, the Department will instruct CBP to liquidate such entries at the rate for the PRC-wide entity. Additionally, if the Department determines that an exporter had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's cash deposit rate) will be liquidated at the rate for the PRC-wide entity.[20] 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 cash deposits of estimated duties, where applicable.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this review for shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by sections 751(a)(2)(C) of the Act: (1) For previously investigated or reviewed PRC and non-PRC exporters that received a separate rate in a prior completed segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (2) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be that for the PRC-wide entity; and (3) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter.

These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

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

Notification to Interested Parties

These preliminary results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: September 29, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Companies Subject to the Administrative Review That Are Part of the PRC-Wide Entity

1. ANH (Xinyi) Refractories Co. Ltd.
2. Anyang Rongzhu Silicon Industry Co., Ltd.
3. Barsan Global Lojistik Ve Gum. Mus.Bayuquan Refractories Co., Ltd.
4. Beijing Tianxing Ceramic Fiber Composite Materials Corp.
5. Benxi Iron & Steel (Group) International Economic & Trading Co.
6. Changxing Magnesium Furnace Charge Co., Ltd.
7. Changxing Wangfa Architectural & Metallurgical Materials Co., Ltd.
8. Changzing Zhicheng Refractory Material Factory.
9. China Metallurgical Raw Material Beijing Company.
10. China Quantai Metallurgical (Beijing) Engineering & Science Co., Ltd.
11. Chosun Refractories.
12. Cimm Group of China.
13. CNBM International Corporation.
14. Dalian Cerax Co., Ltd.
15. Dalian Dalmond Trading Co., Ltd.
16. Dalian F.T.Z. Huaxin International.
17. Dalian F.T.Z. Maylong Resources Co., Ltd.
18. Dalian Huayu Refractories International Co., Ltd.
19. Dalian LST Metallurgy Co., Ltd.
20. Dalian Masoo International Trading.
21. Dalian Mayerton Refractories Ltd.
22. Dalian Morgan Refractories Ltd.
23. Dashiqiao Bozhong Mineral Products Co., Ltd.
24. Dashiqiao City Magnesite.
25. Dashiqiao City Guangcheng Refractory Co., Ltd.
26. Dashiqiao Jia Sheng Mining Co., Ltd.
27. Dashiqiao Jinlong Refractories Co., Ltd.
28. Dashiqiao RongXing Refractory Material Co., Ltd.
29. Dashiqiao Sanqiang Refractory Material Co., Ltd.
30. Dashiqiao Yutong Packing Factory.
31. Dashiqiao Zhongjian Magnesia.
32. Dengfeng Desheng Refractory Co., Ltd.
33. DFL Minmet Refractories Corp.
34. Duferco SA.
35. Duferco BarInvest SA Beijing Office.
36. Duferco Ironet Shanghai Representative Office.
37. Eastern Industries & Trading Co., Ltd.
38. Far Horizon Trading Limited.
39. Fengchi Mining Co., Ltd of Haicheng City.
40. Fengchi Refractories Co., of Haicheng City.
41. Fengchi Refractories Corp.
42. Ferro Alliages & Mineraux Inc.
43. Firma.
44. Haicheng City Qunli Mining Co., Ltd.
45. Haicheng City Xiyang Import & Export Corporation.
46. Haicheng Donghe Taidi Refractory Co., Ltd.
47. Haicheng Ruitong Mining Co., Ltd.
48. Haiyuan Talc Powder Manufacture Factory.
49. Henan Boma Co. Ltd.
50. Henan Kingway Chemicals Co., Ltd.
51. Henan Tagore Refractories Co., Ltd.
52. Henan Xinmi Changzxing Refractories, Co., Ltd.
53. Hebei Qinghe Refractory Group Co. Ltd.
54. Huailin Refractories (Dashiqiao) Pte. Ltd.
55. Hualude Hardware Products Co. Ltd.
56. Indian Technomac Co., Ltd.
57. Jfe Refractories Corporation.
58. Jiangsu Sujia Group New Materials Co., Ltd.
59. Jiangsu Sujia Joint-Stock Co., Ltd.
60. Jinan Forever Imp. & Emp. Trading Co., Ltd.
61. Jinan Linquan Imp. & Emp. Co. Ltd.
62. Jinan Ludong Refractory Co., Ltd.
63. Kosmokraft Refractory Limited.
64. Kuehne & Nagel Ltd. Dalian Branch Office.
65. Kumas Sanayi Urunleri Ve Insaat Paz.
66. Lechang City Guangdong Province SongXin Refractories Co., Ltd.
67. Liaoning Fucheng Refractories Group Co., Ltd.
68. Liaoning Fucheng Special Refractory Co., Ltd.
69. Liaoning Jiayi Metals & Minerals Ltd.
70. Liaoning Jinding Magnesite Group.

[18] *See* 19 CFR 351.310(d).

[19] *See* 19 CFR 351.212(b).

[20] For a full discussion of this practice, *see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

71. Liaoning Mayerton Refractories Co., Ltd.
72. Liaoning Mineral & Metallurgy Group Co., Ltd.
73. Liaoning Qunyi Group Refractories Co., Ltd.
74. Liaoning Qunyi Trade Co., Ltd.
75. Liaoning RHI Jinding Magnesis Co., Ltd.
76. Liaoning Zhongxing Mining Industry Group Co., Ltd.
77. LiShuang Refractory Industrial Co., Ltd.
78. Lithomelt Co., Ltd.
79. Lua Viet Bestref Joint Venture Co.
80. Luheng Refractory Co., Ltd.
81. Luoyang Refractory Group Co., Ltd.
82. Mayerton Refractories.
83. Minsource International Ltd.
84. Minteq International Inc.
85. National Minerals Co., Ltd.
86. Navis Zufall Ueberseespeditions.
87. North Refractories Co., Ltd.
88. Orestar Metals & Minerals Co., Ltd.
89. Oreworld Trade (Tangshan) Co., Ltd.
90. Puyang Refractories Co., Ltd.
91. Qingdao Almatis Co., Ltd. (HQ).
92. Qingdao Almatis Co., Ltd. (Manufacturing).
93. Qingdao Almatis Trading Co., Ltd. (Sales Office).
94. Qingdao Blueshell Import & Emport Corp.
95. Qingdao Fujing Group Co., Ltd.
96. Qingdao Huierde International Trade Co., Ltd.
97. Refratechnik Cement GmbH.
98. Refratechnik Steel GmbH.
99. RHI AG.
100. RHI GLAS GmbH.
101. RHI Refractories Asia Pacific Pte. Ltd.
102. RHI Refractories (Dalian) Co., Ltd.
103. RHI Trading Shanghai Branch.
104. RHI Trading (Dalian) Co., Ltd.
105. Rongyuan Magnesite Co., Ltd. of Dashiqiao City.
106. Shandong Cambridge International Trade Inc.
107. Shandong Lunai Kiln Refractories Co., Ltd.
108. Shandong Refractories Corp.
109. Shanghai Pudong Imp. & Exp. Co. Ltd.
110. Shanghai Vista Packaging Co., Ltd.
111. Shanxi Dajin International (Group) Co., Ltd.
112. Shanxi Xinrong International Trade Co. Ltd.
113. Shenyang Shenghui Refractory Imp.
114. Shenyang Yi Xin Sheng Lai Refractory Materials Co., Ltd.
115. Shinagawa Refractories Co., Ltd.
116. Shinagawa Rongyuan Refractories Co., Ltd.
117. Sinosteel Corporation.
118. SMMC Group Co., Ltd.
119. Store System Inc. O B Dongning Shunf.
120. Syndicate Exp. Pvt., Ltd.
121. Tangshan Success Import & Export Trading Co., Ltd.
122. Tianjin New Century Refractories, Ltd.
123. Tianjin New World Import & Export Trading Co., Ltd.
124. Tianjin Weiyuan Refractory Co., Ltd.
125. The Economic Trading Group of Haicheng Huoying Corporation Ltd.
126. Vereeniging Refractories (Pty).
127. Vesuvius Advanced Ceramics (Suzhou) Co. Ltd.
128. Wonjin Refractories Co., Ltd.
129. Wuxi Tian Liang Foreign Trade Co., Ltd.
130. Xiyuan Xingquan Forsterite Co., Ltd.
131. Yanshi City Guangming High-Tech Refractories Products Co., Ltd.
132. YHS Minerals Co., Ltd.
133. Yingkou Bayuquan Refractories Co., Ltd.
134. Yingkou Bl Mining Co., Ltd.
135. Yingkou Dalmond Refractories Co., Ltd.
136. Yingkou Guangyang Refractories Co., Ltd.
137. Yingkou Guangyang Refractories Co., Ltd. (YGR).
138. Yingkou Heping Samwha Minerals Co., Ltd.
139. Yingkou Jiahe Refractories Co., Ltd.
140. Yingkou Jinlong Refractories Group.
141. Yingkou Kyushu Refractories Co., Ltd.
142. Yingkou Qinghua Group Imp. & Emp. Co., Ltd.
143. Yingkou Qinghua Refractories Co., Ltd.
144. Yingkou Sanhua Refractory Materials Co., Ltd.
145. Yingkou Tianrun Refractory Co.,Ltd.
146. Yingkou Wonjin Refractory Material Co., Ltd.
147. Yingkou Yongji Mag Refractory, Ltd.
148. Yixing Runlong Trade Co., Ltd.
149. Yixing Xinwei Leeshing Refractory Material Co., Ltd.
150. Yixing Zhenqiu Charging Ltd.
151. Zhejiang Changxing Guangming Special Refractory Material Foundry, Co., Ltd.
152. Zhejiang Deqing Jinlei Refractory Co., Ltd.
153. Zhejiang Huzhou Fuzilin Refractory Metals Group Co., Ltd.
154. Zhengzhou Annec Industrial Co., Ltd.
155. Zhengzhou Huachen Refractory Co., Ltd.
156. Zhengzhou Huawei Refractories Co., Ltd.
157. Zibo Lianzhu Refractory Materials Co., Ltd.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum:

1. Background
2. Scope of the Order
3. Preliminary Finding of No Shipments
4. Recommendation

[FR Doc. 2014–24158 Filed 10–8–14; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–801]

Solid Urea From the Russian Federation: Final Results of Antidumping Duty Administrative Review; 2012–2013

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

SUMMARY: On July 11, 2014, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on solid urea from the Russian Federation (Russia).[1] For the final results, we continue to find that MCC EuroChem has not sold subject merchandise at less than normal value during the period of review (POR).

DATES: *Effective* October 9, 2014.

FOR FURTHER INFORMATION CONTACT: Jerrold Freeman or Minoo Hatten, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0180, and (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 11, 2014, the Department published the *Preliminary Results.* The POR is 7/1/2012 through 6/30/2013. We invited interested parties to comment on the *Preliminary Results.* We received no comments.

The Department conducted this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The merchandise subject to the order is solid urea, a high-nitrogen content fertilizer which is produced by reacting ammonia with carbon dioxide. The product is currently classified under the Harmonized Tariff Schedules of the United States (HTSUS) item number 3102.10.00.00. Previously, such merchandise was classified under item number 480.3000 of the Tariff Schedules of the United States. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Final Results of the Review

The Department made no changes to its calculations announced in the *Preliminary Results.* As a result of our review, we determine that a weighted-average dumping margin of 0.00 percent exists for MCC EuroChem for the POR.

Assessment Rates

In accordance with 19 CFR 351.212 and the *Final Modification,*[2] the Department will instruct U.S. Customs and Border Protection (CBP) to liquidate

[1] *See Solid Urea from the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review; 2012–2013,* 79 FR 40063 (July 11, 2014) (*Preliminary Results).*

[2] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101, 8102 (February 14, 2012) (*Final Modification*).

all appropriate entries for MCC EuroChem without regard to antidumping duties.

For entries of subject merchandise during the POR produced by MCC EuroChem for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*).

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

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of solid urea from Russia entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for MCC EuroChem will be 0.00 percent, the weighted average dumping margin established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the manufacturer is, the cash deposit rate will be the rate established for the manufacturer of the merchandise for the most recently completed segment of this proceeding; (4) the cash deposit rate for all other manufacturers or exporters will continue to be 64.93 percent, the all-others rate established in the original less-than-fair-value (LTFV) investigation.[3] The rate established in the LTFV investigation for the Soviet Union was applied to each new independent state, including Russia. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

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

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (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 or 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 sanctionable violation.

The Department is issuing and publishing these final results of administrative review in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(h).

Dated: October 3, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

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BILLING CODE 3510–DS–P

[3] *See Urea From the Union of Soviet Socialist Republics; Final Determination of Sales at Less Than Fair Value,* 52 FR 19557 (May 26, 1987). Also note that following the break-up of the Soviet Union, the antidumping duty order on solid urea from the Soviet Union was transferred to the individual members of the Commonwealth of Independent States. *See Solid Urea From the Union of Soviet Socialist Republics; Transfer of the Antidumping Order on Solid Urea From the Union of Soviet Socialist Republics to the Commonwealth of Independent States and the Baltic States and Opportunity to Comment,* 57 FR 28828 (June 29, 1992).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–843]

Polyethylene Retail Carrier Bags From Taiwan: Affirmative Final Determination of Circumvention of the Antidumping Duty Order

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

SUMMARY: The Department of Commerce (the Department) determines that imports of unfinished polyethylene retail carrier bags (PRCBs) from Taiwan are circumventing the antidumping duty order on PRCBs from Taiwan.[1]

DATES: Effective October 9, 2014.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla or Minoo Hatten, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC, 20230; telephone: (202) 482–3477, and (202) 482–1690, respectively.

Background

We initiated an anti-circumvention inquiry of the antidumping duty order on PRCBs from Taiwan on July 31, 2013, pursuant to section 781(a) of the Tariff Act of 1930, as amended, (the Act) and 19 CFR 351.225(g).[2] We published the affirmative preliminary determination on June 2, 2014, finding that imports of unfinished PRCBs from Taiwan are circumventing the *Order.*[3]

We invited interested parties to comment on the *Preliminary Determination.* We received no comments.

Scope of the Order

The merchandise subject to the *Order* is PRCBs which may be referred to as t-shirt sacks, merchandise bags, grocery bags, or checkout bags. The subject merchandise is defined as non-sealable sacks and bags with handles (including drawstrings), without zippers or integral extruded closures, with or without gussets, with or without printing, of polyethylene film having a thickness no greater than 0.035 inch (0.889 mm) and no less than 0.00035 inch (0.00889 mm), and with no length or width shorter than 6 inches (15.24 cm) or longer than 40 inches (101.6 cm). The depth of the bag may be shorter than 6 inches but not longer than 40 inches (101.6 cm). PRCBs are typically provided without any consumer packaging and free of charge by retail establishments, *e.g.,* grocery, drug, convenience, department, specialty retail, discount stores, and restaurants, to their customers to package and carry their purchased products. The scope of the order excludes (1) polyethylene bags that are not printed with logos or store names and that are closeable with drawstrings made of polyethylene film and (2) polyethylene bags that are packed in consumer packaging with printing that refers to specific end-uses other than

[1] *See Antidumping Duty Orders: Polyethylene Retail Carrier Bags from Indonesia, Taiwan, and the Socialist Republic of Vietnam,* 75 FR 23667 (May 4, 2010) (the *Order*).

[2] *See Polyethylene Retail Carrier Bags From Taiwan: Initiation of Anti-circumvention Inquiry on Antidumping Duty Order,* 78 FR 46319 (July 31, 2013).

[3] *See Polyethylene Retail Carrier Bags From Taiwan: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order,* 79 FR 31302 (June 2, 2014) (*Preliminary Determination*).

packaging and carrying merchandise from retail establishments, *e.g.,* garbage bags, lawn bags, trash-can liners. Imports of the subject merchandise are currently classifiable under statistical category 3923.21.0085 of the Harmonized Tariff Schedule of the United States (HTSUS). This subheading also covers products that are outside the scope of the order. Furthermore, although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Scope of the Circumvention Inquiry

This circumvention inquiry covers merchandise from Taiwan that appears ready to undergo the final processing of cutting the unfinished PRCBs to length, sealing the bottoms, and die-cutting the unfinished PRCBs to create the handles of the finished PRCBs. The unfinished PRCBs subject to this inquiry may or may not have printing and may be of different dimensions as long as they otherwise meet the description of the scope of the order.

Final Determination

In the *Preliminary Determination,* we determined that imports of unfinished PRCBs from Taiwan are circumventing the *Order.* Specifically, we determined that imports of unfinished PRCBs from Taiwan are being completed and sold in the United States pursuant to the statutory and regulatory criteria laid out in section 781(a) of the Act and 19 CFR 351.225(g). We based our *Preliminary Determination* upon record evidence submitted by the petitioners and an importer, SmileMakers, Inc. For a complete discussion of the evidence which led to our preliminary determination, see the *Preliminary Determination.*[4]

Because no party provided any additional information or comments regarding our *Preliminary Determination,* our final determination remains unchanged from the *Preliminary Determination.* Accordingly, we determine, pursuant to section 781(a) of the Act and 19 CFR 351.225(g), that imports of unfinished PRCBs from the Taiwan are circumventing the *Order.*

Continuation of Suspension of Liquidation

As a result of this determination, and consistent with 19 CFR 351.225(l)(3), we intend to direct U.S. Customs and Border Protection to continue to suspend liquidation and to require a cash deposit of estimated antidumping duties at the applicable rate on unliquidated entries of merchandise subject to this inquiry that are entered, or withdrawn from warehouse, for consumption on or after July 31, 2013, the date of publication of the initiation of this inquiry.[5]

Notifications to Interested Parties

This notice serves as the only reminder to parties subject to the administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This determination of circumvention is in accordance with section 781(a) of the Act and 19 CFR 351.225(g).

Dated: October 3, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2014–24156 Filed 10–8–14; 8:45 am]

BILLING CODE 3510–DS–P

[4] *Id.*

[5] *Id.*

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD296

Endangered Species; File No. 18604

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that the Guam Department of Agriculture Division of Aquatic and Wildlife Resources (DAWR), 163 Dairy Road, Mangilao, Guam 96913, has applied in due form for a permit to take green (*Chelonia mydas*) and hawksbill (*Eretmochelys imbricata*) sea turtles for purposes of scientific research.

DATES: Written, telefaxed, or email comments must be received on or before November 10, 2014.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 18604 from the list of available applications.

These documents are also available upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division by email to *NMFS.Pr1Comments@noaa.gov* (include the File No. in the subject line of the email), by facsimile to (301) 713–0376, or at the address listed above.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Amy Hapeman or Courtney Smith, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

On May 20, 2014 notice (79 FR 28899) was published that the applicant requests a five-year research permit to gather information on green and hawksbill sea turtle movement, species distribution, and health status and to document threats to the species in Guam waters. NMFS is currently processing this request. The applicant is requesting to revise the number of green sea turtles to be taken from 15 to 66 sea turtles annually, 15 of which would receive a satellite transmitter before release. All other aspects of the application would remain the same.

Dated: October 3, 2014.

Julia Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2014–24048 Filed 10–8–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD538

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of workshop and meeting.

SUMMARY: The South Atlantic Fishery Management Council (SAFMC) will hold a workshop and meeting of its Scientific and Statistical Committee (SSC). See **SUPPLEMENTARY INFORMATION**.

DATES: The SSC will hold an Acceptable Biological Catch (ABC) Control Rule Workshop, 1 p.m. to 5 p.m. on Monday, October 27, 2014 and 9 a.m. to 12 p.m. on Tuesday, October 28, 2014. The SSC will meet 1 p.m. to 6 p.m. on Tuesday, October 28, 2014; 9 a.m. to 6 p.m. on Wednesday, October 29, 2014; and 9 a.m. to 3 p.m. on Thursday, October 30, 2014.

ADDRESSES:

Meeting address: The meetings and workshop will be held at the Crowne Plaza Airport Hotel, 4831 Tanger Outlet Boulevard, North Charleston, SC 29418; telephone: (800) 503–5762 or (843) 744–4422; fax: (843) 744–4472.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366 or toll free (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: The following items will be discussed by the SSC during this meeting:

SSC ABC Control Rule Workshop, Monday, October 27, 2014, 1 p.m. Until Tuesday, October 28, 2014, 12 p.m.

1. Review ABC Control rule performance.
2. Consider ABC Control rule modifications.

SSC Meeting, Tuesday, October 28, 2014, 1 p.m. until Thursday, October 30, 2014, 3 p.m.

1. Receive an updates on recent Southeast Data, Assessment and Review (SEDAR) stock assessment program activities, the Marine Recreational Information Program (MRIP) Calibration Workshop II and the National SSC Workshop.
2. Receive a report on the ABC Control Rule Workshop and consider ABC Control Rule modifications.
3. Review stock assessments of hogfish, mutton snapper and king mackerel and develop fishing level recommendations.
4. Review Snapper-Grouper Regulatory Amendment 16.
5. Review bag limit analytical methods and application to gag grouper.
6. Receive updates and progress reports on other ongoing projects and fishery management plan amendments.

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.

Written comment on SSC agenda topics is to be distributed to the Committee through the Council office, similar to all other briefing materials. Written comment to be considered by the SSC shall be provided to the Council office no later than one week prior to an SSC meeting. For this meeting, the deadline for submission of written comment is 12 p.m. Tuesday, October 21, 2014. Two opportunities for comment on agenda items will be provided during SSC meetings and noted on the agenda. The first will be at the beginning of the meeting, and the second near the conclusion, when the SSC reviews its recommendations.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the SAFMC 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: October 6, 2014.

Tracey L. Thompson,

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

[FR Doc. 2014–24128 Filed 10–8–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD539

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 Joint VMS/Enforcement Committee and Advisory Panel Meeting 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 Monday, October 27, 2014 at 1 p.m.

ADDRESSES:

Meeting address: The meeting will be held at the Courtyard by Marriott, 32 Exchange Terrace, Providence, RI 02903; telephone: (401) 272–1191; fax: (401) 272–1416.

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 Committee and Advisory Panel will review Scallop Framework 26, including (1) potential changes to access area boundaries; (2) measures to allow a limited access vessel to declare out of the fishery on return to port; (3) measures to allow fishing in state waters after federal Northern Gulf of Maine (NGOM) TAC is reached; (4) measures to make turtle regulations consistent in the scallop fishery; (5) measures to modify the existing area closure accountability measures in place for Georges Bank and Southern New England/Mid-Atlantic yellowtail flounder, and develop new accountability measures for northern windowpane flounder; and measures to modify flaring bar regulations on turtle deflector dredges. They will also review a measure proposed in Groundfish Amendment 18, to allow vessels to use a 5.5 inch codend within the redfish exemption area on trips with an observer or approved electronic monitoring technology onboard. Other business may be discussed if time permits.

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions 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 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: October 6, 2014.

Tracey L. Thompson,

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

[FR Doc. 2014–24110 Filed 10–8–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 14–43]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

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 14–43 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: October 6, 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

SEP 30 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. 14-43, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to the Kingdom of Saudi Arabia for defense articles and services estimated to cost $1.750 billion. 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
4. Regional Balance (Classified Document Provided Under Separate Cover)

BILLING CODE 5001–06–C

Transmittal No. 14–43

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:* Kingdom of Saudi Arabia

(ii) *Total Estimated Value:*

Major Defense Equipment *	$1.250 billion
Other	$ .500 billion
Total	$1.750 billion

* 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:* 202 Patriot Advanced Capability (PAC)-3 Missiles with containers, and 1 Guidance Enhanced Missile (GEM) Flight Test Target/Patriot as a Target. Also included are 2 PAC-3 Telemetry Kits, 6 Fire Solution Computers, 36 Launcher Station Modification Kits, 2 Missile Round Trainers, 2 PAC–3 Slings, 6 Patriot Automated Logistics Systems Kits, 6 Shorting Plugs, spare and repair parts, lot validation and range support, ground support equipment, repair and return, publications and technical documentation, personnel training and training equipment, Quality Assurance Team, U.S. Government and contractor technical and logistics support services,

and other related elements of logistics and program support.

(iv) *Military Department:* Army (WAS)

(v) *Prior Related Cases, if any:*

FMS case UAK-$991M-30Nov90

FMS case JBV-$2.7B-16Dec92

(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:* 30 Sep 14

POLICY JUSTIFICATION

Kingdom of Saudi Arabia (KSA)—Patriot Air Defense System with PAC-3 Enhancement

The Kingdom of Saudi Arabia has requested a possible sale of 202 Patriot Advanced Capability (PAC)-3 Missiles with containers, and 1 Guidance Enhanced Missile (GEM) Flight Test Target/Patriot as a Target. Also included are 2 PAC-3 Telemetry Kits, 6 Fire Solution Computers, 36 Launcher Station Modification Kits, 2 Missile Round Trainers, 2 PAC-3 Slings, 6 Patriot Automated Logistics Systems Kits, 6 Shorting Plugs, spare and repair parts, lot validation and range support, ground support equipment, repair and return, publications and technical documentation, personnel training and training equipment, Quality Assurance Team, U.S. Government and contractor technical and logistics support services, and other related elements of logistics and program support. The estimated cost is $1.750 billion.

The program will contribute to the foreign policy and national security of the United States by helping to improve the security of a partner which has been, and continues to be, an important force for political stability and economic progress in the Middle East.

The proposed sale will help replenish Saudi's current Patriot missiles which are becoming obsolete and difficult to sustain due to age and the limited availability of repair parts. The purchase of PAC-3 missiles will support current and future defense missions and promote stability within the region. Saudi Arabia, which already has Patriot missiles in its inventory, will have no difficulty absorbing these additional missiles into its armed forces.

The proposed sale will not alter the basic military balance in the region.

The principal contractors will be Lockheed Martin Missiles and Fire Control in Dallas, Texas; and Raytheon Corporation in Tewksbury, Massachusetts. Although offsets are requested, they are unknown at this time and will be determined during negotiations between the KSA and contractor.

Implementation of this proposed program will require one U.S. contractor to travel to the Kingdom of Saudi Arabia for a period of three years for equipment fielding and system checkout.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 14–43

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 Patriot Air Defense System contains classified Confidential hardware components and critical/sensitive technology. The Patriot Advance Capability-3 (PAC-3) Missile Four-Pack is classified Confidential and the improved PAC-3 launcher hardware is Unclassified. The missiles requested represent significant technological advances for the existing Kingdom of Saudi Arabia Patriot system capabilities. With the incorporation of the PAC-3 missile, the Patriot System will continue to hold a significant technology lead over other surface-to-air missile systems in the world.

2. The PAC-3 sensitive/critical technology is primarily in the area of design and production know-how and primarily inherent in the design, development and/or manufacturing data related to certain components. The list of components is classified Confidential.

3. Information on system performance capabilities, effectiveness, survivability, PAC-3 Missile seeker capabilities, select software/software documentation and test data are classified up to and including Secret.

4. Loss of this hardware, software, documentation and/or data could permit development of information which may lead to a significant threat to future U.S. military operations. If a technology 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 capabilities.

5. 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 advance capabilities.

6. A determination has been made that the Kingdom of Saudi Arabia can provide substantially the same degree of protection for this technology as the U.S. Government. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

7. All defense articles and services listed in this transmittal have been authorized for release and export to the Kingdom of Saudi Arabia.

[FR Doc. 2014–24136 Filed 10–8–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 14–42]

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 14–42 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: October 3, 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

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

SEP 29 2014

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. 14-42, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to the United Arab Emirates for defense articles and services estimated to cost $900 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
4. Regional Balance (Classified Document Provided Under Separate Cover)

BILLING CODE 5001–06–C

Transmittal No. 14–42

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 Arab Emirates (UAE)

(ii) *Total Estimated Value:*

Major Defense Equipment *	$400 million
Other	$500 million
Total	$900 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 High Mobility Artillery Rocket Systems (HIMARS) Launchers

100 M57 Army Tactical Missile System (ATACMS) T2K (Block IA Unitary), Rockets

65 M31A1 Guided Multiple Launch Rocket (GMLRS) Unitary Pods

Also included are 12 High Mobility Artillery Rocket System Resupply Vehicles M1084A1P2; 2 Wreckers, 5 Ton, M1089A1P2, with Long Term Armor Strategy (LTAS) Cab and B-Kit Armor; 90 Low Cost Reduced-Range Practice Rocket (RRPR) pods; support equipment; communications equipment; spare and repair parts; test sets; batteries; laptop computers;

publications and technical data; facility design; personnel training and equipment; systems integration support; a Quality Assurance Team and a Technical Assistance Fielding Team support; United States Government and contractor engineering and logistics personnel services; and other related elements of logistics support.

(iv) *Military Department:* Army (ZVE and ZVD)

(v) *Prior Related Cases, if any:* FMS Case ZUD—$595M—1 August 2007

(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: 29 September 2014*

POLICY JUSTIFICATION

UAE—High Mobility Artillery Rocket Systems (HIMARS) Launchers

The Government of the United Arab Emirates (UAE) has requested a possible sale of

12 High Mobility Artillery Rocket Systems (HIMARS) Launchers
100 M57 Army Tactical Missile System (ATACMS) T2K (Block IA Unitary) Rockets
65 M31A1 Guided Multiple Launch Rocket (GMLRS) Unitary Pods

Also included are 12 High Mobility Artillery Rocket System Resupply Vehicles M1084A1P2; 2 Wreckers, 5 Ton, M1089A1P2, with Long Term Armor Strategy (LTAS) Cab and B-Kit Armor; 90 Low Cost Reduced-Range Practice Rocket (RRPR) pods; support equipment; communications equipment; spare and repair parts; test sets; batteries; laptop computers; publications and technical data; personnel training and equipment; systems integration support; a Quality Assurance Team and a Technical Assistance Fielding Team support; United States Government and contractor engineering and logistics personnel services; and other related elements of logistics support. The estimated cost is $900 million.

This proposed sale will contribute to the foreign policy and national security of the U.S. 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.

The HIMARS will improve the UAE's capability to meet current and future threats and provide greater security for its critical infrastructure. This proposed sale will also enhance the UAE's interoperability with the U.S. and its allies, making it a more valuable partner in an increasingly important area of the world. The UAE will have no difficulty absorbing this equipment into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be Lockheed Martin Missile and Fire Control in Dallas, Texas. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of up to ten U.S. government or contractor representatives to travel to the UAE for a period of up to one year for equipment de-processing/fielding, system checkout and training.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 14–42

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. High Mobility Artillery Rocket System (HIMARS) with the Universal Fire Control System (UFCS). HIMARS is a C–130 transportable, wheeled version of the Multiple Launch Rocket System (MLRS) launcher. Integrated on a 5-ton Family of Medium Tactical Vehicles (FMTV) truck chassis, it carries one launch pod containing six MLRS rockets or one ATACMS missile and is capable of firing all MLRS Family of Munitions (MFOM) rockets and missiles, to include Guided MLRS, ATACMS Unitary, and future variants. HIMARS operates with the same MLRS command, control, and communications, as well as the same size crew, as the M270A1 launcher. The HIMARS launcher has a Global Positioning System (GPS) Precise Positioning System (PPS), but can operate without it. The launcher has a maximum speed of 55 mph and a minimum cruising range of 300 miles. The UFCS provides the command and control interface, man-machine interface, weapon interface, launcher interface and embedded training. The UFCS enables the launcher to interoperate with compatible national fire direction systems to navigate to specific fire and reload points, compute the technical firing solution, and orient the Launcher Module (LM) on the target to deliver the weapon accurately and effectively. The UFCS is capable of firing all MFOM rockets and missiles. It includes Built-in-Test and capability to store critical mission parameters, as well as system configuration and maintenance information. The UFCS also provided position navigation and processing necessary to direct and maintain control of the launcher system to allow for accurate firing and loading of weapons. The HIMARS end item hardware is Unclassified.

2. M57 ATACMS Block 1A Unitary Rockets. The purpose of the M57 Missile is to provide Corps and Joint Task Force Commanders the capability to attack high-payoff, time sensitive targets when and where collateral damage, unexploded ordnance, or piloted aircraft risk may be of concern. Regardless of weather conditions, the M57 Missile can be employed against a variety of infrastructure, tactical, and, operational targets. The M57 ATACMS Block 1A (Unitary) rocket is a conventional, semi-ballistic missile which utilizes a 500-lb HE unitary warhead in place of the standard anti-personnel, anti-material (APAM) submunitions. The Block IA configuration has increased range and accuracy as compared to the Block I (70–300km for Block 1A vs. 25–165km for Block I) and maintains lethality due to a Global Positioning System (GPS) PPS aided guidance system. The M57 ATACMS Block 1A (Unitary) is the Full Material Release variant of ATACMS Unitary (formerly the M48 Quick Reaction Unitary), and has been upgraded to TACMS 2K (T2K) specifications (T2K includes redesigned components to compensate for obsolescence issues and brings down per-unit costs).

Components of the M57 ATACMS Block IA Unitary missile are considered highly resistant to reverse engineering, and the impact of loss or diversion of the end item hardware would have minimum adverse impact. However, technical data for production of the Ring Laser Gyroscope (RLG), or for production, procession, fabrication, and loading of the solid propellant rocket motor are potentially applicable to development and production of accurate, long-range missile delivery systems. In addition, the RLG and accelerometers would have applicability to aircraft, space, and submarine programs. Lithium battery technology has applicability in a number of areas such as smart munitions communication, etc.

The data table and mission critical data generator special applications software is classified Confidential. The Security Classification Guide's (SCG's) classification of performance data and information ranges from Unclassified to

Secret. System accuracy, lethality, and effectiveness data are classified Secret. System response time and most trajectory data are classified Confidential. Range, reliability, and maintainability data are Unclassified. Countermeasures and counter-countermeasures are classified Secret.

3. M31A1 Guided Multiple Launch Rocket System (GMLRS) Unitary. GMLRS Unitary uses a Unitary High Explosive (HE) Warhead along with GPS PPS-aided IMU based guidance and control for ground-to-ground precision point targeting. GPS PPS is not required for GMLRS to meet its effectiveness threshold. Additionally, GMLRS Unitary uses an Electronic Safe and Arm Fuze (ESAF) along with a nose mounted proximity sensor to give enhanced effectiveness to the GMLRS Unitary rocket by providing tri-mode warhead functionality with point detonate, point detonate with programmable delay, or Height of Burst proximity function. Control of the rocket in flight is accomplished by fins (canards) located in the nose section. GMLRS Unitary M31A1A1 end-item is comprised of a Launch Pod Container (LPC) and six GMLRS Unitary Rockets. The LPC can be loaded in the M270A1, M142 HIMARS, or in the European M270 launcher. The LPC provides a protective environment for the GMLRS Unitary during shipment and storage, and serves as an expendable launch rail when the GMLRS Unitary Rocket is fired. The height, width, length, and other features of the LPC are exactly the same as for the MLRS rocket LPC. The LPC is a controlled breathing type container equipped with desiccant for humidity control. The forward and aft LPC covers are designed to fracture as the rocket egresses from the container. The GMLRS rocket utilizes technologies in the guidance and control subsystem and the rocket motor that appear on the Military Critical Technologies List. The most serious consequences of unauthorized disclosure of information concerning the guidance and control subsystem are the accelerated development of countermeasures and manufacturing capability by other nations. Components of the GMLRS system are considered highly resistant to reverse engineering and the impact of loss or diversion of the end item hardware would have minimum adverse impact. However, technical data for production of the RLG, or for production, processing, fabrication, and loading of the solid propellant rocket motor are directly applicable to the development and production of accurate, long-range rocket and missile systems. In addition, the RLG and accelerometers would have applicability to aircraft, space and submarine programs. Lithium battery technology has applicability in a number of areas such as smart munitions, communications, etc. Production technology for the GMLRS motor exceeds limits established in the Missile Technology Control Regime.

4. Missile Technology Control Regime (MTCR). The HIMARS and associated munitions are MTCR Category II controlled. The MTCR controlled items will be identified and reported as part of the MTCR process.

5. 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.

6. 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.

7. All defense articles and services listed in this transmittal have been authorized for release and export to the United Arab Emirates.

[FR Doc. 2014–24085 Filed 10–8–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice Is Given of the Names of Members of the Performance Review Board for the Department of the Air Force

AGENCY: Department of the Air Force, DOD.

ACTION: Notice.

SUMMARY: Notice is given of the names of members of the Performance Review Board for the Department of the Air Force.

DATES: Effective Date: November 3, 2014.

SUPPLEMENTARY INFORMATION: Pursuant to 5 U.S.C. 4314(c) (1–5), the Department of the Air Force (AF) announces the appointment of members to the AF's Senior Executive Service (SES) Performance Review Board (PRB). Appointments are made by the authorizing official. Each board member shall review and evaluate performance scores provided by the SES' immediate supervisor. Performance standards must be applied consistently across the AF. The board will make final recommendations to the authorizing official relative to the performance of the executive.

The members of the 2014 Performance Review Board for the U.S. Air Force are:

1. Board President—Gen Selva, Commander, United States Transportation Command.
2. Honorable Eric Fanning, Under Secretary of the Air Force.
3. Gen Spencer, Vice Chief of Staff of the Air Force.
4. Lt Gen Litchfield, Commander, Air Force Sustainment Center.
5. Lt Gen Greaves, Commander, Space & Missile Systems Center.
6. Mr. Corsi, Assistant Deputy Chief of Staff for Manpower, Personnel and Services.
7. Mr. McMillin, Auditor General of the Air Force.
8. Ms. Thomas, Deputy Chief Management Officer of the Air Force.
9. Ms. Salazar, Deputy Chief, Information Dominance and Deputy Chief Information Officer.
10. Mr. Gill, Executive Director, Air Force Materiel Command.
11. Mr. Sitterly, Principal Deputy Assistant Secretary of the Air Force for Manpower and Reserve Affairs.
12. Mr. Lombardi, Principal Deputy Assistant Secretary of the Air Force (Acquisition).
13. Ms. Watern, Deputy Assistant Secretary for Cost and Economics.
14. Ms. Rooney, Director, Intelligence Systems Support Office.
15. Mr. Callicutt, Director, Capability and Resource Integration, United States Strategic Command.

Additionally, all career status Air Force Tier 3 SES members not included in the above list are eligible to serve on the 2014 Performance Review Board and are hereby nominated for inclusion on an ad hoc basis in the event of absence(s).

FOR FURTHER INFORMATION CONTACT: Please direct any written comments or requests for information to Dr. Daramia Hinton, Deputy Director, Senior Executive Management, AF/DPS, 1040 Air Force Pentagon, Washington DC, 20330–1040 (PH: 703–695–7677; or via email at *daramia.t.hinton.civ@mail.mil.*).

Henry Williams,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2014–24103 Filed 10–8–14; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF EDUCATION

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Extension of Deadline; Preschool Development Grants—Development Grants and Preschool Development Grants—Expansion Grants

AGENCY: Department of Education and Department of Health and Human Services.

ACTION: Notice extending deadline date for the FY 2014 grant competitions.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.419A and 84.419B.

SUMMARY: On August 18, 2014, the Departments of Education and Health and Human Services (Departments) published in the **Federal Register** (79 FR 48853, 79 FR 48873) notices inviting applications for new awards for fiscal year 2014 for the Preschool Development Grants—Development Grants and Preschool Development Grants—Expansion Grants programs. The notices established October 14, 2014, as the deadline date for eligible applicants to apply for funding under the programs. However, the Departments have been informed that the Grants.gov Web site will be unavailable to applicants on October 11–12, 2014, due to a scheduled maintenance outage. To allow applicants additional time to complete their applications as a result of this outage, we are extending the deadline date for transmittal of applications to October 15, 2014.

DATES: *Deadline for Transmittal of Applications:* October 15, 2014.

FOR FURTHER INFORMATION CONTACT: Rebecca Marek, U.S. Department of Education, 400 Maryland Ave. SW., room 3E344, Washington, DC 20202–6200. Telephone: 202–260–0968 or by email: *PreschoolDevelopmentGrants.Competition@ed.gov.*

If you use a telecommunications device for the deaf or a text telephone, call, toll free: 1–877–576–7734.

SUPPLEMENTARY INFORMATION:

All other information in the August 18, 2014 notices inviting applications for these competitions remains the same, including the application submission instructions.

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

Program Authority: Sections 14005 and 14006 of the ARRA, as amended by section 1832(b) of division B of the Department of Defense and Full-Year Continuing Appropriations Act, 2011 (Pub. L. 112–10), the Department of Education Appropriations Act, 2012 (title III of division F of Pub. L. 112–74, the Consolidated Appropriations Act, 2012), and the Department of Education Appropriations Act, 2014 (title III of division H of Pub. L. 113–76, the Consolidated Appropriations Act, 2014).

Dated: October 7, 2014.

Deborah S. Delisle,

Assistant Secretary for Elementary and Secondary Education, U.S. Department of Education.

Mark H. Greenberg,

Acting Assistant Secretary for Children and Families, U.S. Department of Health and Human Services.

[FR Doc. 2014–24265 Filed 10–8–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[14–87–NG, 14–90–NG, 14–91–NG, et al.]

Orders Granting Authority To Import and Export Natural Gas, To Import and Export Liquefied Natural Gas and Vacating Prior Authority During August 2014

ATLANTIC POWER ENERGY SERVICES (US) LLC

PETROCHINA INTERNATIONAL (AMERICA) INC.

MERRILL LYNCH COMMODITES, INC.

TECHGEN S.A. DE C.V.

PETROCHINA INTERNATIONAL (CANADA) INC.

ENERGY SOURCE NATURAL GAS INC.

BLUEWATER GAS STORAGE, LLC

ST. CLAIR POWER L.P.

INFINITE ENERGY, INC.

MERCURIA ENERGY GAS TRADING LLC

TRAILSTONE NA LOGISTICS, LLC

ARC RESOURCES LTD.

GULF OIL LP

BOISE WHITE PAPER, L.L.C.

LOUISIANA LNG ENERGY LLC

AIR FLOW NORTH AMERICA CORP.

CLEAN ENERGY

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during August 2014, it issued orders granting authority to import and export natural gas, to import and export liquefied natural gas, and vacating prior authority. These orders are summarized in the attached appendix and may be found on the FE Web site at *http://www.fossil.energy.gov/programs/gasregulation/authorizations/Orders-2014.html.* They are also available for inspection and copying in the Office of Fossil Energy, Office of Oil and Gas Global Security and Supply, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on September 29, 2014.

John A. Anderson,

Director, Division of Natural Gas Regulatory Activities, Office of Oil and Gas Global Security and Supply, Office of Oil and Natural Gas.

Appendix

DOE/FE ORDERS GRANTING IMPORT/EXPORT AUTHORIZATIONS

3467	08/21/14	14–87–NG	Atlantic Power Energy Services (US) LLC	Order granting blanket authority to import/export natural gas from/to Canada.
3468	08/21/14	14–90–NG	PetroChina International (America) Inc.	Order granting blanket authority to import/export natural gas from/to Canada.
3469	08/21/14	14–91–NG	Merrill Lynch Commodities, Inc.	Order granting blanket authority to import/export natural gas from/to Canada/Mexico.
3470	08/21/14	14–93–NG	Techgen S.A. de C.V.	Order granting blanket authority to export natural gas to Mexico.
3471	08/21/14	14–95–NG	PetroChina International (Canada) Inc.	Order granting blanket authority to import/export natural gas from/to Canada.
3472	08/21/14	14–97–NG	Energy Source Natural Gas Inc.	Order granting blanket authority to import/export natural gas from/to Canada and vacating prior authority.
3473	08/21/14	14–99–NG	Bluewater Gas Storage, LLC	Order granting blanket authority to import/export natural gas from/to Canada.
3474	08/21/14	14–100–NG ..	St. Clair Power L.P.	Order granting blanket authority to import/export natural gas from/to Canada.
3475	08/21/14	14–101–NG ..	Infinite Energy, Inc.	Order granting blanket authority to import/export natural gas from/to Canada.
3476	08/21/14	14–103–NG ..	Mercuria Energy Gas Trading LLC	Order granting blanket authority to import/export natural gas from/to Canada/Mexico.
3477	08/21/14	14–106–NG ..	TrailStone NA Logistics, LLC	Order granting blanket authority to import/export natural gas from/to Canada and to export natural gas to Mexico.
3478	08/21/14	14–107–NG ..	ARC Resources Ltd.	Order granting blanket authority to import natural gas from Canada.
3479	08/21/14	14–108–LNG	Gulf Oil LP	Order granting blanket authority to import LNG from Canada by truck.
3480	08/21/14	14–110–NG ..	Boise White Paper, L.L.C.	Order granting blanket authority to import natural gas from Canada.
3482	08/28/14	14–19–LNG ..	Louisiana LNG Energy LLC	Order granting long-term Multi-Contract authorization to export LNG by vessel from the proposed Louisiana LNG Energy LLC Project in Plaquemines Parish, Louisiana, to Free Trade Agreement nations.
3483	08/29/14	14–53–LNG ..	Air Flow North America Corp.	Order granting blanket authorization to export LNG in ISO Containers transported by vessel to FTANs located within Central America, South America, the Caribbean, or Africa.
3484	08/29/14	14–54–LNG ..	Clean Energy	Order granting blanket authority to import/export LNG from/to FTANs by truck, rail, barge, or other waterborne vessel.

[FR Doc. 2014–24133 Filed 10–8–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 14–119–LNG]

Chevron U.S.A. Inc.; Application for Blanket Authorization To Export Previously Imported Liquefied Natural Gas on a Short-Term Basis

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application (Application), filed on August 27, 2014, by Chevron U.S.A. Inc. (Chevron), requesting blanket authorization to export liquefied natural gas (LNG) previously imported into the United States from foreign sources in an amount up to the equivalent of 72 billion cubic feet (Bcf) of natural gas on a short-term or spot market basis for a two-year period commencing on December 8, 2014.[1] The LNG would be exported from the Sabine Pass LNG Terminal owned by Sabine Pass LNG, L.P., in Cameron Parish, Louisiana, to any country with the capacity to import LNG via ocean-going carrier and with which trade is not prohibited by U.S. law or policy. Chevron states that it has contracted for 1.0 Bcf/day of terminal capacity from Sabine Pass LNG, L.P., for an initial term of 20 years that will expire June 30, 2029, with the option to extend the term. Chevron states that it does not seek authorization to export domestically-produced natural gas supplies, and notes that it currently holds a blanket authorization to import LNG from various international sources by vessel in an amount up to the equivalent of 800 Bcf of natural gas.[2] The Application was filed under section 3 of the Natural Gas Act (NGA). Additional details can be found in Chevron's Application, posted on the DOE/FE Web site at: *http://energy.gov/fe/downloads/chevron-usa-inc-14-119-lng.* Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed using procedures detailed in the Public Comment Procedures section no later than 4:30 p.m., Eastern time, November 10, 2014.

ADDRESSES:

Electronic Filing by email

fergas@hq.doe.gov.

[1] Chevron's current blanket authorization to export previously imported LNG, granted in DOE/FE Order No. 3221 on January 4, 2013, extends through December 7, 2014.

[2] *Chevron U.S.A. Inc.,* DOE/FE Order No. 3454, FE Docket No. 14–68–LNG, Order Granting Blanket Authorization to Import Liquefied Natural Gas from Various International Sources by Vessel (July 3, 2014).

Regular Mail

U.S. Department of Energy (FE–34), Office of Oil and Gas Global Security and Supply, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026–4375.

Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.)

U.S. Department of Energy (FE–34), Office of Oil and Gas Global Security and Supply, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Larine Moore or Beverly Howard, U.S. Department of Energy (FE–34), Office of Oil and Gas Global Security and Supply, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478; (202) 586–9387.

Cassandra Bernstein, U.S. Department of Energy, Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, 1000 Independence Ave. SW., Washington, DC 20585, (202) 586–9793.

SUPPLEMENTARY INFORMATION:

DOE/FE Evaluation

The Application will be reviewed pursuant to section 3 of the NGA, as amended, and the authority contained in DOE Delegation Order No. 00–002.00N (July 11, 2013) and DOE Redelegation Order No. 00–002.04F (July 11, 2013). In reviewing this LNG export application, DOE will consider domestic need for the gas, as well as any other issues determined to be appropriate, including whether the arrangement is consistent with DOE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose this application should comment in their responses on these issues.

The National Environmental Policy Act (NEPA), 42 U.S.C. 4231, *et seq.,* requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this Notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable. Any person wishing to become a party to the proceeding must file a motion to intervene or notice of intervention. The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the Application. All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by the regulations in 10 CFR Part 590.

Filings may be submitted using one of the following methods: (1) Emailing the filing to *fergas@hq.doe.gov,* with FE Docket No. 14–119–LNG in the title line; (2) mailing an original and three paper copies of the filing to the Office of Oil and Gas Global Security and Supply at the address listed in **ADDRESSES**; or (3) hand delivering an original and three paper copies of the filing to the Office of Oil and Gas Global Supply at the address listed in **ADDRESSES**. All filings must include a reference to FE Docket No. 14–119–LNG. **Please Note:** If submitting a filing via email, please include all related documents and attachments (e.g., exhibits) in the original email correspondence. Please do not include any active hyperlinks or password protection in any of the documents or attachments related to the filing. All electronic filings submitted to DOE must follow these guidelines to ensure that all documents are filed in a timely manner. Any hardcopy filing submitted greater in length than 50 pages must also include, at the time of the filing, a digital copy on disk of the entire submission.

A decisional record on the Application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

The Application is available for inspection and copying in the Division of Natural Gas Regulatory Activities docket room, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The Application and any filed protests, motions to intervene or notice of interventions, and comments will also be available electronically by going to the following DOE/FE Web address: *http://www.fe.doe.gov/programs/gasregulation/index.html.*

Issued in Washington, DC, on October 2, 2014.

John A. Anderson,

Director, Division of Natural Gas Regulatory Activities, Office of Oil and Gas Global Security and Supply, Office of Oil and Natural Gas.

[FR Doc. 2014–24129 Filed 10–8–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Docket No. EERE–2014–BT–NOA–0016]

Buildings-to-Grid Integration and Related Areas of Research

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of availability and request for public comment.

SUMMARY: The Department of Energy (DOE) announces for public comment the availability of the draft document titled ''Transaction-Based Building Controls Framework, Volume 1: Reference Guide''.

DATES: DOE will accept written comments regarding the draft document until November 10, 2014.

ADDRESSES: The draft document is available at: *http://www.regulations.gov/#!docketDetail;D=EERE-2014-BT-NOA-0016.*

Any comments submitted must identify the request for comment for buildings-to-grid integration and related areas of research and provide docket number EERE–2014–BT–NOA–0016 by any of the following methods:

- *Email: ConnectedBuildings2014NOA0016@ee.doe.gov.* Include the docket number EERE–2014–BT–NOA–0016 in the subject line of the message.
- *Mail:* Mr. Joseph Hagerman, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies. [Please note that comments and CDs sent by mail are often delayed and may

be damaged by mail screening processes.]

• *Hand Delivery/Courier:* Mr. Joseph Hagerman, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. If possible, please submit all items on CD, in which case it is not necessary to include printed copies.

Docket: The docket is available for review at *www.regulations.gov,* including **Federal Register** notices, framework documents, summary notes, comments, and other supporting documents/materials. All documents in the docket are listed in the *www.regulations.gov* index.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Hagerman, U.S. Department of Energy, Office of Building Technologies (EE–5B), 950 L'Enfant Plaza SW., Washington, DC 20024. Phone: (202) 586–4549. Email: *joseph.hagerman@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: This notice announces the availability for public comment of the draft document ''Transaction-Based Building Controls Framework, Volume 1: Reference Guide''. A new building diagnostic and controls revolution is underway within the buildings sector, primarily in the commercial buildings sector. In it, application-based systems are presenting an opportunity to implement strategies in which highly ''optimized'' control capable of constantly increasing efficiency levels while improving resource allocation is an inherent attribute of the strategy rather than an explicitly programmed feature. These building controls and algorithms can also be part of deep retrofits in existing buildings that result in energy savings not just today, but also ensure persistent energy savings over the life of the buildings. At the same time, the introduction of sensors and controls, as well as information technology and communication protocols between the buildings and the electric grid, has led to digitized sensing, metering, communication and controls.

Using these technological advances and careful coordination, buildings could provide valuable comfort and productivity services to building owners and occupants, such as automatically and continuously improving building operations and maintenance, while at the same time reducing energy costs. The above-mentioned document proposes a framework concept to achieve the objectives of raising buildings' efficiency and energy savings potential benefiting building owners and operators. We call it a transaction-based building controls' framework, wherein mutually-beneficial and cost-effective market-based transactions can be enabled between multiple players across different domains.

DOE is particularly interested in public comment on the following list of questions embedded within the document.

1. What do you think of the Transactive Energy future state described here?

2. Are there other or better ways to make buildings smarter?

3. How smart do buildings need to be and why?

4. Are there other examples of Transactive Energy implementation that should be included? Please provide details, reports and studies that you might be aware of documenting the results of such implementations.

5. Are these four categories of exchangeable services comprehensive enough? If not, should they be expanded in scope? Or, should additional categories be defined?

6. What are some other reports/studies that cover/support/illustrate these topics of services and service categories?

7. Are there other important networks that need to be illustrated?

8. Are there other (project) demonstration examples to be included? Are there other important categories of transactions?

9. What are some additional use cases for this end-user service category? Please see the use-case template in section 8.0 to provide your inputs.

10. Are there additional or better use cases for this energy market service category? Please see the use-case template in section 8.0 to provide your inputs.

11. Can you describe additional use cases for this grid service category? Please see the use-case template in section 8.0 to provide your inputs.

12. What are some additional use cases for this societal service category? Please see the use-case template in section 8.0 to provide your inputs.

The public comment period ends November 10, 2014 to provide interested parties adequate time to prepare and submit comments and DOE will consider any comments received by that date. The report is available at *http://www.regulations.gov/#!docketDetail;D=EERE-2014-BT-NOA-0016.*

Issued in Washington, DC, on September 30, 2014.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2014–24134 Filed 10–8–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC14–16–000]

Commission Information Collection Activities (FERC–537, FERC–725F, FERC–725I); Consolidated Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of information collections and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 USC 3506(c)(2)(A), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the requirements and burden [1] of the information collections described below.

DATES: Comments on the collections of information are due December 8, 2014.

ADDRESSES: You may submit comments (identified by Docket No. IC14–16–000) by either of the following methods:

• *eFiling at Commission's Web site: http://www.ferc.gov/docs-filing/efiling.asp*

• *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Please reference the specific collection number and/or title in your comments.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading

[1] The Commission defines burden as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Type of Request: Three-year extension of the information collection requirements for all collections described below with no changes to the current reporting requirements. Please note that each collection is distinct from the next.

Comments: Comments are invited on: (1) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collections of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collections; and (4) ways to minimize the burden of the collections of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FERC–537, Gas Pipeline Certificates: Construction, Acquisition and Abandonment

OMB Control No.: 1902–0060.

Abstract: The information collected under the requirements of FERC–537 is used by the Commission to implement the statutory provisions of the Natural Gas Policy Act of 1978 (NGPA) [2] and the Natural Gas Act (NGA). [3] Under Section 7(c) of the NGA, natural gas pipeline companies must obtain Commission authorization to undertake the construction or extension of any facilities, or to acquire or operate any such facilities or extensions. A natural gas company must also obtain Commission approval under Section 7(b) of the NGA prior to abandoning any jurisdictional facility or service. Under the NGA and the NGPA, interstate and intrastate pipelines must also obtain authorization for certain transportation and storage services and arrangements, particularly a Part 284, Subpart G—Blanket Certificate.[4]

The information collected is necessary to certificate interstate pipelines engaged in the transportation and sale of natural gas, and the construction, acquisition, and operation of facilities to be used in those activities, to authorize the abandonment of facilities and services, and to authorize certain NGPA transactions. If a certificate is granted, the natural gas company can construct, acquire, or operate facilities, plus engage in interstate transportation or sale of natural gas. Conversely, approval of an abandonment application permits the pipeline to cease service and/or discontinue the operation of such facilities. Authorization under NGPA Section 311(a) allows the interstate or intrastate pipeline applicants to render certain transportation services.

The data required to be submitted consists of identification of the company and responsible officials, factors considered in the location of the facilities and the detailed impact on the project area for environmental considerations. Also to be submitted are the following:

- Flow diagrams showing proposed design capacity for engineering design verification and safety determination;
- Commercial and economic data presenting the basis for the proposed action; and
- Cost of the proposed facilities, plans for financing, and estimated revenues and expenses related to the proposed facility for accounting and financial evaluation.

The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR Parts 157.5–.11; 157.13–.20; 157.53; 157.201–.209; 157.211; 157.214–.218; 284.8; 284.11; 284.126; 284.221; 284.224.

Type of Respondent: Natural Gas Pipelines.

Estimate of Annual Burden: The Commission estimates the annual public reporting burden for the information collection as:

FERC–537—GAS PIPELINE CERTIFICATES: CONSTRUCTION, ACQUISITION, AND ABANDONMENT

Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden hours & cost per response [5]	Total annual burden hours & total annual cost	Cost per respondent ($)
(1)	(2)	(1)*(2) = (3)	(4)	(3)*(4) = (5)	(5) ÷ (1)
389	1.2	467	133 $9,377	62,111 $4,379,059	$11,257

A more granular breakdown of the average burden hour figure (i.e. 133 hours per response) follows:

Regulation section 18 CFR . . .	Regulation topic	Number of respondents	Number of responses	Avg. hours per response
157.5–.11; & 157.13–.20	Interstate certificate and abandonment applications	149	82	500
157.53	Exemptions	149	0.5	100
157.201–.209; 157.211; 157.214–.218.	Blanket Certificates prior notice filings	149	46	200
157.201–.209; 157.211; 157.214–.218.	Blanket Certificates—annual reports	198	294	50
284.11	NGPA Sec. 311 Construction—annual reports	198	294	50

[2] 15 U.S.C. 3301–3432.

[3] 15 U.S.C. 717–717w.

[4] 18 CFR 284.8.

[5] The estimates for cost per response are derived using the following formula: Average Burden Hours per Response * $70.50 per Hour = Average Cost per Response. The cost per hour figure is the FERC average salary. Subject matter experts found that industry employment costs closely resemble FERC's regarding the FERC–537 information collection.

Regulation section 18 CFR . . .	Regulation topic	Number of respondents	Number of responses	Avg. hours per response
284.8	Capacity Release—record keeping	0	N/A	75
284.126(a)&(c)	Intrastate bypass, semi-annual transportation & storage—reports.	37	48	30
284.221	Blanket Certificates—one time filing, inc. new tariff and rate design proposal.	[6] 0	N/A	100
284.224	Hinshaw Blanket Certificates	5	5	75
157.5–.11; & 157.13–.20	Non-facility certificate or abandonment applications	0	N/A	75
TOTALS		[1] 389 distinct entities.	467	[2] 133 average, weighted.

[1] Distinct entities.
[2] Average weighted.

FERC–725F, Mandatory Reliability Standards for Nuclear Plant Interface Coordination

OMB Control No.: 1902–0249.

Abstract: The Commission requires the information collected by the FERC–725F to implement the statutory provisions of section 215 of the Federal Power Act (FPA) (16 U.S.C. 824o). On August 8, 2005, the Electricity Modernization Act of 2005, which is Title XII, Subtitle A, of the Energy Policy Act of 2005 (EPAct 2005), was enacted into law.[7] EPAct 2005 added a new section 215 to the FPA, which required a Commission-certified Electric Reliability Organization (ERO) to develop mandatory and enforceable Reliability Standards, which are subject to Commission review and approval. Once approved, the Reliability Standards may be enforced by the ERO subject to Commission oversight, or the Commission can independently enforce Reliability Standards.[8]

On February 3, 2006, the Commission issued Order No. 672, implementing section 215 of the FPA.[9] Pursuant to Order No. 672, the Commission certified one organization, North American Electric Reliability Corporation (NERC), as the ERO. The Reliability Standards developed by the ERO and approved by the Commission apply to users, owners and operators of the Bulk-Power System as set forth in each Reliability Standard.

On November 19, 2007, NERC filed its petition for Commission approval of the Nuclear Plant Interface Coordination Reliability Standard, designated NUC–001–1. In Order No. 716, issued October 16, 2008, the Commission approved the standard while also directing certain revisions.[10] Revised Reliability Standard, NUC–001–2, was filed with the Commission by NERC in August 2009 and subsequently approved by the Commission January 21, 2010.[11]

The purpose of Reliability Standard NUC–001–2 is to require ''coordination between nuclear plant generator operators and transmission entities for the purpose of ensuring nuclear plant safe operation and shutdown.'' [12] The Nuclear Reliability Standard applies to nuclear plant generator operators (generally nuclear power plant owners and operators, including licensees) and ''transmission entities,'' defined in the Reliability Standard as including a nuclear plant's suppliers of off-site power and related transmission and distribution services. To account for the variations in nuclear plant design and grid interconnection characteristics, the Reliability Standard defines transmission entities as ''all entities that are responsible for providing services related to Nuclear Plant Interface Requirements (NPIRs),'' and lists eleven types of functional entities (heretofore described as ''transmission entities'') that could provide services related to NPIRs.[13]

FERC–725F information collection requirements include establishing and maintaining interface agreements, including record retention requirements. These agreements are not filed with FERC but with the appropriate entities as established by the Reliability Standard.

Type of Respondent: Nuclear operators, nuclear plants, transmission entities.

Estimate of Annual Burden: The Commission estimates the average annual burden for this information collection as:

[6] The number for these filings is accounted for in other regulatory categories in FERC–537.

[7] Energy Policy Act of 2005, Public Law 109–58, Title XII, Subtitle A, 119 Stat. 594, 941 (2005), 16 U.S.C. 824o.

[8] 16 U.S.C. 824o(e)(3).

[9] *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards,* Order No. 672, FERC Stats. & Regs. ¶ 31,204, *order on reh'g,* Order No. 672–A, FERC Stats. & Regs. ¶ 31,212 (2006).

[10] *Mandatory Reliability Standard for Nuclear Plant Interface Coordination,* Order No. 716, 125 FERC ¶ 61,065, at P 189 & n.90 (2008), *order on reh'g,* Order No. 716–A, 126 FERC ¶ 61,122 (2009).

[11] *North American Electric Reliability Corporation,* 130 FERC ¶ 61,051 (2010). When the revised Reliability Standard was approved the Commission did not go to OMB for approval. It is assumed that the changes made did not substantively affect the information collection and therefore a formal submission to OMB was not needed.

[12] See Reliability Standard NUC–001–2 at *http://www.nerc.com/files/NUC-001-2.pdf.*

[13] The list of functional entities consists of transmission operators, transmission owners, transmission planners, transmission service providers, balancing authorities, reliability coordinators, planning authorities, distribution providers, load-serving entities, generator owners and generator operators.

[14] The cost for reporting requirements is $73.83/hour and is based on a composite loaded (wage plus benefits) average wage for an electrical engineer, attorney, and administrative staff. The cost for record keeping is $29.01 and is based on the loaded wage for a file clerk. The wages are generated from Burueau of Labor Statistics data retrieved September, 2014 from *http://www.bls.gov/oes/current/naics2_22.htm.* The loaded wage is calculated using BLS data indicating, as of Sept 1, 2014, that wages make up 69.9% of total salary (*http://www.bls.gov/news.release/ecec.nr0.htm*).

[15] This figure of 130 transmission entities is based on the assumption that each agreement will be between 1 nuclear plant and 2 transmission entities (65 times 2 = 130). However, there is some double counting in this figure because some transmission entities may be party to multiple agreements with multiple nuclear plants. The double counting does not affect the burden estimate and the correct number of unique respondents will be reported to OMB. The actual number of unique entities subject to this collection is 143.

FERC–725F	Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden hours & cost per response [14]	Total annual burden hours & total annual cost	Cost per respondent ($)
	(1)	(2)	(1)*(2) = (3)	(4)	(3)*(4) = (5)	(5) ÷ (1)
New agreements (Reporting).	10 nuclear operators + 20 transmission entities.	1	30	1,080 $79,736	32,400 $2,392,092	$79,736
New Agreements (Record Keeping).	10 nuclear operators + 20 transmission entities.	1	30	108 $3,133	3,240 $93,992	3,133
Modifications to agreements (Reporting).	65 nuclear plants + 130 transmission entities [15].	2	390	66.67 $4,922	26,000 $1,919,581	9,844
Modifications to Agreements (Record Keeping).	65 nuclear plants + 130 transmission entities.	2	390	6.67 $193	2,600 $75,426	387
Total		[16] 420		64,240 $4,481,091		

FERC–725I, Mandatory Reliability Standards for the Northeast Power Coordinating Council

OMB Control No.: 1902–0258.

Abstract: This information collection relates to two FERC approved Protection and Control (PRC) regional Reliability Standards: PRC–002–NPCC–01—Disturbance Monitoring, and PRC–006–NPCC–1—Automatic Underfrequency Load-Shedding. These Northeast Power Coordinating Council (NPCC) regional Reliability Standards require respondents to provide recording capability necessary to monitor the response of the Bulk-Power System to system disturbances, including scheduled and unscheduled outages; requires each reliability coordinator to establish requirements for its area's dynamic disturbance recording needs; establishes disturbance data reporting requirements; and requires planning coordinators to incrementally gather data, run studies, and analyze study results to design or update the UFLS programs that are required in the regional Reliability Standard in addition to the requirements of the NERC Reliability Standard PRC–006–1.[17]

Reliability Standard PRC–002–NPCC–01 introduced several new mandatory and enforceable requirements for the applicable entities. However, when FERC approved this standard NPCC had (and continues to have) criteria [18] and published guidance [19] addressing similar requirements that the Reliability Standard made mandatory. Thus, it is usual and customary for affected entities within NPCC to create, maintain and store some of the same or equivalent information identified in Reliability Standard PRC–002–NPCC–01. Therefore, many of the requirements contained in PRC–002–NPCC–01 do not impose new burdens on the affected entities.[20]

Several requirements contained in regional Reliability Standard PRC–002–NPCC–01 were entirely new responsibilities for the applicable entities when the Commission approved the standard and each of these is listed in the estimated annual burden section below.

Information collection burden for Reliability Standard PRC–006–NPCC–01 is based on the time needed for planning coordinators and generator owners to incrementally gather data, run studies, and analyze study results to design or update the UFLS programs that are required in the regional Reliability Standard in addition to the requirements of the NERC Reliability Standard PRC–006–1.[21] There is also burden on the generator owners to maintain data.

Type of Respondent: Entities registered with the North American Electric Reliability Corporation (NERC) as Generator Owners, Transmission Owners, Reliability Coordinators and Planning Coordinators

Estimate of Annual Burden: The number of respondents is based on NERC's registry as of August 27, 2014. Entities registered for more than one applicable function type have been accounted for in the figures below. The Commission estimates the annual public reporting burden for the information collection as:

Information collection requirements	Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden hours & cost per response [22]	Total annual burden hours & total annual cost	Cost per Respondent ($)
	(1)	(2)	(1)*(2) = (3)	(4)	(3)*(4) = (5)	(5) ÷ (1)
R13: GO [23] and TO to have evidence it acquired and installed dynamic disturbance recorders and a mutually agreed upon implementation schedule with the RC (record retention)	1	1	1	10 $290	10 $290	$290

[16] The recordkeeping ''responses'' are considered to be part of (i.e. to be contained within the same quantity as) the Reporting responses leading to a total number of unique responses of 420 (390 + 30 = 420).

[17] The burden estimates for Reliability Standard PRC–006–1 are included in Order No. 763 (Final Rule in RM11–20) and covered in FERC–725A (OMB Control No. 1902–0244). OMB approved those requirements on 7/9/2012 (ICR Reference No. 201204–1902–001).

[18] Disturbance Monitoring Equipment Criteria (Aug. 2007), *available at https://www.npcc.org/Standards/Criteria/A-15.pdf* (Disturbance Monitoring Criteria).

[19] Guide for Application of Disturbance Recording Equipment (Sept. 2006), *available at https://www.npcc.org/Standards/Guides/B-26.pdf* (Application Guide).

[20] 5 CFR 1320.3(b)(2) (2011).

[21] The burden estimates for Reliability Standard PRC–006–1 are included in Order No. 763 (Final Rule in RM11–20) and currently covered in FERC–725A (OMB Control No. 1902–0244). OMB approved those requirements on 7/9/2012 (ICR Reference No. 201204–1902–001).

Information collection requirements	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1)*(2) = (3)	Average burden hours & cost per response [22] (4)	Total annual burden hours & total annual cost (3)*(4) = (5)	Cost per Respondent ($) (5) ÷ (1)
R14.5: GO and TO to have evidence of a maintenance and testing program for stand-alone disturbance monitoring equipment including monthly verification of active analog quantities	166	12	1,992	5 $305	9,960 $607,560	3,660
R14.7: GO and TO to record efforts to return failed units to service if it takes longer than 90 days [24]	33	1	33	10 $610	330 $20,130	610
R14.7: GO and TO record retention	33	1	33	10 $290	330 $9,570	290
R17: RC provide certain disturbance monitoring equipment data to the Regional Entity upon request	5	1	5	5 $305	25 $1,525	305
R17: RC record retention	5	1	5	10 $290	50 $1,450	290
Total		[25] 2,031		10,705 $640,525		

RELIABILITY STANDARD PRC–006–NPCC–01

Information collection requirements	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1)*(2) = (3)	Average burden hours & cost per response (4)	Total annual burden hours & total annual cost (3)*(4) = (5)	Cost per respondent ($) (5) ÷ (1)
PCs Design and document automatic UFLS program	6	1	6	8 $488	48 $2,928	$488
PCs update and maintain UFLS program database	6	1	6	16 $976	96 $5,856	976
GOs provide documentation and data to the planning coordinator	145	1	145	16 $976	2,320 $141,520	976
GOs: record retention	145	1	145	4 $116	580 $16,820	116
Total			302		3,044 $167,124	

Dated: September 30, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–24057 Filed 10–8–14; 8:45 am]

BILLING CODE 6717–01–P

[22] The estimates for cost per response are derived using the following formula: Average Burden Hours per Response * XX per Hour = Average Cost per Response. The hourly cost figure comes from the Bureau of Labor Statistics (*http://www.bls.gov/oes/current/naics2_22.htm* and *http://www.bls.gov/news.release/ecec.nr0.htm*). Record retention at a wage plus benefits cost of $29/hour and the remaining costs are based on the wage plus benefits for an electrical engineer at $61/hour.

[23] For purposes of these charts, generation owner is abbreviated to GO, transmission owner is abbreviated to TO, reliability coordinator is abbreviated to RC, and planning coordinator is abbreviated to PC.

[24] We estimate that an entity will experience a unit failure greater than 90 days once every five years. Therefore, 20 percent of NPCC's 166 generator owners and transmission owners will experience a unit failure of this duration each year.

[25] The recordkeeping ''responses'' for R14.7 and R17 are considered to be part of (i.e. to be contained within the same quantity as) the Reporting responses leading to a total number of unique responses of 420 (390 + 30 = 420).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice Of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG15–1–000.
Applicants: Binghamton BOP LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Binghamton BOP LLC.
Filed Date: 10/1/14.
Accession Number: 20141001–5478.
Comments Due: 5 p.m. ET 10/22/14.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER14–2022–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Supplement to May 22, 2014 Request for Waiver of Midcontinent Independent System Operator, Inc.
Filed Date: 10/1/14.
Accession Number: 20141001–5479.
Comments Due: 5 p.m. ET 10/22/14.

Docket Numbers: ER14–2565–001.
Applicants: Public Service Company of New Mexico.
Description: Compliance filing per 35: Supplement to OATT Order No. 792 Compliance Filing to be effective 8/1/2014.
Filed Date: 10/2/14.
Accession Number: 20141002–5148.
Comments Due: 5 p.m. ET 10/23/14.

Docket Numbers: ER14–2568–001.
Applicants: Arizona Public Service Company.
Description: Compliance filing per 35: Compliance with Order No. 792 to be effective 10/3/2014.
Filed Date: 10/2/14.
Accession Number: 20141002–5128.
Comments Due: 5 p.m. ET 10/23/14.

Docket Numbers: ER14–2659–001.
Applicants: NV Energy, Inc.
Description: Tariff Amendment per 35.17(b): OATT Revisions to Attachment N—Update to Pending filing to be effective 8/4/2014.
Filed Date: 10/2/14.
Accession Number: 20141002–5095.
Comments Due: 5 p.m. ET 10/23/14.

Docket Numbers: ER14–2871–001.
Applicants: Cameron Ridge, LLC.
Description: Tariff Amendment per 35.17(b): Supplement to MBR to be effective 11/11/2014.
Filed Date: 10/2/14.
Accession Number: 20141002–5123.
Comments Due: 5 p.m. ET 10/23/14.

Docket Numbers: ER15–10–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Tariff Amendments to Revise Interest Due On Certain Refunds and Other Payments to be effective 12/1/2014.
Filed Date: 10/1/14.
Accession Number: 20141001–5376.
Comments Due: 5 p.m. ET 10/22/14.

Docket Numbers: ER15–11–000.
Applicants: Nevada Power Company.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Rate Schedule No. 139 Interim Joint Dispatch Agreement Renewal to be effective 12/1/2014.
Filed Date: 10/1/14.
Accession Number: 20141001–5382.
Comments Due: 5 p.m. ET 10/22/14.

Docket Numbers: ER15–12–000.
Applicants: Arizona Public Service Company.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Modifications to Service Agreement No. 216 to be effective 9/19/2014.
Filed Date: 10/1/14.
Accession Number: 20141001–5402.
Comments Due: 5 p.m. ET 10/22/14.

Docket Numbers: ER15–13–000.
Applicants: Transource Wisconsin, LLC.
Description: Baseline eTariff Filing per 35.1: Transource Wisconsin, LLC 205 Filing to Establish an Incentive Formula Rate to be effective 12/1/2014.
Filed Date: 10/1/14.
Accession Number: 20141001–5444.
Comments Due: 5 p.m. ET 10/22/14.

Docket Numbers: ER15–14–000.
Applicants: Sierra Pacific Power Company.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Rate Schedule No. 63—Concurrence in NPC RS No. 139 Interim Jt. Dispatch Renew to be effective 12/1/2014.
Filed Date: 10/1/14.
Accession Number: 20141001–5447.
Comments Due: 5 p.m. ET 10/22/14.

Docket Numbers: ER15–15–000.
Applicants: California Independent System Operator Corporation.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): 2014–10–01_CommitmentCostEnhancements to be effective 12/1/2014.
Filed Date: 10/1/14.
Accession Number: 20141001–5452.
Comments Due: 5 p.m. ET 10/22/14.

Docket Numbers: ER15–16–000.
Applicants: Binghamton BOP LLC.
Description: Initial rate filing per 35.12 Binghamton BOP LLC Market-Based Rate Tariff to be effective 12/1/2014.
Filed Date: 10/1/14.
Accession Number: 20141001–5469.
Comments Due: 5 p.m. ET 10/22/14.

Docket Numbers: ER15–17–000.
Applicants: Westar Energy, Inc.
Description: Request for Cancellation of Rate Schedules and Service Agreements of Westar Energy, Inc.
Filed Date: 10/1/14.
Accession Number: 20141001–5473.
Comments Due: 5 p.m. ET 10/22/14.

Docket Numbers: ER15–18–000.
Applicants: Tampa Electric Company, TECO Energy, Inc.
Description: Petition of TECO Energy, Inc. and Tampa Electric Company for Waiver of Affiliate Transaction Pricing Rule.
Filed Date: 10/1/14.
Accession Number: 20141001–5480.
Comments Due: 5 p.m. ET 10/22/14.

Docket Numbers: ER15–19–000.
Applicants: NRG New Jersey Energy Sales LLC.
Description: Tariff Withdrawal per 35.15: Notice of Cancellation to be effective 10/3/2014.
Filed Date: 10/2/14.
Accession Number: 20141002–5076.
Comments Due: 5 p.m. ET 10/23/14.

Docket Numbers: ER15–20–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Revisions to Attachment AE—Re-Pricing Clarification to be effective 3/1/2014.
Filed Date: 10/2/14.
Accession Number: 20141002–5127.
Comments Due: 5 p.m. ET 10/23/14.

Docket Numbers: ER15–21–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Revisions Regarding Review and Reporting of Physical Withholding to be effective 3/1/2014.
Filed Date: 10/2/14.
Accession Number: 20141002–5144.
Comments Due: 5 p.m. ET 10/23/14.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES15–1–000.
Applicants: Oklahoma Gas and Electric Company.
Description: Application of Oklahoma Gas and Electric Company for Authority to Issue Short-Term Debt Securities.
Filed Date: 10/2/14.
Accession Number: 20141002–5027.
Comments Due: 5 p.m. ET 10/23/14.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH15–1–000.
Applicants: TECO Energy, Inc.

Description: TECO Energy, Inc. submits FERC 65–B Material Change in Facts of Waiver Notification.
Filed Date: 10/1/14.
Accession Number: 20141001–5481.
Comments Due: 5 p.m. ET 10/22/14.

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: October 2, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–24119 Filed 10–8–14; 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: ER09–1224–007.
Applicants: Entergy Operating Companies.
Description: Entergy Operating Companies Errata to September 15, 2014 Service Schedule MSS–3 Bandwidth Formula Comprehensive Recalculation.
Filed Date: 9/30/14.
Accession Number: 20140930–5355.
Comments Due: 5 p.m. ET 10/21/14.

Docket Numbers: ER10–3286–005; ER10–3299–004.
Applicants: Millennium Power Partners, L.P., New Athens Generating Company, LLC.
Description: Supplement to June 25, 2014 Triennial Market Power Report of Millennium Power Partners, L.P., et. al.
Filed Date: 9/30/14.
Accession Number: 20140930–5359.
Comments Due: 5 p.m. ET 10/21/14.

Docket Numbers: ER14–2321–001.
Applicants: Duke Energy Progress, Inc.
Description: Compliance filing per 35: Supplement to Southeast MBR Filing to be effective 3/1/2014.
Filed Date: 10/1/14.
Accession Number: 20141001–5153.
Comments Due: 5 p.m. ET 10/22/14.

Docket Numbers: ER14–2657–000.
Applicants: El Paso Electric Company.
Description: Supplement to August 14, 2014 El Paso Electric Company tariff filing.
Filed Date: 9/30/14.
Accession Number: 20140930–5345.
Comments Due: 5 p.m. ET 10/21/14.

Docket Numbers: ER14–2978–000.
Applicants: Coolidge Power LLC.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Revised Tariff Filing to be effective 10/1/2014.
Filed Date: 9/30/14.
Accession Number: 20140930–5322.
Comments Due: 5 p.m. ET 10/21/14.

Docket Numbers: ER14–2979–000.
Applicants: NV Energy, Inc.
Description: Compliance filing per 35: OATT Revisions to Schedules 5 and 6—Reserve Service to be effective 10/1/2014.
Filed Date: 9/30/14.
Accession Number: 20140930–5328.
Comments Due: 5 p.m. ET 10/21/14.

Docket Numbers: ER14–2980–000.
Applicants: New England Power Pool Participants Committee.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): October 2014 Membership Filing to be effective 9/1/2014.
Filed Date: 9/30/14.
Accession Number: 20140930–5335.
Comments Due: 5 p.m. ET 10/21/14.

Docket Numbers: ER14–2981–000.
Applicants: El Paso Electric Company.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): OATT Updates to Schedules 5 and 6 to be effective 10/1/2014.
Filed Date: 9/30/14.
Accession Number: 20140930–5336.
Comments Due: 5 p.m. ET 10/21/14.

Docket Numbers: ER14–2982–000.
Applicants: Millennium Power Partners, L.P.
Description: Compliance filing per 35: Change in Status Filing to be effective 10/1/2014.
Filed Date: 9/30/14.
Accession Number: 20140930–5337.
Comments Due: 5 p.m. ET 10/21/14.

Docket Numbers: ER14–2983–000.
Applicants: Idaho Power Company.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): First Revised BPA PF and OTEC NITSAs to be effective 10/1/2014.
Filed Date: 9/30/14.
Accession Number: 20140930–5339.
Comments Due: 5 p.m. ET 10/21/14.

Docket Numbers: ER14–2984–000.
Applicants: San Diego Gas & Electric Company.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): SDGE TO4 Formula Depreciation Rate Change to be effective 1/1/2015.
Filed Date: 9/30/14.
Accession Number: 20140930–5340.
Comments Due: 5 p.m. ET 10/21/14.

Docket Numbers: ER14–2985–000.
Applicants: Transource, LLC.
Description: Unopposed Request for Waiver of Part VI of the PJM Open Access Transmission Tariff to Allow the Conversion of Attachment SS Interconnection Requests to Attachment EE Upgrade Requests Without Loss of Queue Priority of Transource, LLC.
Filed Date: 9/30/14.
Accession Number: 20140930–5368.
Comments Due: 5 p.m. ET 10/21/14.

Docket Numbers: ER15–1–000.
Applicants: TransCanada Energy Sales Ltd.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): TransCanada Energy Sales—Revised Electric Tariff to be effective 10/2/2014.
Filed Date: 10/1/14.
Accession Number: 20141001–5091.
Comments Due: 5 p.m. ET 10/22/14.

Docket Numbers: ER15–2–000.
Applicants: Duke Energy Beckjord, LLC.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Supplement to Southeast MBR Filing to be effective 3/1/2014.
Filed Date: 10/1/14.
Accession Number: 20141001–5165.
Comments Due: 5 p.m. ET 10/22/14.

Docket Numbers: ER15–3–000.
Applicants: Commonwealth Edison Company, PJM Interconnection, L.L.C.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Modifications to Customers Identified to Attachment H–13 to be effective 10/13/2014.
Filed Date: 10/1/14.
Accession Number: 20141001–5166.
Comments Due: 5 p.m. ET 10/22/14.

Docket Numbers: ER15–4–000.
Applicants: Westar Energy, Inc.
Description: Tariff Withdrawal per 35.15: Notice of Cancellation of Rate Schedules to be effective 11/1/2013.
Filed Date: 10/1/14.
Accession Number: 20141001–5207.
Comments Due: 5 p.m. ET 10/22/14.

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: October 1, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–24106 Filed 10–8–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1325–002; ER14–2323–000; ER14–2321–000; ER14–2319–000; ER12–1958–002; ER12–1946–002; ER11–2080–002; ER10–1335–002; ER10–1333–002.

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: Second supplement to June 30, 2014 Triennial Market Power Analysis Update for the Southeast Region of Duke Energy Corporation MBR Sellers.

Filed Date: 10/1/14.

Accession Number: 20141001–5317.

Comments Due: 5 p.m. ET 10/22/14.

Docket Numbers: ER10–2564–003; ER10–2289–003; ER10–2600–003.

Applicants: UNS Electric, Inc., Tucson Electric Power Company, UniSource Energy Development Company.

Description: Response to Request [to Question No. 9] for Additional Information of Tucson Electric Power Company, *et al.*

Filed Date: 10/1/14.

Accession Number: 20141001–5261.

Comments Due: 5 p.m. ET 10/22/14.

Docket Numbers: ER11–2558–002; ER14–825–000; ER14–824–000; ER11–2557–002; ER11–2554–002; ER11–2552–002.

Applicants: Niagara Mohawk Power Corporation, New England Power Company, National Grid-Glenwood Energy Center, LLC, National Grid-Port Jefferson Energy Center, LLC, Massachusetts Electric Company, The Narragansett Electric Company.

Description: Supplement to December 24, 2013 Updated Triennial Market Power Analysis for Northeast Region of Niagara Mohawk Power Corporation, *et al.*

Filed Date: 9/30/14.

Accession Number: 20140930–5361.

Comments Due: 5 p.m. ET 10/14/14.

Docket Numbers: ER15–5–000.

Applicants: Wyoming Colorado Intertie, LLC.

Description: Compliance filing per 35: Order No. 792 Compliance Filing to be effective 10/2/2014.

Filed Date: 10/1/14.

Accession Number: 20141001–5250.

Comments Due: 5 p.m. ET 10/22/14.

Docket Numbers: ER15–6–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): 2014–10–01_Amend Schedule 33 Blackstart to be effective 12/1/2014.

Filed Date: 10/1/14.

Accession Number: 20141001–5260.

Comments Due: 5 p.m. ET 10/22/14.

Docket Numbers: ER15–7–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): 2014–10–1_Add City of Alexandria, Louisiana to Attachment FF–4 to be effective 12/1/2014.

Filed Date: 10/1/14.

Accession Number: 20141001–5265.

Comments Due: 5 p.m. ET 10/22/14.

Docket Numbers: ER15–8–000.

Applicants: New York Independent System Operator, Inc., Niagara Mohawk Power Corporation.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): TO 205 filing of LGIA No. 2161 between NMPC and Selkirk Cogen Partners to be effective 9/1/2014.

Filed Date: 10/1/14.

Accession Number: 20141001–5280.

Comments Due: 5 p.m. ET 10/22/14.

Docket Numbers: ER15–9–000.

Applicants: PacifiCorp.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): OATT Revised Schedule 4 to be effective 12/1/2014.

Filed Date: 10/1/14.

Accession Number: 20141001–5285.

Comments Due: 5 p.m. ET 10/22/14.

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: October 1, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–24107 Filed 10–8–14; 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: RP15–4–000.

Applicants: Trunkline Gas Company, LLC.

Description: § 4(d) rate filing per 154.204: Fuel Filing on 10–1–14 to be effective 11/1/2014.

Filed Date: 10/1/14.

Accession Number: 20141001–5073.

Comments Due: 5 p.m. ET 10/14/14.

Docket Numbers: RP15–5–000.

Applicants: Southwest Gas Storage Company.

Description: § 4(d) rate filing per 154.204: Fuel Filing on 10–1–2014 to be effective 11/1/2014.

Filed Date: 10/1/14.

Accession Number: 20141001–5076.

Comments Due: 5 p.m. ET 10/14/14.

Docket Numbers: RP15–6–000.

Applicants: Columbia Gas Transmission, LLC.

Description: § 4(d) rate filing per 154.204: Section 19 Revision—Penalties to be effective 11/1/2014.

Filed Date: 10/1/14.

Accession Number: 20141001–5083.

Comments Due: 5 p.m. ET 10/14/14.

Docket Numbers: RP15–7–000.

Applicants: Natural Gas Pipeline Company of America.

Description: § 4(d) rate filing per 154.204: Removal of Expired/Expiring Agreement to be effective 11/1/2014.

Filed Date: 10/1/14.
Accession Number: 20141001–5129.
Comments Due: 5 p.m. ET 10/14/14.

Docket Numbers: RP15–8–000.
Applicants: WBI Energy Transmission, Inc.
Description: Annual Report of Penalty Revenue Credits of WBI Energy Transmission, Inc.
Filed Date: 10/1/14.
Accession Number: 20141001–5133.
Comments Due: 5 p.m. ET 10/14/14.

Docket Numbers: RP15–9–000.
Applicants: Northern Natural Gas Company.
Description: § 4(d) rate filing per 154.204: 20141001 West Leg 2014 Expansion Negotiated Rate to be effective 11/1/2014.
Filed Date: 10/1/14.
Accession Number: 20141001–5136.
Comments Due: 5 p.m. ET 10/14/14.

Docket Numbers: RP15–10–000.
Applicants: Central New York Oil And Gas, L.L.C.
Description: § 4(d) rate filing per 154.204: Filing of Revised Nonconforming Agreement and Negotiated Rate Agreements to be effective 11/1/2014.
Filed Date: 10/1/14.
Accession Number: 20141001–5142.
Comments Due: 5 p.m. ET 10/14/14.

Docket Numbers: RP15–11–000.
Applicants: Panhandle Eastern Pipe Line Company, LP.
Description: § 4(d) rate filing per 154.204: Fuel Filing on 10–1–14 to be effective 11/1/2014.
Filed Date: 10/1/14.
Accession Number: 20141001–5145.
Comments Due: 5 p.m. ET 10/14/14.

Docket Numbers: RP15–12–000.
Applicants: Guardian Pipeline, L.L.C.
Description: § 4(d) rate filing per 154.204: Transporter's Use Gas Annual Filing 2014 to be effective 11/1/2014.
Filed Date: 10/1/14.
Accession Number: 20141001–5162.
Comments Due: 5 p.m. ET 10/14/14.

Docket Numbers: RP15–13–000.
Applicants: Natural Gas Pipeline Company of America.
Description: § 4(d) rate filing per 154.204: Negotiated Rate—J. Aron & Company to be effective 10/1/2014.
Filed Date: 10/1/14.
Accession Number: 20141001–5171.
Comments Due: 5 p.m. ET 10/14/14.

Docket Numbers: RP15–14–000.
Applicants: Texas Gas Transmission, LLC.
Description: § 4(d) rate filing per 154.403(d)(2): 2014 Fuel Tracker Filing to be effective 11/1/2014.
Filed Date: 10/1/14.
Accession Number: 20141001–5190.
Comments Due: 5 p.m. ET 10/14/14.

Docket Numbers: RP15–15–000.
Applicants: Gulf South Pipeline Company, LP.
Description: § 4(d) rate filing per 154.204: Cap Rel Neg Rate Agmt (JW 34690 to QWest 43161) to be effective 10/1/2014.
Filed Date: 10/1/14.
Accession Number: 20141001–5192.
Comments Due: 5 p.m. ET 10/14/14.

Docket Numbers: RP15–16–000.
Applicants: Gulf South Pipeline Company, LP.
Description: § 4(d) rate filing per 154.204: Cap Rel Neg Rate Agmt (QEP 37657 to Trans LA 43176) to be effective 10/1/2014.
Filed Date: 10/1/14.
Accession Number: 20141001–5193.
Comments Due: 5 p.m. ET 10/14/14.

Docket Numbers: RP15–17–000.
Applicants: Viking Gas Transmission Company.
Description: § 4(d) rate filing per 154.204: Bi-Directional Transportation to be effective 11/1/2014.
Filed Date: 10/1/14.
Accession Number: 20141001–5206.
Comments Due: 5 p.m. ET 10/14/14.

Docket Numbers: RP15–18–000.
Applicants: Transcontinental Gas Pipe Line Company.
Description: § 4(d) rate filing per 154.204: GT&C Section 19 DPE Provisions to be effective 11/1/2014.
Filed Date: 10/1/14.
Accession Number: 20141001–5208.
Comments Due: 5 p.m. ET 10/14/14.

Docket Numbers: RP15–19–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) rate filing per 154.204: TEAM 2014 In-Service Non-conforming Agreements to be effective 11/1/2014.
Filed Date: 10/1/14.
Accession Number: 20141001–5344.
Comments Due: 5 p.m. ET 10/14/14.

Docket Numbers: RP15–20–000.
Applicants: Texas Eastern Transmission, LP.
Description: Compliance filing per 154.203: TEAM 2014 Project In-Service NegRate Compliance—CP13–84 to be effective 11/1/2014.
Filed Date: 10/1/14.
Accession Number: 20141001–5350.
Comments Due: 5 p.m. ET 10/14/14.

Docket Numbers: RP15–21–000.
Applicants: Carolina Gas Transmission Corporation.
Description: § 4(d) rate filing per 154.204: 2014 FRQ & TDA Filing to be effective 11/1/2014.
Filed Date: 10/1/14.
Accession Number: 20141001–5358.
Comments Due: 5 p.m. ET 10/14/14.

Docket Numbers: RP15–22–000.
Applicants: Texas Eastern Transmission, LP.
Description: Compliance filing per 154.203: TEAM 2014 Project In-Service Recourse Rates Compliance—CP13–84 to be effective 11/1/2014.
Filed Date: 10/1/14.
Accession Number: 20141001–5370.
Comments Due: 5 p.m. ET 10/14/14.

Docket Numbers: RP15–23–000.
Applicants: Transwestern Pipeline Company, LLC.
Description: § 4(d) rate filing per 154.312: Transwestern Rate Case to be effective 11/1/2014.
Filed Date: 10/1/14.
Accession Number: 20141001–5448.
Comments Due: 5 p.m. ET 10/14/14.

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.

Filings in Existing Proceedings

Docket Numbers: RP13–526–003.
Applicants: Gulf South Pipeline Company, LP.
Description: Compliance filing per 154.203: Filing to Incorporate Approved Changes and Move Into Effect November 1, 2014 to be effective 11/1/2014.
Filed Date: 10/1/14.
Accession Number: 20141001–5089.
Comments Due: 5 p.m. ET 10/14/14.

Docket Numbers: RP13–526–004.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits tariff filing per 154.203: Correction to Compliance Filing to be effective 11/1/2014.
Filed Date: 10/1/14.
Accession Number: 20141001–5089.
Comments Due: 5 p.m. ET 10/14/14.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

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: October 2, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–24126 Filed 10–8–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER15–16–000]

Binghamton BOP LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of Binghamton BOP LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and *Procedure* (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is October 22, 2014.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 2, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–24108 Filed 10–8–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR14–42–000]

Dakota Access, LLC; Energy Transfer Crude Oil Company, LLC; Notice of Petition for Declaratory Order

Take notice that on September 26, 2014, pursuant to Rule 207(a)(2) of the Commission's Rules of Practices and Procedure, 18 CFR 385.207(a)(2)(2014), Dakota Access, LLC (Dakota Access) and Energy Transfer Crude Oil Company, LLC (ETCO, and together with Dakota Access, Petitioners) filed a petition for declaratory order seeking approval of the specified rate structures, terms of service, and prorationing methodology for the proposed Dakota Access pipeline project (the DAPL Project) and the proposed Energy Transfer Crude Oil pipeline project (the ETCO Project), (collectively, the Bakken Oil Projects), all as more fully explained in the petition.

Any person desiring to intervene or to protest in this proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.or* call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on October 24, 2014.

Dated: October 2, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–24105 Filed 10–8–14; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 24, 2014.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Augustin S. Hart, III, Rebecca S. Hart and Broadwater Partners LP, all of*

Oquawka, Illinois; Douglas S. Hart, Powell, Wyoming; the general partner of Broadwaters Partnership LP, Broadwaters, Inc., Cody, Wyoming; Kathryn Stuart Lansing, Lake Forest, Illinois; Douglas S. Hart, Powell, Wyoming; and Harriet Heather Hart, Bozeman, Montana; to retain voting shares of Western Illinois Bancshares, Inc., and thereby retain voting shares of Western Illinois Bank, both in Monmouth, Illinois.

B. Federal Reserve Bank of Minneapolis (Jacquelyn K. Brunmeier, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *John R. Von Holtum,* Minneapolis, Minnesota; to retain voting shares of Central Trust Company, Edina, Minnesota, and thereby indirectly retain voting shares of Central Bank and Trust, Lander, Wyoming, CenBank, Buffalo Lake, Minnesota, and VH Bancorporation, Inc., Edina, Minnesota, and its subsidiary Grand Marais State Bank, Grand Marais, Minnesota.

Board of Governors of the Federal Reserve System, October 6, 2014.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2014–24147 Filed 10–8–14; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-ScottRodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination—on the dates indicated—of the waiting period provided by law and the premerger notification rules. The listing for each transaction includes the transaction number and the parties to the transaction. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

EARLY TERMINATIONS GRANTED
SEPTEMBER 1, 2014 THRU SEPTEMBER 30, 2014

09/02/2014		
20141361	G	AK Steel Holding Corporation; Alexey Mordashov; AK Steel Holding Corporation.
20141362	G	Steel Dynamics, Inc.; Alexey Mordashov; Steel Dynamics, Inc.
20141362	G	Trian SPV VIII, L.P.; E.I. du Pont de Nemours and Company; Trian SPV VIII, L.P.
20141377	G	Trian Partners, L.P.; E.I. du Pont de Nemours & Company; Trian Partners, L.P.
20141378	G	Trian Star Trust; E.I. du Pont de Nemours & Company; Trian Star Trust.
20141411	G	ABRY Partners VII, L.P.: KORE Wireless Group Inc.; ABRY Partners VII, L.P.
20141439	G	FR XII Charlie AIV, L.P.; PDC Energy, Inc.: FR XII Charlie AIV, LP.
20141444	G	Wind Point Partners VII–A, L.P.; Caroline Hunt Trust Estate; Wind Point Partners VII–A, L.P.
20141446	G	Boat NP Newco, Inc.; Journal Communications, Inc.; Boat NP Newco, Inc.
20141447	G	The E.W. Scripps Company; Journal Communications, Inc.: The E.W. Scripps Company.
20141451	G	Tiptree Financial Partners, L.P.; Fortegra Financial Corporation; Tiptree Financial Partners, L.P.
20141454	G	One Equity Partners Secondary Fund, L.P.; JPMorgan Chase & Co.; One Equity Partners Secondary Fund, L.P.
20141458	G	FMI Associates, L.L.C.; Corsicana Bedding, Inc.; FMI Associates, L.L.C.
20141459	G	Caxton Global Investments Limited; Fortune Brands Home and Security, Inc.; Caxton Global Investments Limited.
20141461	G	Natural Resource Partners L.P.; Trilantic Capital Partners IV L.P.; Natural Resource Partners L.P.
20141471	G	Rhone Offshore Partners IV L.P.: Elizabeth Arden, Inc.; Rhone Offshore Partners IV L.P.
09/03/2014		
20141415	G	Thema Bravo Fund XI, L.P.; SailPoint Technologies, Inc.; Thoma Bravo Fund XI, L.P.
20141418	G	Liberty Interactive Corporation; FTD Companies, Inc.; Liberty Interactive Corporation.
20141419	G	FTD Companies, Inc.; Liberty Interactive Corporation: FTD Companies, Inc.
20141440	G	FR XII Charlie AIV, L.P.: Lime Rock Partners V.L.P.: FR XII Charlie AIV, L.P.
20141462	G	Telstra Corporation Limited; Ooyala, Inc.; Telstra Corporation Limited.
20141464	G	PetSmart, Inc.: Pet360, Inc.; PetSmart, Inc.
09/04/2014		
20141423	G	Adage Capital Partners, L.P.; HeartWare International, Inc. Adage Capital Partners, L.P.
20141452	G	Shire plc; AbbVie Inc.; Shire plc.
20141453	G	AbbVie Inc.; Shire plc; AbbVie Inc.
09/05/2014		
20141222	G	Level 3 Communications, Inc.; tw telecom inc. Level 3 Communications, Inc.
20141445	G	TA XI L.P.; Idera, Inc.: TA XI L.P.
09/08/2014		
20141448	G	Carl C. Icahn; Hertz Global Holdings, Inc.; Carl C. Icahn.
20141450	G	Post Holdings, Inc.; ABC Peanut Butter, LLC; Post Holdings. Inc.
20141470	G	Kainos Capital Partners. LP; Blue Point Capital Partners II, L.P.; Kainos Capital Partners, LP.

EARLY TERMINATIONS GRANTED—Continued
SEPTEMBER 1, 2014 THRU SEPTEMBER 30, 2014

20141473	G	Special Purchase Company, a to-be-formed Korean corporation; Hyundai Logistics Co., Ltd.; Special Purchase Company, a to-be-formed Korean corporation.
20141474	G	MedAssets, Inc.; Michael A. Sachs; MedAssets, Inc.
20141475	G	Ultra Petroleum Corp.; Royal Dutch Shell plc; Ultra Petroleum Corp.
20141478	G	Mercury New Holdco Inc.; Sinclair Broadcast Group, Inc.; Mercury New Holdco Inc.
20141479	G	Buckeye Partners, L.P.; Claude Dauphin; Buckeye Partners, L.P.
20141481	G	Connexus Credit Union; Endura Financial Federal Credit Union; Connexus Credit Union.
20141486	G	Khosla Ventures, II, LP; AliphCom; Khosla Ventures, II, LP.
20141489	G	John C. Malone; Liberty Global plc; John C. Malone.
20141491	G	WA. Baxters & Sons (Holdings) Limited; DDJ Capital Management, LLC; W.A. Baxters & Sons (Holdings) Limited.
20141497	G	dievini Hopp BioTech holding GmbH & Co. KG; LTS Lohmann Therapie-Systeme AG; dievini Hopp BioTech holding GmbH & Co. KG.
09/09/2014		
20141490	G	Oak Hill Capital Partners III, L.P. Maple Hill Holding Co Oak Hill Capital Partners III, L.P.
09/10/2014		
20141468	G	CCP IX LP No. 1 Vista Equity Partners Fund III, L.P.; CCP IX LP No. I.
09/11/2014		
20141466	G	John A. Thaler; The Madison Square Garden Company; John A. Thaler.
20141467	G	JAT Capital Offshore Fund, Ltd.; The Madison Square Garden Company: JAT Capital Offshore Fund, Ltd.
20141480	G	Republic Services, Inc.; Rainbow Disposal Co., Inc.; Republic Services, Inc.
09/12/2014		
20141421	G	NRG Energy, Inc.; Goal Zero Holdings, LLC NRG Energy, Inc.
20141424	G	Carl C. Icahn; Gannett Co., Inc.; Carl C. Icahn.
20141477	G	Senator Global Opportunity Offshore Fund Ltd.; Salix Pharmaceuticals, Ltd.; Senator Global Opportunity Offshore Fund Ltd.
20141498	G	Amazon.com, Inc. Twitch Interactive, Inc.; Amazon.com. Inc.
20141499	G	ERM Worldwide Limited; Stone Arch Capital, L.P.; ERM Worldwide Limited.
20141502	G	Audax Private Equity Fund IV, L.P.; Sentinel Capital Partners IV, L.P. Audax Private Equity Fund IV, L.P.
20141508	G	Genstar Capital Partners VI, L.P.; Archibald Cox, Jr.; Genstar Capital Partners VI, L.P.
20141511	G	Genstar Capital Partners VI, L.P.; Construction Software Technologies, Inc.; Genstar Capital Partners VI, L.P.
09/15/2014		
20141517	G	Mitsui & Co., Ltd El. du Pont de Nemours & Company: Mitsui & Co., Ltd.
09/16/2014		
20141501	G	Froedtert Health, Inc.; Ascension Health Alliance; Froedtert Health, Inc.
20141503	G	Skilled HealthCare Group, Inc; FC-GEN Operations Investment, LLC; Skilled HealthCare Group, Inc.
20141505	G	Blackbaud, Inc.; VFF I AIV I, L.P.; Blackbaud, Inc.
20141509	G	NRG Energy, Inc.; Pure Energies Group Inc.; NRG Energy, Inc.
20141510	G	Fidelity National Information Services, Inc.; Clear2Pay N.V.; Fidelity National Information Services, Inc.
20141515	G	Clearlake Capital Partners III, LP: Gores Capital Partners III. L.P. Clearlalce Capital Partners III, LP.
20141518	G	The Veritas Capital Fund IV. L.P.; BT Software Holding Group, Inc.; The Veritas Capital Fund IV, L.P.
20141522	G	Quad-C Partners VIII, L.P.; WaHoBo, LLC Quad-C Partners VIII, L.P.
09/17/2014		
20141438	G	Cemer Corporation; Siemens Aktiengesellschaft; Cemer Corporation.
20141469	G	John C. Malone; Discovery Communications, Inc. John C. Malone.
20141504	G	Amphenol Corporation; The Resolute Fund II, L.P.; Amphenol Corporation.
20141514	G	AVG Technologies NV.; WaveMarket, Inc.; AVG Technologies N.V.
09/18/2014		
20141495	G	Pershing Square Holdings, Ltd. Air Products and Chemicals. Inc.; Pershing Square Holdings, Ltd.
09/19/2014		
20141525	G	AutoZone. Inc.; Dr. Karl Gaertner; AutoZone, Inc.
20141531	G	Loews Corporation; Chevron Corporation Loews Corporation.
20141532	G	Crown Finance Foundation: Windjammer Senior Equity Fund III. L.P. Crown Finance Foundation.
20141533	G	Michael S. Smith: ZHA FLNG, LLC: Michael S. Smith.
20141534	G	Lexington Capital Partners VIII, L.P.: Citigroup Inc.; Lexington Capital Partners VIII, L.P.
20141539	G	Sinclair Broadcast Group, Inc.; James E. Rogers Trust; Sinclair Broadcast Group, Inc.
20141540	G	Calpine Corporation; Exelon Corporation; Calpine Corporation.

EARLY TERMINATIONS GRANTED—Continued
SEPTEMBER 1, 2014 THRU SEPTEMBER 30, 2014

20141542	G	Arthur T. Demoulas Demoulas Super Markets, Inc.: Arthur T. Demoulas.
20141543	G	Frances Irene Demoulas; Demoulas Super Markets, Inc.: Frances Irene Demoulas.
20141545	G	TAD Family Trust Demoulas Super Markets, Inc.; TAD Family Trust.
20141546	G	Caren L. Demoulas Demoulas Super Markets, Inc.; Caren L. Demoulas.
20141547	G	Glorianne Demoulas Demoulas Super Markets, Inc.; Glorianne Demoulas.
20141552	G	Berkshire Fund VIII, L.P.; Access Information Holdings, LLC; Berkshire Fund VIII, L.P.
20141556	G	3i Group plc; Audax Private Equity Fund II, L.P.; 3i Group plc.
20141562	G	Concordia Healthcare Corp.; Eisai Co., Ltd.; Concordia Healthcare Corp.
20141563	G	Hicks, Muse, Tate & Furst Equity Fund III, L.P.; Mercury New Holdco Inc. Hicks, Muse, Tate & Furst Equity Fund III, L.P.
20141564	G	Hicks, Muse, Tate & Furst Equity Fund IV, L.P.Mercury New Holdco Inc. Hicks, Muse, Tate & Furst Equity Fund IV, L.P.
09/22/2014		
20141472	G	JLL Patheon Co-Investment Fund, L.P. (Cayman); Gallus BioPharmaceuticals, LLC JLL Patheon Co. Investment Fund, L.P. (Cayman).
20141519	G	1–800–FLOWERS.COM, Inc.; Harry & David Holdings, Inc. 1–800–FLOWERS.COM, Inc.
09/23/2014		
20141506	G	Behnnan Capital IV, L.P.; Nautic Partners VI, LP.; Behrman Capital IV, L.P.
20141512	G	Court Square Capital Partners III, L.P.; Pike Corporation; Court Square Capital Partners III, L.P.
20141561	G	Intercontinental Exchange, Inc.; Super Derivatives. Inc.; Intercontinental Exchange, Inc.
09/24/2014		
20141496	G	Pershing Square Holdings, Ltd.; Canadian Pacific Railway Limited; Pershing Square Holdings, Ltd.
20141572	G	Alliance Data Systems Corporation; Conversant, Inc.; Alliance Data Systems Corporation.
20141570	G	Solvay, S.A. Chevron Corporation; Solvay, S A.
20141571	G	Solvay S.A.; Phillips 66: Solvay S.A.
20141577	G	Murata Manufacturing Co., Ltd. Peregrine Semiconductor Corporation; Murata Manufacturing Co., Ltd.
20141581	G	3G Special Situations Fund II, L.P.; Tim Hortons Inc.; 3G Special Situations Fund II, L.P.
20141582	G	Tim Hortons Inc.: 3G Special Situations Fund II, L.P.; Tim Hortons Inc.
20141583	G	United Stationers Inc.; Mr. Richard Bell; United Stationers Inc.
20141586	G	KKR North America Fund XI, L.P.; Flexpoint Fund II. L.P.; KKR North America Fund XI, L.P.
20141595	G	Terrence M. Pegula; Ralph C. Wilson, Jr. Irrevocable Trust UAD 3/25114; Terrence M. Pegula.
20141601	G	Gryphon Partners 3.5, L.P.; Orchid Underwriters Agency, Inc. Gryphon Partners 3.5, L.P.
20141602	G	Global Cash Access Holdings, Inc. Multimedia Games Holding Company, Inc.; Global Cash Access Holdings, Inc.
20141603	G	EnerVest Energy Institutional Fund XIII–C, L.P.; Loews Corporation EnerVest Energy Institutional Fund XIII–C, L.P.
20141604	G	Roger S. Penske; ATC Holder), LLC: Roger S. Penske.
20141605	G	Sentinel Capital Partners V. L.P.; Huntsman Gay Capital Partners Fund, L.P.Sentinel Capital Partners V, L.P.
20141608	G	WSP Global Inc.; Balfour Beatty plc; WSP Global Inc.
20141611	G	Hellman & Friedman Capital Partners VII, L.P.; Berkshire Fund VII, L.P.; Hellman & Friedman Capital Partners VII. L.P.
20141613	G	GI Partners Fund IV LP.; KKBS Group Holdings LLC GI Partners Fund IV LR.
09/30/2014		
20141589	G	EQT V (No. 1) Limited Partnership; Atwood Holdings LLC; EQT V (No. I) Limited Partnership.
20141616	G	Nucor Corporation; ArcelorMittal; Nucor Corporation.

FOR FURTHER INFORMATION CONTACT: Renee Chapman, Contact Representative, or Theresa Kingsberry, Legal Assistant, Federal Trade Commission, Premerger Notification, Office Bureau of Competition, Room Cc-5301, Washington, DC 20024, (202) 326–3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2014–24014 Filed 10–8–14; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2002–D–0268 (formerly Docket No. 2002D–0005)]

International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH GL30); Guidance for Industry on Pharmacovigilance of Veterinary Medicinal Products: Controlled List of Terms; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry (GFI #143) entitled ''Guidance for Industry on Pharmacovigilance of Veterinary Medicinal Products: Controlled List of Terms'' (VICH GL30). This guidance has been developed for veterinary use by the International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH). The purpose of this VICH guidance document is to describe the controlled lists of terms critical to completing the controlled data fields as identified in the guidance entitled ''Data Elements for Submission of Veterinary Adverse Event Reports to the Center for Veterinary Medicine'' (GFI #188), available on the FDA Web site at: *http://www.fda.gov/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/ucm042450.htm.*

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Margarita Brown, Center for Veterinary Medicine (HFV–240), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9048, *CVMAESupport@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote the international harmonization of regulatory requirements. FDA has participated in efforts to enhance harmonization and has expressed its commitment to seek scientifically based, harmonized technical procedures for the development of pharmaceutical products. One of the goals of harmonization is to identify, and then reduce, differences in technical requirements for drug development among regulatory agencies in different countries.

FDA has actively participated in the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use for several years to develop harmonized technical requirements for the approval of human pharmaceutical and biological products among the European Union, Japan, and the United States. The VICH is a parallel initiative for veterinary medicinal products. The VICH is concerned with developing harmonized technical requirements for the approval of veterinary medicinal products in the European Union, Japan, and the United States, and includes input from both regulatory and industry representatives.

The VICH Steering Committee is composed of member representatives from the European Commission, European Medicines Evaluation Agency, European Federation of Animal Health, Committee on Veterinary Medicinal Products, FDA, the U.S. Department of Agriculture, the Animal Health Institute, the Japanese Veterinary Pharmaceutical Association, the Japanese Association of Veterinary Biologics, and the Japanese Ministry of Agriculture, Forestry and Fisheries.

Six observers are eligible to participate in the VICH Steering Committee: One representative from the governments of Australia/New Zealand, one representative from the industry in Australia/New Zealand, one representative from the government of Canada, one representative from the industry of Canada, one representative from the government of South Africa, and one representative from the industry of South Africa. The VICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation for Animal Health (IFAH). An IFAH representative also participates in the VICH Steering Committee meetings.

II. Guidance on Controlled Lists of Terms

In the **Federal Register** of June 21, 2007 (72 FR 34261), FDA published a notice of availability for a revised draft guidance entitled ''Revised Draft Guidance for Industry on Pharmacovigilance of Veterinary Medicinal Products: Controlled List of Terms'' (VICH GL30). Interested persons were given until July 23, 2007, to comment on the revised draft guidance. FDA received a few comments on the draft revised guidance, and those comments, as well as those received by other VICH member regulatory agencies, were considered as the guidance was finalized. The guidance announced in this document finalizes the draft revised guidance dated June 20, 2007. The final guidance is a product of the Pharmacovigilance Expert Working Group of the VICH.

This VICH guidance document describes the controlled lists of terms critical to completing the controlled data fields as indicated in FDA's ''Guidance for Industry, Data Elements for Submission of Veterinary Adverse Event Reports to the Center for Veterinary Medicine'' (GFI #188). To assess the safety and efficacy of veterinary medicinal products, the use of controlled lists of terms is important in order to assure consistency, as well as to provide for comparison between products and across product classes. This guidance also includes an appropriate maintenance procedure to keep the lists of terms up to date.

III. Significance of Guidance

This guidance, developed under the VICH process, has been revised to conform to FDA's good guidance practices regulation (21 CFR 10.115). For example, the document has been designated ''guidance'' rather than ''guideline.'' In addition, guidance documents must not include mandatory language such as ''shall,'' ''must,'' ''require,'' or ''requirement,'' unless FDA is using these words to describe a statutory or regulatory requirement.

The guidance represents the Agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of applicable statutes and regulations.

IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in this guidance have been approved under OMB control numbers 0910–0284 and 0910–0645.

V. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

VI. Electronic Access

Persons with access to the Internet may obtain the guidance at either *http://www.fda.gov/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/default.htm* or *http://www.regulations.gov.*

Dated: October 6, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–24152 Filed 10–8–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0001]

Science Advisory Board to the National Center for Toxicological Research Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Science Advisory Board (SAB) to the National Center for Toxicological Research (NCTR).

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 November 6, 2014, from 8:15 a.m. to 4:15 p.m. and on November 7, 2014, from 8 a.m. to 2 p.m.

Location: NCTR SAB, 3900 NCTR Rd., Conference Room B–12, Jefferson, AR 72079.

Contact Person: Donna Mendrick, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 2208, Silver Spring, MD 20993–0002, 301–796–8892, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: On November 6, 2014, the NCTR Director will welcome the participants and provide a Center-wide update on scientific initiatives and accomplishments during the past year. The SAB will be presented with an overview of the Division of Microbiology Subcommittee and the Subcommittee Site Visit Report. Following the public session, the SAB will hear an update from each of NCTR's research Divisions, the Office of Science Coordination, followed by an update on NCTR's Global Interactions.

On November 7, 2014, the Office of the Chief Scientist will update the SAB on their research needs, and discuss opportunities for collaboration to help address these needs, followed by a report from the National Toxicology Program of the National Institutes of Environmental Health Sciences on current and future collaboration.

The Center for Biological Evaluation and Research, the Center for Drug Evaluation and Research, the Center for Devices and Radiological Health, the Center for Veterinary Medicine, the Center for Tobacco Products, the Office of Regulatory Affairs, and the Center for Food Safety and Applied Nutrition will each briefly discuss their Center-specific research strategic needs.

Following an open discussion of all the information presented, the open session of the meeting will close so that SAB members can discuss personnel issues at NCTR.

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 30, 2014. Oral presentations from the public will be scheduled between approximately 12 noon to 1 p.m. on November 6, 2014. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 22, 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 October 23, 2014.

Closed Committee Deliberations: On November 7, 2014, from 12 noon to 2 p.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). This portion of the meeting will be closed to permit discussion of information concerning individuals associated with the research programs at NCTR.

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 Donna

Mendrick 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).

Date: September 30, 2014.

Jill Hartzler Warner,

Associate Commissioner for Special Medical Programs.

[FR Doc. 2014–24039 Filed 10–8–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0001]

Oncologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Oncologic 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 November 6, 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: Caleb Briggs, 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, email: *ODAC@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: During the morning session, the committee will discuss new drug application (NDA) 205353, panobinostat capsules, application submitted by Novartis Pharmaceuticals Corporation. The proposed indication (use) for this product is in combination with bortezomib and dexamethasone, for the treatment of patients with multiple myeloma who have received at least one prior therapy.

During the afternoon session, the committee will discuss NDA 206317, ferric pyrophosphate solution, for administration via hemodialysis dialysate, application submitted by Rockwell Medical, Inc. The proposed indications (uses) for this product are for the treatment of iron loss or iron deficiency to maintain hemoglobin in adult patients with hemodialysis-dependent stage 5 chronic kidney disease and to reduce the prescribed dose of erythropoiesis stimulating agent required to maintain desired hemoglobin levels.

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 23, 2014. Oral presentations from the public will be scheduled between approximately 10:30 a.m. to 11 a.m., and 3:30 p.m. to 4 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 October 15, 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 October 16, 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 Caleb Briggs 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).

September 30, 2014.

Jill Hartzler Warner,

Associate Commissioner for Special Medical Programs.

[FR Doc. 2014–24038 Filed 10–8–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0394]

Request for Nominations for Voting Members on a Public Advisory Committee; Tobacco Products Scientific Advisory Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for voting members to serve on the Tobacco Products Scientific Advisory Committee, Office of Science, Center for Tobacco Products.

FDA seeks to include the views of women and men, members of all racial and ethnic groups, and individuals with and without disabilities on its advisory committees and, therefore, encourages nominations of appropriately qualified candidates from these groups.

DATES: Nominations received on or before December 8, 2014 will be given first consideration for membership on the Tobacco Products Scientific Advisory Committee. Nominations received after December 8, 2014 will be considered for nomination to the committee as later vacancies occur.

ADDRESSES: All nominations for membership should be submitted electronically by logging into the FDA Advisory Committee Membership Nomination Portal: *https://www.accessdata.fda.gov/scripts/FACTRSPortal/FACTRS/index.cfm,* by mail to Advisory Committee Oversight and Management Staff, Food and Drug Administration 10903 New Hampshire Ave., Bldg. 32, rm. 5103, Silver Spring, MD 20993–0002, or by FAX to 301–847–8640.

Information about becoming a member on an FDA advisory committee can also be obtained by visiting FDA's Web site at: *http://www.fda.gov/AdvisoryCommittees/default.htm.*

FOR FURTHER INFORMATION CONTACT: *Regarding all nomination questions for membership, the primary contact is:* Caryn Cohen, Office of Science, Center for Tobacco Products, Center for Tobacco Products Document Control Center, Food and Drug Administration, 10903 New Hampshire Avenue, Bldg. 71, rm. G335, Silver Spring, MD 20993–0002, 1–877–287–1373 (choose Option 5), FAX: 240–276–3655, email: *TPSAC@fda.hhs.gov.:*

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for voting members on the Tobacco Products Scientific Advisory Committee.

I. General Description of the Committee Duties

The Tobacco Products Scientific Advisory Committee (the Committee) advises the Commissioner of Food and Drugs (the Commissioner) or designee in discharging responsibilities related to the regulation of tobacco products. The Committee reviews and evaluates safety, dependence, and health issues relating to tobacco products and provides appropriate advice, information, and recommendations to the Commissioner.

II. Criteria for Voting Members

The Committee consists of 12 members including the Chair. Members and the Chair are selected by the Commissioner or designee from among individuals knowledgeable in the fields of medicine, medical ethics, science, or technology involving the manufacture, evaluation, or use of tobacco products. Members are invited to serve for overlapping terms of up to 4 years. Almost all non-Federal members of this committee serve as Special Government Employees. The Committee includes nine technically qualified voting members, selected by the Commissioner or designee. The nine voting members include seven members who are physicians, dentists, scientists, or health care professionals practicing in the area of oncology, pulmonology, cardiology, toxicology, pharmacology, addiction, or any other relevant specialty. The nine voting members also include one member who is an officer or employee of a state or local government or of the Federal Government, and one member who is a representative of the general public.

In addition to the voting members, the Committee includes three nonvoting members who are identified with industry interests. These members include one representative of the interests of the tobacco manufacturing industry, one representative of the interests of tobacco growers, and one representative of the interests of the small business tobacco manufacturing industry, which position may be filled on a rotating, sequential basis by representatives of different small business tobacco manufacturers based on areas of expertise relevant to the topics being considered by the Committee.

III. Nomination Procedures

Any interested person may nominate one or more qualified individuals for membership on the Committee. Self-nominations are also accepted. Nominations must include a current, complete résumé or curriculum vitae for each nominee, including current business address and/or home address, telephone number, and email address if available. Nominations must also specify the advisory committee for which the nominee is recommended. Nominations must also acknowledge that the nominee is aware of the nomination unless self-nominated. FDA will ask potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflicts of interest.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: October 3, 2014.

Jill Hartzler Warner,

Associate Commissioner for Special Medical Programs.

[FR Doc. 2014–24074 Filed 10–8–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Policy on Conferring With Urban Indian Organizations; Correction

AGENCY: Indian Health Service, HHS.

ACTION: Notice; correction.

SUMMARY: The Indian Health Service is issuing this Notice to correct the effective date from October 29, 2014 to September 22, 2014 for the final Policy for Conferring with Urban Indian Organizations. The notice published at 79 FR 58359, September 29, 2014.

FOR FURTHER INFORMATION CONTACT: Office of Management Services, Management Policy and Internal Control Staff, Indian Health Service, 801 Thompson Avenue, Suite 625A, Rockville, MD 20852, Telephone (301) 443–2650. (This is not a toll-free number.)

Correction

In the **Federal Register** of September 29, 2014, in FR Doc. 2014–23005, on page 58359, in the third column, following **DATES** the correct date should read as follows:

This Policy is effective September 22, 2014.

Dated: October 3, 2014.

Yvette Roubideaux,

Acting Director, Indian Health Service.

[FR Doc. 2014–24154 Filed 10–8–14; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Time Sensitive Obesity Policy Reviews.

Date: October 23, 2014.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michele L. Barnard, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–8898, *barnardm@extra.niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: October 1, 2014.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–24058 Filed 10–8–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Arthritis and Musculoskeletal and Skin Diseases Initial Review Group; Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee.

Date: October 30–31, 2014.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Helen Lin, Ph.D., Scientific Review Officer, NIH/NIAMS/RB, 6701 Democracy Blvd., Suite 800, Plaza One, Bethesda, MD 20817, 301–594–4952, *linh1@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS).

Dated: October 3, 2014.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–24064 Filed 10–8–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: November 5, 2014.

Time: 10:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Peter Zelazowski, Ph.D., Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Rm. 5B01, Bethesda, MD 20892–7510, 301–435–6902, *peter.zelazowski@nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; ''Shoulder Pathology''.

Date: November 7, 2014.

Time: 2:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Joanna Kubler-Kielb, Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892–7510, 301–435–6916, *kielbj@mail.nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; In-vivo methods for assessing placental development and function.

Date: November 12, 2014.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, Ph.D., Scientific Review Administrator, Scientific Review Branch, National Institute of Child Health and Human Development, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892–9304, (301) 435–6680, *skandasa@mail.nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Educational Programs.

Date: November 14, 2014.

Time: 8:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Washington, 1515 Rhode Island Ave NW., Washington, DC 20005.

Contact Person: Carla T. Walls, Ph.D., Scientific Review Administrator, Scientific Review Branch, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–435–6898, *wallsc@mail.nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: November 20–21, 2014.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Cathy J. Wedeen, Ph.D., Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, DHHS, 6100 Executive Blvd., Room 5B01–G, Bethesda, MD 20892, 301–435–6878, *wedeenc@mail.nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; ''Mouse Model of Dyslexia Risk Genes''.

Date: November 21, 2014.

Time: 2:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Rita Anand, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd. Room 5B01, Bethesda, MD 20892, (301) 496–1487, *anandr@mail.nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; ''Children Imaging Program Project''.

Date: November 25, 2014.

Time: 12:30 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Joanna Kubler-Kielb, Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892–7510, 301–435–6916, *kielbj@mail.nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: December 5, 2014.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Peter Zelazowski, Ph.D., Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Rm. 5B01, Bethesda, MD 20892–7510, 301–435–6902, *peter.zelazowski@nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Human Structural Birth Defects.

Date: December 11, 2014.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Sherry L Dupere, Ph.D., Chief, Scientific Review Branch, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892–7510, 301–451–3415, *duperes@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 3, 2014.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–24063 Filed 10–8–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; Quality Assessment Support.

Date: October 30, 2014.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute of Environmental Health Sciences, Keystone Building, Room K–3118, 530 Davis Drive, Research Triangle Park, NC 27709 (Telephone Conference Call).

Contact Person: RoseAnne M McGee, Associate Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–0752, *mcgee1@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: October 3, 2014.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–24060 Filed 10–8–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; NIBIB 2015–01 R13 Review.

Date: November 25, 2014.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, Suite 920, 6707 Democracy Boulevard, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Ruixia Zhou, Ph.D., Scientific Review Officer, 6707 Democracy Boulevard, Suite 957, Bethesda, MD 20892, 301–496–4773, *zhour@mail.nih.gov.*

Dated: October 2, 2014.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–24061 Filed 10–8–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Multidisciplinary Studies of HIV/AIDS and Aging.
Date: October 29, 2014.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.
Contact Person: Robert Freund, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7852, Bethesda, MD 20892, 301–435–1050, *freundr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–13–080: Accelerating the Pace of Drug Abuse Research Using Existing Data.
Date: October 31, 2014.
Time: 10:00 a.m. to 1:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: George Vogler, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3140, MSC 7770, Bethesda, MD 20892, (301) 237–2693, *voglergp@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Improvement of Animal Models for Stem Cell Based Regenerative Medicine.
Date: November 3–4, 2014.
Time: 8:00 a.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Jonathan Arias, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7840, Bethesda, MD 20892, 301–435–2406, *ariasj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Neurological, Aging and Musculoskeletal Epidemiology.
Date: November 3, 2014.
Time: 1:00 p.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: George Vogler, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3140, MSC 7770, Bethesda, MD 20892, (301) 237–2693, *voglergp@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; AREA Grant Review.
Date: November 3, 2014.
Time: 2:30 p.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Michael M. Sveda, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, 301–435–3565, *svedam@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflicts: Hepatobiliary Pathophysiology and Pharmacology.
Date: November 4, 2014.
Time: 1:00 p.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Patricia Greenwel, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, 301–435–1169, *greenwep@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Pulmonary fibrosis, lung injury, and lung development.
Date: November 5–6, 2014.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Bradley Nuss, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC7814, Bethesda, MD 20892, 301–451–8754, *nussb@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS Clinical Studies and Epidemiology Study Section.
Date: November 5, 2014.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: The St. Regis Washington DC, 923 16th Street NW., Washington, DC 20006.
Contact Person: Hilary D Sigmon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, (301) 357–9236, *sigmonh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Oncological Sciences.
Date: November 6–7, 2014.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Ola Mae Zack Howard, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Room 4192, MSC 7806, Bethesda, MD 20892, 301–451–4467, *howardz@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cell, Computational, and Molecular Biology.
Date: November 6, 2014.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Doubletree Hotel Bethesda (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Maria DeBernardi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7892, Bethesda, MD 20892, 301–435–1355, *debernardima@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Behavioral Neuroscience.
Date: November 6–7, 2014.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hotel Palomar, 2121 P Street NW., Washington, DC 20037.
Contact Person: Kristin Kramer, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5205, MSC 7846, Bethesda, MD 20892, (301) 437–0911, *kramerkm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cardiovascular Sciences.
Date: November 6–7, 2014.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Margaret Chandler, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7814, Bethesda, MD 20892, (301) 435–1743, *margaret.chandler@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Genes, Genomes and Genetics.
Date: November 6–7, 2014.
Time: 8:30 a.m. to 1:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.
Contact Person: Marie-Jose Belanger, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5181, MSC 7804, Bethesda, MD 20892, *belangerm@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 3, 2014.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–24059 Filed 10–8–14; 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: Submission for OMB Review; Comment Request

Periodically, SAMHSA will publish a summary of information collection requests under the Office of Management and Budget (OMB) review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: Identifying Core Competencies of Peer Workers in Behavioral Health Services (Behavioral Health Services) —NEW

SAMHSA's Center for Mental Health Services' project, Bringing Recovery Supports to Scale Technical Assistance Center Strategy (BRSS TACS) is requesting OMB's approval for a data collection project entitled, ''Identifying Core Competencies of Peer Workers in Behavioral Health Services.'' The BRSS TACS team intends to use two instruments to collect original data to inform the ongoing development of core competencies for peer workers in behavioral health care services. These instruments are:

- Core Competencies Survey with Peer Workers
- Telephone Interview of Peer Workers

The primary purpose for this information is to appraise the importance of specific competencies to the work of peer workers who are currently employed in behavioral health settings. The Core Competencies Survey will collect peer workers' ratings of the importance of different competencies to their work. The Telephone Interview of Peer Workers will collect peer workers' experiences with and opinions about the competencies on the survey. They will also be asked how they might use the competencies in their work. The Core Competencies Survey and the Telephone Interview are seen as critical to the development of core competencies for peer workers because they integrate the perspective of people who are currently employed as peer workers in the behavioral health care workforce and have been judged as competent by another colleague.

While peer workers have become critical components of recovery-oriented systems, paid peer positions and roles are relatively new additions to the behavioral health workforce. There are basic questions about how to define these roles. There are additional uncertainties about how best to prepare people in recovery for the role of peer worker and how to supervise and evaluate the job performance of peer workers. Developing a set of core competencies is an important step in responding to these questions and may be a valuable activity in expanding peer roles in behavioral health.

Although training programs for peer workers in the behavioral health system have existed for over a decade, there have been no attempts to standardize the content or the models of training. To date, no national consensus defines standards for peer worker training programs. Training programs differ in length, ranging from 30 to 105 hours of face-to-face training and vary widely in the knowledge and skills that they teach trainees (SAMHSA, 2012).

The Core Competency Project will describe the foundational knowledge, skills, and attitudes required by peer workers to perform their roles in a wide variety of behavioral health programs and services. Peer-provided recovery support services typically involve providing social support, linking people to community resources, assisting with decision-making activities, and a host of educational and recreational activities (CSAT, 2009; SAMHSA, 2012). In addition, peer workers facilitate educational and support groups and advocate for service improvements. SAMHSA defines peer-provided recovery support as, ''a set of non-clinical, peer-based activities that engage, educate and support an individual successfully to make life changes necessary to recover from disabling mental illness and/or substance use disorder conditions'' (CSAT, 2009). While some peer workers are performing advanced or specialized competencies within the behavioral health field, the core competencies described will include the foundational competencies required by all peer workers working in a variety of environments and with a diversity of people.

It is critical to communicate to the behavioral health field and behavioral health authorities about the foundational knowledge, skills, and attitudes needed by peer workers. Because of the anticipated continued demand for peers in the behavioral health workforce, SAMHSA has prioritized the development of peer-delivered recovery support services across mental health and substance use disorder services. In an effort to deliver services of uniformly high quality, the core competencies of peer workers will be described so that states and other credentialing bodies will be able to establish uniform standards for peer workers.

In addition, clear descriptions of core competencies will assist behavioral health authorities with their strategic workforce planning efforts. The description of core competencies will inform services and peer workforce training programs of the basic requirements needed by peer workers in behavioral health services. The competencies will provide guidance to behavioral health programs when writing job descriptions and performances evaluations. In many communities, job descriptions lack uniformity and specificity and do not reflect accurately the focus of peer-provided recovery support services.

The results of these surveys will contribute to the creation of competency descriptions that will provide guidance to organizations, programs, states, and regions to strengthen their peer workforce development efforts. These core competencies will inform training programs and state certification entities about the essential skills, knowledge, and attitudes needed by peer workers in a range of roles in behavioral health services. Currently, 33 states offer certification for their peer workers and a growing number of states use Medicaid funds to reimburse for peer support services (Daniels et al., 2014). Despite the growth of the behavioral health peer workforce; there are inconsistencies in the requirements for these certifications across different states.

For behavioral health organizations and programs, core competencies will provide guidance for job descriptions for peer workers and improve the recruitment of potential workers by providing fair and unbiased criteria for hiring and making sure everyone is assessed against the same framework. Core competency descriptions have the potential to strengthen the workforce through improved training and preparation of peer workers. Behavioral health programs and organizations can

use the core competencies to improve performance evaluations by providing a framework to discuss and assess performance.

Core competencies have the potential to contribute to a ''culture of competence'' in which peer workers could use the competencies to engage in accurate self-assessment and seek out experiences to improve their competencies. For peer workers, core competencies could help to clarify what is expected in their role and will assist them in assessing their own strengths and limitations as a provider of peer support.

At this time, SAMHSA is requesting approval to use these two forms. The forms are described here:

1. *Peer Worker Telephone Interviews:* Peer worker interviews will be conducted by telephone with 20 peer workers to gather descriptive details about the interviewees' use of the core competencies included in the quantitative surveys, their opinions about specific competencies, and their beliefs about the usefulness of articulating core competencies for their peer worker roles. Qualitative interviews may also produce examples of how peer workers use specific competencies.

The information gathered by the Core Competencies Survey and the Peer Worker Telephone Interview will help SAMHSA guide the behavioral health field with workforce development efforts related to peer workers. This information is crucial to providing technical assistance to states, behavioral health organizations, peer-run and recovery community organizations, and organizations and institutions that provide training to peer workers in behavioral health.

2. *Core Competencies Survey:* The Core Competencies Survey was developed through an extensive process of literature reviews, synthesis of the competencies, expert panel review, and consensus-building activities. The Core Competencies Survey has 61 items and uses a 5-point Likert scale from 1-unimportant to 5-very important. The items on the survey are specific competencies that were developed by the BRSS TACS team, their partners, and experts in peer-provided services in behavioral health. Respondents to the Core Competencies Survey will also complete a section on demographic characteristics of the participant's gender, age, race/ethnicity, geographic location, level of education, monthly income, length of time as a peer worker, current field of employment, and certification status. Demographic data will be used to describe the survey respondents. The response to the current field of employment questions will be used to categorize the respondent as working primarily in addiction services, mental health services, or services for people with co-occurring disorders, a variable that will be included in specific analyses of the data.

The chart below summarizes the annualized burden for this project.

Type of respondent	Number of respondents	Responses per respondent	Total number of responses	Hours per response	Total annual burden hours
Peer workers for interview	20	1	20	1	20
Peer workers for survey	100	1	100	1	100
Total	120		120		120

Written comments and recommendations concerning the proposed information collection should be sent by November 10, 2014 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, OMB. To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov.* Although commenters are encouraged to send their comments via email, commenters may also fax their comments to: 202–395–7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

Summer King,

Statistician.

[FR Doc. 2014–24111 Filed 10–8–14; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0106]

Agency Information Collection Activities: Petition for Qualifying Family Member of a U–1 Nonimmigrant, Form I–929; Extension, Without Change, of a Currently Approved Collection

ACTION: 60-day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (i.e. the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until December 8, 2014.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0106 in the subject box, the agency name and Docket ID USCIS–2009–0010. To avoid duplicate submissions, please use only one of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal Web site at *www.regulations.gov* under e-Docket ID number USCIS–2009–0010;

(2) *Email.* Submit comments to *USCISFRComment@uscis.dhs.gov;*

(3) *Mail.* Submit written comments to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140.

SUPPLEMENTARY INFORMATION:

Comments

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking

Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Petition for Qualifying Family Member of a U–1 Nonimmigrant.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–929; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Section 245(m) of the Immigration and Nationality Act (Act) allows certain qualifying family members who have never held U nonimmigrant status to seek lawful permanent residence or apply for immigrant visas. Before such family members may apply for adjustment of status or seek immigrant visas, the U–1 nonimmigrant who has been granted adjustment of status must file an immigrant petition on behalf of the qualifying family member using Form I–929. Form I–929 is necessary for USCIS to make a determination that the eligibility requirements and conditions are met regarding the qualifying family member.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–929 is 2,000 and the estimated hour burden per response is 1 hour.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 2,000 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $245,000.

If you need a copy of the information collection instrument with instructions, or additional information, please visit the Federal eRulemaking Portal site at: *http://www.regulations.gov.* We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, Telephone number 202–272–8377.

Dated: October 2, 2014.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2014–24092 Filed 10–8–14; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0037]

Agency Information Collection Activities: Refugee/Asylee Relative Petition, Form I–730; Extension, Without Change, of a Currently Approved Collection

ACTION: 60-Day Notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (i.e. the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until December 8, 2014.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0037 in the subject box, the agency name and Docket ID USCIS–2007–0030. To avoid duplicate submissions, please use only one of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal Web site at *www.regulations.gov* under e-Docket ID number USCIS–2007–0030;

(2) *Email.* Submit comments to *USCISFRComment@uscis.dhs.gov;*

(3) *Mail.* Submit written comments to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140.

SUPPLEMENTARY INFORMATION:

Comments

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal

information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Refugee/Asylee Relative Petition.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–730; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form I–730 is used by a refugee or asylee to file on behalf of his or her spouse and/or children for follow-to-join benefits provided that the relationship to the refugee/asylee existed prior to their admission to the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–730 is 86,400 and the estimated hour burden per response is .583 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 57,600 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $10,584,000.

If you need a copy of the information collection instrument with instructions, or additional information, please visit the Federal eRulemaking Portal site at: *http://www.regulations.gov.* We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, Telephone number 202–272–8377.

Dated: October 2, 2014.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2014–24091 Filed 10–8–14; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0064]

Agency Information Collection Activities: Importer ID Input Record

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; revision of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security 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: Importer ID Input Record (CBP Form 5106). CBP is proposing that this information collection be revised with a change to the burden hours and a change to the information collected on Form 5106. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before December 8, 2014 to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) annual costs to respondents or record keepers from the collection of information (a total capital/startup costs, operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Importer ID Input Record.

OMB Number: 1651–0064.

Form Number: CBP Form 5106.

Abstract: The collection of the information on the Importer ID Input Record (CBP Form 5106) is the basis for establishing bond coverage, release and entry of merchandise, liquidation, and the issuance of bills and refunds. Each person, business firm, government agency, or other organization that intends to file an import entry shall file CBP Form 5106 with the first formal entry or request for services that will result in the issuance of a bill or a refund check upon adjustment of a cash collection. This form is also filed for the

ultimate consignee for whom an entry is being made.

CBP proposes to revise the CBP Form 5106 by gathering additional information about the company and its officers. This will enhance CBP's ability to make an informative assessment of risk prior to the initial importation, and will provide CBP with improved awareness regarding the company and its officers who have chosen to conduct business with CBP. CBP is also requesting that the company officers whose information will be submitted on this form have importing and financial business knowledge of the company, and that they have the legal authority to make decisions on behalf of the company.

The revised form will capture more detailed company information which is in alignment with other U.S. Government data standards and business standards. In addition to collecting information about the business structure and its officers, this detailed information will provide CBP with a greater knowledge about the company and its' previous business practices. The new data elements that CBP proposes to collect are:

If you are an importer, how many entries do you plan on filing in a year?
How will the identification number be utilized?
Program Code (for future use)
Type of address (for mailing address)
Type of address (for physical location)
Phone Number
Fax number
Email address
Web site
A brief business description.
The 6-digit North American Industry Classification System (NAICS) code for this business.
The D–U–N–S Number for the Importer.
The filer code if submitting as a broker/self-filer.
Year established
Primary Banking Institution
Certificate or Articles of Incorporation—(Locator I.D.)
Certificate or Articles of Incorporation—(Reference Number)
Business Structure/Company Officers
  Company Position Title
  Name
  Direct Phone Number
  Direct Email
  Social Security Number
  Passport Number
  Passport Country of Issuance
  Passport Expiration Date
  Passport Type
Broker Name
Broker Telephone Number

CBP also proposes to rename this form ''Create/Update Importer Identity Form'' to make the form's purpose clearer to respondents. CBP Form 5106 is authorized by 19 U.S.C. 1484 and provided for by 19 CFR 24.5. The current version of this form is accessible at: *http://www.cbp.gov/sites/default/files/documents/CBP%20Form%205106_0.pdf.* The proposed new version of this form may be viewed at: *http://www.cbp.gov/trade/trade-community.*

Current Actions: CBP proposes to revise the information being collected by adding data elements to CBP Form 5106. This revision will result in an increase in the estimated time to complete this form, from 15 minutes to 30 minutes, and will also increase the burden hours from 75,000 to 150,000. CBP also proposes to rename this form ''Create/Update Importer Identity Form.''

Type of Review: Revision.

Affected Public: Businesses and Individuals.

Estimated Number of Respondents: 300,000.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 150,000.

Dated: October 6, 2014.

Tracey Denning,

Acting Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2014–24199 Filed 10–8–14; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5752–N–83]

30-Day Notice of Proposed Information Collection: Tenant Resource Network Program

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:* November 10, 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 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: Tenant Resource Network Program.

OMB Approval Number: 2502–0601.

Type of Request: Extension.

Form Number: SF–424, SF–424 Supplemental, HUD–424 CBW, SF–LLL, HUD–2880, HUD–92041, HUD–2994–A, HUD–96010, Form HUD–96011 and HUD 50080–TRNP.

Description of the need for the information and proposed use: Grant Application.

Respondents: Non-profit groups.

Estimated Number of Respondents: 100.

Estimated Number of Responses: 1800.

Frequency of Response: Annually.

Average Hours per Response: 49.866.

Total Estimated Burdens: 78,961.

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.

September 30, 2014.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2014–24089 Filed 10–8–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5752–N–84]

30-Day Notice of Proposed Information Collection: Office of Housing Counseling Performance Review

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: November 10, 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 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 June 16, 2014.

A. Overview of Information Collection

Title of Information Collection: Office of Housing Counseling Performance Review.

OMB Approval Number: 2502–0574.

Type of Request: Extension.

Form Number: HUD 9910.

Description of the need for the information and proposed use: HUD Office of Housing Counseling participating agencies are non-profit and government organizations that provide housing counseling services. The information collected allows HUD to monitor and provide oversight for agencies participating in the Housing Counseling Program. Specifically, the information collected is used to ensure that participating agencies comply with program policies and regulations and to determine if agencies remain eligible to provide counseling services under HUD's Housing Counseling Program. Housing counseling aids tenants, potential home buyers and homeowners in improving their housing conditions and in meeting the responsibilities of tenancy and homeownership.

Respondents: Non-for-profit institutions.

Estimated Number of Respondents: 455.

Estimated Number of Responses: 455.

Frequency of Response: 1.

Average Hours per Response: 9.5.

Total Estimated Burdens: 4323.

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: September 30, 2014.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2014–24087 Filed 10–8–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5756–N–37]

60-Day Notice of Proposed Information Collection: Local Appeals to Single—Family Mortgage Limits

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date: December 8, 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: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Erica Garber, Credit Policy Specialist, HMID, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Erica Garber at *Erica.A.Garber@hud.gov* or telephone 202–402–6320. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Garber.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the

information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Local Appeals to Single-Family Mortgage Limits.

OMB Approval Number: 2502–0302.

Type of Request: Extension.

Form Number: N/A.

Description of the need for the information and proposed use: Any interested party may submit a request for the mortgage limits to be increased in a particular area if they believe that the present limit does not accurately reflect the higher sales prices in that area. Any request for an increase must be accompanied by sufficient housing sales price data to justify higher limits.

This allows HUD the opportunity to examine additional data to confirm or adjust the set loan limit for a particular area.

Respondents: Business and other for-profit.

Estimated Number of Respondents: 10.

Estimated Number of Responses: 10.

Frequency of Response: 1.

Average Hours per Response: 7.

Total Estimated Burdens: 70.

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: *September 26, 2014.*

Laura M. Marin,

Associate General Deputy Assistant Secretary for Housing-Associate Deputy Federal Housing Commissioner.

[FR Doc. 2014–24084 Filed 10–8–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–FAC–2014–N196; FXFR133609ANS09–FF09F14000–134]

Aquatic Nuisance Species Task Force Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a public meeting of the Aquatic Nuisance Species (ANS) Task Force, which consists of 13 Federal and 13 ex-officio members. The ANS Task Force's purpose is to develop and implement a program for U.S. waters to prevent introduction and dispersal of aquatic invasive species (AIS); to monitor, control, and study such species; and to disseminate related information.

DATES: The ANS Task Force will meet from 8 a.m. to 4:30 p.m. on Wednesday, November 5, and Thursday, November 6, 2014. For security purposes, registration for the meeting is required. If you wish to attend the meeting, you must register by contacting the ANS Task Force Executive Secretary (see **FOR FURTHER INFORMATION CONTACT**) no later than October 30, 2014.

ADDRESSES: The ANS Task Force meeting will take place at the U.S. Fish and Wildlife Service, Lucille Stickel Conference Room (1W108), 5275 Leesburg Pike, Falls Church, VA 22041–3803 (telephone: 703–358–2398).

FOR FURTHER INFORMATION CONTACT: Laura Norcutt, Acting Executive Secretary, ANS Task Force, by telephone at (703) 358–2398, or by email at *Laura_Norcutt@fws.gov.* If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App., we announce that the ANS Task Force will hold a meeting.

Background

The ANS Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (Act) (Pub. L. 106–580, as amended), and is composed of 13 Federal and 13 ex-officio members, and co-chaired by the U.S. Fish and Wildlife Service and the National Oceanic and Atmospheric Administration. The ANS Task Force provides advice on AIS infesting waters of the United States and other nations, among other duties as specified in the Act.

Meeting Agenda

- Addressing AIS Issues at Federally Managed Water Bodies
- Model State Inspection and Decontamination Legislation
- ANSTF Outreach Committee: Status of Recreational, Water Garden, and Classroom Guidelines
- Plans for Revitalizing Habitattitude
- eDNA Information Clearinghouse Web site
- Draft Lionfish Management Plan Approval
- West Virginia State AIS Management Plan Approval
- Implementation of Invasive Species Efforts for National Arctic Strategy
- Summit on Boat Construction in Consideration of AIS
- ANSTF Involvement with National Invasive Species Awareness Week
- Stop Aquatic Hitchhikers! Update
- Quagga Zebra Action Plan Update
- ANSTF Report to Congress
- Hydraulic Fracturing for Gas Development as an AIS Pathway

The final agenda and other related meeting information will be posted on the ANS Task Force Web site at *http://anstaskforce.gov.*

Meeting Minutes

Summary minutes of the meeting will be maintained by the Executive Secretary (see **FOR FURTHER INFORMATION CONTACT**). The minutes will be available for public inspection within 60 days after the meeting and will be posted on the ANS Task Force Web site at *http://anstaskforce.gov.*

Dated: October 3, 2014.

Jeffrey L. Underwood,

Acting Co-Chair, Aquatic Nuisance Species Task Force, Assistant Director for Fish and Aquatic Conservation.

[FR Doc. 2014–24067 Filed 10–8–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[14X.LLAZG02200.L16100000.DO0000.LXSS206A0000.241A]

Supplemental Notice of Intent To Prepare a Travel Management Plan Concurrent With the San Pedro Riparian National Conservation Area Resource Management Plan and Associated Environmental Impact Statement, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In compliance with the National Environmental Policy Act of 1969 (NEPA), as amended, the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, and the Arizona-Idaho Conservation Act of 1988 (creating the San Pedro National Conservation Area), the Bureau of Land Management (BLM) Tucson Field Office, Tucson, Arizona, intends to prepare a Travel Management Plan (TMP) concurrent with the preparation of a Resource Management Plan (RMP) and associated Environmental Impact Statement (EIS) for the San Pedro Riparian National Conservation Area (SPRNCA). This notice announces the beginning of the scoping process to solicit public comments and identify issues for the TMP.

DATES: Comments on issues related to travel management planning may be submitted in writing until November 10, 2014. The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance through local media, newspapers, and the BLM Web site at: *http://www.blm.gov/az/st/en/fo/tucson_field_office.html.* In order to be included in the TMP, all comments must be received prior to the close of the 30-day scoping period or 30 days after the last public meeting, whichever is later. We will provide additional opportunities for public participation upon publication of the TMP and Draft RMP/Draft EIS.

ADDRESSES: You may submit comments on the TMP by any of the following methods:

- *Email: blm_az_tfo_sprnca@blm.gov*
- *Project Web site: https://www.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=renderDefaultPlanOrProjectSite&projectId=36503&dctmId=0b0003e8804c8caa*
- *Regular mail:* Bureau of Land Management Tucson Field Office, 3201 East Universal Way, Tucson, AZ 85756

Documents pertinent to this proposal may be examined at the Tucson Field Office.

FOR FURTHER INFORMATION CONTACT: David McIntyre, SPRNCA RMP Project Manager, telephone 520–258–7259; address 3201 East Universal Way, Tucson, AZ 85756; email *dmcintyre@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: A Notice of Intent for the SPRNCA RMP and EIS was published on April 30, 2013 (78 FR 25299), with a 90-day scoping period that included scoping meetings during the summer. Due to public interest, the RMP scoping period was extended until September 27, 2013, for a total of 150 days. This document provides notice that the BLM Tucson Field Office, Tucson, Arizona, intends to prepare a TMP concurrent with the preparation of an RMP and associated EIS for the SPRNCA. It announces the beginning of the TMP scoping process, and seeks public input on travel and transportation issues and route designation within the SPRNCA. The SPRNCA, which encompasses 56,347 acres of public land located within Cochise County, Arizona, was designated by Congress on November 18, 1988. The Arizona-Idaho Conservation Act of 1988 (Pub. L. 100–696) established that the land must be managed to conserve, protect and enhance the riparian area and the aquatic, wildlife, archaeological, paleontological, scientific, cultural, educational, and recreational resources of the area. It also requires the designation of roads for motorized vehicle use be included in a comprehensive long-range plan for the area. Developing the TMP in conjunction with the RMP and associated EIS will satisfy this requirement. In addition to considering the designation of roads for motorized use, the TMP will identify and consider primitive roads and trails available for non-motorized use. Decisions in the TMP will be limited to BLM-administered land within the planning area boundary. The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis and alternatives to be considered in development of the TMP. Preliminary issues for the TMP have been identified by BLM personnel; Federal, State, and local agencies; and other stakeholders. They represent the BLM's knowledge to date of the existing issues and concerns with current management. Some of these issues and concerns include:

- Impacts to other public land users and adjacent private landowners;
- Impacts to wildlife habitat;
- Impacts to water quality, cultural sites, vegetation, including riparian and wetland areas, and soils; and
- Identification of recreational opportunities.
- Possible use of hierarchical mitigation strategies that include avoidance, minimization, and compensation, on a local or regional scale, if appropriate.

The BLM will use NEPA public participation requirements to assist the agency in satisfying the public involvement requirements under Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. 470 (f) pursuant to 36 CFR 800.2(d)(3). The information about historic and cultural resources within the area potentially affected by the proposed TMP will assist the BLM in identifying and evaluating impacts to such resources in the context of both NEPA and Section 106 of the NHPA. The BLM will consult with Indian tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration. Federal, State, and local agencies, along with tribes that may be interested in or affected by the proposed TMP the BLM is evaluating in conjunction with the SPRNCA RMP and associated EIS are invited to participate in the scoping process, and if eligible, may request or be requested by the BLM to participate in the development of the environmental analysis as a cooperating agency.

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 publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1501.7, 43 CFR 1610.2

Raymond Suazo,

State Director.

[FR Doc. 2014–24077 Filed 10–8–14; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCO956000 L14200000.BJ0000]

Notice of Filing of Plats of Survey; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plats of Survey; Colorado

SUMMARY: The Bureau of Land Management (BLM) Colorado State Office is publishing this notice to inform the public of the intent to officially file the survey plat listed below and afford a proper period of time to protest this action prior to the plat filing. During this time, the plat will be available for review in the BLM Colorado State Office.

DATES: Unless there are protests of this action, the filing of the plat described in this notice will happen on November 10, 2014.

ADDRESSES: BLM Colorado State Office, Cadastral Survey, 2850 Youngfield Street, Lakewood, CO 80215–7093.

FOR FURTHER INFORMATION CONTACT: Randy Bloom, Chief Cadastral Surveyor for Colorado, (303) 239–3856.

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The plat, in 2 sheets, and field notes of the dependent resurvey and survey in Township 37 North, Range 2 East, New Mexico Principal Meridian, Colorado, were accepted on September 24, 2014.

Randy Bloom,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 2014–24125 Filed 10–8–14; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAN01000 L10200000.XZ0000 14X LXSIOVHD0000]

Third Call for Nominations for the Northern California Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to reopen the request for public nominations for the Northern California Resource Advisory Council (RAC), which has 15 open positions this year. This RAC provides advice and recommendations to the Bureau of Land Management (BLM) Northern California District on land use planning and management of public lands within northern California and far northwest Nevada. The BLM will accept public nominations for 30 days after the publication of this notice.

DATES: All nominations must be received no later than November 10, 2014.

ADDRESSES: Nominations should be sent to: Bureau of Land Management, 2950 Riverside Drive, Susanville, CA 96130, Attention, Jeff Fontana. Application forms are available online at: *http://www.blm.gov/ca/st/en/info/rac.html*. Nominations must be accompanied by all of the information identified below.

FOR FURTHER INFORMATION CONTACT: Nancy K. Haug, Bureau of Land Management, Northern California District Manager, 355 Hemsted Drive, Redding, CA 96130; 530–224–2160.

SUPPLEMENTARY INFORMATION: The Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by the BLM. Section 309 of the FLPMA (43 U.S.C. 1739) directs the Secretary to establish 10- to 15-member citizen-based advisory councils that are consistent with the Federal Advisory Committee Act (FACA). As required by FACA, RAC membership must be balanced and representative of the various interests concerned with the management of the public lands. The rules governing RACs are found at 43 CFR subpart 1784 and include the following three membership categories:

Category One—Holders of Federal grazing permits and representatives of organizations associated with energy and minerals development, timber industry, transportation or rights-of-way, developed outdoor recreation, off-highway vehicle use, and commercial recreation;

Category Two—Representatives of nationally or regionally recognized environmental organizations, archaeological and historic organizations, dispersed recreation activities, and wild horse and burro organizations; and

Category Three—Representatives of State, county, or local elected office, employees of a State agency responsible for management of natural resources, representatives of Indian tribes within or adjacent to the area for which the council is organized, representatives of academia who are employed in the natural sciences, and the public-at-large.

Individuals may nominate themselves or others. Nominees must be residents of the State in which the RAC has jurisdiction. The BLM will evaluate nominees based on their education, training, experience, and knowledge of the geographical area of the RAC. Nominees should demonstrate a commitment to collaborative resource decision-making.

The Obama Administration prohibits individuals who are currently federally registered lobbyists from being appointed or re-appointed to FACA and non-FACA boards, committees, or councils.

The following must accompany all nominations:

—Letters of reference from represented interests or organizations;
—A completed RAC application; and
—Any other information that addresses the nominee's qualifications.

Simultaneous with this notice, the BLM California State Office will issue a press release providing additional information for submitting nominations, with specifics about the number and categories of member positions available. If you have already submitted your nomination materials for the Northern California RAC in response to the first call for nominations published in the **Federal Register** on February 6, 2014 (79 FR 7223), or the second call for nominations published in the **Federal Register** on May 27, 2014 (79 FR 30161), you do not need to resubmit the materials.

Authority: 43 CFR 1784.4–1

Martha Maciel,

Deputy State Director, External Affairs.

[FR Doc. 2014–24095 Filed 10–8–14; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF JUSTICE

[OMB Number 1110–0053]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Reinstatement, With Change, of a Previously Approved Collection for Which Approval Has Expired: FBI eFOIA Form

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: 60-day Notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs, Federal Bureau of Investigation, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until December 8, 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 David Sobonya, FOIA Public Information Officer, Federal Bureau of Investigation, 170 Marcel Drive, Winchester, VA 22602.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Federal Bureau of Investigation, 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:* Reinstatement of the FBI eFOIA form with changes, a previously approved collection for which approval has expired.

2. *The Title of the Form/Collection:* FBI eFOIA form.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The applicable component within the Department of Justice is the Federal Bureau of Investigation.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

The general public who wish to make online FOIA request will be the most affected group. This information collection is to allow the Federal Bureau of Investigation to accept and responded to FOIA requester as defined in 28 CFR 16.3.

(a) How made and addressed. You may make a request for records of the Department of Justice by writing directly to the Department component that maintains those records. You may find the Department's ''Freedom of Information Act Reference Guide''—which is available electronically at the Department's World Wide Web site, and is available in paper form as well—helpful in making your request.

For additional information about the FOIA, you may refer directly to the statute. If you are making a request for records about yourself, see § 16.41(d) for additional requirements. If you are making a request for records about another individual, either a written authorization signed by that individual permitting disclosure of those records to you or proof that that individual is deceased (for example, a copy of a death certificate or an obituary) will help the processing of your request. Your request should be sent to the component's FOIA office at the address listed in appendix I to part 16. In most cases, your FOIA request should be sent to a component's central FOIA office. For records held by a field office of the Federal Bureau of Investigation (FBI) or the Immigration and Naturalization Service (INS), however, you must write directly to that FBI or INS field office address, which can be found in most telephone books or by calling the component's central FOIA office. (The functions of each component are summarized in part 0 of this title and in the description of the Department and its components in the ''United States Government Manual,'' which is issued annually and is available in most libraries, as well as for sale from the Government Printing Office's Superintendent of Documents. This manual also can be accessed electronically at the Government Printing Office's World Wide Web site (which can be found at *http://www.access.gpo.gov/su_docs*).) If you cannot determine where within the Department to send your request, you may send it to the FOIA/PA Mail Referral Unit, Justice Management Division, U.S. Department of Justice, 950 Pennsylvania Avenue NW., Washington, DC 20530–0001. That office will forward your request to the component(s) it believes most likely to have the records that you want. Your request will be considered received as of the date it is received by the proper component's FOIA office. For the quickest possible handling, you should mark both your request letter and the envelope ''Freedom of Information Act Request.''

(b) Description of records sought. You must describe the records that you seek in enough detail to enable Department personnel to locate them with a reasonable amount of effort. Whenever possible, your request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter of the record. In addition, if you want records about a court case, you should provide the title of the case, the court in which the case was filed, and the nature of the case. If known, you should include any file designations or descriptions for the records that you want. As a general rule, the more specific you are about the records or type of records that you want, the more likely the Department will be able to locate those records in response to your request. If a component determines that your request does not reasonably describe records, it shall tell you either what additional information is needed or why your request is otherwise insufficient. The component also shall give you an opportunity to discuss your request so that you may modify it to meet the requirements of this section. If your request does not reasonably describe the records you seek, the agency's response to your request may be delayed.

(c) Agreement to pay fees. If you make a FOIA request, it shall be considered an agreement by you to pay all applicable fees charged under § 16.11, up to $25.00, unless you seek a waiver of fees. The component responsible for responding to your request ordinarily will confirm this agreement in an acknowledgement letter. When making a request, you may specify a willingness to pay a greater or lesser amount.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 11,000 FOIA request are completed annually. These requests can be submitted via free-form letter, email or the eFOIA form. In FY 2014 approximately 200 online eFOIA forms were submitted. An average of 8 minutes per respondent is needed to complete form the eFOIA form. The estimated range of burden for respondents is expected to be between 4 minutes to 12 minutes for completion.

6 *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is .5 hours. It is estimated that respondents will take .5 hour to complete a questionnaire. The burden hours for collecting respondent data sum to 250 hours 500 respondents × .5 hours = 250 hours).

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.405B, Washington, DC 20530.

Dated: October 6, 2014.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2014–24132 Filed 10–8–14; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ASTM International Standards

Notice is hereby given that, on September 11, 2014, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), ASTM International (''ASTM'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ASTM has provided an updated list of current, ongoing ASTM standards activities originating between May 2014 and September 2014 designated as Work Items. A complete listing of ASTM Work Items, along with a brief description of each, is available at *http://www.astm.org.*

On September 15, 2004, ASTM filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 10, 2004 (69 FR 65226).

The last notification was filed with the Department on May 7, 2014. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 9, 2014 (79 FR 32999).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2014–24036 Filed 10–8–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Pistoia Alliance, Inc.

Notice is hereby given that, on September 5, 2014, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Pistoia Alliance, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Philip Quinlan (individual member), Nottingham, UNITED KINGDOM; and QFAB Bioinformatics, Brisbane, AUSTRALIA, have been added as parties to this venture.

Also, 3E Company Environmental, Ecological and Engineering, Carlsbad, CA, has withdrawn as a party to this venture.

In addition, the following members have changed their names: Accelrys to Dassault Systèmes, Surenes, Cedex, FRANCE; and GGA to EPAM Systems, Newtown, PA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Pistoia Alliance, Inc. intends to file additional written notifications disclosing all changes in membership.

On May 28, 2009, Pistoia Alliance, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 15, 2009 (74 FR 34364).

The last notification was filed with the Department on June 16, 2014. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on July 23, 2014 (79 FR 42816).

Patricia A. Brink,

Director of Civil Enforcement Antitrust Division.

[FR Doc. 2014–24043 Filed 10–8–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—IMS Global Learning Consortium, Inc.

Notice is hereby given that, on September 18, 2014, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), IMS Global Learning Consortium, Inc. (''IMS Global'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Artificial Intelligence Laboratory, Seoul, REPUBLIC OF KOREA; Bridgepoint Education, Inc., San Diego, CA; Intersective, Darlinghurst, AUSTRALIA; Kaywon University of Art & Design, Uiwing-si, Gyeonnggi-do, REPUBLIC OF KOREA; Poway Unified School District, Poway, CA; University of Bridgeport, Bridgeport, CT; University of Maryland, Baltimore County, Baltimore, MD; and WEDU Communications Mapo-gu, Seoul, REPUBLIC OF KOREA, have been added as parties to this venture.

Also, Antioch University, Yellow Spring, OH; and National Institute of Multimedia Education (NIME), Mihama-ku, Chibu, JAPAN, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and IMS Global intends to file additional written notifications disclosing all changes in membership.

On April 7, 2000, IMS Global filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 13, 2000 (65 FR 55283).

The last notification was filed with the Department on July 2, 2014. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on July 28, 2014 (79 FR 43781).

Patricia A. Brink,

Director of Civil Enforcement Antitrust Division.

[FR Doc. 2014–24041 Filed 10–8–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Employment and Training Administration

Final Notice of Job Corps Center for Closure

AGENCY: Office of Job Corps, Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration (ETA) of the U.S. Department of Labor (Department or DOL) issues this notice to announce its final decision to close the Treasure Lake Job Corps Center. The Office of Job Corps (OJC) in ETA published a proposed methodology for selecting centers for closure at 78 FR 2284 on January 10, 2013. Based on public comments received, the Office of Job Corps published a revised methodology for selecting centers for closure at 79 FR 36823 on June 30, 2014. Based on review of those comments, the Office of Job Corps published its final closure methodology and announced its proposed decision to close the Treasure Lake Job Corps Center at 79 FR 51198 on August 27, 2014. A total of 13 public comments were received in response to the proposal to close Treasure Lake. After reviewing all comments, the Department has decided to close the Treasure Lake Job Corps Center.

FOR FURTHER INFORMATION CONTACT: Lenita Jacobs-Simmons, Acting National Director, Office of Job Corps, ETA, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–4463, Washington, DC 20210; Telephone (202) 693–3000 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1 (877) 889–5627 (TTY/TDD).

SUPPLEMENTARY INFORMATION:

Process for Selecting Job Corps Center for Closure

On August 14, 2012, the Office of Job Corps hosted a national Job Corps listening session, via webinar, with the Job Corps community to solicit input on the methodology factors for selecting Job Corps centers for closure. More than 100 Job Corps stakeholders participated in the session and provided criteria-related suggestions in the areas of performance, geographic location, local economic impact, contract budgets, facilities, and the time period for evaluating chronic low performance.

On January 10, 2013, OJC published a **Federal Register** Notice requesting public comments on a proposed methodology for selecting Job Corps centers for closure (78 FR 2284). A total of 18 public comments were received. As a result of analysis, OJC revised the methodology factors for selection of Job Corps centers for closure. OJC also proposed additional considerations for inclusion as factors in the methodology.

On June 30, 2014, OJC published a second **Federal Register** Notice requesting public comments on a revised methodology for selecting Job Corps centers for closure (79 FR 36823). The comment period for the June 30, 2014 **Federal Register** Notice was open from June 30, 2014 to July 21, 2014. A total of 11 public comments were received. After reviewing these comments, OJC decided not to make any changes to the proposed methodology.

On August 27, 2014, OJC published a third **Federal Register** Notice announcing the final methodology. Applying the methodology, Job Corps also announced its proposed decision to close the Treasure Lake Job Corps Center in Indiahoma, Oklahoma. The Notice further requested comments on the proposed decision to close Treasure Lake.

The comment period for the August 27, 2014, **Federal Register** Notice was open from August 27, 2014, to September 26, 2014. Thirteen (13) public comments were received in response to the proposed decision to close Treasure Lake. OJC considered these comments in making its final decision to close Treasure Lake.

The comments are summarized briefly and discussed below.

Two commenters generally supported the Job Corps' decision to close Treasure Lake.

One commenter criticized the methodology that Job Corps developed and applied in determining which center to close. Since commenters had ample time to discuss those issues in response to two previous **Federal Register** Notices, and because the August 27, 2014, FRN requested comments only on the proposed selection of Treasure Lake, we consider this comment to be out of scope and will not respond to it here.

One commenter expressed their belief that Job Corps' decision ignores Congress' intent with respect to measuring and improving center performance as manifested in its passage of the Workforce Innovation and Opportunity Act (WIOA). As noted in the August 27, 2014, FRN, the actions available to Job Corps to improve performance under WIOA are consistent with those available under the Workforce Investment Act (WIA). Waiting until WIOA becomes effective on July 1, 2015, would adversely affect those students who may otherwise have the opportunity to attend a higher performing center. OJC believes that implementing reforms to the Job Corps program now while working toward successful implementation of WIOA will lead to the greatest improvement across the Job Corps system.

Two commenters asserted that closing Treasure Lake would cost $10.5 million and would be an inefficient use of Job Corps' resources. OJC cannot respond to the commenters' cost estimate because it is unclear how they developed it. More broadly, OJC is focused on the longer-term cost efficiencies that will result from achieving better results for current and future Job Corps students with the limited funds available.

The same commenters argued that Program Year 2013 data shows that Treasure Lake's successful placement of graduates in full time employment upon graduation and those graduates' high job retention rates indicate that Treasure Lake is not a poorly performing center. However, these commenters point only to three of the fifteen measures that comprise Treasure Lake's Outcome Measurement System (OMS) score. On the remaining twelve measures Treasure Lake was in the bottom quintile of performance for eleven of them. In addition, Treasure Lake's PY 2013 OMS score was a full seven percentage points lower than its PY 2012 OMS score. Accordingly, OJC had no basis to conclude that Treasure Lake's overall performance in PY 2013 constituted significant performance improvement such that it should have been exempt from closure.

One commenter expressed concern that there was not sufficient opportunity for stakeholder input. OJC disagrees. As discussed above, in addition to holding a broadly attended listening session with all potentially affected stakeholders, the Department published three separate **Federal Register** Notices, including two specifically requesting comments on the proposed methodology to which the public, including stakeholders, could provide substantive comments.

One commenter asserts, based on Senate Report 112–176, that Congress mandated for Job Corps to exhaust all options to improve a center before closing it, which, it asserts, OJC had not done in this case. Job Corps disagrees with the commenter's assertion, and believes that Treasure Lake has been given ample opportunity to demonstrate sustained performance improvement. In

addition, as the referenced report, Senate Report 112–176, was a report on proposed but never enacted legislation we disagree that it provides evidence of Congress' intent on this matter.

The same commenter expressed their opinion that Treasure Lake has not been on its Performance Improvement Plan (PIP) for sufficient time to make performance improvement. OJC disagrees that additional time and resources will lead to improved performance. Despite having been on a PIP and having received assistance for at least the past two years, Treasure Lake's performance has dramatically decreased. Between PY 2011 and PY 2013, Treasure Lake's OMS score has decreased more than 18 percentage points, from 94.5% to 76%. To OJC, this performance decline indicates that additional resources should not be expended to attempt to improve performance. Balanced against the lost opportunity for current and future students to attend a higher performing center, OJC believes that closing Treasure Lake achieves the best outcome for the program.

Several commenters generally expressed their opinion, based on their experience at the center, the opportunities that the center provides for troubled youth, and the impact that the center has on the broader community, that Job Corps should not close Treasure Lake. The core mission of Job Corps is to train students to become more employable, responsible, and productive citizens, and we believe that we will advance this mission by closing Treasure Lake and enhancing opportunities for current and future students at higher performing centers.

Finally, one comment was received that is outside the scope of the requested response, and was therefore not considered.

Job Corps Center Selected for Closure and the Closure Process

Based on its application of the closure methodology as described in the August 27, 2014, **Federal Register** Notice and OJC's consideration of the comments received in response to the August 27, 2014, **Federal Register** Notice, OJC has decided to close the Treasure Lake Job Corps Center.

OJC will implement the closure process following the center closure requirements in WIA section 159(g) and other applicable requirements.

Signed in Washington, DC, this 3rd day of October 2014.

Portia Wu,

Assistant Secretary for Employment and Training .

[FR Doc. 2014–24094 Filed 10–8–14; 8:45 am]

BILLING CODE 4510–FT–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Public Meeting of the Advisory Committee on Apprenticeship (ACA)

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice of a public meeting.

SUMMARY: Pursuant to Section 10 of the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2 § 10), notice is hereby given to announce an open meeting of the Advisory Committee on Apprenticeship (ACA) on Tuesday, November 18, 2014 and Wednesday, November 19, 2014. The meeting will convene over a day and a half. The ACA is a discretionary committee established by the Secretary of Labor, in accordance with FACA, as amended in 5 U.S.C. App. 2, and its implementing regulations (41 CFR 101–6 and 102–3). All meetings of the ACA are open to the public.

DATES: The meeting will begin at approximately 1:00 p.m. Eastern Standard Time on Tuesday, November 18, 2014, at the U.S. Department of Labor, Francis Perkins Building, 200 Constitution Avenue NW., Washington, DC 20210, and will continue until approximately 5:00 p.m. The meeting will reconvene on Wednesday, November 19, 2014, at approximately 9:00 a.m. Eastern Standard Time at the U.S. Department of Labor, Francis Perkins Building, 200 Constitution Avenue NW., Washington, DC 20210, and adjourn at approximately 4:00 p.m. Any updates to the agenda and meeting logistics will be posted on the Office of Apprenticeship's homepage: *http://www.doleta.gov/oa/.*

FOR FURTHER INFORMATION CONTACT: The Designated Federal Official, Mr. John V. Ladd, Administrator, Office of Apprenticeship, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–5311, Washington, DC 20210, Telephone: (202) 693–2796 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: In order to promote openness, and increase public participation, webinar and audio conference technology will be used throughout the meeting. Webinar and audio instructions will be prominently posted on the Office of Apprenticeship homepage: *http://www.doleta.gov/oa/.* Members of the public can attend the meeting in-person or virtually. Members of the public that will attend the meeting in-person are encouraged to arrive early to allow for security clearance into the Francis Perkins Building.

Security and Transportation Instructions for the Frances Perkins Building

Meeting participants should use the visitor's entrance to access the Frances Perkins Building, one block north of Constitution Avenue on 3rd and C Streets NW. For security purposes meeting participants must:

1. Present valid photo identification (ID) to receive a visitor badge.
2. Know the name of the event you are attending: the meeting event is the Advisory Committee on Apprenticeship meeting.
3. Visitor badges are issued by the security officer at the Visitor Entrance located at 3rd and C Streets NW., as described above.
4. Laptops and other electronic devices may be inspected and logged for identification purposes.
5. Due to limited parking options, Metro rail is the easiest way to travel to the Frances Perkins Building. For individuals wishing to take metro rail, the closest metro stop to the building is Judiciary Square on the Red Line.

Notice of Intent To Attend the Meeting

All meeting participants are being asked to submit a notice of intent to attend by Monday, November 3, 2014, via email to Mr. John V. Ladd at *oa.administrator@dol.gov,* with the subject line ''November 2014 ACA Meeting.''

1. Please indicate if you will be attending virtually, or in-person, to ensure adequate space is arranged to accommodate all meeting participants.
2. If individuals have special needs and/or disabilities that will require special accommodations, please contact Kenya Huckaby on (202) 693–3795 or via email at *huckaby.kenya@dol.gov* no later than Monday, November 3, 2014.
3. Any member of the public who wishes to file written data or comments pertaining to the agenda may do so by sending the data or comments to Mr. John V. Ladd via email at *oa.administrator@dol.gov,* subject line ''November 2014 ACA Meeting,'' or to the Office of Apprenticeship,

Employment and Training Administration, U.S. Department of Labor, Room N–5311, 200 Constitution Avenue NW., Washington, DC 20210. Such submissions will be included in the record for the meeting if received by Monday, November 3, 2014.

4. See below regarding members of the public wishing to speak at the ACA meeting.

Purpose of the Meeting and Topics To Be Discussed

The purpose of the meeting will focus on Registered Apprenticeship expansion efforts. The agenda will cover the following topics:

- The American Apprenticeship Initiative
- Workforce Innovation and Opportunity Act (WIOA) and the Implications for Registered Apprenticeship
- Federal and State Partnerships Supporting Apprenticeship Expansion
- Sector-Based Outreach Efforts and Technical Assistance
- ACA Workgroup Updates
- New Member FACA Orientation and Ethics Training
- Other Matters of Interest to the Apprenticeship Community
- Public Comment
- Adjourn

The agenda and meeting logistics may be updated should priority items come before the ACA between the time of this publication and the scheduled date of the ACA meeting. All meeting updates will be posted to the Office of Apprenticeship's homepage: *http://www.doleta.gov/oa/.* Any member of the public who wishes to speak at the meeting should indicate the nature of the intended presentation and the amount of time needed by furnishing a written statement to the Designated Federal Official, Mr. John V. Ladd, by Monday, November 3, 2014. The Chairperson will announce at the beginning of the meeting the extent to which time will permit the granting of such requests.

Portia Wu,

Assistant Secretary for the Employment and Training Administration.

[FR Doc. 2014–24083 Filed 10–8–14; 8:45 am]

BILLING CODE 4510–FR–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2011–0066]

Vertical Tandem Lifts in Marine Terminals; Extension of the Office of Management and Budget's (OMB) Approval of Collection of Information (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend the Office of Management and Budget's (OMB) approval of the collection of information requirements specified by the Standard on Vertical Tandem Lifts (VTLs) in Marine Terminals. A VTL is the practice of a container crane lifting two or more intermodal containers, one on top of the other, connected by a particular type of interbox connector, known as a semiautomatic twistlock.

DATES: Comments must be submitted (postmarked, sent, or received) by December 8, 2014.

ADDRESSES: *Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2011–0066, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and the OSHA docket number (OSHA–2011–0066) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments 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 (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download from the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accord with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 et seq.) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The VTL Standard for Marine Terminals (29 CFR part 1917) specifies the following collection of information requirements. The purpose of each of these requirements is to provide

workers with safe work practices when using VTLs.

Paragraph (i)(8)(iv) of § 1917.71 requires employers to ensure that the interbox connectors used in VTLs has been certified by a competent authority authorized under § 1918.11 (for interbox connectors that are part of a vessel's gear) or § 1917.50 (for other interbox connectors). Paragraph (i)(8)(v) requires employers to make the certification available for inspection and that the certificate attests that the interbox connector meets the strength criteria specified in paragraph (i)(8)(iv) of the standard. Also, paragraph (i)(8)(vi) requires that each interbox connector be clearly and durably marked with its safe working load for lifting and with an identifying number or mark that will enable it to be associated with its test certificate.

The certification is necessary to ensure that interbox connector-corner casting assemblies have adequate strength to ensure the safety of the lift. Marking of interbox connectors informs employers, workers and OSHA that the interbox connectors have been certified.

Paragraph (j)(2) of § 1917.71 requires the employer to develop, implement, and maintain a written plan for transporting vertically connected containers in the terminal. The transport plan helps ensure the safety of terminal workers and therby enhances productivity. Paragraph (k)(2) of § 1917.71 requires that the written transport plan include the safe work zone and procedures to ensure that workers are not in the zone when a VTL is in motion.

Written plans give employers, workers, and OSHA compliance officers assurance that VTLs are safe to use and provide the compliance officers with an efficient means to assess employer compliance with the Standard.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirements contained in the Standard on Vertical Tandem Lifts (VTLs) for Marine Terminals (29 CFR part 1917). OSHA is proposing to decrease the existing burden hour estimate for the collection of information requirements specified by the Standard from 2,000 hours to 560 hours, a total decrease of 1,440 hours. Based on staff expertise, the Agency estimates that 10%, of marine terminal establishments are using VTLs. The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

Type of Review: Extension of a currently approved collection.

Title: Vertical Tandem Lifts (VTLs) for Marine Terminals (29 CFR part 1917).

OMB Control Number: 1218–0260.

Affected Public: Business or other for-profits; not-for-profit organizations; Federal Government; State, Local, or Tribal Government.

Number of Respondents: 140.

Frequency of Responses: On occasion.

Total Responses: 140.

Average Time per Response: Employers will take four hours to generate, develop, and maintain a written plan for transporting vertically coupled containers in a terminal.

Estimated Total Burden Hours: 560.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number (Docket No. OSHA–2011–0066) for the ICR. You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g., copyrighted material) is not publicly available to read or download from this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available from the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 et seq.) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on October 3, 2014.

David Michaels,

Assistant Secretary of Labor, for Occupational Safety and Health.

[FR Doc. 2014–24123 Filed 10–8–14; 8:45 am]

BILLING CODE 4510–26–P

MILITARY COMPENSATION AND RETIREMENT MODERNIZATION COMMISSION

Meeting of the Military Compensation and Retirement Modernization Commission

AGENCY: Military Compensation and Retirement Modernization Commission.

ACTION: Notice town hall meeting.

SUMMARY: The Military Compensation and Retirement Modernization Commission (Commission) was established by the National Defense Authorization Act for FY 2013. Pursuant to the Act, the Commission is holding public hearings and a town hall to

solicit comments from the general public and select experts on the modernization of the military compensation and retirement systems.

DATES: The town hall will be held Thursday, October 16, 2014.

ADDRESSES: The town hall will be held at the Marriott Courtyard, 1721 E. Central Texas Expressway (US Route 190), Killeen, Texas 76541.

FOR FURTHER INFORMATION CONTACT: Christopher Nuneviller, Associate Director, Military Compensation and Retirement Modernization Commission, PO Box 13170, Arlington Virginia 22209; telephone 703–692–2080; fax 703–697–8330; email *christopher.nuneviller@mcrmc.gov.*

SUPPLEMENTARY INFORMATION: The Military Compensation and Retirement Modernization Commission (Commission) was established by the National Defense Authorization Act for FY 2013, Public Law 112–239, §§ 671–680 (2013), (amended by National Defense Authorization Act for FY 2014, Pub. L. 113–66, § 1095(b)) (2014). The Commission will conduct public hearings and town halls across the United States and on select military installations internationally to solicit comments on the modernization of the military compensation and retirement systems. The Commission seeks the views of Service members, veterans, retirees, their beneficiaries and other interested parties regarding pay, retirement, health benefits and quality of life programs of the Uniformed Services. The Commission will hear from senior commanders of local military commands and their senior enlisted advisors, unit commanders and their family support groups, local medical and education community representatives, and other quality of life organizations. These meetings sites will be accessible to members of the general public including individuals with disabilities.

On Thursday, October 16, 2014, the Commission will hold a public town hall meeting from 7:00 p.m. until 9:00 p.m.

Thursday, October 16, 2014 Agenda

7:00 p.m. to 9:00 p.m. Town Hall.

On the evening of Thursday, October 16, 2014, the Chairman and Commissioners will hear from the public. Attendees will be given an opportunity to address the Chairman and Commissioners and relay to them their experience and comments.

Due to the deliberative, nascent and formative nature of the Commission's work, the Commissioners are unable to discuss their thoughts, plans or intentions for specific recommendations that will ultimately be made to the President and Congress.

The town hall will be transcribed and the transcripts placed on the Commission's Web site. In addition to public hearings, and due to the essential need for input from the beneficiaries, the Commission is accepting and strongly encourages comments and other submissions through its Web site (*www.mcrmc.gov*).

Christopher Nuneviller,

Associate Director, Administration and Operations.

[FR Doc. 2014–24148 Filed 10–8–14; 8:45 am]

BILLING CODE P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Council on the Arts 183rd Meeting

AGENCY: National Endowment for the Arts, National Foundation on the Arts and Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10 (a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held at the in Grand Ballroom B of the Mandarin Hotel, 1330 Maryland Avenue SW., Washington, DC 20024. This meeting also will be webcast. Agenda times are approximate.

DATES: Friday, October 31, 2014 from 9 a.m. to 11:15 a.m.

FOR FURTHER INFORMATION CONTACT: Office of Public Affairs, National Endowment for the Arts, Washington, DC 20506, at 202/682–5570.

SUPPLEMENTARY INFORMATION: The meeting, on Friday, October 31st, will be open to the public on a space available basis. The meeting will begin with opening remarks and voting on recommendations for funding and rejection and guidelines, followed by updates by the Chairman. There also will be the following presentations (times are approximate): From 9:30 a.m. to 10 a.m.—*The Art of Empathy: Celebrating Literature in Translation* (Amy Stolls: Director of Literature; Don Ball: Assistant Director of Publications, Office of Public Affairs; Esther Allen: Writer, Editor, & Literary Translator); from 10 a.m. to 10:30 a.m.—presentations from the Dallas Museum of Art (Eugene McDermott: Director, Maxwell Anderson); from 10:30 a.m. to 11 a.m.—presentation from Center of Creative Arts (COCA), St. Louis (Kelly Pollack: Executive Director; COCA Alum: Christopher Page). From 11–11:15 there will be concluding remarks from the Chairman and announcement of voting results. The meeting will adjourn at 11:15 a.m.

To register to watch the webcasting of the open session of this meeting, go to *http://artsgov.adobeconnect.com/nca-oct2014-webcast/event/registration.html.*

If, in the course of the open session discussion, it becomes necessary for the Council to discuss non-public commercial or financial information of intrinsic value, the Council will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b, and in accordance with the February 15, 2012 determination of the Chairman. Additionally, discussion concerning purely personal information about individuals, such as personal biographical and salary data or medical information, may be conducted by the Council in closed session in accordance with subsection (c)(6) of 5 U.S.C. 552b.

Any interested persons may attend, as observers, Council discussions and reviews that are open to the public. If you need special accommodations due to a disability, please contact the Office of Accessibility, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5733, Voice/T.T.Y. 202/682–5496, at least seven (7) days prior to the meeting.

Dated: October 6, 2014.

Kathy Plowitz-Worden,

Panel Coordinator, Office of Guidelines and Panel Operations.

[FR Doc. 2014–24153 Filed 10–8–14; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Modification Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of Permit Modification Request Received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of requests to modify permits issued to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 part 670 of the Code of Federal Regulations. This is the required notice of a requested permit modification.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by November 10, 2014. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Division of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Li Ling Hamady, ACA Permit Officer, at the above address or *ACApermits@nsf.gov* or (703) 292–7149.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Description of Permit Modification Requested: The Foundation issued a permit (ACA 2014–006) to Eric Stangeland of Quark Expeditions on September 18, 2013. The issued permit allows the applicant to conduct waste management activities associated with tourism activities including shore excursions, kayaking, camping, cross country skiing, ice climbing and mountaineering in the Antarctic Peninsula region. Mitigation measures are in place to reduce the risk of non-native species introductions and the risk of spills.

A recent modification to this permit, dated February 13, 2014, permitted the applicant to allow for the conduct of waste management activities associated with conducting ice swimming and remote controlled camera copter activities.

Now the applicant proposes a modification to his permit to allow for the conduct of waste management activities associated with downhill skiing, polar plunging, and stand up paddleboarding (SUPing).

The SUPing activity would consist of up to 10 passengers per excursion. Quark staff would maintain a watch for leopard seals and killer whales and abort the activity if these animals are sighted. SUPers would be accompanied by 2 Quark staff, one on a SUP and one in a zodiac in case of emergency. Mitigation measures would be in place to reduce the risk of non-native species introductions and the risk of spills ashore.

The polar plunge activity would consist of participants entering the water wearing a bathing suit, for about 5–15 seconds. This activity would take place either away from land, with passengers wearing a safety belt, tethered to the ship, or from a beach landing. A safety zodiac with at least two staff members will be deployed and staff would maintain a watch for leopard seals and killer whales and abort the activity if these animals are sighted. If the activity requires a beach landing, mitigation measures would be in place to reduce the risk of non-native species introductions and the risk of spills ashore.

The downhill ski activity is the same as was described for the one-off activity detailed in the applicant's original permit application. The applicant wishes to carry out this activity again this season, and in future seasons depending on passenger demand.

Location: Antarctic Peninsula Region.

DATES: (that the mod would be valid) November 1, 2014 to March 31, 2017.

Nadene G. Kennedy,

Polar Coordination Specialist, Division of Polar Programs.

[FR Doc. 2014–24109 Filed 10–8–14; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Engineering Advisory Committee; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Engineering Advisory Committee Meeting #1170.

Date/Time: October 22, 2014: 12:15 p.m. to 6 p.m. October 23, 2014: 8:30 a.m. to 12:30 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Suite 1235, Arlington, Virginia 22230.

Type of Meeting: OPEN.

Contact Person: Evette Rollins, National Science Foundation, 4201 Wilson Boulevard, Suite 505, Arlington, VA 22230; Telephone 703–292–8300.

Purpose of Meeting: To provide advice, recommendations and counsel on major goals and policies pertaining to engineering programs and activities.

Agenda:

Wednesday, October 22, 2014

- The Federal Advanced Manufacturing Landscape
- The Future of Advanced Manufacturing
- Directorate for Engineering Update
- OSTP Perspective on Engineering at NSF

Thursday, October 23, 2014

- Perspectives from the Office of the Director
- Planning for ENG AdCom Subcommittee Work
- Overview, Division of Chemical, Bioengineering, Environmental, and Transport Systems (CBET)
- Roundtable on ENG Strategic Activities and Recommendations

Dated: October: 6, 2014.

Suzanne Plimpton,

Acting Committee Management Officer.

[FR Doc. 2014–24139 Filed 10–8–14; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Request for Input (RFI)—National Big Data R&D Initiative; Correction

AGENCY: The National Coordination Office (NCO) for Networking and Information Technology Research and Development (NITRD), NSF.

FOR FURTHER INFORMATION CONTACT: Wendy Wigen at 703–292–4873 or *wigen@nitrd.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

DATES: To be considered, written comments must be received by November 14, 2014.

SUMMARY: This is a correction to the previous submission published on October 2, 2014, at 79 FR 59520. The changes are limited to the insertion of links to various documents referenced within this notice. For additional information and supporting information please see the NITRD Web site, *www.nitrd.gov.* This request encourages feedback from multiple big data stakeholders to inform the development of a framework, set of priorities, and ultimately a strategic plan for the National Big Data R&D Initiative. A number of areas of interest have been identified by agency representatives in the Networking and Information Technology Research and Development (NITRD) Big Data Senior Steering Group (BDSSG) as well as the many members of the big data R&D community that have participated in BDSSG events and workshops over the past several years. This RFI is a critical step in developing a cross-agency strategic plan that has broad community input and that can be referenced by all Federal agencies as they move forward over the next five to ten years with their own big data R&D programs, policies, partnerships, and activities.

SUPPLEMENTARY INFORMATION:

Overview: This RFI is issued under the National Big Data R&D Initiative. The NITRD BDSSG is inviting broad community input as it develops a National Big Data R&D Strategic Plan that can be referenced by participating agencies as they conceive and deploy their own big data programs, policies, and activities.

Background: The BDSSG was initially formed to identify big data R&D activities across the Federal Government, offer opportunities for agency coordination, and jointly develop strategies for a national initiative. The National Big Data R&D Initiative was launched in March 2012.

Since the launch, the BDSSG has held numerous meetings and workshops, including a major showcase event of dozens of partnerships that will help advance the frontiers of big data R&D across the country. Many participating federal agencies have already established new big data programs, policies and activities and plan to do more in the future. Currently, the BDSSG is drafting a framework and establishing a set of priory goals for a National Big Data R&D Strategic Plan.

Objective: The major goal of this RFI is to gather information from multiple sectors to inform the development of an effective National Big Data R&D Strategic Plan. After the submission period ends and the feedback is analyzed, a workshop will be held to further discuss and develop the input received.

What We Are Looking For: As a big data stakeholder, we would like to (1) understand your particular role and point of view in the big data innovation ecosystem, and (2) using the draft, The National Big Data R&D Initiative: Vision and Areas of Interest (*http://www.nitrd.gov/nitrdgroups/images/0/09/Federal_BD_R%26D_Thrusts_and_Priority_Themes.pdf*), as the basis, encourage you to provide comments and suggestions for how we might best develop an overarching, comprehensive framework to support national-scale big data science and engineering research and education, discoveries and innovation. Please include a description of the areas of critical investment (either within or across agencies), both currently and within a five to ten year horizon. Collectively, your comments could focus on one or more agencies, the set of NITRD agencies as a whole, or the national effort. Please keep in mind that the focus is on high level strategies for how agencies can leverage their collective investments. It will not focus on individual agency plans and will not contain an implementation plan. We are interested in all points of view on the activities that can best support research, development, and innovation in Big Data. However, we are not interested in specific research proposals or vendor offerings. While the NITRD agencies would welcome input on policies that are directly relevant to big data R&D, those policies that are more appropriately determined by the Administration or Congress (or both) are not relevant to this exercise.

Who Can Participate: This RFI is open to all. We especially encourage public and private sector organizations (e.g., universities, government laboratories, companies, non-profits) with big data interests to submit their ideas. Participants must also be willing to have their ideas posted for discussion on a public Web site and included with possible attribution in the plan.

Submission Format: All responses must be no more than two (2) pages long (12 pt. font, 1″ margins) and include:

- Who you are—name, credentials, organization
- Your contact information
- Your experience working with big data and your role in the big data innovation ecosystem
- Comments and suggestions based on reading the initial framework, The National Big Data R&D Initiative: Vision and Priority Actions *http://www.nitrd.gov/nitrdgroups/images/0/09/Federal_BD_R%26D_Thrusts_and_Priority_Themes.pdf*), and guided by the following questions:
  - What are the gaps that are not addressed in the Visions and Priority Actions document?
  - From an interagency perspective, what do you think are the most high impact ideas at the frontiers of big data research and development?
  - What new research, education, and/or infrastructure investments do you think will be game-changing for the big data innovation ecosystem?
  - How can the federal government most effectively enable new partnerships, particularly those that cross sectors or domains?
- A short explanation of why you feel your contribution/ideas should be included in the strategic plan
- Examples, where appropriate

In accordance with FAR 15.202(3), responses to this notice are not offers and cannot be accepted by the Government to form a binding contract. Responders are solely responsible for all expenses associated with responding to this RFI, including any subsequent requests for proposals.

Submitted by the National Science Foundation for the National Coordination Office (NCO) for Networking and Information Technology Research and Development (NITRD) on October 6, 2014.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2014–24137 Filed 10–8–14; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2014–0214]

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 and Budget (OMB) and solicitation of public comment.

SUMMARY: The 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:* NRC Form 396, ''Certification of Medical Examination by Facility Licensee.''

2. *Current OMB approval number:* 3150–0024.

3. *How often the collection is required:* Upon application for an initial or upgrade license; every 6 years for the renewal of an operator or senior operator license, and notices of disability that occur during licensed tenure.

4. *Who is required or asked to report:* Facility licensees who are tasked with certifying the medical fitness of applicants and operator licensees.

5. *The number of annual respondents:* 131.

6. *The number of hours needed annually to complete the requirement or request:* 1,968 hours (1,668 Reporting Hours and 300 Recordkeeping Hours.)

7. *Abstract:* NRC Form 396 is used to transmit information to the NRC regarding the medical condition of applicants for initial operator licenses or renewal of operator licenses and for the maintenance of medical records for all

licensed operators. The information is used to determine whether the physical condition and general health of applicants for operator licenses and licensed operators are such that the applicant/operator would not be expected to cause operational errors endangering public health and safety.

Submit, by December 8, 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 O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The OMB clearance requests are available at the NRC's Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/.* The document will be available on the NRC's home page site for 60 days after the signature date of this notice.

Comments 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–2014–0214. You may submit your comments by any of the following methods: Electronic comments go to *http://www.regulations.gov* and search for Docket No. NRC–2014–0214. Mail comments to the NRC Clearance Officer, Tremaine Donnell (T–5 F42), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Questions about the information collection requirements may be directed to the NRC Clearance Officer, Tremaine Donnell (T–5 F42), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–6258, or by email to *INFOCOLLECTS.Resource@NRC.GOV.*

Dated at Rockville, Maryland, this 6th day of October, 2014.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2014–24117 Filed 10–8–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2014–0192]

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 and Budget (OMB) and solicitation of public comment.

SUMMARY: The 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:* NRC Form 313, ''Application for Materials License'' and NRC Forms 313A (RSO), 313A (AMP), 313A (ANP), 313A (AUD), 313A (AUT), and 313A (AUS).

2. *Current OMB approval number:* 3150–0120.

3. *How often the collection is required:* There is a one-time submittal of the NRC Form 313 (which may include the NRC Form 313A series of forms) with information to receive a license. Once a specific license has been issued, there is a 10-year resubmittal of the NRC Form 313 (which may include the NRC form 313A series of forms) with information for renewal of the license. Amendment requests are submitted as needed by the licensee.

There is a one-time submittal for all limited specific medical use applicants of a NRC Form 313A series form to have each new individual identified as a Radiation Safety Officer (RSO), authorized medical physicist (AMP), authorized nuclear pharmacist (ANP), or authorized user or a subsequent submittal of additional information for one of these individuals to be identified with a new authorization on a limited specific medical use license.

NRC Form 313A (RSO) is also used by medical broad scope licensees when identifying a new individual as an RSO or adding an additional RSO authorization for the individual. This submittal may occur when applying for a new license, amendment, or renewal.

NRC Form 313A (ANP) is also used by commercial nuclear pharmacy licensees when requesting an individual be identified for the first time as ANP. This submittal may occur when applying for a new license, amendment, or renewal.

4. *Who is required or asked to report:* All applicants requesting a license, amendment or renewal of a license for byproduct or source material.

5. *The number of annual respondents:* 14,400 (2,000 NRC licensees and 12,400 Agreement State licensees).

6. *The number of hours needed annually to complete the requirement or request:* 61,920 (8,600 NRC and 53,320 Agreement State hours).

7. *Abstract:* Applicants must submit NRC Form 313, which may include the six forms in the 313A series, to obtain a specific license to possess, use, or distribute byproduct or source material. These six forms in the 313A series are: (1) NRC Form 313A (RSO), ''Radiation Safety Officer Training and Experience and Preceptor Attestation''; (2) NRC Form 313A (AMP), ''Authorized Medical Physicist Training and Experience and Preceptor Attestation''; (3) NRC Form 313A (ANP), ''Authorized Nuclear Pharmacist Training and Experience and Preceptor Attestation''; (4) NRC Form 313A (AUD), ''Authorized User Training and Experience and Preceptor Attestation (for uses defined under 35.100, 35.200, and 35.500)''; (5) NRC Form 313A (AUT), ''Authorized User Training and Experience and Preceptor Attestation (for uses defined under 35.300)''; and (6) NRC Form 313A (AUS), ''Authorized User Training and Experience and Preceptor Attestation (for uses defined under 35.400 and 35.600).'' The information is reviewed by the NRC to determine whether the applicant is qualified by training and experience, and has equipment, facilities, and procedures which are adequate to protect the public health and safety and minimize danger to life or property.

Submit, by December 8, 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 O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The OMB clearance requests are available at the NRC's Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/.* The document will be available on the NRC's home page site for 60 days after the signature date of this notice.

Comments 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–2014–0192. You may submit your comments by any of the following methods: Electronic comments go to *http://www.regulations.gov* and search for Docket No. NRC–2014–0192. Mail comments to the NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Questions about the information collection requirements may be directed to the NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–6258, or by email to *INFOCOLLECTS.Resource@NRC.GOV.*

Dated at Rockville, Maryland, this 6th day of October , 2014.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2014–24116 Filed 10–8–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–271–LA; ASLBP No. 15–934–01–LA–BD01]

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission, *see* 37 FR 28,710 (Dec. 29, 1972), and the Commission's regulations, *see, e.g.,* 10 CFR 2.104, 2.105, 2.300, 2.309, 2.313, 2.318, 2.321, notice is hereby given that an Atomic Safety and Licensing Board (Board) is being established to preside over the following proceeding: Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc., (Vermont Yankee Nuclear Power Station).

This proceeding involves an application by Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. for a license amendment for the Vermont Yankee Nuclear Power Station, which is located in Vernon, Vermont. In response to a notice filed in the **Federal Register**, *see* 79 FR 42,546 (July 22, 2014), a hearing request was filed via the Electronic Information Exchange on September 24, 2014 by the State of Vermont through the Vermont Department of Public Service.

The Board is comprised of the following administrative judges:

E. Roy Hawkens, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dr. Michael F. Kennedy, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dr. Richard E. Wardwell, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents, and other materials shall be filed in accordance with the NRC E-Filing rule. *See* 10 CFR 2.302.

Rockville, Maryland.

Dated: October 3, 2014.

E. Roy Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 2014–24164 Filed 10–8–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2014–0221]

NRC Enforcement Policy

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy revision; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is soliciting comments from interested parties, including public interest groups, States, members of the public, and the regulated industry (i.e., reactor, fuel cycle, and material licensees, vendors, and contractors), on proposed revisions to its Enforcement Policy (the Policy). The intent of this request for comment is to assist the NRC in revising its Enforcement Policy.

DATES: Submit comments by November 24, 2014. Comments received after this date will be considered if it is practical to do so, but the NRC staff is able to assure consideration only for comments received on or before this date.

ADDRESSES: You may submit comment by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0221. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: 3WFN–6A44MP, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on accessing information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Gerry Gulla, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2872; email: *Gerald.Gulla@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2014–0221 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–2014–0221.
- *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.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. The Enforcement Policy is available in ADAMS under Accession No. ML12340A295.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Public Web site:* Go to *http://www.nrc.gov* and select ''Public Meetings and Involvement,'' then ''Enforcement,'' and then ''Enforcement Policy.''

B. Submitting Comments

Please include Docket ID NRC–2014–0221 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS, and the NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Background

The mission of the NRC is to license and regulate the Nation's civilian use of byproduct, source, and special nuclear material to ensure adequate protection of public health and safety, promote the common defense and security, and protection of the environment. The NRC supports this mission through its use of its Enforcement Policy (the Policy). Adequate protection is presumptively assured by compliance with the NRC's regulations and the Policy contains the basic procedures used to assess and disposition apparent violations of the NRC's requirements.

The Policy has undertaken a number of revisions since its initial publication in the **Federal Register** on October 7, 1980 (45 FR 66754), as an interim policy. On August 27, 2010, in a Staff Requirements Memorandum (SRM), SRM–SECY–09–0190 ''Recommendations for Reactor Oversight Process Improvements,'' the Commission approved a major revision to the Policy. On September 30, 2010 (75 FR 60485), the NRC published a notice to announce an effective date of September 30, 2010, for the revision to the Policy. This notice included a solicitation of comments on the revised Policy for approximately 18 months after its effective date. The NRC staff previously solicited comments on other SRM–SECY–09–0190 items in documents published in the **Federal Register** on August 9, 2011 (76 FR 48919), September 6, 2011 (76 FR 54986), and December 6, 2011 (76 FR 76192). The Policy was revised on January 28, 2013 (78 FR 5838), to incorporate the aforementioned solicited comments. The current Policy is available in ADAMS under Accession No. ML13228A199.

The purpose of this **Federal Register** notice is to solicit comments on the following proposed revisions.

III. Proposed Revisions to the Enforcement Policy

1. Violation Examples

a. 6.3 Materials Operations

The Policy addresses the failure to secure a portable gauge as required by 10 CFR 30.34(i) under Section 6.3, ''Materials Operations.'' Specifically, paragraph 6.3.c.3, a severity level (SL) III example, states, ''A licensee fails to secure a portable gauge with at least two independent physical controls whenever the gauge is not under the control and constant surveillance of the licensee as required by 10 CFR 30.34(i).'' Accordingly, a violation of the 10 CFR 30.34(i) requirements constitutes a SL III violation for gauges having either no security or one level of security. The SL III significance is based largely on licensees' control of portable gauges to reduce the opportunity for unauthorized removal or theft and is the only example currently provided in the Policy.

When assessing the significance of a violation involving the failure to secure the portable gauge, the NRC considers that both of the physical controls must be defeated for the portable gauge to be removed deterring a theft by requiring a more determined effort to remove the gauge. Considering the reduced risk associated with having one barrier instead of no barrier, a graded approach is appropriate for 10 CFR 30.34(i) violations of lower significance. Therefore, the NRC believes that certain failures to secure portable gauges warrant a SL IV designation. This graded approach was piloted in Enforcement Guidance Memoranda 11–004, dated April 28, 2011 (ADAMS Accession No. ML111170601). After over 2 years of monitoring, it was determined that the addition of the SL IV example did not increase the number of losses/thefts reported. Therefore, the NRC is proposing to add a SL IV example.

Proposed revision:

6.3.d.10 A licensee fails to secure a portable gauge as required by 10 CFR 30.34(i), whenever the gauge is not under the control and constant surveillance of the licensee, where at least one level of physical control existed and there was no actual loss of material, and that failure is not repetitive.

b. 6.4 Licensed Reactor Operators

The NRC is proposing miscellaneous clarifications to the current violation examples listed in this section. This revision is necessary to more closely align the wording used in Section 6.4 of the Policy with the wording used in 10 CFR 55.53(j).

Proposed revisions:

6.4.a/b/c.1.(a) unfit for duty as a result of a confirmed positive test for drugs or alcohol at the lower of the cutoff levels for drugs or alcohol contained in 10 CFR part 26, or as established by the facility licensee, or

6.4.a/b/c.1.(b) mentally or physically impaired as a result of substance use including prescription and over-the-counter drugs as described in 10 CFR 55.53(j), or

6.4.a.1.(c) and 6.4.b/c.1.(d) impaired by fatigue such that the individual could not safely and competently perform his or her duties, as determined by a post event fatigue assessment required by 10 CFR 26.211(a)(3).

6.4.c.3 A licensed operator or senior operator is involved in the use, sale, or possession of illegal drugs on or off site.

c. 6.9 Inaccurate and Incomplete Information or Failure to Make a Required Report

Under 6.9.c.2.(c), the NRC is proposing to remove the reference to 10 CFR 26.719(d) because it is not a reporting requirement.

Proposed revision to 6.9.c.2.(c): failure to make any report required by 10 CFR 73.71, ''Reporting of Safeguards

Events,'' or appendix G, ''Reportable Safeguards Events,'' to 10 CFR part 73 ''Physical Protection of Plants and Materials,'' or 10 CFR part 26, ''Fitness-For-Duty Programs.''

d. 6.11.d Reactor, Independent Spent Fuel Storage Installation, Fuel Facility, and Special Nuclear Material Security

The current Policy examples for a SL IV violation are focused on the ''loss of special nuclear material (SNM) of low strategic significance.'' The loss of SNM is too narrow of a focus on the loss of material and not the other aspects of the Materials Control & Accountability (MC&A) program that could be a precursor to a loss of SNM. The Policy should have an example for MC&A at the fuel facilities that cover the reduction in the ability to detect a loss or diversion of material which could lead to a more significant event.

New Violation Example:

6.11.d.3 A deficiency in the licensee's MC&A system that results in a fuel cycle facility General Performance Objective(s) degradation, referenced in §§ 74.31, 74.33, 74.41, or 74.51, regarding adequate detection or protection against loss, theft, or diversion of SNM.

e. 6.14 Fitness-for-Duty

(1) Incorporate violation example 6.14.a.2 in 6.14.b.1. An employee assistance program (EAP) is one provision of many contained in 10 CFR part 26, subpart B, for which 6.14.a.1 applies. Therefore, the ''severity'' associated with an inadequate EAP is significantly less than that of a licensee not meeting ''two or more subparts of 10 CFR part 26.'' An ineffective implementation of an EAP does not result in a safety or security concern and should not represent a SL I violation.

Proposed Revision: Delete 6.14.a.2.

6.14.b.1 A licensee fails to remove an individual from unescorted access status when this person has been involved in the sale, use, or possession of illegal drugs within the protected area, or a licensee fails to take action in the case of an on-duty misuse of alcohol, illegal drugs, prescription drugs, or over the counter medications or when notified by a licensee employee assistance program that an individual poses an immediate threat to himself, herself or others;

(2) In violation example 6.14.b.2 remove the verbiage ''unfitness for duty based on drug or alcohol use.'' Part 26 does not define unfitness and the behavioral observation program is not limited to just drugs and alcohol impairment.

Proposed Revision to 6.14.b.2: A licensee fails to take action to meet a regulation or a licensee behavior observation program requirement when observed behavior within the protected area or credible information concerning the activities of an individual indicates impairment by any substance, legal or illegal, or mentally or physically impaired from any cause, which adversely affects their ability to safely and competently perform their duties.

(3) Violation example 6.14.c.1 should encompass more than just drug and alcohol positive tests; it should include other aspects of the program such as subversions.

Proposed Revision to 6.14.c.1: A licensee fails to take the required action for a person who has violated the licensee's Fitness-For-Duty policy, in cases that do not amount to a SL II violation;

(4) Violation example 6.14.c.5 should be deleted. It has been incorporated under the proposed revision 6.14.b.1.

Proposed revision: Delete 6.14.c.5

2. Construction Reactor Oversight Process (cROP)

a. Table of Contents

The Table of Contents will be revised to incorporate the implementation of the cROP into the Policy. This will require a revision to the titles of Sections 2.2.3 and 2.2.4. There are also other miscellaneous cROP related reference revisions throughout the Policy. Section 2.2.6, ''Construction,'' will be split into two sections: Section 2.2.6 to addresses construction activities at production and utilization facilities, and a new section (2.2.7), was created to discuss construction at fuel processing and fabrication facilities.

b. Section 2.2 Assessment of Violations

Section 2.2 will be modified to add the implementation of the cROP to the Policy.

Proposed revision: After a violation is identified, the NRC assesses its severity or significance (both actual and potential). Under traditional enforcement, the severity level (SL) assigned to the violation generally reflects the assessment of the significance of a violation, and is referred to as traditional enforcement. For most violations committed by power reactor licensees, the significance of a violation is assessed using the significance determination process (SDP) under the Reactor Oversight Process (ROP) or under the Construction Reactor Oversight Process (cROP), as discussed below in Section 2.2.3, ''Assessment of Violations Identified Under the ROP and cROP.'' All other violations will be assessed using traditional enforcement as described in Section 2.2.4, ''Exceptions to Using an SDP for the Assessment of Violations Identified Under the ROP or cROP.'' Traditional enforcement will be used for facilities that are not subject to an SDP.

c. Section 2.2.3 Operating Reactor Assessment Program

This section will be revised to add the implementation of the cROP and will reference the NRC's Inspection Manual Chapter (IMC) 2505. IMC 2505 describes the construction assessment program and is the overall cROP guidance and basis document. IMC 2505 serves the same purpose as IMCs 0308 and to some extent, IMC 2515.

Proposed revision:

2.2.3 Assessment Program Assessment of Violations Identified Under the ROP or cROP

The assessment, disposition, and subsequent NRC's action related to inspection findings identified at operating power reactors are determined by the ROP, as described in the NRC's Inspection Manual Chapter (IMC) 0305, ''Operating Reactor Assessment Program.'' The assessment, disposition, and subsequent NRC's action related to inspection findings identified at power reactors under the cROP are determined by the cROP, as described in IMC 2505, ''Periodic Assessment of Construction Inspection Program Results.''

Inspection findings identified through the ROP are assessed for safety significance using the SDP described in IMC 0609, ''Significance Determination Process.'' Inspection findings identified through the cROP are assessed for safety significance using the SDP described in IMC 2519, ''Construction Significance Determination Process.'' The SDPs use risk insights, where possible, to assist the NRC staff in determining the safety or security significance of inspection findings identified within the ROP or cROP. Inspection findings. . .

d. Section 2.2.4 Exceptions to Using Only the Operating Reactor Assessment Program

This section will be revised to add the implementation of the cROP and will reference IMC 2505.

Proposed revision:

2.2.4 Exceptions to Using an SDP for the Assessment of Violations Identified Under the ROP or the cROP

Some aspects of inspection findings and their associated violations at power reactors under the ROP or cROP cannot

be addressed only through the use of an applicable SDP. Reactor inspection findings are assigned significance and any associated violations involving traditional enforcement are assigned severity levels and can be considered for civil penalties (see IMC 0612, ''Power Reactor Inspection Reports,'' or IMC 0613, ''Power Reactor Construction Inspection Reports'') . . .

e. Section 2.2.6 Construction

Section 2.2.6, ''Construction,'' will be split into two sections: Section 2.2.6, ''Construction of a Production or Utilization Facility'' will address construction activities at reactor facilities. New Section 2.2.7, ''Construction of Processing and Fuel Fabrication, Conversion of Uranium Hexafluoride, or Uranium Enrichment Facilities,'' will be created to discuss construction at fuel processing and fabrication facilities. By creating the two sections, the NRC staff will be able to address specific enforcement policy issues unique to these facilities.

Proposed revision:

2.2.6 Construction of a Production or Utilization Facility

In accordance with 10 CFR 50.10, no person may begin the construction of a production or utilization facility on a site on which the facility is to be operated until that person has been issued either a construction permit under 10 CFR part 50, a combined license (COL) under 10 CFR part 52, an early site permit authorizing the activities under 10 CFR 50.10(d), or a limited work authorization under 10 CFR 50.10(d). In an effort to preclude unnecessary regulatory burden on 10 CFR part 52 COL licensees, while maintaining safety, the Changes during Construction (CdC) Preliminary Amendment Request (PAR) process, is developed in Interim Staff Guidance (ISG)–025 ''Interim Staff Guidance on Changes during Construction under 10 CFR part 52.'' The licensing condition providing the option for a PAR as detailed in ISG–025 allows the licensee to request to make physical changes to the plant that are consistent with the scope of the associated license amendment request (LAR). The NRC staff may issue a No Objection Letter, with or without specific limitations, in response to the PAR. Enforcement actions will not be taken for construction pursuant to a PAR No Objection Letter that is outside of the current licensing basis (CLB) while the corresponding LAR is under review as long as the construction is consistent with the associated LAR and the No Objection Letter (the latter of which may contain limitations on construction activities). The PAR No Objection Letter authorization is strictly conditioned on the licensees' commitment to return the plant to its CLB if the requested LAR is subsequently denied or withdrawn. Failure to timely restore the CLB may be subject to separate enforcement, such as an order, a civil penalty, or both.

f. New Section 2.2.7

New Section 2.2.7, ''Construction of Processing and Fuel Fabrication, Conversion of Uranium Hexafluoride, or Uranium Enrichment Facilities,'' will be created to discuss construction at fuel processing and fabrication facilities. As a result, the NRC staff will be able to address specific enforcement policy issues unique to these facilities.

Proposed revision:

2.2.7 Construction of Processing and Fuel Fabrication, Conversion of Uranium Hexafluoride, or Uranium Enrichment Facilities

In accordance with 10 CFR 40.32(e) and 10 CFR 70.23(a)(7), commencement of construction, as defined in 10 CFR 40.4 and 70.4, before the NRC finishes its safety or environmental reviews and issues a license or license amendment for construction and operation of a facility where the proposed activity is uranium processing and/or fuel fabrication, scrap recovery, conversion or deconversion of uranium hexafluoride, or uranium enrichment; or for the possession and use of source and byproduct material for uranium milling or the production of uranium hexafluoride; or for the conduct of any other activity which the NRC determines will significantly affect the quality of the environment, is grounds for denial to possess and use licensed material in the plant or facility. Additionally, in accordance with 10 CFR 70.23(b), failure to obtain Commission approval for the construction of the principal structures, systems, and components of a plutonium processing and fuel fabrication plant prior to beginning such construction may also be grounds for denial of a license to possess and use special nuclear material. Construction activities are considered to be at the applicant's or licensee's own risk if the activities are performed prior to issuance of a license or license amendment, or in the case of a plutonium processing and fuel fabrication plant, prior to receipt of a construction authorization.

g. Section 2.3.1 Minor Violation

This revision will remove redundant language (IMC titles) from previously identified IMCs, and will add references to examples of minor violation issues found in IMCs 0613 and 0617.

Proposed revision: Violations of minor safety or security concern generally do not warrant enforcement action or documentation in inspection reports but must be corrected. Examples of minor violations can be found in the NRC Enforcement Manual and in IMC 0612 (Appendix E, ''Examples of Minor Issues''), IMC 0613 (Appendix E, ''Examples of Minor Construction Issues''), and IMC 0617, ''Vendor and Quality Assurance Implementation Inspection Reports (Appendix E, ''Examples of Minor Issues''). Guidance for documenting minor violations can be found in the NRC's Enforcement Manual; IMC 0610, ''Nuclear Material Safety and Safeguards Inspection Reports''; IMC 0612; IMC 0613; IMC 0616, ''Fuel Cycle Safety and Safeguards Inspection Reports''; and IMC 0617.

h. Section 2.3.2 Noncited Violation

This revision adopts the NRC's guidance on ''Plain Writing.'' It will also align with the aforementioned changes to this section of the Policy associated with crediting licensee corrective action programs whenever the NRC has inspected the CAP and found it to meet regulatory guidance, industry standards, or both.

Proposed revision:

2.3.2 Noncited Violation

If a licensee or nonlicensee has implemented a corrective action program that has been determined to be adequate by the NRC,[1] the NRC will normally disposition SL IV violations and violations associated with green ROP or cROP findings as noncited violations (NCVs) if all the criteria in Paragraph 2.3.2.a. are met.

For licensees and nonlicensees that have not received formal credit from the NRC for their corrective action programs, the NRC will normally disposition SL IV violations and violations associated with green ROP or cROP findings as NCVs if all of the criteria in Paragraph 2.3.2.b are met. If the SL IV violation or violation associated with green ROP or cROP finding was identified by the NRC, the NRC will normally issue a Notice of Violation.

Inspection reports or inspection records document NCVs and briefly describe the corrective action the licensee or nonlicensee has taken or plans to take, if known. Licensees and

[1] The NRC may credit a formal corrective action program that has been inspected and found to meet regulatory guidance, industry standards, or both.

nonlicensees are not required to provide written responses to NCVs; however, they may provide a written response if they disagree with the NRC's description of the NCV or dispute the validity of the NCV.

i. Section 6.5.c.4 and 5 SL III Violations Involve, for Example:

These examples (4 and 5) were modified to reference the appropriate regulation governing changes to a facility that references a certified design (i.e., 10 CFR 52.98). This regulation refers to applicable change processes in the applicable design certification rule, which are currently contained in 10 CFR part 52, appendix A–D.

Proposed revision:

4. A licensee fails to obtain prior Commission approval required by 10 CFR 50.59 or 10 CFR 52.98 for a change that results in a condition evaluated as having low-to-moderate or greater safety significance; or

5. A licensee fails to update the FSAR as required by 10 CFR 50.71(e), and the FSAR is used to perform a 10 CFR 50.59 or 10 CFR 52.98 evaluation for a change to the facility or procedures, implemented without Commission approval, that results in a condition evaluated as having low-to-moderate or greater safety significance.

j. Section 6.5.d.5 SL IV violations involve, for example:

Example 6.5.d.5 was moved to Section 6.9.d ''Inaccurate and Incomplete Information or Failure to Make a Required Report.''

Proposed revision: Delete example 6.5.d.5.

k. Section 6.9 Inaccurate and Incomplete Information or Failure to Make a Required Report

Section 50.55(e) requires holders of a construction permit or combined license (until the Commission makes the finding under 10 CFR 52.103(g)) to adopt procedures to evaluate deviations and failures to comply to identify defects and failures to comply associated with substantial safety hazards as soon as practicable. This section is similar to the reporting requirements of 10 CFR part 21. Therefore, a reference to this regulation was added to the examples provided in Section 6.9. In addition, Section 6.9.d, Item 12, was changed to note that 10 CFR 21.21(a) applies to vendors as well as licensees.

Proposed revision:

a. SL I violations involve, for example:

5. A deliberate failure to notify the Commission as required by 10 CFR part 21, ''Reporting of Defects and Noncompliance,'' or 10 CFR 50.55(e) occurs.

c. SL III violations involve, for example:

5. A failure to provide the notice required by 10 CFR part 21 or 10 CFR 50.55(e), for example:

(a) An inadequate review or failure to review such that, if an appropriate review had been made as required, a 10 CFR part 21 or 10 CFR 50.55(e) report would have been required; or

(b) A withholding of information or a failure to make a required interim report by 10 CFR 21.21, ''Notification of Failure to Comply or Existence of a Defect and Its Evaluation,'' or 10 CFR 50.55(e) occurs with careless disregard.

d. SL IV violations involve, for example:

12. Failure to make an interim report required by 10 CFR 21.21(a)(2) or under 10 CFR 50.55(e); or

13. Failure to implement adequate 10 CFR Part 21 or 10 CFR 50.55(e) processes or procedures that have more than minor safety or security significance.

14. A materials licensee fails to . . .

3. Glossary Revisions

a. During an audit of the NRC's use of Confirmatory Action Letters (CAL), it was identified that some agency procedures did not consistently describe all CAL recipients. To date, all affected procedures have been revised to incorporate a consistent definition with the exception of the Policy. This Policy revision will incorporate the term Confirmatory Action Letter.

Proposed revision: Confirmatory Action Letter (CAL) is a letter confirming a licensee's or contractor's voluntary agreement to take certain actions to remove significant concerns regarding health and safety, safeguards, or the environment. It is issued to licensees or, if appropriate, to non-licensees subject to the NRC's jurisdiction.

b. The description of Enforcement Guidance Memoranda was moved from Section 2.3.9 and placed into the Glossary Section, no actual change in policy.

c. The term interim Enforcement Policy was added to the Glossary.

Proposed revision: Interim Enforcement Policies (IEPs) are developed by the NRC staff and approved by the Commission for specific topics, typically for a finite period of time. Generally, IEPs grant the staff permission to refrain from taking enforcement action for generic issues which are not currently addressed in the Policy and are typically effective until such time that guidance is developed and implemented. IEPs can be found in Section 9.0 of the Policy.

4. Civil Penalty for Reciprocity (Section 2.3.4)

Recent cases involving the willful failure to file for reciprocity (including one case that was particularly egregious) have led to discussions regarding the agency's ability to deter future noncompliance in this area and lessen the economic benefit. Since reciprocity involves obtaining an NRC general license, the willful failure to obtain an NRC specific license will also be addressed by this effort aimed at deterring noncompliance and reducing the resultant economic gain.

Although the Policy (Section 3.6, ''Use of Discretion in Determining the Amount of a Civil Penalty) allows the staff to exercise discretion to propose or escalate a civil penalty for cases involving willfulness, the staff will add clarifying language to Section 2.3.4, ''Civil Penalty,'' near the discussion on civil penalties for violations associated with loss of regulated material (i.e., the NRC's lost source policy). To aid in implementation and ensure consistency, the Enforcement Manual will include specific guidance regarding the typical or ''starting,'' civil penalty amount (e.g., 2 times the base civil penalty).

Proposed Addition in 2.3.4 after the paragraph starting: ''The NRC considers civil penalties for violations . . .''

For cases involving the willful failure to file for reciprocity or obtain an NRC specific license, the NRC will normally consider a civil penalty to deter noncompliance for economic benefit. Therefore, notwithstanding the normal civil penalty assessment process, in cases where there is any indication that the violation was committed for economic gain, the NRC may exercise discretion and impose a civil penalty. The resulting civil penalty will normally be no more than 3 times the base civil penalty; however, the agency may mitigate or escalate the amount based on the merits of a specific case.

5. New Section 3.10 ''Operating Reactor Violations With No Performance Deficiencies''

Section 2.2.4.d has been deleted and the information has been moved to new Section 3.10, ''Operating Reactor Violations With No Performance Deficiencies.'' Since the information contained in Section 2.2.4.d describes enforcement discretion, it would be more appropriate to be listed in Section 3.0 ''USE OF ENFORCEMENT DISCRETION.'' The NRC views this as

a clarification that involves no actual change in policy.

Proposed revision:

3.10 Operating Reactor Violations with No Performance Deficiencies

The NRC may exercise discretion for operating reactor licensees with violations of NRC requirements for which there are no associated SDP performance deficiencies (e.g., a violation of TS which is not a performance deficiency).

6. Traditional Enforcement Civil Penalty Assessment for Power Reactors

A conflict between the Enforcement Policy (the Policy) and the Enforcement Manual (Manual) has been identified with respect to how the NRC determines the appropriateness and amount of civil penalties (CP) for power reactor violations subject to the traditional enforcement process. While the Policy is the controlling document, certain staff members believe the Manual is correct and that the Policy was not revised as intended during the major revision(s) to support the reactor oversight process (ROP). SECY–99–007 ''Recommendations for Reactor Oversight Process Improvements'' contains some preliminary discussion of the effect of the ROP on traditional enforcement and provides some insight as to this original intent. Other staff members maintain that the Policy is appropriate and should continue to be followed.

For non-willful, SL III violations, the traditional enforcement CP assessment process in the Policy includes a 2-year ''look back'' at a licensee's enforcement history as a means of evaluating licensee performance. From this review, for licensees with good performance, the staff may bypass the question of whether the licensee or the NRC identified the issue, which can increase a licensee's chance of not receiving a civil penalty, so long as the staff concludes the licensee implemented timely and effective corrective action. The specific language questions whether the licensee had ''any previous escalated enforcement action (regardless of the activity area) within the past 2 years . . .'' [2] and defines Escalated Enforcement Action to include ''NOVs associated with an inspection finding that the SDP [significance determination process] evaluates as having a low to moderate (white) or greater safety significance . . .''.[3]

During the development of the ROP, circa 2000, both the Policy and the Manual were revised to support the new assessment process. Within a year of the Policy revision incorporating the ROP, the Manual was changed to specifically exclude ROP significance determination process (SDP) findings from the ''look back'' consideration, effectively causing the staff to not consider recent licensee ROP performance when considering whether a CP is appropriate for a power reactor traditional enforcement violation and thus ''automatically'' bypassing the question of identification credit for power reactor licensees in certain scenarios. This notice seeks to determine whether past ROP performance should, in fact, be considered as part of a power reactor licensee's enforcement history, and whether the question of identification credit should be asked, recognizing that if a licensee did identify the current violation, a civil penalty may still not be assessed (assuming corrective action credit).

A review of the Policy revision history as well as the Manual changes revealed that the inconsistency dates back to the year 2000 timeframe. In researching the history, the staff noted that the traditional Policy underwent substantial revision, specifically including the CP assessment process, just prior to the development of the ROP pilot. At the time, it was standard practice to revise the Policy and then solicit public comments for consideration in a subsequent revision. Consequently, there is a certain overlap in Policy revisions and a resultant lack of clarity.

The issue is very narrow, impacting only traditional enforcement cases involving a non-willful, SL III violation (practically speaking, the violation would be a violation involving ''impeding the regulatory process,'' such as violations of 10 CFR 50.59 or 50.9, or violations involving a failure to make a required report) for a licensee that has, within the last 2 years, received one or more violation(s) associated with a White, Yellow, or Red SDP finding. If all of these conditions were met, the process would then look at whether identification credit was warranted. If identification credit was warranted (i.e., the licensee identified the issue giving rise to the current violation), the licensee's previous history would not impact the issuance or amount of a proposed CP.

In the late 1990's the Policy was revised numerous times, starting with a complete revision in 1995 to incorporate the recommendations of an agency level review team and, shortly thereafter, to support the newly-developed ROP. In addition, at least one substantive change was made to the basis of assessing violation significance which, while related to the ROP, was broader than power reactors only and not directly associated with the ROP revisions. Due to the large number of substantive changes being made to the Policy during this period, it is not surprising that there is little mention in the related Commission papers of this specific issue. The staff identified only one public comment (from the Nuclear Energy Institute (NEI)) on the subject, and it was not directly associated with the ROP. Rather, NEI's comment reflected a concern that the use of any escalated enforcement action was too broad of a sweep and that ''despite the industry's sustained excellent safety performance, even the NRC recognizes that licensees may receive an occasional violation in a 2-year period. . . . The Enforcement Policy should be clarified to state that the criterion is met *unless the previous violation is in the same functional area as the current violation.''* [4] NEI's comment, although not directly in response to the 1995 revision, was actually focused on that change, not the ROP revisions also in progress at the time. No documentation was found that addressed NEI's comment, other than a commitment that the staff made to consider it in the next Policy revision (at which point the language was not modified, nor was NEI's comment specifically addressed).

The staff reviewed case history to gain perspective on the scope of the issue. During the 14 years since the inception of the ROP, only ten cases were in the scope of this issue (traditional enforcement SL III, non-willful cases with an SDP finding of greater-than-green within the previous 2 years of the case being assessed). Of the ten, in three instances, a prior SDP finding was considered (consistent with the Policy), although no CP was issued due to identification credit, or, in one case, other factors warranting enforcement discretion. Of the remaining seven cases, only three appeared to warrant a CP based on the licensee's performance and failure to identify the violation being considered; however, apparently due to following the Manual guidance specifically excluding SDP findings, no CP was actually issued. It is not certain that a CP should have been issued in each of those three cases due to lack of documentation on all aspects that may impact a CP. In other words, while it might appear a CP should have been issued, it's not a certainty. In addition, when the staff identified the issue,

[2] Enforcement Policy, January 28, 2013, § 2.3.4(a).

[3] Id. at § 7.0 Glossary, although previous Policy revisions included nearly the same definition in a footnote to the CP assessment process.

[4] SECY–00–0049 (ADAMS Accession No. ML003683227).

despite relatively few examples through the years, three additional cases were identified as meeting the criteria to consider identification credit; however, recognizing the inconsistent implementation of the Policy, the staff used discretion to not consider identification credit.

The NRC is soliciting comments on the options presented below. The NRC requests that in your submissions, you specify which option you believe to be appropriate and provide any comments that you may have on this topic.

Options:

A. Make no changes to the Policy and revise the Manual to be consistent with the Policy. This option encourages identification of issues by licensees consistent with the Policy goals by considering identification credit, and recognizes good performance when there are no escalated violations within the past 2 years. This approach assumes that the default methodology is to consider who identified the current violation when evaluating that violation for a possible CP. A licensee is not ''penalized'' by having a violation within the past 2 years; rather they are given a special dispensation when they have not received such a violation. When a licensee has had an escalated violation in the previous two years, the question regarding identification is considered (meaning if a licensee has a previous escalated violation it does not automatically result in a CP or an increase in CP). Because traditional enforcement actions are not inputs to the action matrix, there is no impact on the ROP, only the *possible* amount of a CP for the instant traditional enforcement case.

B. Revise the Policy to eliminate consideration of previous (within the last 2 years) escalated ROP violations during the CP assessment process for a non-willful SL III violation. This could be accomplished by inserting the phrase ''(except violations associated with ROP findings)'' at Section 2.3.4.a, changing the first sentence to ''Did the licensee have any previous escalated enforcement action (regardless of the activity area) (except violations associated with ROP findings), within the past 2 years.''

The Agency's ROP and the Agency Action Matrix process provide an increasing level of Agency oversight (inspection, assessment, senior Agency management review) based on licensee performance. The ROP has a foundation in the corrective action program which is consistent with one of the goals of the Enforcement Policy; namely the identification and corrective actions. The action matrix carries forward and the impact of previous SDP findings continues for a period of time in the action matrix. Therefore, a policy decision could be made that the SDP findings would not be considered in the assessment of a licensee's performance for the purpose of civil penalty determination. This option would provide the maximum separation between the ROP and traditional enforcement.

C. Revise the Policy to consider escalated ROP violations in the same functional area. This could be accomplished by inserting the phrase ''(for escalated ROP findings, only consider violations in the same strategic performance (i.e., reactor safety, radiation safety, and safeguards) area).''

This option would be consistent with the NEI comment from 1999. If the functional areas selected were at a high level, an argument could be made that for a power reactor, a type of licensee with a large amount of operation within NRC's jurisdiction, performance in one functional area is not necessarily reflective of all of the functional areas. However, contrary to the concern raised by NEI, power reactor licensees are not routinely in the situation where escalated enforcement of this certain type is being considered and a previous escalated SDP finding within the past 2 years exists. As noted in the data above, the total number of scenarios identified by the staff was less than one per year on average (and about half of those cases would not have received a CP due to the licensee receiving identification credit). The option would also create a difference between licensee types within the Policy. All other licensee types would still be subject to consideration of all activity areas.

D. Revise the Policy to eliminate all consideration of prior performance for all licensees. This option would eliminate the 2-year look back altogether and all traditional enforcement non-willful escalated cases would consider who identified the violation as the first step in the CP assessment process. This option also eliminates the recognition that one escalated violation in the previous 2 years or 2 inspections does not necessarily indicate poor performance, a concept that was originally recognized in NUREG–1525. In considering identification credit for every violation, licensees without any performance history but who did not identify the violations would receive a CP whereas under the current Policy, they would not.

7. Revision to Section 6.13 ''Information Security''

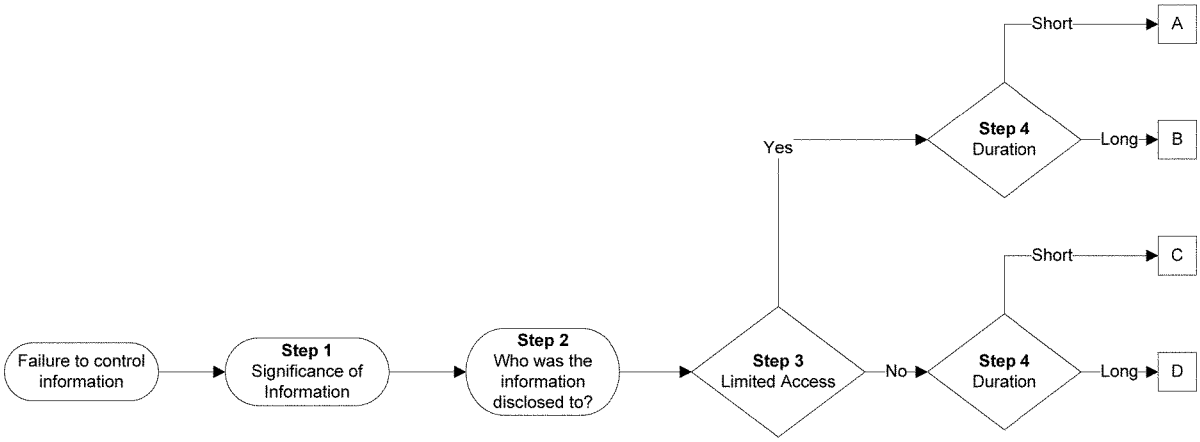
The NRC is proposing to revise Section 6.13 of the Policy, ''Information Security.'' This revision will replace the current examples, which are based on the classification levels of the information, with a risk-informed approach for assessing the significance of information security violations. This approach of evaluating the significance of information security violations by using a risk-informed process is based on the actual and/or potential significance of the information security violation and will more accurately reflect the severity of these types of violations and improve regulatory consistency.

This proposed process is the result of lessons learned from a number of violations that the NRC has processed over the last few years based on varying significance levels. This process will utilize a flow chart and table approach, along with defined terms.

Once a noncompliance is identified, a four step approach will be applied to determine the significance level. The four steps are: (1) Determine the significance of the information (i.e., High, Moderate, or Low), (2) determine the extent of disclosure (i.e., individual deemed trustworthy and reliable, unknown disclosure, or confirmed to an unauthorized individual), (3) determine the accessibility of the information (i.e., how limited was access to the information), and (4) determine the duration of the non-compliance (i.e., how long was the information available).

Once all steps are completed, the user will obtain a recommended severity level for the violation. The NRC recognizes this approach as a change from the traditional violation examples; however, the new process will be risk-informed and will consider the significance of the information as it relates to public health and safety or the common defense and security regardless of the classification level.

Proposed revision:



Step 2 Disclosure		Disclosed to an individual deemed Trustworthy and Reliable				Unknown Disclosure				Confirmed to an Unauthorized Individual			
		A	B	C	D	A	B	C	D	A	B	C	D
Step 1 Significance	High	SL III	SL III	SL III	SL II	SL III	SL II	SL II	SL II	SL II	SL II	SL II	SL II
	Moderate	SL IV	SL III	SL III	SL III	SL IV	SL III	SL III	SL III	SL III	SL III	SL III	SL III
	Low	SL IV	SL IV	SL IV	SL III	SL IV	SL IV	SL IV	SL III	SL III	SL III	SL III	SL III

Significance

High Significance: The totality of information that could reasonably cause an adverse impact on national security and provide a significant amount of information about a technology (i.e. key elements of a technology or system) or combinations of the following elements related to protective strategies: Response Strategy, Target Sets, Physical Security Plan, Contingency Plan or Integrated Response Plan. The information can be either SECRET or CONFIDENTIAL (National Security or Restricted Data) or Safeguards.

Moderate Significance: The totality of information provides limited information within its classification that may be useful for an adversary about technology information or physical security plan of a facility. The information can be either SECRET or CONFIDENTIAL (National Security or Restricted Data), Safeguards or information requiring protection pursuant to 10 CFR part 37.

Low Significance: The totality of information was not particularly sensitive within its classification in that, taken by itself, the information would not aid an adversary in gaining information about a technology or physical security plan of a facility. The information can be either SECRET or CONFIDENTIAL (National Security or Restricted Data), Safeguards, information requiring protection pursuant to 10 CFR part 37.

Disclosure

Trustworthy and reliable: An individual considered dependable in judgment, character, and performance, such that disclosure of Information to that individual does not constitute an unreasonable risk to the public health and safety or common defense and security.

Unknown Disclosure: Instances when controlled information has been secured, protected, or marked improperly but there is no evidence that anyone has accessed the information while it was improperly handled.

Confirmed: Instances where a person who does not have authorization to access controlled information gains access to the information.

Electronic Media/Confirmed: For electronic media it is considered confirmed once the information is no longer on an approved network for that type of information.

Unauthorized Individual: A person who does not possess a trustworthiness and reliability determination and a need-to-know.

Limited Access

Hard Copy Format: The licensee has the ability to restrict access to the area where the information is stored and has some type of control system in place on who accesses the area.

Electronic Media: The information is stored in a location that is still within the licensee's computer network's firewall and the licensee has some type of control system in place on who can access the information.

Duration

Long: Greater than or equal to 14 days from the date of infraction to discovery of the non-compliance.

Short: Less than 14 days from the date of infraction to discovery of the non-compliance.

IV. Procedural Requirements

Paperwork Reduction Act

This policy statement does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget (OMB), approval number 3150–0136.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Dated at Rockville, Maryland, this 30th day of September 2014.

For the Nuclear Regulatory Commission.

Patricia K. Holahan,

Director, Office of Enforcement.

[FR Doc. 2014–24166 Filed 10–8–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–259, 50–260, and 50–296; NRC–2014–0222]

Tennessee Valley Authority; Browns Ferry Nuclear Plant, Unit Nos. 1, 2, and 3

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; withdrawal by applicant.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has accepted the request of Tennessee Valley Authority (TVA) to withdraw its application dated June 28, 2004, for a proposed amendment to Renewed Facility Operating License (RFOL) No. DPR–33 for Browns Ferry Nuclear Plant (BFN), Unit No. 1, and its application dated June 25, 2004, for proposed amendments to RFOL Nos. DPR–52 and DPR–68 for BFN Unit Nos. 2 and 3. The proposed amendments would have increased the maximum authorized power level from the current 3458 megawatt thermal (MWt) to 3952 MWt (approximately 15 percent) for BFN Unit Nos. 1, 2, and 3.

ADDRESSES: Please refer to Docket ID NRC–2014–0222 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0222. 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 ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select ''*ADAMS Public Documents''* and then select ''*Begin Web-based ADAMS Search*.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Farideh E. Saba, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1447; email: *Farideh.Saba@nrc.gov*.

SUPPLEMENTARY INFORMATION: The NRC has accepted TVA's withdrawal of its applications dated June 28, 2004 (ADAMS Accession No. ML041810168), and June 25, 2004 (ADAMS Accession No. ML041840301), for proposed amendments to RFOL No. DPR–33 for BFN Unit No. 1, and RFOL Nos. DPR–52 and DPR–68 for BFN Unit Nos. 2 and 3, respectively, located in Limestone County, Alabama. The proposed change would have modified the BFN operating licenses to increase the maximum authorized power level to 3952 megawatts thermal, by approximately 20 percent above the then maximum authorized power level for Unit No. 1, and approximately 15 percent for Unit Nos. 2 and 3. The licensee, in the September 18, 2014 (ADAMS Accession No. ML14265A487), letter stated that it has been developing a new consolidated extended power uprate license amendment request for BFN Unit Nos. 1, 2, and 3 that is expected to be submitted by October 2015.

The NRC issued Notices of Consideration of Issuance of Amendments to Facility Operating Licenses published in the **Federal Register** (FR) on July 11, 2005 (70 FR 39803), for BFN Unit No. 1 and July 12, 2005 (70 FR 40064), for BFN Unit Nos. 2 and 3. However, by letter dated September 18, 2014, the licensee requested to withdraw the proposed amendments.

Dated at Rockville, Maryland, this 2nd day of October 2014.

For the Nuclear Regulatory Commission.

Farideh E. Saba,

Senior Project Manager, Plant Licensing Branch II–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2014–24163 Filed 10–8–14; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73298; File No. TP 14–13]

Order Granting Limited Exemptions From Exchange Act Rule 10b–17 and Rules 101 and 102 of Regulation M to ProShares Morningstar Alternatives Solution ETF Pursuant to Exchange Act Rule 10b–17(b)(2) and Rules 101(d) and 102(e) of Regulation M

October 3, 2014.

By letter dated October 3, 2014 (the ''Letter''), as supplemented by conversations with the staff of the Division of Trading and Markets, counsel for ProShares Trust (the ''Trust'') on behalf of the Trust, ProShares Morningstar Alternatives Solution ETF (the ''Fund''), any national securities exchange on or through which shares issued by the Fund (''Shares'') are listed or may subsequently trade, SEI Investments Distribution Co., and other persons or entities engaging in transactions in Shares (collectively, the ''Requestors'') requested exemptions, or interpretive or no-action relief, from Rule 10b–17 of the Securities Exchange Act of 1934, as amended (''Exchange Act''), and Rules 101 and 102 of Regulation M, in connection with secondary market transactions in Shares and the creation or redemption of aggregations of Shares of at least 10,000 shares (''Creation Units'').

The Trust is registered with the Commission under the Investment Company Act of 1940, as amended (''1940 Act''), as an open-end management investment company. The Fund will seek results that correspond generally to the return (before the Fund's fees and expenses) of the Morningstar Alternatives Index (the ''Index''). The Index is designed to provide diversified exposure to alternative asset classes with the goal of enhancing risk adjusted portfolio returns when combined with a range of traditional investments. The Index allocates among a comprehensive set of alternative ETFs sponsored or advised by the Fund's adviser or its affiliates that employ alternative and non-traditional strategies such as long/short, market neutral, managed futures, hedge fund replication, private equity, infrastructure or inflation-related investments. The maximum allocation to any particular ETF or exchange-traded commodity pool (''ETCP'') is 30%. The Fund intends to operate as an ''ETF of ETFs'' by seeking to track the performance of its Index through investing at least 80% of its total assets in the ETFs and ETCPs that comprise its

Index. Except for the fact that the Fund will operate as an ETF of ETFs, the Fund will operate in a manner substantially identical to the ETFs that are included in the Index.

The Requestors represent, among other things, the following:

- Shares of the Fund will be issued by the Trust, an open-end management investment company that is registered with the Commission;
- The Trust will continuously redeem Creation Units at net asset value (''NAV'') and the secondary market price of the Shares should not vary substantially from the NAV of such Shares;
- Shares of the Fund will be listed and traded on NYSE Arca, Inc. or other exchange in accordance with exchange listing standards that are, or will become, effective pursuant to Section 19(b) of the Exchange Act (the ''Exchange''); [1]
- All ETFs in which the Fund is invested will meet all conditions set forth in a relevant class relief letter,[2] will have received individual relief from the Commission, or can rely on individual relief even though they are not named parties (for example, a no-action letter); [3]
- All the components of the Index will have publicly available last sale trade information;
- The intra-day proxy value of the Fund per share and the value of the Index will be publicly disseminated by a major market data vendor throughout the trading day;
- On each business day before the opening of business on the Exchange, the Fund's index receipt agent, through the National Securities Clearing Corporation, will make available the list of the names and the numbers of securities and other assets of the Fund's portfolio that will be applicable that day to creation and redemption requests;
- The Exchange or other market information provider will disseminate (i) continuously every 15 seconds throughout the trading day, through the facilities of the consolidated tape, the market value of a Share and (ii) every 15 seconds throughout the trading day, a calculation of the intraday indicative value of a Share;
- The arbitrage mechanism will be facilitated by the transparency of the Fund's portfolio and the availability of the intra-day indicative value, the liquidity of securities held by the Fund and the ability to acquire such securities, as well as the arbitrageurs' ability to create workable hedges;
- The Fund will invest solely in liquid securities;
- The Fund will invest in securities that will facilitate an effective and efficient arbitrage mechanism and the ability to create workable hedges;
- The Trust believes that arbitrageurs are expected to take advantage of price variations between the Fund's market price and its NAV; and
- A close alignment between the market price of Shares and the Fund's NAV is expected.

Regulation M

While redeemable securities issued by an open-end management investment company are excepted from the provisions of Rule 101 and 102 of Regulation M, the Requestors may not rely upon that exception for the Shares.[4] However, we find that it is appropriate in the public interest and is consistent with the protection of investors to grant a conditional exemption from Rules 101 and 102 to persons who may be deemed to be participating in a distribution of Shares of the Fund as described in more detail below.

Rule 101 of Regulation M

Generally, Rule 101 of Regulation M is an anti-manipulation rule that, subject to certain exceptions, prohibits any ''distribution participant'' and its ''affiliated purchasers'' from bidding for, purchasing, or attempting to induce any person to bid for or purchase any security which is the subject of a distribution until after the applicable restricted period, except as specifically permitted in the rule. Rule 100 of Regulation M defines ''distribution'' to mean any offering of securities that is distinguished from ordinary trading transactions by the magnitude of the offering and the presence of special selling efforts and selling methods. The provisions of Rule 101 of Regulation M apply to underwriters, prospective underwriters, brokers, dealers, or other persons who have agreed to participate or are participating in a distribution of securities. The Shares are in a continuous distribution and, as such, the restricted period in which distribution participants and their affiliated purchasers are prohibited from bidding for, purchasing, or attempting to induce others to bid for or purchase extends indefinitely.

Based on the representations and facts presented in the Letter, particularly that the Trust is a registered open-end management investment company that will continuously redeem at the NAV Creation Unit size aggregations of the Shares of the Fund and that a close alignment between the market price of Shares and the Fund's NAV is expected, the Commission finds that it is appropriate in the public interest and consistent with the protection of investors to grant the Trust an exemption under paragraph (d) of Rule 101 of Regulation M with respect to the Fund, thus permitting persons participating in a distribution of Shares of the Fund to bid for or purchase such Shares during their participation in such distribution.[5]

Rule 102 of Regulation M

Rule 102 of Regulation M prohibits issuers, selling security holders, and any affiliated purchaser of such person from bidding for, purchasing, or attempting to induce any person to bid for or purchase a covered security during the applicable restricted period in connection with a distribution of securities effected by or on behalf of an issuer or selling security holder.

Based on the representations and facts presented in the Letter, particularly that the Trust is a registered open-end management investment company that will redeem at the NAV Creation Units of Shares of the Fund and that a close alignment between the market price of

[1] Further, the Letter states that should the Shares also trade on a market pursuant to unlisted trading privileges, such trading will be conducted pursuant to self-regulatory organization rules that are effective pursuant to Section 19(b) of the Exchange Act.

[2] Exchange Act Rel. No. 67215 (Jun. 19, 2012); 77 FR 37941 (Jun. 25, 2012); Letter from Catherine McGuire, Esq., Chief Counsel, Division of Market Regulation, to the Securities Industry Association Derivative Products Committee (November 21, 2005); Letter from Racquel L. Russell, Branch Chief, Division of Market Regulation, to George T. Simon, Esq., Foley & Lardner LLP (June 21, 2006); Letter from James A. Brigagliano, Acting Associate Director, Division of Market Regulation, to Stuart M. Strauss, Esq., Clifford Chance US LLP (October 24, 2006); Letter from James A. Brigagliano, Associate Director, Division of Market Regulation, to Benjamin Haskin, Esq., Willkie. Farr & Gallagher LLP (April 9, 2007); or Letter from Josephine Tao, Assistant Director, Division of Trading and Markets, to Domenick Pugliese, Esq., Paul, Hastings, Janofsky and Walker LLP (June 27, 2007). *See also* Staff Legal Bulletin No. 9, ''Frequently Asked Questions About Regulation M'' (Apr. 12, 2002) (regarding actively-managed ETFs).

[3] *See, e.g.,* Letter from James A. Brigagliano, Associate Director, Division of Market Regulation, to Kathleen H. Moriarty, Carter, Ledyard & Milburn, dated January 24, 2007 (with respect to the additional funds of ProShares Trust).

[4] While ETFs operate under exemptions from the definitions of ''open-end company'' under Section 5(a)(1) of the 1940 Act and ''redeemable security'' under Section 2(a)(32) of the 1940 Act, the Fund and its securities do not meet those definitions.

[5] Additionally, we confirm the interpretation that a redemption of Creation Unit size aggregations of Shares of the Fund and the receipt of securities in exchange by a participant in a distribution of Shares of the Fund would not constitute an ''attempt to induce any person to bid for or purchase, a covered security during the applicable restricted period'' within the meaning of Rule 101 of Regulation M and therefore would not violate that rule.

Shares and the Fund's NAV is expected, the Commission finds that it is appropriate in the public interest and consistent with the protection of investors to grant the Trust an exemption under paragraph (e) of Rule 102 of Regulation M with respect to the Fund, thus permitting the Fund to redeem Shares of the Fund during the continuous offering of such Shares.

Rule 10b–17

Rule 10b–17, with certain exceptions, requires an issuer of a class of publicly traded securities to give notice of certain specified actions (for example, a dividend distribution) relating to such class of securities in accordance with Rule 10b–17(b). Based on the representations and facts in the Letter, and subject to the conditions below, we find that it is appropriate in the public interest, and consistent with the protection of investors to grant the Trust a conditional exemption from Rule 10b–17 because market participants will receive timely notification of the existence and timing of a pending distribution, and thus the concerns that the Commission raised in adopting Rule 10b–17 will not be implicated.[6]

Conclusion

It is hereby ordered, pursuant to Rule 101(d) of Regulation M, that the Trust, based on the representations and facts presented in the Letter, is exempt from the requirements of Rule 101 with respect to the Fund, thus permitting persons who may be deemed to be participating in a distribution of Shares of the Fund to bid for or purchase such Shares during their participation in such distribution.

It is further ordered, pursuant to Rule 102(e) of Regulation M, that the Trust, based on the representations and the facts presented in the Letter, is exempt from the requirements of Rule 102 with respect to the Fund, thus permitting the Fund to redeem Shares of the Fund during the continuous offering of such Shares.

It is further ordered, pursuant to Rule 10b–17(b)(2), that the Trust, based on the representations and the facts presented in the Letter and subject to the conditions below, is exempt from the requirements of Rule 10b–17 with respect to transactions in the shares of the Fund.

This exemptive relief is subject to the following conditions:

- The Trust will comply with Rule 10b–17 except for Rule 10b–17(b)(1)(v)(a) and (b); and
- The Trust will provide the information required by Rule 10b–17(b)(1)(v)(a) and (b) to the Exchange as soon as practicable before trading begins on the ex-dividend date, but in no event later than the time when the Exchange last accepts information relating to distributions on the day before the ex-dividend date.

This exemptive relief is subject to modification or revocation at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act. This exemption is based on the facts presented and the representations made in the Letter. Any different facts or conditions may require a different response. In the event that any material change occurs in the facts or representations in the Letter, transactions in Shares of the Fund must be discontinued, pending presentation of the facts for our consideration. In addition, persons relying on this exemption are directed to the anti-fraud and anti-manipulation provisions of the Exchange Act, particularly Sections 9(a), 10(b), and Rule 10b–5 thereunder. Responsibility for compliance with these and any other applicable provisions of the federal securities laws must rest with the persons relying on this exemption. This order should not be considered a view with respect to any other question that the proposed transactions may raise, including, but not limited to the adequacy of the disclosure concerning, and the applicability of other federal or state laws to, the proposed transactions.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–24101 Filed 10–8–14; 8:45 am]

BILLING CODE 8011–01–P

[6] We also note that timely compliance with Rule 10b–17(b)(1)(v)(a) and (b) would be impractical in light of the nature of the Fund. This is because it is not possible for the Fund to accurately project ten days in advance what dividend, if any, would be paid on a particular record date.

[7] 17 CFR 200.30–3(a)(6) and (9).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73295; File No. SR–BYX–2014–026]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rule 11.13 of BATS Y-Exchange, Inc.

October 3, 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 September 25, 2014, BATS Y-Exchange, Inc. (the ''Exchange'' or ''BYX'') 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 Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend Rule 11.13(a) regarding the handling of orders that have been posted to the Exchange's order book (''BATS Book'')[5] that are subsequently locked or crossed by other Trading Centers.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to provide Users of the Exchange with additional options with respect to the Exchange's method of processing the unfilled balance of a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] As defined in Rule 1.5(e).

routable limit order that is posted to the BATS Book.

The Exchange currently allows Users to submit various types of limit orders to the Exchange that are processed pursuant to Exchange Rules 11.13(a)(1) and 11.13(a)(2)(B), as set forth below. Rule 11.13(a)(1) describes the process by which an incoming order would execute against the BATS Book. To the extent an order has not been executed in its entirety against the BATS Book, Rule 11.13(a)(2)(B) then describes the process of routing marketable limit orders [6] to one or more Trading Centers, including a description of how the Exchange treats any unfilled balance that returns to the Exchange following the first attempt to fill the order through the routing process. If not filled through routing, and based on the order instructions, the unfilled balance of the order may be posted to the BATS Book.

Pursuant to current Exchange rules,[7] to the extent the unfilled balance of an order has been posted to the BATS Book, should the order subsequently be locked or crossed by another accessible Trading Center, the System [8] shall route the order to the locking or crossing Trading Center if instructed to do so by the User (the ''RECYCLE Option''). The Exchange proposes to modify the RECYCLE Option as set forth below. At the outset, the Exchange notes that it proposes to re-name the RECYCLE Option as Re-Route instructions.

The Exchange currently offers only one form of RECYCLE, namely, that an order will be subject to the RECYCLE Option if it is either locked or crossed. The Exchange proposes to retain this functionality and to name such functionality the Super Aggressive Re-Route instruction, which reference reflects the willingness of the routable order posted to the BATS Book to route to away Trading Centers and to remove liquidity from such Trading Centers any time such order is locked or crossed (*i.e.,* rather than passively waiting for an execution on the BATS Book). The Exchange also proposes to add new optional functionality that will allow a User to instruct the Exchange to apply the Super Aggressive Re-Route instruction solely to routable orders posted to the BATS Book with remaining size of less than one round lot.

In addition to the Super Aggressive Re-Route instruction described above, the Exchange proposes to add a second option, the Aggressive Re-Route instruction, which would subject an order to the routing process after being posted to the BATS Book only if the order is subsequently crossed by another Trading Center (rather than if the order is locked or crossed).

The Exchange proposes to retain language making clear that unless otherwise specified the Re-Route options described above may be combined with any of the System routing options specified in paragraph (a)(3) of Rule 11.13.

Examples

Example 1—Aggressive Re-Route

As an example of an order with an Aggressive Re-Route instruction, assume the Exchange receives an order to buy 300 shares of a security at $10.10 per share. Assume further that the NBBO is $10.09 by $10.10 when the order is received, and the Exchange's lowest priced offer is priced at $10.11. The Exchange will route the order away from the Exchange as a bid to buy 300 shares at $10.10. Assume that the order obtains one 100 share execution through the routing process and then returns to the Exchange. The Exchange will post the order as a bid to buy 200 shares at $10.10. If displayed liquidity then appears at one or more Trading Centers priced at $10.09 or lower (*i.e.,* crossing the posted bid to buy at $10.10), the Exchange will take the displayed bid off of the BATS Book and again route such order to the displayed liquidity at other Trading Centers.

Example 2—Super Aggressive Re-Route

As an example of an order with a Super Aggressive Re-Route instruction, assume the Exchange receives an order to buy 300 shares of a security at $10.10 per share designated with such instruction. Assume further that the NBBO is $10.09 by $10.10 when the order is received, and the Exchange's lowest priced offer is priced at $10.11. The Exchange will route the order away from the Exchange as a bid to buy 300 shares at $10.10. Assume that the order obtains one 100 share execution through the routing process and then returns to the Exchange. The Exchange will post the order as a bid to buy 200 shares at $10.10. If displayed liquidity then appears in the marketplace priced at $10.10 or lower, the Exchange will take the displayed bid off of the BATS Book and again route such order to the displayed liquidity at other Trading Centers.

Example 3—Super Aggressive Re-Route for Odd Lots Only

Assuming the facts from Example 2 above that results in a 200 share order posting to the BATS Book after routing away, if a User has elected to apply the Super Aggressive Re-Route instruction solely to routable orders posted to the BATS Book with remaining size of less than one round lot, then the posted bid to buy 200 shares at $10.10 would not route off of the BATS Book if displayed liquidity appeared at one or more other Trading Centers priced at $10.10 or lower. Assume, however, that the posted order to buy 200 shares is later executed on the BATS Book against an incoming order to sell 150 shares at $10.10, leaving a 50 share order to buy at $10.10. Such order would now be subject to the Super Aggressive Re-Route functionality and would route to away Trading Centers if locked or crossed.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [9] and further the objectives of Section 6(b)(5) of the Act [10] because it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and, in general, to protect investors and the public interest. Specifically, the proposed changes are designed to provide Users with additional control over their orders in the context of a national market system where quotations may lock or cross orders posted to the BATS Book. Thus, the proposals are directly targeted at removing impediments to and perfect [sic] the mechanism of a free and open market and national market system. The proposed rule change also is designed to support the principles of Section 11A(a)(1) [11] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets.

The proposed rule changes would also provide Users with access to functionality that may result in the efficient execution of such orders and will provide additional flexibility as

[6] Market orders are also routed away, pursuant to Rule 11.13(a)(2)(A), however the Exchange is not proposing any changes to the treatment of routed market orders at this time.

[7] *See* Rule 11.13(a)(2).

[8] As defined in Rule 1.5(aa), the System is the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78k–1(a)(1).

well as increased functionality to the Exchange's System and its Users.

The Exchange reiterates that the Super Aggressive Re-Route instruction is currently contained in Exchange rules as the RECYCLE Option. The Exchange believes that adding an optional functionality that will only treat orders with size less than a round lot as orders with Super Aggressive Re-Route instruction is reasonable because such orders are not Protected Quotations under the Act, and thus, are more likely to be locked or crossed by external markets. Accordingly, allowing such orders to only apply the Super Aggressive Re-Route instruction will enhance the likelihood of their prompt execution. The Exchange believes that the proposed addition of the Aggressive Re-Route instruction is consistent with the Act as it will provide Users with another option that may result in the efficient execution of such orders and will provide additional flexibility as well as increased functionality to the Exchange's System and its Users.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that Re-Route functionality generally encourages competition by increasing the likelihood of executions of orders that have been posted to the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6)(iii) thereunder.[13]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange stated that waiver of this requirement would allow the Exchange to immediately offer Exchange Users additionally variations of functionality that is already available on the Exchange. The Exchange also stated that the addition of a variation of Re-Route functionality that applies only when an order is crossed by an accessible Trading Center and the odd lot variation to the Super-Aggressive Re-Route instruction will benefit market participants and their customers by allowing them greater flexibility in their efforts to fill orders. The Commission believes that the waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposed rule change to be operative upon filing.[14]

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) [15] 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–BYX–2014–026 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–BYX–2014–026. 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 will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BYX–2014–026 and should be submitted on or before October 30, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

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[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6)(iii). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78s(b)(2)(B).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73299; File No. SR–FINRA–2014–041]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Tier Size Pilot of FINRA Rule 6433 (Minimum Quotation Size Requirements for OTC Equity Securities)

October 3, 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 September 30, 2014, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 6433 (Minimum Quotation Size Requirements for OTC Equity Securities) to extend the Tier Size Pilot, which currently is scheduled to expire on November 14, 2014, for an additional three months, until February 13, 2015.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared 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

FINRA proposes to amend FINRA Rule 6433 (Minimum Quotation Size Requirements for OTC Equity Securities) (the ''Rule'') to extend, until February 13, 2015, the amendments set forth in File No. SR–FINRA–2011–058 (''Tier Size Pilot'' or ''Pilot''), which currently are scheduled to expire on November 14, 2014.[4]

The Tier Size Pilot was filed with the SEC on October 6, 2011,[5] to amend the minimum quotation sizes (or ''tier sizes'') for OTC Equity Securities.[6] FINRA believed, and continues to believe, that the Pilot, among other things, would simplify the tier structure, facilitate the display of customer limit orders, and expand the scope of the Rule to apply to additional quoting participants. During the proposal process, the SEC received a number of comments, including some expressing concern regarding the potential impact of the proposed rule change, and, in response, FINRA submitted an amendment to revise the tiers and to implement the proposed revised tier sizes as a one-year pilot to allow FINRA and the SEC to better analyze the impact of the new tiers during the pilot period.[7] FINRA also committed to collecting and providing to the Commission certain pre- and post-pilot data to assist in analyzing the impact of the Pilot.[8] The data provision includes the collection and submission to the SEC of monthly information regarding:

- The price of the first trade of each trading day executed at or after 9:30:00 a.m., based on execution time.
- The price of the last trade of each trading day executed at or before 4:00:00 p.m., based on execution time.
- Daily share volume.
- Daily dollar volume.
- Number of limit orders from customers and in total.
- Percentage of the day that the size of the BBO equals the minimum quote size.
- Number of market makers actively quoting.
- Number of executions from a limit order and number of limit orders at the BBO or better by tier size from a customer and in total.
- Liquidity/BBO metrics
- Time-weighted quoted spread.
- Effective spread.
- Time-weighted quoted depth (number of shares) at the inside.
- Time-weighted quoted depth (dollar value of shares) at the inside.

In addition to submitting the above data to the Commission, which FINRA has provided on a monthly basis for the duration of the Pilot,[9] FINRA also committed to providing to the Commission an assessment on the operation of the Tier Size Pilot that, among other things, would address the impact of the Pilot, the concerns raised by commenters during the rule filing process, and whether the Pilot has resulted in the desired effects. FINRA submitted this assessment on September 13, 2013. The assessment utilized Pilot data covering the period from November 12, 2012 through June 30, 2013.[10] As noted in the assessment, FINRA believes that the analysis of the data generally showed that the Tier Size Pilot had a neutral to positive impact on OTC market quality for the majority of OTC Equity Securities and tiers. FINRA also found that there was an increase of 13% in the number of customer limit orders that met the minimum quotation sizes to be eligible for display under the Pilot tiers (for all tiers combined).

FINRA also observed certain impacts that appeared to be temporary. Specifically, FINRA noted that, while some large market makers initially reduced the number of securities actively quoted on a priced basis, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* Securities Exchange Act Release No. 67208 (June 15, 2012), 77 FR 37458 (June 21, 2012) (Order Approving File No. SR–FINRA–2011–058, as amended); *see also* Securities Exchange Act Release No. 70839 (November 8, 2013), 78 FR 68893 (November 15, 2013) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Tier Size Pilot of FINRA Rule 6433; File No. SR–FINRA–2013–049).

[5] *See* Securities Exchange Act Release No. 65568 (October 14, 2011), 76 FR 65307 (October 20, 2011) (Notice of Filing of File No. SR–FINRA–2011–058).

[6] ''OTC Equity Security'' means any equity security that is not an ''NMS stock'' as that term is defined in Rule 600(b)(47) of SEC Regulation NMS; provided, however, that the term OTC Equity Security shall not include any Restricted Equity Security. *See* FINRA Rule 6420.

[7] *See* Securities Exchange Act Release No. 66819 (April 17, 2012); 77 FR 23770 (April 20, 2012) (Notice of Filing of Amendment No. 1 to File No. SR–FINRA–2011–058).

[8] *See* Securities Exchange Act Release No. 67208 (June 15, 2012), 77 FR 37458 (June 21, 2012) (Order Approving File No. SR–FINRA–2011–058, as amended.

[9] FINRA will continue to submit monthly data until the new Tier Size Pilot period expiration date of February 13, 2015.

[10] The assessment is part of the SEC's comment file for SR–FINRA–2011–058 and also is available on FINRA's Web site at: *http://www.finra.org/Industry/Regulation/RuleFilings/2011/P124615* (''Pilot Assessment'').

number of market makers providing quotes gradually reversed over time as the Pilot progressed. Thus, to allow additional time to observe the operation of the Pilot and to provide the SEC with data over a longer time period so that the effects of the Pilot could be more thoroughly reviewed, FINRA filed an extension for another year, extending the period from November 12, 2013 until November 14, 2014.

The purpose of this filing is to extend the operation of the Tier Size Pilot for an additional three month period, until February 13, 2015, to provide FINRA with additional time to consider the implications of the data collected since June 30, 2013 and to determine whether FINRA will propose that the Pilot tiers be adopted as permanent.

FINRA has filed the proposed rule change for immediate effectiveness. The effective date of the proposed rule change will be the date of filing.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[11] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA also believes that the proposed rule change is consistent with the provisions of Section 15A(b)(11) of the Act.[12] Section 15A(b)(11) requires that FINRA rules include provisions governing the form and content of quotations relating to securities sold otherwise than on a national securities exchange which may be distributed or published by any member or person associated with a member, and the persons to whom such quotations may be supplied.

FINRA believes that the extension of the Tier Size Pilot for an additional three months is consistent with the Act in that it would provide the Commission and FINRA with additional data and more time to undertake a thorough review of the submitted data. FINRA believes this additional time will facilitate FINRA's consideration of the impact of the Pilot using data after June 30, 2013, and determination of the appropriateness of making the Pilot tiers permanent.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2014–041 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2014–041. 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 St. NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2014–041, and should be submitted on or before October 30, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–24102 Filed 10–8–14; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78*o*–3(b)(6).

[12] 15 U.S.C. 78*o*–3(b)(11).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73296; File No. SR–BATS–2014–044]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rules 11.13 and 21.9 of BATS Exchange, Inc.

October 3, 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 September 25, 2014, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend Rule 11.13(a) regarding the handling of orders that have been posted to the order book (''BATS Book'')[5] of the Exchange's cash equities trading platform (''BATS Equities'') that are subsequently locked or crossed by other Trading Centers. Consistent with its practice of offering similar functionality for the Exchange's equity options trading platform (''BATS Options'') as it does for BATS Equities, the Exchange also proposes to amend Rule 21.9(a) to make similar changes with respect to BATS Options.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to provide Users of the Exchange with additional options with respect to the Exchange's method of processing the unfilled balance of a routable limit order that is posted to the BATS Book.

With respect to BATS Equities, the Exchange currently allows Users to submit various types of limit orders to the Exchange that are processed pursuant to Exchange Rules 11.13(a)(1) and 11.13(a)(2)(B), as set forth below. Rule 11.13(a)(1) describes the process by which an incoming order would execute against the BATS Book for BATS Equities. To the extent an order has not been executed in its entirety against the BATS Book, Rule 11.13(a)(2)(B) then describes the process of routing marketable limit orders[6] to one or more Trading Centers, including a description of how the Exchange treats any unfilled balance that returns to the Exchange following the first attempt to fill the order through the routing process. If not filled through routing, and based on the order instructions, the unfilled balance of the order may be posted to the BATS Book.

Similarly, with respect to BATS Options, Rule 21.8 describes the process by which an incoming order would execute against the BATS Options Book.[7] To the extent an order has not been executed in its entirety against the BATS Options Book, Rule 21.9(a)(1) then describes the process of routing marketable limit orders[8] to one or more other options exchanges, including a description of how the Exchange treats any unfilled balance that returns to the Exchange following the first attempt to fill the order through the routing process. If not filled through routing, and based on the order instructions, the unfilled balance of the order may be posted to the BATS Options Book.

Pursuant to current Exchange rules,[9] to the extent the unfilled balance of an order has been posted to the BATS Book, should the order subsequently be locked or crossed by another accessible Trading Center, the System[10] shall route the order to the locking or crossing Trading Center if instructed to do so by the User (the ''RECYCLE Option''). The Exchange proposes to modify the RECYCLE Option as set forth below. At the outset, the Exchange notes that it proposes to re-name the RECYCLE Option as Re-Route instructions.

BATS Equities

The Exchange currently offers only one form of RECYCLE, namely, that an order will be subject to the RECYCLE Option if it is either locked or crossed. The Exchange proposes to retain this functionality and to name such functionality the Super Aggressive Re-Route instruction, which reference reflects the willingness of the routable order posted to the BATS Book to route to away Trading Centers and to remove liquidity from such Trading Centers any time such order is locked or crossed (*i.e.,* rather than passively waiting for an execution on the BATS Book). The Exchange also proposes to add new optional functionality that will allow a User to instruct the Exchange to apply the Super Aggressive Re-Route instruction solely to routable orders posted to the BATS Book with remaining size of less than one round lot.

In addition to the Super Aggressive Re-Route instruction described above, the Exchange proposes to add a second option, the Aggressive Re-Route instruction, which would subject an order to the routing process after being posted to the BATS Book only if the order is subsequently crossed by another Trading Center (rather than if the order is locked or crossed).

The Exchange proposes to retain language making clear that unless otherwise specified the Re-Route options described above may be combined with any of the System routing options specified in paragraph (a)(3) of Rule 11.13.

Examples

Example 1—Aggressive Re-Route

As an example of an order with an Aggressive Re-Route instruction, assume the Exchange receives an order to buy 300 shares of a security at $10.10 per share. Assume further that the NBBO is $10.09 by $10.10 when the order is received, and the Exchange's lowest priced offer is priced at $10.11. The Exchange will route the order away

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] As defined in Rule 1.5(e).

[6] Market orders are also routed away pursuant to Rule 11.13(a)(2)(A), however the Exchange is not proposing any changes to the treatment of routed market orders at this time.

[7] As defined in Rule 16.1(a)(9).

[8] Market orders are also routed away pursuant to Rule 21.9(a)(1), however the Exchange is not proposing any changes to the treatment of routed market orders at this time.

[9] *See* Rule 11.13(a)(2) for BATS Equities and Rule 21.9(a)(1) for BATS Options.

[10] As defined in Rule 1.5(aa), the System is the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away.

from the Exchange as a bid to buy 300 shares at $10.10. Assume that the order obtains one 100 share execution through the routing process and then returns to the Exchange. The Exchange will post the order as a bid to buy 200 shares at $10.10. If displayed liquidity then appears at one or more Trading Centers priced at $10.09 or lower (*i.e.,* crossing the posted bid to buy at $10.10), the Exchange will take the displayed bid off of the BATS Book and again route such order to the displayed liquidity at other Trading Centers.

Example 2—Super Aggressive Re-Route

As an example of an order with a Super Aggressive Re-Route instruction, assume the Exchange receives an order to buy 300 shares of a security at $10.10 per share designated with such instruction. Assume further that the NBBO is $10.09 by $10.10 when the order is received, and the Exchange's lowest priced offer is priced at $10.11. The Exchange will route the order away from the Exchange as a bid to buy 300 shares at $10.10. Assume that the order obtains one 100 share execution through the routing process and then returns to the Exchange. The Exchange will post the order as a bid to buy 200 shares at $10.10. If displayed liquidity then appears in the marketplace priced at $10.10 or lower, the Exchange will take the displayed bid off of the BATS Book and again route such order to the displayed liquidity at other Trading Centers.

Example 3—Super Aggressive Re-Route for Odd Lots Only

Assuming the facts from Example 2 above that results in a 200 share order posting to the BATS Book after routing away, if a User has elected to apply the Super Aggressive Re-Route instruction solely to routable orders posted to the BATS Book with remaining size of less than one round lot, then the posted bid to buy 200 shares at $10.10 would not route off of the BATS Book if displayed liquidity appeared at one or more other Trading Centers priced at $10.10 or lower. Assume, however, that the posted order to buy 200 shares is later executed on the BATS Book against an incoming order to sell 150 shares at $10.10, leaving a 50 share order to buy at $10.10. Such order would now be subject to the Super Aggressive Re-Route functionality and would route to away Trading Centers if locked or crossed.

BATS Options

In order to maintain consistency between analogous processes offered by BATS Equities and BATS Options, the Exchange proposes to modify the rules of BATS Options to conform to the changes described above related to the Re-Route instruction.

The proposed Re-Route functionality for BATS Options is similar to the proposed functionality for BATS Equities, with the exception of language related to odd lot orders. Because, consistent with other options exchanges, BATS Options does not categorize any orders as odd lot orders or round lot orders, the Exchange has omitted language regarding the proposed optional Re-Route functionality applicable to odd lot orders for BATS Equities. All other changes for BATS Equities, including the rationale and examples described above, are identical for BATS Options.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [11] and further the objectives of Section 6(b)(5) of the Act [12] because it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and, in general, to protect investors and the public interest. Specifically, the proposed changes are designed to provide Users with additional control over their orders in the context of a national market system where quotations may lock or cross orders posted to the BATS Book. Thus, the proposals are directly targeted at removing impediments to and perfect [sic] the mechanism of a free and open market and national market system. The proposed rule change also is designed to support the principles of Section 11A(a)(1) [13] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets.

The proposed rule changes would also provide Users with access to functionality that may result in the efficient execution of such orders and will provide additional flexibility as well as increased functionality to the Exchange's System and its Users.

The Exchange reiterates that the Super Aggressive Re-Route instruction is currently contained in Exchange rules as the RECYCLE Option. The Exchange believes that adding an optional functionality that will only treat orders with size less than a round lot as orders with Super Aggressive Re-Route instruction is reasonable because such orders are not Protected Quotations under the Act, and thus, are more likely to be locked or crossed by external markets. Accordingly, allowing such orders to only apply the Super Aggressive Re-Route instruction will enhance the likelihood of their prompt execution. The Exchange believes that the proposed addition of the Aggressive Re-Route instruction is consistent with the Act as it will provide Users with another option that may result in the efficient execution of such orders and will provide additional flexibility as well as increased functionality to the Exchange's System and its Users.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that Re-Route functionality generally encourages competition by increasing the likelihood of executions of orders that have been posted to the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [14] and Rule 19b–4(f)(6)(iii) thereunder.[15]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78k–1(a)(1).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6)(iii). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

become operative immediately upon filing. The Exchange stated that waiver of this requirement would allow the Exchange to immediately offer Exchange Users additionally variations of functionality that is already available on the Exchange. The Exchange also stated that the addition of a variation of Re-Route functionality that applies only when an order is crossed by an accessible Trading Center and the odd lot variation to the Super-Aggressive Re-Route instruction will benefit market participants and their customers by allowing them greater flexibility in their efforts to fill orders. The Commission believes that the waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposed rule change to be operative upon filing.[16]

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)[17] 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–BATS–2014–044 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–BATS–2014–044. 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 will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BATS–2014–044 and should be submitted on or before October 30, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–24100 Filed 10–8–14; 8:45 am]

BILLING CODE 8011–01–P

[16] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78s(b)(2)(B).

[18] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Tregaron Opportunity Fund II, L.P. License No. 09/09–0474; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Tregaron Opportunity Fund II, L.P., 300 Hamilton Avenue, 4th Floor, Palo Alto, CA 94301, a Federal Licensee under the Small Business Investment Act of 1958, as amended (the ''Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Tregaron Opportunity Fund I, L.P. and Tregaron Opportunity Fund II, L.P. propose to provide debt financing to Somerset Landscape, LLC, 19051 South Arizona Avenue, Chandler, AZ 85286. The proceeds will be used to finance the acquisition of Greener Pastures Landscape, Inc.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because Tregaron Opportunity Fund I, L.P. and Tregaron Opportunity Fund II, L.P. are Associates and because Tregaron Opportunity Fund I, L.P. has a greater than ten percent interest in Somerset Landscape, LLC. Therefore this transaction is considered financing an Associate requiring SBA prior written exemption.

Notice is hereby given that any interested person may submit written comments on the transaction, within fifteen days of the date of this publication, to the Associate Administrator for Office of Investment and Innovation, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416.

Dated: September 20, 2014.

Javier E. Saade,

Associate Administrator for Office of Investment and Innovation.

[FR Doc. 2014–23953 Filed 10–8–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF STATE

[Public Notice 8913]

Culturally Significant Object Imported for Exhibition Determinations: ''Classical Nudes and the Making of Queer History''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the object to be included in the exhibition ''Classical Nudes and the Making of Queer History,'' imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the imported object at the Leslie + Lohman Museum of Gay and Lesbian Art, New York, New York, from on or about October 17, 2014, until on or

about January 4, 2015, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a description of the imported object, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: October 3, 2014.

Kelly Keiderling,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2014–24140 Filed 10–8–14; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 8910]

Culturally Significant Object Imported for Exhibition Determinations: ''Delacroix's Greece on the Ruins of Missolonghi''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the object to be included in the exhibition ''Delacroix's Greece on the Ruins of Missolonghi,'' imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at the Los Angeles County Museum of Art, Los Angeles, CA, from on or about November 16, 2014, until on or about February 15, 2015, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit object, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: October 3, 2014.

Kelly Keiderling,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2014–24143 Filed 10–8–14; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 8914]

Culturally Significant Objects Imported for Exhibition Determinations: ''Warriors and Mothers: Epic Mbembe Art'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Warriors and Mothers: Epic Mbembe Art,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, New York, NY, from on or about December 9, 2014, until on or about September 7, 2015, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: October 3, 2014.

Kelly Keiderling,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2014–24138 Filed 10–8–14; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 8911]

Culturally Significant Objects Imported for Exhibition Determinations: ''Masterpieces From the National Galleries of Scotland'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Masterpieces from the National Galleries of Scotland,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Frick Collection, New York, NY, from on or about November 5, 2014, until on or about February 5, 2015, the de Young Museum, Fine Arts Museums of San Francisco, San Francisco, CA, from on or about March 7, 2015, until on or about May 31, 2015, the Kimball Art Museum, Ft. Worth, TX, from on or about June 28, 2015, until on or about September 20, 2015, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: October 3, 2014.

Kelly Keiderling,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2014–24142 Filed 10–8–14; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 8912]

Culturally Significant Objects Imported for Exhibition Determinations: ''Ennion: Master of Roman Glass''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Ennion: Master of Roman Glass,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Metropolitan Museum of Art, New York, New York, from on or about December 9, 2014, until on or about April 13, 2015, The Corning Museum of Glass, Corning, New York, from on or about May 15, 2015, until on or about October 19, 2015, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: October 3, 2014.

Kelly Keiderling,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2014–24141 Filed 10–8–14; 8:45 am]

BILLING CODE 4710–05–P

TRADE AND DEVELOPMENT AGENCY

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: United States Trade and Development Agency.

ACTION: Request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the U.S. Trade and Development Agency has submitted a request to the Office of Management and Budget (OMB) to review and approve an extension for a currently approved information collection for Evaluation of USTDA Performance. USTDA published its first **Federal Register** Notice on this information request extension on July 21, 2014, at 79 FR 42392, at which time a 60-day comment period was announced. No comments were received in response to this notice at the end of the comment period.

Comments are again being solicited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

DATES: Comments must be received by OMB by November 10, 2014 to be assured of consideration.

ADDRESSES: Copies of the subject form and the request for extension prepared for submission to OMB may be obtained from the Agency Submitting Officer. Comments should be addressed as follows: Desk Officer for USTDA, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503.

FOR ADDITIONAL INFORMATION CONTACT: Contact Carolyn Hum, Administrative Officer, Attn: PRA, U.S. Trade and Development Agency, 1000 Wilson Blvd., Suite 1600, Arlington, VA 22209–3901; Tel.: (703) 875–4357, Fax: (703) 875–4009; Email: *chum@ustda.gov.*

SUPPLEMENTARY INFORMATION:

Summary Collection Under Review

Type of Request: Extension of a currently approved information collection.

Expiration Date of Previous Approval: 12/31/2014.

Title: Evaluation of USTDA Performance.

Form Number: USTDA 1000E–2011a.

Frequency of Use: annually for duration of project.

Type of Respondents: Business or other for profit; Not-for-profit institutions; Farms; Federal Government.

Estimated Number of Responses: 1,840 to 2,200 per year.

Estimated Total Annual Burden on Respondents: 613 to 733 hours per year.

Federal Cost: $369,699.

Authority for Information Collection: Government Performance and Results Act of 1993 103 Pub. L. 62; 107 Stat. 285.

Abstract: USTDA and contractors will collect information from various stakeholders on USTDA-funded activities regarding development impact and/or commercial objectives as well as evaluate success regarding GPRA objectives.

Dated: October 6, 2014.

Carolyn Hum,

Administrative Officer.

[FR Doc. 2014–24124 Filed 10–8–14; 8:45 am]

BILLING CODE 8040–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2014–0175]

Senior Executive Service Performance Review Boards Membership

AGENCY: Office of the Secretary, Department of Transportation (DOT).

ACTION: Notice of Performance Review Board (PRB) appointments.

SUMMARY: DOT publishes the names of the persons selected to serve on the various Departmental PRBs as required by 5 U.S.C. 4314(c)(4).

FOR FURTHER INFORMATION CONTACT: Cynthia M. Vaughan, Acting Director, Departmental Office of Human Resource Management, (202) 366–4088.

SUPPLEMENTARY INFORMATION: The persons named below have been selected to serve on one or more Departmental PRBs.

Issued in Washington, DC, on October 1, 2014.

Cynthia M. Vaughan,

Acting Director, Departmental Office of Human Resource Management.

Department Of Transportation

Federal Highway Administration

Alicandri, Elizabeth
Arnold, Robert E.
Bezio, Brian R.
Brown, Janice W.
Conner, Clara H.
Curtis, Joyce A.
Elston, Debra S.
Evans, Monique R.
Finfrock, Arlan E. Jr.
Fleury, Nicolle M.
Furst, Anthony T.
Griffith, Michael S.
Holian, Thomas P.
Hughes Rayman, Caitlin
Kehrli, Mark R.
Knopp, Martin C.
Konove, Elissa K.
Leonard, Kenneth
Lindley, Jeffrey A.
Lucero, Amy C.
Mammano, Vincent P.
Marchese, April L.
Mcdade, Jonathan D.
Mcelroy, Regina S.
Nadeau, Gregory G.
Pagan-Ortiz, Jorge E.
Paniati, Jeffrey F.
Ridenour, Melisa L.
Saunders, Ian C.
Schaftlein, Shari M.
Schmidt, Robert T.
Shepherd, Gloria M.
Shores, Sarah J.
Solomon, Gerald L.
Stephanos, Peter J.
Suarez, Ricardo
Tischer, Marylynn
Trentacoste, Michael F.
Waidelich, Walter C. Jr.
Walker, Cheryl J.
Whitlock, Warren S.
Winter, David R.

Federal Motor Carrier Administration

Amos, Anna J.
Bronrott, William A.
Collins, Anne L.
Darling, Thomas F. S. Iii
Delorenzo, Joseph P.
Fromm, Charles J.
Horan, Charles A. Iii
Miller, Robert W.
Minor, Larry W.
Paden, William R.
Quade, William A. Iii
Reed, Pamela G.
Regal, G. Kelly
Smith, Steven K.
Thomas, Curtis L.
Van Steenburg, John W.

Federal Railroad Administration

Cummings, Stacy A.
Hill, Corey W.
Hynes, Ronald E.
Lauby, Robert C.
Moscoso, Brenda J.
Nissenbaum, Paul
Osborn, Peter W.
Pennington, Rebecca A.
Porter, Melissa L.
Tunna, John M.

Federal Transit Administration

Ahmad, Mokhtee
Biehl, Scott A.
Buchanan-Smith, Henrika
Carter, Dorval R.
Garliauskas, Lucy
Gehrke, Linda M.
Krochalis, Richard F.
Mcmillan, Therese W.
Mello, Mary E.
Nifosi, Dana C.
Patrick, Robert C.
Rogers, Leslie T.
Shazor, Marilyn G.
Simon, Marisol R.
Taylor, Yvette G.
Tuccillo, Robert J.
Valdes, Vincent
Welbes, Matthew J.

Maritime Administration

Bohnert, Roger V.
Brennan, Dennis J.
Brohl, Helen A.
Dunlap, Susan L.
Helis, James A.
Kumar, Shashi N.
Mc Mahon, Christopher J.
Moschkin, Lydia
Parker, Franklin R.
Pixa, Rand R.
Quinn, John P.
Szabat, Joel M.
Tokarski, Kevin M.

National Highway Traffic Safety Administration

Beuse, Nathaniel M.
Borris, Frank S. Ii
Brown, Michael L.
Coggins, Colleen P.
Donaldson, K. John
Friedman, David J.
Gunnels, Mary D.
Johnson, Tim J.
Lewis, Nancy L.
Marshall, John W.
Mclaughlin, Brian M.
Mclaughlin, Susan
Michael, Jeffrey P.
Posten, Raymond R.
Saul, Roger A.
Shelton, Terry T.
Smith, Daniel C.
Sprague, Mary G.
Vincent, O. Kevin
Wood, Stephen P.

Office Of The Secretary

Abraham, Julie
Aylward, Anne D.
Baldwin, Kristen K.
Brown, Gregory A.
Carlson, Terence W.
Darr, Carol C.
Farley, Audrey L.
Feinberg, Sarah E.
Fontenot, Brodi L.
Forsgren, Janet R.
Geier, Paul M.
Gretch, Paul L.
Hazeur, Camille M.
Herlihy, Thomas W.
Homan, Todd M.
Horn, Donald H.
Hu, Patricia S.
Hurdle, Lana T.
Ishihara, David S.
Jackson, Ronald A.
Jefferson, Daphne Y.
Johns, Robert C.
Jones, Mary N.
Jones, Stephanie J.
Kaleta, Judith S.
Keck, Meghan A.
Lang, Steven R.
Lee, Robert M. Jr.
Lefevre, Maria S.
Lew, Shoshana M.
Lowder, Michael W.
Mcdermott, Susan E.
Mckinney, Richard L.
Neal, Brandon T.
Partridge, Ellen L.
Petrosinowoolverton, Marie
Popkin, Stephen M.
Rivait, David J.
Schmitt, Rolf R.
Smith, Willie H.
Vaughan, Cynthia M.
Washington, Keith E.
Wells, John V.
Womack, Kevin C.

Pipeline And Hazardous Materials Safety Administration

Butters, Timothy P.
Daugherty, Linda
El-Sibaie, Magdy A.
Mayberry, Alan K.
Poyer, Scott A.
Schoonover, William S.
Summitt, Monica J.
Sutherland, Vanessa L.
Tsaganos, Vasiliki B.
Wiese, Jeffrey D.

Saint Lawrence Seaway Development Corporation

Blackman, Anita K.
Lavigne, Thomas A.
Middlebrook, Craig H.
Pisani, Salvatore L.

[FR Doc. 2014–24197 Filed 10–8–14; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the Fort Worth Spinks Airport at Fort Worth, Texas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at the Fort Worth Spinks Airport under the provisions of Section 125 of the Wendell H. Ford Aviation

Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before November 10, 2014.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Ed Agnew, Manager, Federal Aviation Administration, Southwest Region, Airports Division, Texas Airports Development Office, ASW–650, Fort Worth, Texas 76137.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to the Mr. Bill Welstead, Aviation Director, at the following address: 4201 N. Main St., Suite 200, Fort Worth, TX 76106.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Mekhail, Program Manager, Federal Aviation Administration, Texas Airports Development Office, ASW–650, 2601 Meacham Boulevard, Fort Worth, Texas 76137, Telephone: (817) 222–5663, email: *Anthony.Mekhail@faa.gov,* fax: (817) 222–5989.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Fort Worth Spinks Airport under the provisions of the AIR 21.

The following is a brief overview of the request:

The City of Fort Worth requests the release of 0.64 acres of property within the Fort Worth Spinks Airport. The land was acquired using City and FAA funds from 1983 to 1987. The property to be released will be sold to the City of Burleson and revenues shall be used for the operation and maintenance at the airport.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents relevant to the application in person at the Fort Worth Spinks Airport, telephone number (817) 392–5434.

Issued in Fort Worth, Texas, on October 1, 2014.

Edward N. Agnew,

Acting Manager, Airports Division.

[FR Doc. 2014–24145 Filed 10–8–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Non-Aeronautical Land-Use Assurance Related to the Proposed Release and Exchange of Airport Property at Acadiana Regional Airport, New Iberia, Louisiana

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land and concurrence of land swap.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to authorize the release and exchange of approximately 7.231 acres of the airport property at the Acadiana Regional Airport, New Iberia LA, owned by the New Iberia Parish. The Parish is proposing a land swap to exchange this 7.231 acre parcel for another parcel of approximately 10.548 acres.

The acreage being released is not needed for aeronautical use as currently identified on the Airport Layout Plan. The new proposed parcel will be used for the Acadiana Regional Airport, New Iberia LA, Access Road project from Louisiana Highway 675 (Jefferson Island Road) to Louisiana Highway 3212 (Northwest Bypass).

The acreage being released comprising this parcel was originally acquired in 1970 when the Parish governing body petitioned the U.S. government for release of 2,100 acres of previously the Naval Air Station New Iberia property for civil aviation use through the General Services Administration excess land disposal process. In exchange for the 7.231 acres the airport will receive a new parcel of land described above for the Acadiana Regional Airport, New Iberia LA, Access Road project. The 7.231 acre parcel (Tract 14) is Zoned ''I–1: Industrial'' and has access to LA Highway 3212 (Prairie Road) and is being proposed to be swapped for approximately 10.548 acres (Tract 13) Zoned ''A–1: Agricultural''. The appraised fair market value of the proposed 7.231 acres parcel is $64,000, the fair market value of the proposed acquired parcel is $58,000. The difference of $6,000 in fair market value between Tract 14 and Tract 13 will be compensated by the Iberia Parish Council to the Iberia Airport Authority to accommodate FAA auditing standards and requirements to prevent the potential for ''diversion of funds (assets)''. A Phase I, Environmental Site Assessment was conducted and published on April 14, 2014 resulting in the assessment that did not reveal any evidence of Recognized Environmental Conditions (RECs) in connection with the new acquired property. This action and the affected properties have been evaluated by the Department of the Army, New Orleans District, Corps of Engineers, the State Office of Historic Preservation, Department of Culture, Recreation and Tourism, and the Louisiana Ecological Services Office with a determination of an activity that would not negatively affect any wetland subject to Corps' jurisdiction, historical properties or threatened or endangered species respectively. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject property nor a determination of eligibility for grant-in-aid funding from the FAA. The disposition of proceeds (or compensation) from the disposal of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

In accordance with section 47107(c)(2)(B) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose and concurring with the proposed land swap.

DATES: Comments must be received on or before November 10, 2014.

ADDRESSES: Comments on this Application may be mailed or delivered to the FAA at the following address: Lacey D. Spriggs, Manager, Federal Aviation Administration, Southwest Region, Airports District Office, ASW–640J, 2601 Meacham Boulevard, Suite 684, Fort Worth, Texas 76137.

Documents reflecting this FAA action may be reviewed at this same location or at the Louisiana Department of Transportation, Division of Aviation, P.O. Box 94245, Baton Rouge, LA 70804–9245.

FOR FURTHER INFORMATION CONTACT: Mr. John V. Dawson, Program Manager, Federal Aviation Administration, Airports District Office, 2601 Meacham Boulevard, Suite 684, Fort Worth, Texas 76137.

Documents reflecting this FAA action may be reviewed at this same location or at the Louisiana Department of Transportation, Division of Aviation, and P.O. Box 94245, Baton Rouge, LA 70804–9245.

SUPPLEMENTARY INFORMATION: Following is a description of the subject airport property to be released at the Acadiana

Regional Airport in New Iberia, LA and described as follows:

A parcel of land located in Section 32, Township 11 South, Range 6 East. Said parcel subject to all easements, restrictions, and reservations of record.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Louisiana Department of Transportation, Division of Aviation, Baton Rouge LA 70804–9245.

Issued in Fort Worth, Texas on October 3, 2014.

Lacey D. Spriggs,

Acting Manager, Airports Division.

[FR Doc. 2014–24146 Filed 10–8–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2014–0021]

Notice of Buy America Waiver for a Variable Refrigerant Flow HVAC System

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of Buy America waiver.

SUMMARY: In response to the San Bernardino Associated Governments' (SANBAG) request for a Buy America waiver for a Variable Refrigerant Flow (VRF) HVAC system, the Federal Transit Administration (FTA) hereby waives its Buy America requirements for the VRF HVAC system to be installed at the Omnitrans San Bernardino Transit Center (SBTC). This waiver is limited to a single procurement for the VRF HVAC system for the SBTC, an FTA-funded project.

DATES: This waiver is effective immediately.

FOR FURTHER INFORMATION CONTACT: Richard L. Wong, FTA Attorney-Advisor, at (202) 366–4011 or *richard.wong@dot.gov.*

SUPPLEMENTARY INFORMATION: The purpose of this notice is to announce that FTA has granted a Buy America non-availability waiver for SANBAG's procurement of a VRF HVAC system for the SBTC.

With certain exceptions, FTA's Buy America requirements prevent FTA from obligating an amount that may be appropriated to carry out its program for a project unless ''the steel, iron, and manufactured goods used in the project are produced in the United States.'' 49 U.S.C. 5323(j)(1). A manufactured product is considered produced in the United States if: (1) all of the manufacturing processes for the product take place in the United States; and (2) all of the components of the product are of U.S. origin. A component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents. 49 CFR 661.5(d). If, however, FTA determines that ''the steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality,'' then FTA may issue a non-availability waiver. 49 U.S.C. 5323(j)(2)(B); 49 CFR 661.7(c).

SANBAG requested a non-availability waiver for a VRF HVAC system that will be installed into the SBTC, a multimodal transfer facility in downtown San Bernardino, California that will serve patrons and operators of Omnitrans' fixed route buses, the newly opened sbX bus rapid transit (BRT) line, the Victor Valley Transit Authority, the Mountain Area Regional Transit Authority, and the Southern California Regional Rail Authority (Metrolink).

FTA selected the SBTC project for award of fiscal year 2011 funding made available pursuant to the Bus and Bus Facilities Program (49 U.S.C. 5309(b)) in support of the U.S. Department of Transportation's (DOT) Livability Initiative and the Partnership for Sustainable Communities between the U.S. DOT, the U.S. Department of Housing and Urban Development, and the U.S. Environmental Protection Agency (Bus Livability Program). FTA selected each project for the Bus Livability Program based on whether it would, among other things, promote a more environmentally sustainable transportation system. 76 FR 37393, 37397 (June 27, 2011); *see also* 76 FR 68813 (Nov. 7, 2011). More specifically, FTA assessed the project's ability to ''maintain, protect or enhance the environment, as evidenced by environmentally friendly policies and practices utilized in the project design, construction, and operation that exceed the requirements of the National Environmental Policy Act including items such as whether the project uses a [U.S. Green Building Council] Leadership in Energy and Environmental Design (LEED)-certified design. . . .'' 76 FR at 37397.

The SBTC is being built to the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) standards and will incorporate a number of sustainable and energy efficient elements. One of those elements is a VRF HVAC system that, among other things, is space saving, has invertor technology, efficiency, and a non-ozone depleting refrigerant that domestic manufacturers of HVAC systems do not provide. According to SANBAG, its contractor was directed to evaluate the substitution of a Buy America-compliant Variable Air Volume (VAV) system, but the contractor advised SANBAG that the VAV system would endanger the project's LEED Gold certification because of the difference in efficiency between the VAV and VRF HVAC systems. In addition, the substitution of a VAV system would require significant changes to the project, such as the alteration of already-erected structural elements that were designed to accommodate a VRF system and additional design changes and plan reviews by the City of San Bernardino.

SANBAG points to a recent non-availability waiver FTA issued to St. Louis' MetroLink for a similar VRF system (79 FR 34653, June 17, 2014), as well as to a blanket non-availability waiver issued by the U.S. Department of Energy (DOE) in 2010 for VRF HVAC systems procured with American Reinvestment and Recovery Act funding (75 FR 35447, June 22, 2010). According to SANBAG, the U.S. DOE's determination of non-availability and FTA's recent St. Louis MetroLink waiver, as well as SANBAG's contractor's research, indicate that this product is not manufactured domestically.

On Monday, September 22, 2014, and in accordance with 49 U.S.C. 5323(j)(3)(A), FTA published a notice in the **Federal Register** requesting public comment on, among other topics, the merits of SANBAG's waiver request and potential effects of granting the waiver. The public comment period closed on September 29, 2014. FTA did not receive any comments.

Based on SANBAG's assertions that it is unable to procure a U.S.-manufactured VRF HVAC system, which is critical to obtaining LEED Gold certification, and the fact that FTA did not receive any public comments, FTA hereby waives its Buy America requirement for manufactured products under 49 CFR 661.5(d) for the VRF HVAC system. This waiver is limited to a single procurement for the VRF HVAC system for SANBAG's SBTC project.

Dana Nifosi,

Acting Chief Counsel.

[FR Doc. 2014–24053 Filed 10–8–14; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35859]

Norfolk Southern Railway Company—Trackage Rights Exemption—Wisconsin Central Ltd.

Wisconsin Central Ltd. (CN),[1] pursuant to a written trackage rights agreement, has agreed to grant overhead trackage rights to Norfolk Southern Railway Company (NS) over the portion of CN's rail line between milepost 34.4 near Hartsdale, Ind., and milepost 27.0 near Chicago Heights, Ill., on CN's Matteson Subdivision, a distance of approximately 7.4 miles.

The transaction may be consummated on or after October 23, 2014, the effective date of the exemption (30 days after the verified notice of exemption was filed).

According to NS, the trackage rights are for the intermediate movement of NS traffic over CN's segment of railroad between Hartsdale and Chicago Heights. In 2012, NS was granted authority to abandon a 6.30-mile segment of the Hartsdale Industrial Track (Hartsdale IT) and to discontinue service over a contiguous line segment of approximately 1.2 miles. *See Norfolk So. Ry.—Aban. & Discontinuance of Serv. Exemption—in Lake Cnty., Ind., & Cook Cnty., Ill.,* AB 290 (Sub-No. 336X) (STB served Sept. 24, 2012). CN agreed to grant NS the trackage rights at issue here in exchange for NS's agreement to abandon a segment of its Hartsdale IT. The trackage rights will become necessary for NS to maintain service to shippers located on the western end of the Hartsdale IT upon consummation of the abandonment of the segment of the Hartsdale IT authorized in Docket No. AB 290 (Sub-No. 336X) and removal of the track.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc.,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease & Operate—California Western Railroad,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed by October 16, 2014 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35859, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Maquiling B. Parkerson, General Attorney, Norfolk Southern Railway Company, Three Commercial Place, Norfolk, VA 23510.

Board decisions and notices are available on our Web site at *WWW.STB.DOT.GOV.*

Decided: October 3, 2014.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Raina S. White,

Clearance Clerk.

[FR Doc. 2014–24127 Filed 10–8–14; 8:45 am]

BILLING CODE 4915–01–P

[1] Wisconsin Central Ltd. is a wholly-owned subsidiary of the Canadian National Railway Company. Because Wisconsin Central Ltd. is referred to as ''CN'' in the trackage rights agreement and in the verified notice of exemption, it will be identified as CN here.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 6, 2014.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before November 10, 2014 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8141, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by emailing *PRA@treasury.gov,* calling (202) 622–1295, or viewing the entire information collection request at *www.reginfo.gov.*

Financial Crimes Enforcement Network (FinCEN)

OMB Number: 1506–0066.

Type of Review: Revision of a currently approved collection.

Title: Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (''CISADA'') Reporting Requirements Under Section 104(e).

Abstract: FinCEN, to comply with the congressional mandate to prescribe regulations under section 104(e) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (''CISADA'') and consistent with its statutory mission under 31 U.S.C. 310, issued regulations that would require a U.S. bank that maintains a correspondent account for a foreign bank to inquire of the foreign bank, and report to FinCEN, with respect to whether the foreign bank maintains a correspondent account for, or has processed one or more transfers of funds within the preceding 90 calendar days, other than through a correspondent account, related to any financial institution designated by the U.S. Government in connection with Iran's proliferation of weapons of mass destruction or delivery systems for weapons of mass destruction, or in connection with Iran's support for international terrorism. In addition, FinCEN is requiring a U.S. bank that maintains a correspondent account for a foreign bank to inquire of the foreign bank, and report to FinCEN, with respect to whether the foreign bank has processed one or more transfers of funds within the preceding 90 calendar days related to Iran's Islamic Revolutionary Guard Corps (''IRGC'') or any of its agents or affiliates designated by the U.S. Government. Under the regulations, U.S. banks will only be required to report this information to FinCEN upon receiving a specific written request from FinCEN.

Affected Public: Businesses or other for-profits.

Estimated Annual Burden Hours: 2,825.

Brenda Simms,

Treasury PRA Clearance Officer.

[FR Doc. 2014–24121 Filed 10–8–14; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Community Development Financial Institutions Fund (CDFI) Fund, Department of the Treasury, is soliciting comments concerning the CDFI Certification Application.

DATES: Written comments should be received on or before December 8, 2014 to be assured of consideration.

ADDRESSES: Direct all comments to David Meyer, Program Manager, Certification, Compliance Monitoring, and Evaluation, at the Community Development Financial Institutions Fund, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20020, by email to *cdfihelp@cdfi.treas.gov* or by facsimile to (202) 508–0083. Please note this is not a toll free number.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to David Meyer, Program Manager, Certification, Compliance Monitoring, and Evaluation, at the Community Development Financial Institutions Fund, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20020 by email to *cdfihelp@cdfi.treas.gov* or by facsimile to (202) 508–0083. Please note this is not a toll free number.

SUPPLEMENTARY INFORMATION:

OMB Number: 1559–0028.

Title: The Community Development Financial Institutions Certification Application.

ABSTRACT: A certified Community Development Financial Institution (CDFI) is a specialized financial institution that works in market niches that are underserved by traditional financial institutions. CDFIs provide a unique range of financial products and services in economically distressed target markets, such as mortgage financing for low-income and first-time homebuyers and not-for-profit developers, flexible underwriting and risk capital for needed community facilities, and technical assistance, commercial loans and investments to small start-up or expanding businesses in low-income areas. CDFIs include regulated institutions such as community development banks and credit unions, and non-regulated institutions such as loan and venture capital funds.

CDFI certification is a designation conferred by the CDFI Fund and is a requirement for accessing financial and technical assistance awards from the CDFI Fund through the CDFI Program and Native American CDFI Assistance Program, as well as certain benefits under the Bank Enterprise Award Program, to support an organization's established community development financing programs. A financial institution seeking to become a certified CDFI and qualify to access assistance from the CDFI Fund must complete the CDFI Certification Application.

Type of Review: Extension without change.

Affected Public: Private Sector: Businesses or other for-profits, Not-for-profit institutions; State, Local, and Tribal Governments.

Estimated Number of Respondents: 300.

Estimated Annual Time per Respondent: 37.5 hours.

Estimated Total Annual Burden Hours: 11,250 hours.

Requests for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record and may be published on the CDFI Fund Web site at *http://www.cdfifund.gov.* Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the CDFI Fund, including whether the information shall have practical utility; (b) the accuracy of the CDFI Fund's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Authority: 12 U.S.C. 4703, 4703 note, 4704, 4706, 4707, 4717; 12 CFR part 1805.

Dated: September 30, 2014.

Dennis Nolan,

Deputy Director, Community Development Financial Institutions Fund.

[FR Doc. 2014–24120 Filed 10–8–14; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Specially Designated Nationals and Blocked Persons Pursuant to the Foreign Narcotics Kingpin Designation Act

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of three individuals and two entities whose property and interests in property have been unblocked pursuant to the Foreign Narcotics Kingpin Designation Act (Kingpin Act) (21 U.S.C. Sections 1901–1908, 8 U.S.C. Section 1182).

DATES: The unblocking and removal from the list of Specially Designated Nationals and Blocked Persons (SDN List) of the three individuals and two entities identified in this notice whose property and interests in property were blocked pursuant to the Kingpin Act, is effective on September 30, 2014.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance & Evaluation, Department of the Treasury, Office of Foreign Assets Control, Washington, DC 20220, Tel: (202) 622–2420.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site at *www.treasury.gov/ofac* or via facsimile through a 24-hour fax-on demand service at (202) 622–0077.

Background

On December 3, 1999, the Kingpin Act was signed into law by the President of the United States. The Kingpin Act provides a statutory framework for the President to impose 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 to the benefits of trade and transactions involving U.S. persons and entities.

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 consults 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 when designating and blocking the property or interests in property, subject to U.S. jurisdiction, of persons or entities 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; and/or (3) playing a significant role in international narcotics trafficking.

On September 30, 2014, the Director of OFAC removed from the SDN List the three individuals and three entities listed below, whose property and interests in property were blocked pursuant to the Kingpin Act:

Individuals

1. GALEANO JEREZ, Nohora, c/o ADN CONSULTORES LTDA., Bogota, Colombia; DOB 17 Sep 1968; Cedula No. 51918595 (Colombia) (individual) [SDNTK].
2. ISAZA ALVAREZ, Carlos Arturo; DOB 15 Aug 1947; Cedula No. 8281272 (Colombia) (individual) [SDNTK] (Linked To: COMERCIALIZADORA AUTOMOTORA MATECANA LTDA.; Linked To: COMERCIALIZADORA EL PROVEEDOR LTDA.; Linked To: INVERSIONES BUENOS AIRES LTDA.; Linked To: INVERSIONES Y DISTRIBUCIONES COLOMBIANAS EL OASIS LTDA.; Linked To: PROVEEDORES Y DISTRIBUIDORES NACIONALES S.A.).
3. SANCHEZ PUENTES, Yenny Mabel, c/o DOLPHIN DIVE SCHOOL S.A., Cartagena, Colombia; c/o INVERPUNTO DEL VALLE S.A., Cali, Colombia; Calle 140 No. 6–30 Int. 9 Ap. 201, Bogota, Colombia; Calle 187 54–55 Int. 21 Ap. 201, Bogota, Colombia; c/o CBM DE COLOMBIA S.A., Bogota, Colombia; c/o R D I S.A., Bogota, Colombia; DOB 19 Dec 1967; POB Otanche, Boyaca, Colombia; Cedula No. 51908699 (Colombia); Passport AH982263 (Colombia) (individual) [SDNTK].

Entities

1. ADN CONSULTORES LTDA., Calle 58 No. 20–45 P 3, Bogota, Colombia; NIT # 830109795–8 (Colombia) [SDNTK].
2. GRUPO STA CHIHUAHUA, S.A. DE C.V. (a.k.a. MAILCO), Lateral Blvd. Periferico Ortiz Mena No. 2409, Col. Quinta Sol, Chihuahua, Chihuahua 31214, Mexico; R.F.C. GSC02086417 (Mexico); alt. R.F.C. GSC0208264IF (Mexico) [SDNTK].

Dated: September 30, 2014.

John Smith,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2014–24054 Filed 10–8–14; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Sanctions Actions Pursuant to Executive Order 13224

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (OFAC) is publishing the names of three individuals and two entities whose property and interests in property are blocked pursuant to Executive Order (E.O.) 13224 and whose names have been added to OFAC's list of Specially Designated Nationals and Blocked Persons (SDN List).

DATES: OFAC's actions described in this notice were effective September 30, 2014.

FOR FURTHER INFORMATION CONTACT: Associate Director for Global Targeting, tel.: 202/622–2420, Assistant Director for Sanctions Compliance & Evaluation, tel.: 202/622–2490, Assistant Director for Licensing, tel.: 202/622–2480, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), tel.: 202/622–2410, Office of the General Counsel, Department of the Treasury (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

The SDN List and additional information concerning OFAC sanctions programs are available from OFAC's Web site (*www.treas.gov/ofac*). Certain general information pertaining to OFAC's sanctions programs is also available via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Notice of OFAC Actions

On September 30, 2014, OFAC blocked the property and interests in property of the following three individuals and two entities pursuant to E.O. 13224, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism'':

Individuals

1. SHEIKH, Muhammad Naeem (a.k.a. NAEEM, Muhammad; a.k.a. SHEIKH, Mohammad Nayeem; a.k.a. ''NAEEM, Sheikh''; a.k.a. ''NAIM, Shaikh''), 122 Ahmed Block, New Garden Town, Lahore, Pakistan; 111–C Multan Road, Lahore, Pakistan; 2-Chamberlain Road, Lahore, Pakistan; DOB 04 Sep 1950; POB Lahore, Pakistan; nationality Pakistan; Passport BP5191731 (Pakistan) expires 12 May 2012; National ID No. 35202–1963173–9 (Pakistan); Engineer (individual) [SDGT] (Linked To: LASHKAR E–TAYYIBA).
2. SHEIKH, Umair Naeem (a.k.a. NAEEM, Umair), 112 Ahmed Block, New Garden Town, Lahore, Pakistan; DOB 19 Sep 1980; POB Lahore, Pakistan; citizen Pakistan; Passport AQ5192272 (Pakistan) expires 28 Jul 2012; National ID No. 35202–7366227–7 (Pakistan); [SDGT] (Linked To: LASHKAR E–TAYYIBA; Linked To: ABDUL HAMEED SHAHAB–UD–DIN).
3. KHALIL, Fazl-ur Rehman (a.k.a. KHALIL, Faisal Rahman; a.k.a. KHALIL, Fazl ur-Rahman; a.k.a. KHALIL, Fazlur Rehman), Kheyaban Sir Sayed, Street Two, Sector B27, Rawalpindi, Pakistan; Shams Colony, Islamabad, Pakistan; DOB 1963; POB Pakistan; Passport CR9158341 (Pakistan); National ID No. 6110104398349 (Pakistan); alt. National ID No. 14963091647 (Pakistan); Maulana; Moulana; Qari (individual) [SDGT] (Linked To: HARAKAT UL–MUJAHIDEEN).

Entities

1. ABDUL HAMEED SHAHAB–UD–DIN (a.k.a. ABDUL HAMEED SHAHABUDDAIN; a.k.a. ABDUL HAMEED SHAHABUDDIN; a.k.a. ABDUL HAMEED SHAHAB–U–DIN), 2-Chamberlain Road, Lahore, Pakistan; 2-Chamberlain Road 54000, Pakistan [SDGT] (Linked To: SHEIKH, Muhammad Naeem).
2. NIA INTERNATIONAL, 69 Circular Road, Lahore, Pakistan [SDGT] (Linked To: SHEIKH, Umair Naeem).

Dated: September 30, 2014.

John E. Smith,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2014–24065 Filed 10–8–14; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Sanctions Actions Pursuant to Executive Order 13664

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (OFAC) is publishing the names of 2 persons whose property and interests in property are blocked pursuant to Executive Order (E.O.) 13664.

DATES: OFAC's actions described in this notice were effective September 18, 2014.

FOR FURTHER INFORMATION CONTACT: Associate Director for Global Targeting, tel.: 202/622–2420, Assistant Director for Sanctions Compliance & Evaluation, tel.: 202/622–2490, Assistant Director for Licensing, tel.: 202/622–2480, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), tel.: 202/622–2410, Office of the General Counsel, Department of the Treasury (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

The SDN List and additional information concerning OFAC sanctions programs are available from OFAC's Web site (*www.treas.gov/ofac*). Certain general information pertaining to OFAC's sanctions programs is also available via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Notice of OFAC Actions

On September 18, 2014, OFAC blocked the property and interests in property of the following 2 persons pursuant to E.O. 13664, ''Blocking Property of Certain Persons With Respect to South Sudan'':

Individuals

1. CHUOL, James Koang (a.k.a. CHOL, James Koang; a.k.a. CHUAL, James Koang; a.k.a. RANLEY, James Koang Chol; a.k.a. RANLEY, Koang Chuol); DOB 1961; Passport R00012098 (South Sudan); Major General (individual) [SOUTH SUDAN].
2. WOL, Santino Deng (a.k.a. KUOL, Santino Deng; a.k.a. WUOL, Santino Deng); DOB 09 Nov 1962; Major General; SPLA Third Division Commander (individual) [SOUTH SUDAN].

Dated: September 18, 2014.

John E. Smith,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2014–24056 Filed 10–8–14; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Specially Designated Nationals and Blocked Persons Pursuant to Executive Order 12978

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of eight individuals and one entity whose property and interests in property have been unblocked pursuant to Executive Order 12978 of October 21, 1995, ''Blocking Assets and Prohibiting Transactions With Significant Narcotics Traffickers.''

DATES: The unblocking and removal from the list of Specially Designated Nationals and Blocked Persons (SDN List) of the eight individuals and one entity identified in this notice whose property and interests in property were blocked pursuant to Executive Order 12978 of October 21, 1995, is effective on September 30, 2014.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance & Evaluation, Department of the Treasury, Office of Foreign Assets Control, Washington, DC 20220, Tel: (202) 622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treasury.gov/ofac*) or via facsimile through a 24-hour fax-on demand service at (202) 622–0077.

Background

On October 21, 1995, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (IEEPA), issued Executive Order 12978 (60 FR 54579, October 24, 1995) (the Order). In the Order, the President declared a national emergency to deal with the threat posed by significant foreign narcotics traffickers centered in Colombia and the harm that they cause in the United States and abroad.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The foreign persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of Treasury, in consultation with the Attorney General and the Secretary of State: (a) To play a significant role in international narcotics trafficking centered in Colombia; or (b) to materially assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to the Order; and (3) persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be owned or controlled by, or to act for or on behalf of, persons designated pursuant to the Order.

On September 30, 2014, the Director of OFAC removed from the SDN List the eight individuals and one entity listed below, whose property and interests in property were blocked pursuant to the Order:

Individuals

1. ACEVEDO PAMPLONA, Francisco Luis, Carrera 1 No. 18–52, Cali, Colombia; c/o INVERSIONES INVERVALLE S.A., Cali, Colombia; DOB 29 Apr 1965; Cedula No. 71660070 (Colombia) (individual) [SDNT].
2. AVILA MIRANDA, Jorge Adalberto, c/o CAUCALITO LTDA., Cali, Colombia; Calle 52N No. 2D–29, Cali, Colombia; DOB 23 Apr 1950; Cedula No. 12534286 (Colombia) (individual) [SDNT].
3. BENAVIDEZ CHAVEZ, Alvaro Higinio, Carrera 8N No. 17A–12, Cartago, Colombia; c/o AGROPECUARIA MIRALINDO S.A., Cartago, Colombia; c/o ARIZONA S.A., Cartago, Colombia; DOB 01 Feb 1971; Cedula No. 94295393 (Colombia); Passport 94295393 (Colombia) (individual) [SDNT].
4. GIRALDO HERNANDEZ, Adriana Maria, c/o UNIVISA S.A., Cali, Colombia; c/o V.I.P. PRODUCCIONES E.U., Cali, Colombia; DOB 08 Mar 1961; Cedula No. 31857952 (Colombia); Passport AF234411 (Colombia) (individual) [SDNT].
5. IZQUIERDO QUINTERO, Rosalino, c/o INVERSIONES INVERVALLE S.A., Cali, Colombia; DOB 04 Oct 1956; Cedula No. 70111037 (Colombia) (individual) [SDNT].
6. MARMOLEJO VACA, Hernan Rodrigo, c/o INVERSIONES INVERVALLE S.A., Cali, Colombia; DOB 02 Jul 1948; Cedula No. 14972401 (Colombia) (individual) [SDNT].
7. QUIAZUA ESPINEL, Maria Teresa, c/o

CAJA SOLIDARIA, Bogota, Colombia; c/o CREDISOL, Bogota, Colombia; c/o REPRESENTACIONES Y DISTRIBUCIONES HUERTAS Y ASOCIADOS S.A., Bogota, Colombia; DOB 14 Oct 1966; Cedula No. 51837790 (Colombia); Passport 51837790 (Colombia) (individual) [SDNT].

8. SALAZAR LUGO, Nelson, c/o TURISMO HANSA S.A., San Andres, Colombia; DOB 14 Jul 1955; POB Colombia; Cedula No. 16597419 (Colombia); Passport AH682171 (Colombia) (individual) [SDNT].

Entity

1. V.I.P. PRODUCCIONES E.U., Calle 1A No. 55B–115, Cali, Colombia; NIT # 805031027–1 (Colombia) [SDNT].

Dated: September 30, 2014.

John Smith,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2014–24052 Filed 10–8–14; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2005–40

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). The IRS is soliciting comments concerning information collection requirements related to election to defer net experience loss in a multiemployer plan.

DATES: Written comments should be received on or before December 8, 2014 to be assured of consideration.

ADDRESSES: Direct all written comments to Christie Preston, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of notice should be directed to Allan Hopkins, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Election to Defer Net Experience Loss in a Multiemployer Plan.

OMB Number: 1545–1935.

Notice Number: Notice 2005–40.

Abstract: This notice describes the election that must be filed by an eligible multiemployer plan's enrolled actuary to the Service in order to defer a net experience loss. The notice also describes the notification that must be given to plan participants and beneficiaries, to labor organizations, to contributing employers and to the Pension Benefit Guaranty Corporation within 30 days of making an election with the Service and the certification that must be filed if a restricted amendment is adopted.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved new collection.

Affected Public: Business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 12.

Estimated Average Time per Respondent: 80 hours.

Estimated Total Annual Burden Hours: 960.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 2, 2014.

Christie Preston,

IRS Reports Clearance Officer.

[FR Doc. 2014–24079 Filed 10–8–14; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

Vol. 79 Thursday,

No. 196 October 9, 2014

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Endangered Species Status for Trichomanes punctatum ssp. floridanum (Florida Bristle Fern); Proposed Rules

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2014–0044; 4500030113]

RIN 1018–AY97

Endangered and Threatened Wildlife and Plants; Endangered Species Status for Trichomanes punctatum ssp. floridanum (Florida Bristle Fern)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose to list *Trichomanes punctatum* ssp. *floridanum* (Florida bristle fern), a plant subspecies from Miami-Dade and Sumter Counties in Florida, as an endangered species under the Endangered Species Act of 1973, as amended (Act). If we finalize this rule as proposed, it would extend the Act's protections to this plant and add this plant to the Federal List of Endangered and Threatened Plants.

DATES: We will accept comments received or postmarked on or before December 8, 2014. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by November 24, 2014.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov*. In the Search box, enter FWS–R4–ES–2014–0044, which is the docket number for this rulemaking. Then, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–R4–ES–2014–0044; Division of Policy and Directives Management; U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

FOR FURTHER INFORMATION CONTACT: Craig Aubrey, Field Supervisor, U.S. Fish and Wildlife Service, South Florida Ecological Services Office, 1339 20th Street, Vero Beach, FL 32960; by telephone 772–562–3909; or by facsimile 772–562–4288. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Endangered Species Act (Act), if we find that a species warrants listing as an endangered or threatened species throughout all or a significant portion of its range, we are required to promptly publish a proposal in the **Federal Register** and make a determination on our proposal within 1 year. Listing a species as an endangered or threatened species can only be completed by issuing a rule. In the near future, we intend to propose to designate critical habitat for *Trichomanes punctatum* ssp. *floridanum* under the Act. Critical habitat is prudent, but not determinable at this time. We will publish a proposal to designate critical habitat for *Trichomanes punctatum* ssp. *floridanum* under the Act in the near future.

This rule proposes to list *Trichomanes punctatum* ssp. *floridanum* (Florida bristle fern) as an endangered species.

The basis for our action. Under the Act, we may determine that a species is an endangered or threatened species based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We have determined that the threats to *Trichomanes punctatum* ssp. *floridanum* consist primarily of destruction and modification of habitat resulting in changes in canopy, humidity, hydrology, and fragmentation (Factor A); and proliferation of nonnative invasive species, natural stochastic events including hurricanes and tropical storms, and impacts from climate change including temperature shifts and sea level rise (Factor E).

We will seek peer review. We will seek comments from independent specialists to ensure that our determination is based on scientifically sound data, assumptions, and analyses. We will invite these peer reviewers to comment on our listing proposal. Because we will consider all comments and information we receive during the comment period, our final determination may differ from this proposal.

Information Requested

Public Comments

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned governmental agencies, Native American tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) *Trichomanes punctatum* ssp. *floridanum's* biology, range, and population trends, including:

(a) Biological or ecological requirements of the plant, including habitat requirements;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the plant, its habitat, or both.

(2) Factors that may affect the continued existence of the plant, which may include habitat modification or destruction, overutilization, disease, predation, the inadequacy of existing regulatory mechanisms, or other natural or manmade factors.

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this plant and existing regulations that may be addressing those threats.

(4) Additional information concerning the historical and current status, range, distribution, and population size of this plant, including the locations of any additional populations of the plant.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section

4(b)(1)(A) of the Act (16 U.S.C. 1531 et seq.) directs that determinations as to whether any species is an endangered or threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We request that you send comments only by the methods described in the **ADDRESSES** section.

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov*.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, South Florida Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Public Hearing

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposed rule in the **Federal Register**. Such requests must be sent to the address shown in the **FOR FURTHER INFORMATION CONTACT** section. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), during the public comment period we will seek the expert opinions of appropriate and independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our proposed listing determination is based on scientifically sound data, assumptions, and analyses. The peer reviewers will have expertise in *Trichomanes punctatum* ssp. *floridanum's* biology, habitat, and physical or biological factors.

Previous Federal Actions

Trichomanes punctatum ssp. *floridanum* was first recognized as a candidate for possible future listing on November 9, 2009 (74 FR 57804), and we assigned the subspecies a listing priority number (LPN) of 3. Candidate species are assigned LPNs based on immediacy and magnitude of threats, as well as taxonomic status. The lower the LPN, the higher priority that species is for us to determine appropriate action using our available resources (September 21, 1983; 48 FR 43098). An LPN of 3 is the lowest LPN appropriate for a subspecies such as this fern, indicating that it is a high priority for the U.S. Fish and Wildlife Service (Service) to determine appropriate action. *T. p.* ssp. *floridanum* has remained on the candidate list with an LPN of 3 since 2009 (see 78 FR 70104, November 22, 2013; 77 FR 69994, November 21, 2012; 76 FR 66370, October 26, 2011; 75 FR 69222, November 10, 2010; 74 FR 57804, November 9, 2009).

On May 10, 2011, the Service announced a workplan to restore biological priorities and certainty to the listing process. As part of an agreement with the Center for Biological Diversity and WildEarth Guardians, we filed the workplan with the U.S. District Court for the District of Columbia. The workplan will enable the agency, over a period of 6 years, to systematically review and address the needs of more than 250 species, including *Trichomanes punctatum* ssp. *floridanum,* that were identified in our November 10, 2010, candidate notice of review (CNOR), published in the **Federal Register** at 75 FR 69222, ssp. *floridanum* to determine if these species should be added to the Federal Lists of Endangered and Threatened Wildlife and Plants. This workplan will enable the Service to again prioritize its workload based on the needs of candidate species, while also providing State wildlife agencies, stakeholders, and other partners clarity and certainty about when listing determinations will be made. On July 12, 2011, the Service reached an agreement with another plaintiff group and further strengthened the workplan, which will allow the agency to focus its resources on the species most in need of protection under the Act. These agreements were approved by the court on September 9, 2011. We are making this proposed listing determination for *Trichomanes punctatum* ssp. *floridanum* now as part of the court-approved workplan.

Background

It is our intent to discuss below only those topics directly relevant to the listing of *Trichomanes punctatum* ssp. *floridanum* as an endangered species in this proposed rule.

Species Description

Trichomanes punctatum ssp. *floridanum,* commonly referred to as the Florida bristle fern, is mat-forming, has no roots, and contains trichomes (hairlike/bristlelike outgrowths) on the tip of the fern (Wunderlin and Hansen 2000, pp. 153–154). This subspecies is very small in size and superficially resembles other bryophytes, such as mosses and liverworts, making it difficult to observe in its natural habitat. *T. p.* ssp. *floridanum* has thin veinlets (small veins) that are not enlarged towards the margin while veins are uniform in width to their apices (tips) (Nauman 1986, p. 179); fronds (leaves of ferns) are considered simple (Morton 1963, p. 89).

Wunderlin and Hansen (2000, pp. 153–154) described *Trichomanes punctatum* ssp. *floridanum* as having separated leaves, with the petiole (stalk by which a leaf is attached to a plant) 0.1–2.0 centimeters (cm) (0.04–0.79 inches (in)) long and typically shorter than the blade. The blade is fan-shaped, round, entire or irregularly lobed at the apex, and 0.5–2.0 cm (0.20–0.79 in) long and 0.2–1.1 cm (0.08–0.43 in) wide. This subspecies has few false veins, and its true veins are not enlarged at their apex.

One unique characteristic of this plant is that it lacks cuticles (the protective layer that cover the epidermis, which is the outermost layer of cells that cover the leaves) or has highly reduced cuticles, and has differentiated epidermises and stomata (small openings in leaves and stems through which gases are exchanged), causing dependence on elevated moisture conditions because a barrier is not present to prevent unregulated loss of water (Krömer and Kessler 2006, p. 57). This dependence restricts most *Trichomanes* spp. to shaded areas with high humid forested environments, making them more vulnerable to changes in localized climatic conditions (Schuster 1971, p. 91; Nauman 1986, pp. 181–182; van der Heiden 2014, p. 5).

Taxonomy

The genus *Trichomanes* contains approximately 320 species of ferns that occur primarily in the tropics and generally lack ecological information (Nauman 1986, p. 179; Nelson 2000, p. 77). The genus belongs to the family

Hymenophyllaceae and the hymenophylloid clade, where ferns are also referred to as filmy ferns, which represents the thin, filmy leaves of the species (Nelson 2000, p. 77). The common name, bristle fern, is used to reference the bristlelike structure that protrudes from the mature sporangia (a structure that holds and produces spores) (Nelson 2000, p. 77).

Five species commonly known as bristle ferns (*Trichomanes* spp.) have been found in Florida (Krömer and Kessler 2006, p. 57). *Trichomanes punctatum* ssp. *floridanum* is a subspecies of *Trichomanes punctatum,* the current taxonomy of which is the result of monographic revision of *Trichomanes* sections (a taxonomic rank or position below the genus but above the species) *Didymoglossum* and *Microgonium* by Wessels Boer (1962, pp. 300–301). All U.S. species of *Trichomanes* now belong to the section *Didymoglossum,* except *T. boschianum* (Morton 1963). Wessels Boer, in reviewing specimens from throughout the American tropics, determined that all *Trichomanes* plants in Florida represented the same taxon, not two separate species, and that *T. sphenoides* (which he described as *T. punctatum sphenoides*) only occurred in tropical America and not in Florida. He further determined that *Trichomanes* plants in Florida were different from those in the tropics and described them as a new subspecies, *Trichomanes punctatum* ssp. *floridanum* (Boer 1962, pp. 300–301). This treatment has been followed by almost all subsequent authors (Lakela and Long 1976, p. 53; Wunderlin 1982, p. 32; Lellinger 1985, p. 205; Nauman 1986, p. 181; Flora of North America Editorial Committee 1993, p. 196; Wunderlin 1998, p. 44; Nelson 2000, p. 81; Wunderlin and Hansen 2000, p. 153; Wunderlin and Hansen 2003, p. 44). The only exception is Long and Lakela (1971, p. 73), who treated the subspecies as *T. punctatum* without further explanation. Additionally, the Florida Department of Agriculture and Consumer Services (2013, *https://www.flrules.org/gateway/RuleNo.asp?title=PRESERVATION%20OF%20NATIVE%20FLORA%20OF%20FLORIDA&ID=5B–40.0055*), the Integrated Taxonomic Information System (2011, p. 1), NatureServe (2013, *http://explorer.natureserve.org/servlet/NatureServe?loadTemplate=tabular_report.wmt&paging=home&save=all&sourceTemplate=reviewMiddle.wmt*), the online Atlas of Florida Vascular Plants (Wunderlin and Hansen 2008, (*http://www.florida.plantatlas.usf.edu/Plant.aspx?id=1122*), the Flora of North America (*http://www.efloras.org/florataxon.aspx?flora_id=1&taxon_id=233501316*), and the Florida Natural Areas Inventory (FNAI, 2013, *http://fnai.org/trackinglist.cfm*) use the name *T. p.* ssp. *floridanum* and indicate that this subspecies' taxonomic standing is accepted. In summary, there is consensus that *Trichomanes punctatum* ssp. *floridanum* is a distinct taxon.

Currently there are two extant metapopulations (a group of spatially separated populations) of this subspecies (Gann *et al.* 2002, pp. 552–554), comprised of four populations in Miami-Dade County and two in Sumter County separated by a distance of approximately 400 kilometers (km) (249 miles (mi)). Both extant metapopulations residing in Miami-Dade and Sumter Counties are considered *T. p.* ssp. *floridanum;* however, until recently, genetics sampling had not been conducted providing conclusive evidence that these metapopulations are in fact the same taxon. As noted by Small (1938, p. 50), the Sumter metapopulation is a considerable distance from where *T. p.* ssp. *floridanum* was first discovered (i.e., south Florida) and resides in a climate and habitat unlike the Miami-Dade County metapopulation. These differences are likely why Morton (1963, p. 90) suggested that the previous determination of these two metapopulations be reviewed. In March 2014, the Service contracted researchers from Florida Atlantic University to determine if the two metapopulations were the same subspecies. Samples were collected from both metapopulations for genetic analysis. DNA was isolated from the samples, and sequencing was completed on five samples from each metapopulation. Researchers found no observable differences in the sequence between the five samples collected from Miami-Dade County and the five samples from Sumter County, indicating that both metapopulations are the same subspecies (Hughes 2014, pp. 1–4).

Life History

The life cycle of ferns is not well known (Woodmansee 2013, pers. comm.); the specific life history of *Trichomanes punctatum* ssp. *floridanum,* including information on other members of the genus, is also lacking. Like all ferns, this taxon has two life-history stages, a gametophyte stage and a sporophyte stage. However, only the sporophyte form is recognizable in the wild, as spores of this plant are invisible to the naked eye (Possley 2013a, pers. comm.; van der Heiden 2013b, pers. comm.).

All reported populations of *Trichomanes punctatum* ssp. *floridanum* have been in the sporophyte stage. The initial stage, after a spore germinates, is the gametophyte stage. The gametophyte contains separate sperm and egg-producing structures. In the presence of water or moisture, sperm reach the eggs for fertilization. Fertilized eggs, under the proper conditions, develop into sporophytes—the typical form most ferns are observed in. The sporophytes produce spores, which in turn can germinate to produce new gametophytes (Nelson 2000, pp. 17–19). Reproduction may also occur in two other ways. Plants may reproduce by division, when rhizomes (horizontal, underground plant stems capable of producing the shoot and root systems of a new plant) break, forming clones of the parent plant, or they may also reproduce with the production of gemmae (cells that detach from the parent and develop into a new individual) and propagules (a plant part that becomes detached from the rest of the plant and grows into a new plant) produced by gametophytes, which can grow into new gametophytes of the same genotype (the genetic makeup of a cell or individual) (Dassler and Farrar 2001, p. 354; Hill 2003, p. 12).

Although it has been suggested that plants sporulate (produce spores) mostly in the spring and summer (Nauman, 1986, p. 182), field observations in Miami-Dade County have observed sporangia in the months of February, March, May, August, October, and December. The plants are likely fertile any time of year; however, during the dry season, sporophytes have been observed to desiccate and probably do not produce spores (Possley 2013e, pers. comm.). In Sumter County, sporangia have been observed from April through September; however, researchers suggest they are likely producing all year with peaks in the wet season (van der Heiden 2013c, pers. comm.). For *Trichomanes punctatum* ssp. *floridanum,* specific reproductive and growth requirements, such as moisture levels needed for each stage of its life history, plant longevity, growth rates, recruitment rates, dispersal methods, and genetic variation, are currently unknown.

Recent field studies in Sumter County on extant *Trichomanes punctatum* ssp. *floridanum* populations found average relative humidity to be around 95 percent, while ambient temperatures were recorded to stay around 23 degrees Celsius (°C) (73 degrees Fahrenheit (°F)). However, during cooler periods (19–22

°C; 66–70 °F) when humidity levels dropped slightly (to around 92 percent humidity), observed plant health declined, demonstrating the fragile nature of this taxon and its dependence on high humid conditions (van der Heiden and Johnson 2014, p. 9). This type of information needs to be further explored to determine habitat requirements (i.e., thresholds for humidity and temperature) for both metapopulations of this taxon.

Organizations such as the Institute for Regional Conservation (IRC) and Fairchild's Center for Tropical Plant Conservation (Fairchild) are working together to understand the biology, life history, and reproduction of *Trichomanes punctatum* ssp. *floridanum.* In 2002, IRC and Fairchild collaborated with fern culture experts from Marie Selby Botanical Gardens (MSBG) in Sarasota, Florida, and tissue culture experts at the Lindner Center for Conservation and Research on Endangered Wildlife (CREW) in Cincinnati, Ohio (Gann *et al.* 2009, pp. 35–36). Currently, Fairchild has grown 14 separate clusters from plants obtained in local hammocks (temperate hardwood forests) and monitored by their organization. The success of this effort to grow healthy *T. p.* ssp. *floridanum* has yet to be determined due to several factors including: slow growth rates, the formation of unusual linear fronds, the susceptibility to mold, and the lack of sporulation (Possley *et al.* 2013, pp. 43–45). However, researchers at CREW have recently developed a successful method to culture *T. p.* ssp. *floridanum* in-vitro and cryopreserve (to preserve by freezing at low temperatures) sporophytes (V. Pence, submitted; Pence and Charls 2006, pp. 29–34). The new plants from CREW have recently been transferred to MSBG, and plans are underway to establish *T. p.* ssp. *floridanum* onto limestone rock, which could potentially be transferred to solution hole (see description under ''Habitat'' section, below) walls for eventual reintroduction (Holst 2014, pers. comm.).

Habitat

In southeastern North America, *Trichomanes* spp. are considered rare because of their delicate nature and requirements for deeply sheltered habitats with almost continuous high moisture and humidity (Farrar 1993b, pp. 190–197; Zots and Buche 2000, p. 203), restricting them from a more widespread pre-glaciation distribution. *Trichomanes punctatum* ssp. *floridanum* is considered strongly hygrophilous (growing or adapted to damp or wet conditions) and generally perceived as restricted to constantly humid microhabitat (Krömer and Kessler 2006, p. 57). *T. p.* ssp. *floridanum* occurs only in the U.S. in the State of Florida. In Florida, *T. p.* ssp. *floridanum* is only known to occur in Miami-Dade and Sumter Counties.

Both extant metapopulations live in dense canopy habitats, with shady conditions that may be obligatory due to the poikilohydric (i.e., possess no mechanism to prevent desiccation) nature of some fern species (Krömer and Kessler 2006, p. 57). The canopy directly contributes to the surrounding humidity of an area. Dense canopies found in rockland habitats can minimize temperature fluctuations by reducing soil warming during the day and heat loss at night. In areas with greater temperature variations, as in Sumter County, this temperature minimization effect can help prevent frost damage to the interior of the hammock (FNAI 2010, p. 25). Mesic conditions are further maintained by the hammock's rounded canopy profile, which deflects winds, limiting desiccation during dry periods and reducing interior storm damage (FNAI 2010, p. 25). Changes in the canopy can impact humidity and evaporation rates, as well as the amount of light available to the understory.

In Miami-Dade County, *Trichomanes punctatum* ssp. *floridanum* is generally epiphytic (a plant that grows non-parasitically upon another plant) or epipetric (growing on rocks), typically growing in rocky outcrops of rockland hammocks, in oolitic (composed of minute rounded concretions resembling fish eggs) limestone solution holes, and, occasionally, on tree roots in limestone-surrounded areas (Phillips 1940, p. 166; Nauman 1986, p. 180; Whitney *et al.* 2004, pp. 105–106; Possley 2013f, pers. comm.; van der Heiden 2014b, pers. comm.). These rockland habitats are outcrops primarily comprised of marine limestone representing the distinct geological formation of the Miami Rock Ridge, a feature which encompasses a broad area from Miami to Homestead, Florida, and narrows westward through the Long Pine Key area of Everglades National Park (ENP) (Snyder *et al.* 1990, pp. 233–234). Several endemic plant species have been identified to be closely associated with the rocklands of southern Florida; these plants are believed to have no adaptation for long-distance dispersal, suggesting a lengthy period of evolution on rocky substrate in southern Florida (Snyder *et al.* 1990, p. 236).

Rockland hammocks are a type of rich tropical hardwood hammock (forest) on upland sites in areas where limestone is very near the surface and often exposed. Once numerous throughout South Florida, these rockland hammocks have a diverse closed canopy and shrub layer, where more than 120 native tree and shrub species are known to occur, including a number of rare plant and animal species, federally listed and candidate species, South Florida endemics, and tropical species at or near the northern limit of their ranges (Phillips 1940, p. 166; Snyder *et al.*1990, p. 16; Gann *et al.* 2009, p. 3). The forest floor is characterized by leaf litter with varying amounts of exposed limestone and has few herbaceous species. Rockland hammocks generally consist of larger, mature trees in the interior, while the margins can be almost impenetrable due to dense growth of smaller shrubs, trees, and vines (FNAI 2010, pp. 24–27). The canopy cover is typically very dense where *Trichomanes punctatum* ssp. *floridanum* occurs. In Miami-Dade County, the hammocks consist of a mix of temperate and tropical hardwood trees, both canopy and understory, including *Ocotea coriacea* (lancewood), *Coccoloba diversifolia* (pigeon plum), *Quercus virginiana* (live oak), *Simarouba glauca* (paradise tree), *Ficus aurea* (strangler fig), and *Sideroxylon foetidissimum* (mastic) (see Snyder *et al.* 1990, p. 241, for complete list). Soils where *T. p.* ssp. *floridanum* is extant in Miami-Dade County generally consist of an uneven layer of highly organic soil overlying rock (Snyder *et al.*1990, p. 238); soils are classified as Matecumbe Muck (moderately well-drained soils that are very shallow) (Florida Geographic Data Library 2013, *http://www.fgdl.org/*). Soils from historical and extant records consist of the following soil types: Krome Very Gravelly Loam, Cardsound Silty Clay Loam-Rock Outcrop Complex, Opalocka Sand-Rock Outcrop Complex, and Dania Muck.

The limestone solution holes consist of bare rock walls that are considered specialized habitat within these hammock areas that host *Trichomanes punctatum* ssp. *floridanum,* as well as several other fern species (Snyder *et al.* 1990, p. 247). The solution hole features that dominate the appearance of rock surface in the Miami Rock Ridge are steep-sided pits, varying in size, formed by dissolution of subsurface limestone followed by a collapse above (Snyder *et al.* 1990, p. 236). Limestone solution holes vary in size, from shallow holes less than 0.5 meter (m) (1.6 feet (ft)) deep to those that cover over 100 m^2 (1,076 ft^2) and are several meters deep (Snyder *et* al. 1990, p. 238). The bottoms

of most solution holes are filled with organic soils, while deeper solution holes penetrate the water table and have (at least historically) standing water for part of the year (Snyder *et al.* 1990, pp. 236–238). Humidity levels are higher in and around the solution holes because of standing water and moisture retained in the organic soils. Many tropical, epipetric plant species are associated with the sinkholes and solution holes in rockland hammocks.

In Sumter County, *Trichomanes punctatum* ssp. *floridanum* is known to be epipetric, residing on limestone boulders in high atmospheric humidity hammocks (van der Heiden 2013a, pers. comm). Plants live in a mesic hammock on limestone boulders 0.1–1.5 m (0.3–4.9 ft) tall (see ''Current Range'' section, below). Mesic hammock is a developed evergreen hardwood and/or palm forest on soils that are rarely inundated (FNAI 2010, pp. 19–23) and commonly associated with hydric hammock and mixed wetland hardwoods. The difference between mesic hammocks and surrounding habitats is a slight difference in elevation; mesic hammocks occur on higher ground within basin or floodplain wetlands, as patches of oak/palm forest in dry prairie or flatwoods communities, on river levees, or in ecotones (transition area between two biomes or areas of distinct plant and animal groups) between wetlands and upland communities and at the edges of lakes, sinkholes, other depressional or basin wetlands, and river floodplains where natural fires do not occur (FNAI 2010, pp. 19–23). Historically, mesic hammocks were thought to be restricted to naturally fire-protected areas such as islands and peninsulas of lakes.

Although there are several occurrences of *Trichomanes punctatum* ssp. *floridanum* in Sumter County where sunlight can be observed through the canopy, generally the habitat is shaded throughout the year, with the lowest amount of canopy cover recorded at 64 percent (van der Heiden and Johnson 2013, pp. 8, 20). *T. p.* ssp. *floridanum* has been observed growing on small limestone rocks, as well as boulders with tall, horizontal faces with numerous other species, including rare State-listed species (e.g., *Asplenium cristatum* (hemlock spleenwort)) and widespread *Pecluma dispersa* (widespread polypody) (van der Heiden 2013b, pers. comm.; van der Heiden and Johnson 2013, p. 7).

Within one occupied Sumter County hammock (Rocky Hammock), the majority of *Trichomanes punctatum* ssp. *floridanum* occur on the northern face of limestone boulders; however, those clusters found on non-north-facing limestone generally occur in close proximity to other boulders, trees, or within protected crevices (van der Heiden and Johnson 2014, p. 7). It has been suggested the northern aspect of limestone boulders are more often inhabited by this taxon because of the reduced exposure to sunlight, promoting cooler temperatures and higher moisture as compared to other sun-exposed sections of rock. This may also be the case for those clusters shielded by other boulders, by trees, or in crevices, allowing the plant to grow on any portion of the shielded rock as long as moisture levels remain high enough to prevent desiccation (van der Heiden and Johnson 2014, pp. 9–10). Additionally, both populations of *T. p.* ssp. *floridanum* in Sumter County grow within the northern quadrant of each hammock.

Soils of mesic hammock are sands mixed with organic matter, often containing a thick layer of leaf litter and generally well-drained. Although some areas maintain high moisture soils due to the accumulation of leaf litter and extensive canopy cover, in general, mesic hammocks can occur across a broad gradient of soil moisture conditions, from somewhat xeric to almost hydric soils. Rock outcrops may also occur in mesic hammocks, especially where limestone is near the surface (FNAI 2010, pp. 19–23). Soil types for the extant metapopulation of *Trichomanes punctatum* ssp. *floridanum* in Sumter County include Okeelanta Muck, Frequently Flooded, and Mabel Fine Sand (i.e., deep and very deep, somewhat poorly drained, slowly permeable soils that formed in sandy to clayey marine deposits, with a bouldery (abounding in rocks or stones) subsurface and 0–5 percent slopes (Florida Geographic Data Library 2013, *http://www.fgdl.org/*)). Additionally, one historical record has Adamsville Fine Sand, Bouldery Subsurface, while another population containing a questionable record from an extirpated population has what is classified as Malabar Fine Sand, Frequently Flooded.

Plant communities associated with mesic hammocks vary depending on the latitude; tropical species gradually increase in frequency from the central to southern peninsular Florida. In south Florida, some high-elevation areas dry enough to support a semi-tropical mesic hammock do exist; however, most ''high hammocks'' are rockland hammocks occurring on limestone (FNAI 2010, pp. 19–23). *Q. virginiana* is common in mesic hammock communities. Oak species found in these hammocks tend to possess a broader tolerance of a range of conditions than do oaks in other habitats (FNAI 2010, pp. 19–23). Mesic hammocks do not contain wetland trees, as found in hydric hammocks; however, these two hammock types often occur as intermixed stands. Because mesic hammocks are often associated with hydric hammocks, with wetlands, or as a transition to uplands, they are sensitive to hydrologic alteration in the landscape. For example, changes in flooding frequency and/or duration can kill most mesic hammock tree species, while lowered water tables can shift vegetation towards xeric species or promote wildfires, destroying the hammock (FNAI 2010, pp. 19–23). Mesic hammocks may be distinguished from rockland hammocks by the dominance of temperate species in the canopy, whereas rockland hammocks are comprised of predominantly tropical woody species.

Trichomanes punctatum ssp. *floridanum* in Sumter County can be found under a dense canopy including *Q. virginiana, Sabal palmetto* (cabbage palm), *Carpinus caroliniana* (American hornbeam), *Celtis laevigata* (sugarberry), *Acer negundo* (boxelder), *Liquidambar styraciflua* (sweetgum), and *Sapindus saponaria* (wingleaf soapberry) (van der Heiden 2013c, pers. comm.; van der Heiden and Johnson 2014, pp. 7, 19). The hammocks where *T. p.* ssp. *floridanum* has been found are also surrounded by a mosaic of wetlands dominated by *Taxodium distichum* (cypress trees). Recent field surveys recorded 18 canopy species in Rocky Hammock and 12 in Tree Frog Hammock (van der Heiden and Johnson 2014, p. 19), both located in Sumter County. The average canopy closure for both populations in Sumter County has been estimated to be more than 75 percent, where it is heavily shaded, maintaining high humidity to reduce chances of desiccation (van der Heiden and Johnson 2014, p. 9). Van der Heiden and Johnson (2014, p. 9) speculate this dense, closed canopy can serve as a shield for *T. p.* ssp. *floridanum* to inhibit the growth of other plant species on the same part of an inhabited rock area.

Habitat differences between Miami-Dade and Sumter Counties have enabled this subspecies to adapt to very different conditions at each location. In Miami-Dade, where *Trichomanes punctatum* ssp. *floridanum* currently is found, the mean maximum temperature from the last 10 years (2004–2013) was 29.0 °C (84.3°F), and the mean minimum temperature for the same time period was 21.4 °C (70.5°F) (*http://www1.ncdc.noaa.gov*). In contrast, yearly mean temperatures were lower

for Sumter County with 23.4 °C (74.2°F) recorded as the maximum temperature for the last 10 years (2004–2013), and 11.8 °C (53.2°F) as the minimum temperature for the same time period (National Oceanic and Atmospheric Administration 2014, *http://www1.ncdc.noaa.gov*). Although it is believed this subspecies needs high temperatures and humidity, along with dense canopy, the exact thresholds for these variables have yet to be determined.

Historical Range/Distribution

The historical range of *Trichomanes punctatum* ssp. *floridanum* included southern (Miami-Dade County; see Table 1, below) and central (Sumter County; see Table 2, below) Florida.

Miami-Dade County

In Miami-Dade, the range of this subspecies extended from Royal Palm Hammock (now in Everglades National Park (ENP)) at its southern limit, northeast to Snapper Creek Hammock, which is located in R. Hardy Matheson Preserve (derived from Gann *et al.* 2002, pp. 552–554), a range of at least 45 square kilometers (km^2) (17 square miles (mi^2)). Plants in Miami-Dade were known to historically occur in at least 11 hammocks: Deering-Snapper Creek Hammock, Castellow Hammock, Silver Palm Hammock (also known as Caldwell), Ross Hammock, Royal Palm Hammock (in ENP), Hattie Bauer Hammock, Shields Hammock, Nixon-Lewis Hammock, Fuchs Hammock, Addison Hammock (in the Deering Estate at Cutler), and Matheson Hammock. In the 1980s, *T. p.* ssp. *floridanum* was also documented in Meissner Hammock and Cox Hammock (now part of the tourist attraction ''Monkey Jungle'') (Small 1918, p. 6; Small 1921, p. 211; Morton 1963 p. 90; Fairchild Tropical Garden 1968, p. 1; Nauman 1986 p. 182; Gann *et al.* 2002, pp. 552–554; Gann 2013, *http://regionalconservation.org/ircs/database/plants/IRCSpAccount.asp?TXCODE=Tricpuncflor&GENUS=Trichomanes&SPECIES=punctatum&Author=Poir.&INFRA1=subsp.&INFRA1NAME=*ssp. *floridanum&INFRA1AUTHOR=Wess.%20Boer&CommonNames=Florida%20bristle%20fern*).

After the initial finding of *Trichomanes punctatum* ssp. *floridanum* in 1901, at Deering-Snapper Creek, J.K. Small made subsequent collections of the subspecies in and around Miami-Dade County including one in 1903, probably located in or near present-day Castellow Hammock (Gann 2014d, pers. comm.). Additional collections were obtained in 1903, in Castellow Hammock by A.A. Eaton with more recent observations by G. Gann and K. Bradley in the late 1990s (Bradley and Gann 1999), and J. Possley and others (Gann *et al.* 2002, pp. 552–554; Possley *et al.* 2013, pp. 43–45). *T. p.* ssp. *floridanum* was collected in Silver Palm Hammock in 1903, by A.A. Eaton and later reported again in 1980; however, this report was not confirmed. The fern was collected from Ross Hammock by J.K. Small and colleagues in 1906. Since then, part of this hammock has been destroyed, and what remains is currently protected as a Miami-Dade Conservation Area. In 1909, the subspecies was collected in Royal Palm Hammock (also known as Paradise Key), now within ENP, and later reported by W.E. Stafford in 1917 (Stafford 1919, p. 386; Gann *et al.* 2002, pp. 552–554).

Several collections of *Trichomanes punctatum* ssp. *floridanum* were made in Miami-Dade in 1915, including: Hattie Bauer Hammock, Shields Hammock, Nixon-Lewis Hammock, Fuchs Hammock, and Deering-Snapper Creek Hammock. Hattie Bauer Hammock, now a Miami-Dade County conservation area, has numerous subsequent collection records by Small (1915, 1916), Correll (1936), and McFarlin (1934, 1940) as cited by Gann 2013, *http://regionalconservation.org/ircs/database/plants/IRCSpAccount.asp?TXCODE=Tricpuncflor&GENUS=Trichomanes&SPECIES=punctatum&Author=Poir.&INFRA1=subsp.&INFRA1NAME=*ssp. *floridanum&INFRA1AUTHOR=Wess.%20Boer&CommonNames=Florida%20bristle%20fern.* The last known collection in Hattie Bauer Hammock was recorded in 1960, by T. Darling, Jr., and subsequently reported as extirpated by Gann *et al.* (2002, pp. 552–554), until it was rediscovered in this hammock in 2011 by Possley (*et al.* 2013, pp. 1–2). Shields Hammock was destroyed prior to 1991 (Cressler 1991, Handwritten Notes). Fuchs Hammock is now part of the Fuchs Hammock Preserve (Gann *et al.* 2002, pp. 552–554) and was vouchered (pressed plant samples taken for future reference) again in 1954, by L. J. Brass; in 1959, by T. Darling Jr.; and in 1969, by F.C. Craighead (The Institute for Regional Conservation, Herbarium Specimens, Floristic Inventory of South Florida Database, September 12, 2007). Fuchs Hammock was also vouchered in 1993, following Hurricane Andrew (1992) by A. Cressler (Cressler 12 February 1993, handwritten notes,), and more recently observed by Possley and others over the years (Gann *et al.* 2002, pp. 552–554; Possley *et al.* 2013, pp. 43–45). *T. p.* ssp. *floridanum* was observed by G. N. Avery in 1983, in Meissner Hammock (immediately adjacent to Fuchs Hammock) and was since vouchered by K. Bradley in 1997 and 2002, and also observed by others (Gann *et al.* 2002, pp. 552–554; Possley *et al.* 2013, pp. 43–45).

In 1916, J.K. Small reported *Trichomanes punctatum* ssp. *floridanum* in Addison Hammock, now located within Deering Estate at Cutler, currently Miami-Dade County Park; however, these reports were never vouchered (J.K. Small 1916; Gann *et al.* 2002, pp. 552–554). Surveys in recent years have yet to find any populations of *T. p.* ssp. *floridanum* in Deering Estate at Cutler, Matheson Hammock, or Silver Palm Hammock (Possley 2013j, pers. comm.). The subspecies was last reported from Cox Hammock in 1989, by A. Cressler, where plants were observed in a sinkhole in the tourist attraction, ''Monkey Jungle'' (Cressler 1991, handwritten notes); it is not known if these plants still exist. Cox Hammock is located about 1.6 km (1.0 mi) northeast of Castellow Hammock Park. Additional hammocks existing today where the taxon formerly occurred include Ross and Royal Palm Hammock (in ENP) and Deering-Snapper Creek Hammock. A section of Deering-Snapper Creek Hammock was destroyed in 1912–1913, when the Snapper Creek Canal was constructed; dredging of this canal drastically altered the water table in the area, depleting the freshwater springs, while a large spoil berm from excavation of the canal destroyed existing habitat (Metro-Dade County Park and Recreation Department 1991, p. 10). Other hammocks in the historical range that are presumed destroyed include Nixon Lewis Hammock, which is partially destroyed (Gann 2013, *http://regionalconservation.org/ircs/database/plants/IRCSpAccount.asp?TXCODE=Tricpuncflor&GENUS=Trichomanes&SPECIES=punctatum&Author=Poir.&INFRA1=subsp.&INFRA1NAME=ssp. floridanum&INFRA1AUTHOR=Wess.%20Boer&CommonNames=Florida%20bristle%20fern*) and a station presumably near the Matheson Hammock Park vouchered by G. Peterson in 1940.

TABLE 1—SUMMARY OF HISTORICAL REPORTS, POPULATION LOCATIONS, AND CURRENT POPULATION AND HAMMOCK STATUS OF TRICHOMANES PUNCTATUM SSP. FLORIDANUM IN MIAMI-DADE COUNTY, WHERE KNOWN

[Gann *et al.* 2002; The Institute for Regional Conservation, Herbarium Specimens, Floristic Inventory of South Florida Database, September 12, 2007; Florida Natural Areas Inventory element occurrences 9/12/2013; Possley 2013c, j–k, 2014a–c; Possley 2013, 2014 pers. comm.; Gann 2013, pers. comm.; van der Heiden 2013e, pers. comm.; Gann 2014a–f, pers. comm.; Gann *et al.* 2014, *http://regionalconservation.org/ircs/database/plants/PlantPage.asp?TXCODE=Tricpuncflor*]

No.	Population location	Year(s) of initial report(s)	Observer	Number of specimens collected	Current population status	Current hammock status
1	Deering-Snapper Creek Hammock (in R. Hardy Matheson Preserve).	1901	J.K. Small, G.V. Nash	3	Extirpated ...	Protected Area, Partially Destroyed.
		1915	J.K. Small, C.A. Mosier ...	1		
2	Castellow Hammock	1903	J.K. Small, J.J. Carter	2	Extant	Protected Area.
		1903	A.A. Eaton	4		
3	Silver Palm Hammock	1903	A.A. Eaton	1	Extirpated ...	Protected Area.
4	Ross Hammock	1906	J.K. Small, J.J. Carter	2	Extirpated ...	Protected Area, Partially Destroyed.
5	Royal Palm Hammock (ENP); aka Paradise Key.	1909	J.K. Small, J.J. Carter	2	Extirpated ...	Protected Area.
		1917	W.E. Stafford	None		
6	Hattie Bauer Hammock (Orchid Jungle).	1915	J.K. Small, C.A. Mosier ...	2	Extant	Protected Area.
		1915	J.K. Small	3		
		1915	J.K. Small, C.A. Mosier, G.K. Small.	5		
		1916	J.K. Small	1		
		1934	J.B. McFarlin	2		
		1936	D.S. Correll	2		
		1940	J.B. McFarlin	1		
		1960	T. Darling Jr	1		
7	Shields Hammock	1915	J.K. Small, C.A. Mosier, G.K. Small.	1	Extirpated ...	Destroyed.
8	Nixon-Lewis Hammock	1915	J.K. Small, C.A. Mosier ...	1	Extirpated ...	Protected Area, Partially Destroyed.
9	Fuchs Hammock (Sykes Hammock)	1915	J.K. Small, C.A. Mosier ...	1	Extant	Protected Area.
		1954	L.J. Brass	1		
		1959	T. Darling Jr	1		
		1969	A.F. Clewell, F.C. Craighead.	1		
10	Addison Hammock (Deering Estate at Cutler).	1916	J.K. Small	None	Unknown [1] ..	Protected Area.
11	Matheson Hammock Park	1940	G. Peterson	2	Unknown [2] ..	Protected Area.
12	Meissner Hammock	1983	G.N. Avery	None	Extant	Protected Area.
13	Cox Hammock (Monkey Jungle)	1989	A. Cressler	None	Unknown [3] ..	Privately Owned, Partially Destroyed.

[1] Initial report is questionable.
[2] Precise location of sample and associated report is questionable.
[3] It is not known whether the species still occurs here.

Sumter County

In Sumter County, early collections and herbarium label data for *Trichomanes punctatum* ssp. *floridanum* are not accurate or precise in their location descriptions. The first documented collection in 1936, by R.P. St. John, simply states that *T. p.* ssp. *floridanum* was found 11.26 km (7.0 mi) east of Floral City. This collection is close to the extant populations in Sumter (in Rocky Hammock within Withlacoochee State Forest), which is east-southeast of Floral City, and is thought to be the location where *T. p.* ssp. *floridanum* existed on private land until it was cleared for cattle sometime after 1983. A specimen found 3 years later by J.B. McFarlin in 1939 was originally thought to be *T. sphenoides;* the herbarium label data described this collection as ''South of Floral City, Florida. *T. sphenoides* is a misapplied synonym for *T. p.* ssp. *floridanum* according to FNAI. This is the only known station in the United States.'' It is believed that these label data may have been incorrectly recorded, indicating a direction of south from Floral City, when it should have been east. In all likelihood, McFarlin's collection probably referred to the population in the Wahoo area, where St. John previously collected because he states his collection was from the same locality where it was originally found in 1936. The specimen found by McFarlin eventually led to reports of the taxon in Citrus County (Wherry 1964, p. 232; Nelson 2000, p. 81); however, this was never confirmed beyond the initial report. Systematic surveys have not been conducted in Citrus County; therefore, the only documented occurrences of *T. p.* ssp. *floridanum* in this region of Florida have been in Sumter County, just north of Wahoo and east of the Withlacoochee River.

Several years later, in 1954, R. Garrett collected *Trichomanes punctatum* ssp. *floridanum* southeast of Floral City. It is thought to be the same location where St. John and McFarlin made their previous collections; however, label data were again minimal and the exact location is uncertain. In 1959, T. Darling Jr. found this subspecies near Floral City, 11.26 km (7.0 mi) south near a location called Battle Slough. This record has never been confirmed because it is located on private property. Another specimen was found in 1963, by O. Lakela in an area known as Indian Field Ledges. Lakela recorded his location and collection to be west of Withlacoochee River off State Road #48. This information is believed to be incorrect based on a site visit by Darling (1961, p. 7), stating that the Indian Field

Ledges is north of Wahoo, a locality east of the Withlacoochee River. *T. p.* ssp. *floridanum* was not found again in Sumter County until 1983, when S.W. Leonard made a collection on private property known as Rocky Point, north of Wahoo. This is presumed to be the same location where St. John, McFarlin, and Garrett collected their specimens, which is now extirpated.

TABLE 2—SUMMARY OF HISTORICAL REPORTS, POPULATION LOCATIONS, AND CURRENT POPULATION AND HAMMOCK STATUS OF TRICHOMANES PUNCTATUM SSP. FLORIDANUM IN SUMTER COUNTY, WHERE KNOWN

[Gann et al. 2002; The Institute for Regional Conservation, Herbarium Specimens, Floristic Inventory of South Florida Database, September 12, 2007; Florida Natural Areas Inventory Element Occurrences 9/12/2013; van der Heiden 2013d, 2014a, pers. comm.; Gann et al. 2014, *http://regionalconservation.org/ircs/database/plants/PlantPage.asp?TXCODE=Tricpuncflor*]

No.	Population location	Year of initial report	Observer	Number of specimens collected	Current population status	Current hammock status
1	11.26 km (7 mi) East of Floral City [1]	1936	R.P. St. John	1	Presumed Extirpated.	Privately Owned, Presumed Destroyed.
2	Floral City Area [1]	1939	J.B. McFarlin	1	Unknown [2]	Unknown.
3	Southeast of Floral City [1]	1954	R. Garret	1	Presumed Extirpated.	Privately Owned, Presumed Destroyed.
4	Floral City, 11.26 km (7 mi) south (Battle Slough) [1].	1959	T. Darling Jr	1	Unknown [2]	Privately Owned, Unknown.
5	East of Withlacoochee River, off State Road #48 (Indian Field Ledges) [1].	1963	O. Lakela	1	Extirpated	Protected Area.
6	Rocky Point, (north of Wahoo)	1983	S.W. Leonard	1	Extirpated	Privately Owned, Destroyed.

[1] Sumter County collections and herbarium label data for *Trichomanes punctatum* ssp. *floridanum* are inaccurate in location descriptions.
[2] Initial report is questionable.

Current Range

The extant metapopulation of *Trichomanes punctatum* ssp. *floridanum* in Miami-Dade County is approximately 400 km (249 mi) south of the extant metapopulation in Sumter County. Both metapopulations of *T. p.* ssp. *floridanum* are located entirely on public lands (see Table 3, below).

Miami-Dade County

The four populations that constitute the Miami-Dade County metapopulation are located in urban preserves managed by the County's Environmentally Endangered Lands (EEL) Program (see *Factor A,* Conservation Efforts to Reduce Habitat Destruction, Modification, or Curtailment of Its Range, below). These EEL properties include: Castellow Hammock Park (39.5 hectares (ha)) (97.6 acres (ac)), Hattie Bauer Hammock (5.7 ha (14.0 ac)), Fuchs Hammock Preserve (15.7 ha (38.8 ac)), and Meissner Hammock (4.1 ha (10.1 ac)). Three of these preserves (76 percent of the land area) are owned by the County; the fourth, Meissner Hammock (24 percent), is owned by the State and leased to the County (Dozier 2014, pers. comm.). The subpopulations in Fuchs Hammock include a new population that was found in July 2013 (Possley *et al.* 2013, pp. 43–45). Fuchs and Meissner Hammocks are immediately adjacent to each other, and Castellow Hammock Park is 10.5 km (6.5 mi) to the northeast. During 2011, another population was rediscovered at Hattie Bauer Hammock (8 ha (20 ac)) (Possley *et al.* 2013, pp. 43–45). Hattie Bauer Hammock is 4.02 km (2.5 mi) south of Castellow Hammock and approximately 8.05 km (5 mi) northeast of Fuchs and Meissner Hammocks. In general, *Trichomanes punctatum* ssp. *floridanum* occurs in small areas within each hammock.

No comprehensive survey has been conducted in rockland hammocks in Miami-Dade County where suitable *Trichomanes punctatum* ssp. *floridanum* habitat has been identified. Although these areas have been extensively explored by numerous botanists and plant enthusiasts, including sites where the subspecies was formerly found, due to the cryptic nature of this plant it may have been overlooked and new occurrences may yet be discovered (Possley 2013f, pers. comm.; van der Heiden 2013c, pers. comm.). Surveys conducted in the late 1990s, and as late as 2010, did not find *T. p.* ssp. *floridanum* in Silver Palm Hammock (Gann *et al.* 2002, pp. 552–554; Possley 2013g, pers. comm.). A plant sample was collected in Nixon-Lewis Hammock by Small and Mosier in 1915; however, due to extensive disturbance of this hammock, subsequent surveys conducted in 2006, by IRC, could not find the taxon (Bradley and Gann 2005, unpublished data). Over the years, IRC has completed systematic surveys in ENP in Royal Palm Hammock and other hammocks on Long Pine Key; however, plants have not been found there (Gann *et al.* 2009; pp. 1–66). In 2003, based on historical records, staff from ENP and IRC surveyed Royal Palm Hammock for *T. p.* ssp. *floridanum* without success; subsequent surveys conducted in rockland hammocks throughout Long Pine Key (in ENP) for other rare plants were also not successful in finding *T. p.* ssp. *floridanum* (Sadle 2013, pers. comm.).

Sumter County

The Sumter County metapopulation consists of two extant populations of *Trichomanes punctatum* ssp. *floridanum* that have been reported north of Wahoo, in the Withlacoochee State Forest's Jumper Creek Tract; these populations are located in Rocky Hammock (located on 44 boulders) and Tree Frog Hammock (located on 4 boulders) (van der Heiden and Johnson 2014, p. 7). The population in Tree Frog Hammock was discovered as recently as April 2013, during regional surveys (van der Heiden 2013c, pers. comm.). Two additional populations were known from private land just south of the State Forest; however, these populations were subsequently extirpated due to the clearing of land for agriculture by the property owner (van der Heiden 2013c, pers. comm.).

Recent GIS analyses show the soil type associated with known extant occurrences of *Trichomanes punctatum* ssp. *floridanum* in the northern metapopulation to be Okeelanta Muck, Frequently Flooded; this soil covers

approximately 1,478 ha (3,652 ac) in Sumter County. However, not all of these areas have been systematically surveyed. Although surveys conducted of a boulder field within Withlacoochee State Forest's Jumper Creek Tract (called the Indian Field Ledges) in August 2007 and April 2013 were unsuccessful (van der Heiden 2013c, pers. comm.), the discovery of new populations may be possible in the area. Indeed, the population of this subspecies in Jumper Creek's Tree Frog Hammock is a new population that was discovered in April 2013, during additional hammock surveys within Withlacoochee State Forest and the surrounding area (van der Heiden 2013c, pers. comm.).

It is also possible that other subpopulations may exist in Sumter County. Indian Ledges, a hammock located on private land near Jumper Creek (not to be confused with Indian Field Ledges), just north of Wahoo, is believed to be suitable for *Trichomanes punctatum* ssp. *floridanum,* including a dense canopy and appropriate soil (Deangelis 2014a-b, pers. comm.). Over the years, many rare ferns and orchids have been observed in the Indian Ledges Hammock; unfortunately, this hammock was heavily damaged by hurricanes in 2004 (Deangelis 2014a, pers. comm.).

Portions of the Southwest Florida Water Management District (SWFWMD) property within the Green Swamp more than 40.23 km (25 miles) southeast of the Jumper Creek Tract in Withlacoochee State Forest (WSF) may also contain appropriate habitat for *Trichomanes punctatum* ssp. *floridanum* based on existing habitat features such as dense canopy, high humidity microclimates, mesic hammock, and limestone outcroppings (Elliott 2014, pers. comm.). The SWFWMD property within the Green Swamp is the only area where land alteration has not occurred in Sumter County (11,343 ha (28,030 ac)). Portions of Green Swamp owned by the SWFWMD also extend into three other counties: Lake, Polk, and Pasco. Future survey efforts coordinating with local land owners and conservation organizations in this area may prove successful in finding new populations of *T. p.* ssp. *floridanum.*

TABLE 3—SUMMARY OF KNOWN EXTANT OCCURRENCES OF *Trichomanes punctatum* SSP. *floridanum.* (POSSLEY 2013, P. 1–2; DOZIER 2014, PERS. COMM.; VAN DER HEIDEN AND JOHNSON 2014, PP. 1–3).

Metapopulation location (County)	Population location	Land ownership	Number of subpopulations	Status
Miami-Dade	Meissner Hammock	State	2	Extant.
Miami-Dade	Fuchs	County	4	Extant.
Miami-Dade	Castellow	County	3	Extant.
Miami-Dade	Hattie Bauer	County	1	Extant.
Sumter	Rocky Hammock, Withlacoochee State Forest's Jumper Creek Tract.	State	1	Extant.
Sumter	Tree Frog Hammock, Withlacoochee State Forest's Jumper Creek Tract.	State	1	Extant.

Population Estimates and Status

Trichomanes punctatum ssp. *floridanum* grows in dense mats and is rhizomatous (a horizontal stem that often sends out roots and shoots from its nodes). Fronds are scattered in matted clusters along the stems, making it difficult to count clusters, or groups of plants in the same location, and nearly impossible to accurately count individual plants (Nelson 2000, p. 79). This issue has been encountered in other *Trichomanes* species, such as *Trichomanes boschianum* (Appalachian bristle fern) (Hill 2003, p. 11). As such, populations are typically described by the number of clusters (i.e., groups of plants in various sinkholes, on tree roots, on boulders) and the total area covered by the cluster.

Miami-Dade County

In Miami-Dade County, there are four populations of the fern with a total of 10 subpopulations (i.e., nine solution holes and one rocky outcropping). Overall, this taxon occurs in small areas (i.e., less than 0.5 ha (1.2 ac)) at each site, with 88 percent of the total area in three subpopulations in Castellow Hammock. Recent surveys (see Table 4, below) in Miami-Dade by Fairchild (Possley 2013 pp. 1–2) found the fern covering a total area of approximately 9.92 m^2 (106.56 ft^2) (Possley 2013, pp. 1–2).

TABLE 4—AREA COVERED BY EACH OF 10 KNOWN SUBPOPULATIONS OF *Trichomanes punctatum* SSP. *floridanum* IN MIAMI-DADE COUNTY, OCTOBER AND NOVEMBER 2013 (POSSLEY 2013, PP. 1–2) AND IN SUMTER COUNTY, DECEMBER 2013 (VAN DER HEIDEN AND JOHNSON 2014, PP. 7, 14)

Metapopulation	Population	Subpopulation	Estimated area covered (m^2)	Number of clusters
Miami-Dade	Hattie Bauer Hammock	Hole (no tag)	0.078	2–10
Miami-Dade	Fuchs Hammock	Hole 532	0.017	2–10
Miami-Dade	Fuchs Hammock	Hole 533	0.038	2–10
Miami-Dade	Fuchs Hammock	Hole 1431	0.128	2–10
Miami-Dade	Fuchs Hammock	Root 1430	0.047	1
Miami-Dade	Meissner Hammock	Hole 2319	0.145	2–10
Miami-Dade	Meissner Hammock	Hole 3337	0.713	2–10
Miami-Dade	Castellow Hammock	Hole 2332	4.688	11–100
Miami-Dade	Castellow Hammock	Hole 2331	3.925	11–100
Miami-Dade	Castellow Hammock	Hole 944	0.141	2–10
Miami-Dade County Total			9.920 m^2	
Sumter	Rocky Hammock	N/A	4.355	44
Sumter	Tree Frog Hammock	N/A	0.132	4

TABLE 4—AREA COVERED BY EACH OF 10 KNOWN SUBPOPULATIONS OF *Trichomanes punctatum* SSP. *floridanum* IN MIAMI-DADE COUNTY, OCTOBER AND NOVEMBER 2013 (POSSLEY 2013, PP. 1–2) AND IN SUMTER COUNTY, DECEMBER 2013 (VAN DER HEIDEN AND JOHNSON 2014, PP. 7, 14)—Continued

Metapopulation	Population	Subpopulation	Estimated area covered (m^2)	Number of clusters
Sumter County Total			4.487 m^2	
Total Area Covered			14.407 m^2	

The largest known population of *Trichomanes punctatum* ssp. *floridanum* in Miami-Dade County is located at Castellow Hammock (Possley *et al.* 2013, p. 43), where it occurs in three of the larger subpopulations. In October of 2011, field surveys revealed extensive desiccation of this population after intensive nonnative vegetation removal (Possley 2013h, pers. comm.); however, by November 2013, these plants had recovered, and the total area covered by all clusters (i.e., two or more plants next to each other) was estimated at 8.754 m^2 (94.227 ft^2). Meissner Hammock has two subpopulations; the clusters in this hammock cover an area of 0.858 m^2 (9.235 ft^2) and are considered healthy, with no signs of desiccation (Possley *et al.* 2013, pp. 43–45). There is one subpopulation in Hattie Bauer Hammock covering approximately 0.78 m^2 (8.4 ft^2) and three subpopulations of *T. p.* ssp. *floridanum* at Fuchs Hammock, with an additional one that was discovered in July 2013, totaling an area of 0.230 m^2 (2.476 ft^2) (Possley 2013, pp. 1–2; Possley *et al.* 2013, pp. 43–45).

Sumter County

In Sumter County, the Rocky Hammock subpopulation contains 44 clusters, while the newly discovered subpopulation (Tree Frog Hammock) is much smaller with only 4 clusters observed (van der Heiden and Johnson 2014, p. 7). Average cluster size for Rocky Hammock is estimated at 4.355 m^2 (46.877 ft^2) and 0.132 m^2 (1.421 ft^2) for Tree Frog Hammock.

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, we may list a species based on one or more of the following five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination. Each of these factors as applied to *Trichomanes punctatum* ssp. *floridanum* is discussed below.

Information pertaining to *Trichomanes punctatum* ssp. *floridanum* in relation to the five factors provided in section 4(a)(1) of the Act is discussed below. In considering what factors might constitute threats, we must look beyond the mere exposure of the species to the factor to determine whether the species responds to the factor in a way that causes actual impacts to the species. If there is exposure to a factor, but no response, or only a positive response, that factor is not a threat. If there is exposure and the species responds negatively, the factor may be a threat, and we then attempt to determine if that factor rises to the level of a threat, meaning that it may drive or contribute to the risk of extinction of the species such that the species warrants listing as an endangered or threatened species as those terms are defined by the Act. This does not necessarily require empirical proof of a threat. The combination of exposure and some corroborating evidence of how the species is likely impacted could suffice. The mere identification of factors that could impact a species negatively is not sufficient to compel a finding that listing is appropriate; we require evidence that these factors are operative threats that act on the species to the point that the species meets the definition of an endangered or threatened species under the Act.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Habitat modification and destruction, caused by human population growth and development, agricultural conversion, regional drainage, and canal installation, have impacted the range and abundance of *Trichomanes punctatum* ssp. *floridanum.* Secondary effects from hydrology and canopy changes have resulted in changes in humidity, temperature, and existing water levels; loss of natural vegetation; and habitat fragmentation. The modification and destruction of habitat where *T. p.* ssp. *floridanum* was once found have been extreme in most areas of Miami-Dade County; while they have been less dramatic in Sumter County, clearing of land for agricultural conversion and historical logging has resulted in very few areas where the habitat has not been modified. These threats are discussed in detail below.

Human Population Growth, Development, and Agricultural Conversion

Miami-Dade County–Rockland hammocks are considered imperiled both locally and globally, with a limited distribution and an FNAI ranking of G2 (imperiled globally because of rarity (6 to 20 occurrences or fewer than 3,000 individuals) or because of vulnerability to extinction due to some natural or manmade factor))/S2 (either very rare and local in Florida (21–100 occurrences or fewer than 10,000 individuals) or found locally in a restricted range or vulnerable to extinction from other factors)) (FNAI 2010, pp. 24–26, FNAI 2013, *http://www.fnai.org/PDF/NC/Rockland_Hammock_Final_2010.pdf*). The tremendous development and agricultural pressures in the rapidly urbanizing rockland hammock areas in south Florida have resulted in significant reductions of this habitat type, which is also susceptible to fire, frost, canopy disruption, and groundwater reduction (FNAI 2010, pp. 24–26).

Extensive land clearing for human population growth and development in Miami-Dade County has altered, degraded, or destroyed hundreds of acres of this once abundant rockland hammock ecosystem. Rockland hammocks once occurred across the Miami-Rock Ridge, usually in association with pine rocklands, or the edges of marl prairies (areas of thin,

calcitic soil that has accumulated over limestone bedrock) or tidal swamps (Service 1999, p. 122). Destruction of rocklands, including rockland hammocks, has occurred since the beginning of the 1900s. Historical impacts to the environment were addressed by Small (1938, p. 50), who called attention to the demise of *Trichomanes punctatum* ssp. *floridanum* from habitat destruction, and Phillips (1940, p. 167) who expressed his concern for south Florida hammocks due to the obvious and vast amount of destruction of land in the region. Early settlers in Florida cleared hammocks for residential development, farming, and range for livestock, while industrial logging also occurred in the region (Snyder *et al.* 1990, pp. 271–272). Consistent burning of pinelands in Miami-Dade also encroached upon adjacent hammocks, as in the case of Castellow Hammock (Phillips 1940, p. 167). Habitat impacts were further exacerbated by natural stochastic events, such as the hurricane in 1935 that destroyed Ross Hammock (Phillips 1940, p. 167).

Rockland hammock habitat is now limited to public conservation lands where future development and habitat alteration are less likely than on private lands. However, these lands could be sold off in the future and become more likely to be developed or altered in a way that negatively impacts the subspecies and its habitat. Additionally, rockland hammock may be found on private lands; however, the fate of this existing habitat is unknown, as it is dependent upon actions of individual property owners (see discussion under *Factor D*).

Due to the possibility that additional populations of *Trichomanes punctatum* ssp. *floridanum* may be found on private property and could be destroyed, and the fact that there are no guarantees that the limited rockland hammock habitat will remain as public conservation land in perpetuity, habitat loss due to population growth, development, and agricultural conversion poses a threat to this subspecies in Miami-Dade County.

Sumter County—In Sumter County, human population growth and development has occurred, but to a lesser degree than in Miami-Dade County; however, Sumter County has a long history of agriculture dating back to the early 1860s. Generally speaking, all land that was feasible for agriculture was cleared at some point. In particular, mesic hammocks where *Trichomanes punctatum* ssp. *floridanum* occurs have experienced disturbances from human activities such as logging, understory clearing, cattle grazing, and introduction of feral hogs. These natural mesic canopies and soils have largely been destroyed due to their desirable locations for living, camping, and recreating. The global and State rank for mesic hammock habitat (G3/S3) signifies it is considered to have a restricted range or be vulnerable to extinction from other factors (FNAI 2010, p. 22).

Concerns exist regarding future population growth and development in those communities remaining in Sumter County and on lands where urbanization and agriculture have not yet been established. According to the Sumter County Comprehensive Plan, a growth management paradigm has been developed that focuses public resources on urban areas to protect existing undeveloped land for agricultural use (Sumter County 2012, Data and Analysis section). Currently, the threat with greatest impact to *T. p.* ssp. *floridanum* habitat in Sumter County is the potential for agricultural and residential clearing of mesic hammocks on small, fragmented private parcels and in existing conservation areas.

Privately owned land in the area around Wahoo where *Trichomanes punctatum* ssp. *floridanum* is found has been zoned as ''agricultural'' on the Sumter County Future Land Use Map (Sumter County 2012, p. 42). The County exempts single site residential development and agriculture from environmental review and does not regulate land clearing for a single residence. Therefore, any undocumented populations and suitable habitat on private lands are at risk due to land-clearing activities, agricultural conversions, and development. For example, one Sumter County subpopulation observed in 1999 on private land was extirpated due to pasture clearing on the property for livestock (van der Heiden 2013c, pers. comm.). Although undeveloped land is more abundant in Sumter County than in Miami-Dade County, the fact that no virgin land remains within Sumter County may reduce the likelihood of new populations being discovered (Farnsworth 2013, pers. comm.). A full survey for *T. p.* ssp. *floridanum* and associated suitable habitat is needed in Sumter County to determine the severity of potential habitat loss on this subspecies regionally, including the potential impact from future human population growth and development.

Due to existing agricultural and residential clearing of mesic hammocks and potential future clearing on private lands and within existing conservation areas, habitat loss due to human population growth, development, and agricultural conversion poses a threat to *T. p.* ssp. *floridanum* in Sumter County.

Regional Drainage and Consumptive Use

Miami-Dade County—Landscape-level drainage has been extensive in Miami-Dade County. In the early 1900s, drainage initiatives were undertaken to modify land for agriculture and development; impacts resulted in a region-wide drop in the water table (Nauman 1986, p. 182; Lodge 2005, p. 222), disturbing rockland hammocks and their flora (Service 1999, pp. 3–138), including *Trichomanes punctatum* ssp. *floridanum.* Additional stress from regional drainage for canal construction has also contributed to the extirpation and decline of this metapopulation (Nauman 1986, p. 182; see also ''Historical Range/Distribution'', *Miami-Dade County* section, above). As a consequence of the pervasive drainage throughout Miami-Dade County, solution holes, which often contained standing water during the rainy season, now hold much less, if any, water during much of the year, resulting in decreased ambient humidity levels (Phillips 1940, p. 171; Nauman 1986, p. 182; Adimey 2013a, field notes). Even though regional changes in hydrology have not caused extirpation of *T. p.* ssp. *floridanum* at most locations, they may have already induced stress by promoting vulnerability to other stressors, such as periodic long-term droughts, cold weather exposure, and other stochastic events. Furthermore, groundwater levels in the vicinity of *T. p* ssp. *floridanum* are not targeted as part of the Comprehensive Everglades Restoration Plan (CERP) (a framework and guide to restore, protect, and preserve the water resources of central and southern Florida, including the Everglades), and, therefore, impacts from regional drainage are not expected to be ameliorated by CERP. Rockland hammocks in Miami-Dade County have been modified as a result of hydrology changes, reducing the amount of water available to these habitats. This is an ongoing threat for *T. p.* ssp. *floridanum,* as hammocks on limestone substrates are dependent on the underlying water table to keep humidity levels high, especially in limestone sinkholes (Service 1999, pp. 3–127).

Currently, the human population in Miami-Dade County is expected to grow to more than 4 million by 2060, an annual increase of roughly 30,000 people (Zwick and Carr 2006, p. 20). Although water demands will continue to rise with population increases, the extent of future impacts on existing

habitat and the metapopulation of *Trichomanes punctatum* ssp. *floridanum* in Miami-Dade County is unknown at this time.

Sumter County—In Sumter County, water drawdowns have historically been minimal; regional modeling conducted by SWFWMD indicates less than a 0.06-m (0.2-ft) current use of water in the Upper Floridan Aquifer (Deangelis 2014a, 2014c, pers. comm.). No surface water withdrawals are currently occurring in Sumter County; however, it is possible in the future. Minimum flows and levels (MFLs), which are water withdrawal standards to limit water use set the by regional Water Management Districts (WMDs), are already established for the Withlacoochee River portion of the Withlacoochee River watershed in Sumter County. Although increases in human population and development in Sumter County may increase water table use, it is believed changes due to drought conditions (*e.g.,* on the order of several feet) will have a far greater impact on the hydrology (Deangelis 2013a, pers. comm.).

Hydrology

Hydrology is a key ecosystem property that affects distribution and viability of rare plants (Gann *et al.* 2009, p. 6). Hydrology changes have extensively modified and, in some cases, destroyed habitat in south Florida. As a result of human population growth, development, agricultural conversion, and regional drainage, the hydrology of *Trichomanes punctatum* ssp. *floridanum* habitat has changed drastically and has contributed to the alteration in ambient humidity and temperature.

As a hygrophilous (living or growing in damp places) subspecies thought to be restricted to a consistent humid microhabitat (Krömer and Kessler 2006, p. 57), high humidity is a critical factor to its survival; any habitat modification or destruction that changes ambient humidity levels is believed to be a threat to this subspecies (Nauman 1986, p. 182). As noted above, drainage efforts implemented in south Florida have significantly reduced historical water table levels, altering ambient humidity in the area. It is speculated that this subspecies may be living in discrete areas where humidity may be at the threshold for *T. p.* ssp. *floridanum* to survive. Minor drops in ambient humidity may limit reproduction and can negatively impact overall health of existing metapopulations, as well as inhibit the growth of new plants, impacting long-term viability (van der Heiden, 2013c, pers. comm.; Possley 2013f, pers. comm.). Van der Heiden and Johnson (2013, p. 9) recently observed this in Sumter County where small drops in ambient temperature and humidity resulted in observed declines in the health of some clusters of *T. p.* ssp. *floridanum* within the local population.

Canopy Changes

Canopy is also an important habitat feature for *Trichomanes punctatum* ssp. *floridanum,* and in most cases, is the primary factor controlling surrounding temperature and humidity levels that are critical to the survival of this subspecies The proper amount of high shade and low light is critical for the persistence of this subspecies; these features help to maintain humidity and avoid desiccation from excessive light exposure (van der Heiden 2013c, pers. comm.; Possley 2013f, pers. comm.; Adimey 2013a-b, field notes). Currently, in both metapopulations, dense canopy cover is a necessity; however, the lower limits of canopy density needed to ensure survival are not yet known. Changes to existing canopies can result from land clearing and conversion, natural stochastic events, competition with nonnative species, and nonnative species control (see discussion under *Factor E*).

Historically, as land was developed, natural features of the landscape changed, directly eliminating *Trichomanes punctatum* ssp. *floridanum* and also eliminating surrounding vegetation and habitat features essential to this subspecies. Field observations in Miami-Dade County have found clusters of *T. p.* ssp. *floridanum* desiccated when the immediate canopy above the ferns was destroyed or substantially reduced, allowing high amounts of light into the understory (Possley 2013h, pers. comm.); however, over the course of many months, these clusters eventually recovered.

The loss of canopy can result in plant desiccation via increased sun and wind exposure, increased ambient temperatures, changes in ambient humidity, and the proliferation of exotic species (see *Factor E* discussion, below). Destruction or changes in canopy of any existing populations could result in elimination of an entire population. Therefore, canopy loss is believed to be a limiting factor for the future persistence of the subspecies and is therefore considered a threat to *T. p.* spp. *floridanum.*

Habitat Fragmentation

Habitat fragmentation limits dispersal and population size, and promotes vulnerability among existing populations. In Miami-Dade County, most remaining *Trichomanes punctatum* ssp. *floridanum* habitat (i.e., Fuchs, Meissner, Castellow, Hattie Bauer hammocks) is surrounded by housing development and agricultural land, resulting in scattered and small, fragmented natural areas. Regional drainage and hydrology changes may also have contributed to the fragmented habitat in Miami-Dade County. In Sumter County, the impacts of habitat fragmentation are not as severe, as conservation lands are on large, adjacent tracts. Future development in Sumter County could result in an increase in fragmented habitat and pose a threat for this northern metapopulation (van der Heiden 2013c, pers. comm.). However, thorough knowledge of the impacts and subsequent consequences from habitat fragmentation is unknown for both metapopulations of *Trichomanes punctatum* ssp. *floridanum* because information and understanding of dispersal mechanisms for this subspecies is currently lacking. The best available data regarding the impacts of habitat fragmentation on other plant species suggests that habitat fragmentation is likely a stressor impacting this subspecies but does not indicate that it rises to the level of a threat.

Conservation Efforts To Reduce Habitat Destruction, Modification, or Curtailment of Its Range

Conservation efforts to reduce habitat destruction are generally focused on the conservation of land in which both metapopulations occur. All known extant populations occur on State- or County-owned land that is currently protected from future development. In Miami-Dade County, extant occurrences of *Trichomanes punctatum* ssp. *floridanum* have been protected through acquisition within the County's EEL Program (*http://www.miamidade.gov/environment/endangered-lands.asp*).

Fee Title Properties

In 1990, Miami-Dade County voters approved a 2-year property tax to fund the acquisition, protection, and maintenance of natural areas by the EEL Program. The EEL Program purchases and manages natural lands for preservation. Land uses deemed incompatible with the protection of the natural resources are prohibited by current regulations; however, the County Commission ultimately controls what may happen with any County property, and land use changes may occur over time (Gil 2013b, pers. comm.). To date, the Miami-Dade

County EEL Program has acquired a total of approximately 95 ha (236 ac) of tropical hardwood and rockland hammocks (Gil 2013b, pers. comm.). The EEL Program also manages approximately 639 ha (1,578 ac) of tropical hardwood and rockland hammocks owned by the Miami-Dade County Parks, Recreation and Open Spaces Department, including some of the largest remaining areas of tropical hardwood and rockland hammocks (e.g., Matheson Hammock Park, Castellow Hammock Park, and Deering Estate Park and Preserves). A precursor to the EEL Program is the EEL Covenant Program, which regulates private lands for conservation through easements.

EEL Covenant Program

In 1979, Miami-Dade County enacted the EEL Covenant Program, which reduces taxes for private landowners of natural forest communities (NFC) such as pine rocklands and rockland hammocks. Under the EEL Covenant Program, landowners agree not to develop their property and manage it for a period of 10 years, with the option to renew for additional 10-year periods (Service 1999, pp. 3–177). The EEL Covenant Program currently regulates approximately 119 rockland hammock properties, comprising approximately 315.65 ha (780 ac) of habitat (Joyner 2013b, pers. comm.).

Although these temporary conservation easements provide valuable protection for their duration, they are not considered under *Factor D,* below, because they are voluntary agreements and not regulatory in nature. Miami-Dade County currently has approximately 21 rockland hammocks properties enrolled in this program, preserving 20.64 ha (51 ac) of rockland hammock habitat (Joyner 2013b, pers. comm.). The vast majority of these properties are small, and many are in need of habitat management, such as removal of nonnative, invasive plants. Although the EEL Covenant Program has the potential to provide valuable habitat for unknown or future populations of *Trichomanes punctatum* ssp. *floridanum,* the actual contribution of these designated conservation lands is largely determined by whether individual landowners follow prescribed EEL management plans and NFC regulations (see ''Local'' under *Factor D* below).

These County- and State-owned land areas are critical to protecting *Trichomanes punctatum* ssp. *floridanum,* as well as other native flora in Florida. Conservation efforts to prevent the future extirpation of *T. p.* ssp. *floridanum* and other fern species in Miami's EEL Preserves have been underway for many years. In Miami-Dade County, conservation lands are and have been monitored by Fairchild and IRC, in coordination with the EEL Program, to assess habitat status and determine any changes that may pose a threat to or alter the abundance of *T. p.* ssp. *floridanum* (Possley 2013m, pers. comm.; van der Heiden 2013f–h, pers. comm.). Impacts to habitat (e.g., canopy) via nonnative species and natural stochastic events are monitored and actively managed in areas where the taxon is known to occur. These programs are long-term and ongoing in Miami-Dade County; however, programs are limited by the availability of annual funding.

To date, only one reintroduction of filmy ferns (no specific species was indicated) was attempted by F.C. Craighead in the early 1960s, in several hammocks within ENP within the Long Pine Key area; these efforts were unsuccessful without further explanation (Gann 2013, *http://regionalconservation.org/ircs/database/plants/IRCSpAccount.asp?TXCODE=Tricpuncflor&GENUS=Trichomanes&SPECIES=punctatum&Author=Poir.&INFRA1=subsp.&INFRA1NAME=*ssp. *floridanum&INFRA1AUTHOR=Wess.%20Boer&CommonNames=Florida%20bristle%20fern*). This is not surprising since within-range reintroductions into unoccupied habitat have historically resulted in low success rates for plants (Maschinski *et al.* 2011, p. 159). Future reintroduction efforts will likely be attempted by MSBG from *Trichomanes punctatum* ssp. *floridanum* plants grown in-vitro from CREW.

In Sumter County, monitoring and management in Withlacoochee State Forest is provided through the Florida Forest Service (Werner 2013e, pers. comm.). Habitat is assessed annually for canopy changes that may alter ambient humidity levels and for impacts from nonnative plant species and feral pigs. Additionally, surveys on SWFWMD property are conducted periodically to assess habitat and search for rare plant species in the area (Deangelis 2013b, pers. comm.).

Summary of Factor A

Past human actions have destroyed, modified, and curtailed the range and habitat available for *Trichomanes punctatum* ssp. *floridanum.* Human population growth and development, agricultural conversion, and regional drainage have modified, or in most cases, destroyed, habitat where *T. p.* ssp. *floridanum* once occurred, thereby limiting the subspecies' current range and abundance in Florida.

In Miami-Dade County, habitat modification and destruction have severely impacted rockland hammocks that were once abundant. The *Trichomanes punctatum* ssp. *floridanum* metapopulation in Miami-Dade County is currently composed of four known populations, all on County-managed conservation lands. Historically, *T. p. floridanum* was found in an additional nine hammocks in Miami-Dade County. These populations have been extirpated, and the historical range of the southern metapopulation has been reduced by nearly 80 percent. Although much of the habitat has been destroyed and those fragments suitable for the plant remain protected in Miami-Dade County, habitat loss and modification from future development or conversion on private and conservation lands in Miami-Dade County poses a threat. In addition, the areas where *T. p. floridanum* currently exists are still vulnerable to activities in the surrounding areas including agricultural clearing and hydrologic alterations.

The Sumter County metapopulation of *Trichomanes puctatum* ssp. *floridanum* is composed of two known populations, both on State-owned land in the Jumper Creek Tract of the WSF. In central Florida, the subspecies was historically found in as many as seven additional locations. All of these historical populations have since been extirpated primarily due to land conversion and clearing (including for cattle grazing) and the impacts of local and regional drainage. Land clearing and hydrological alterations on private lands adjacent to the Jumper Creek Tract continues to be a threat to *T. p. floridanum* populations and habitat. Although historical habitat modification and destruction in Sumter County has not been as extensive as in South Florida, this is a future potential threat due to the large areas of undeveloped lands within Sumter County.

The destruction and modification of habitats have resulted in changes in canopy, humidity, hydrology, and fragmentation that have contributed to the declines of this taxon. High humidity and dense canopy cover are critical for *Trichomanes puctatum* ssp. *floridanum's* survival; therefore, any habitat modification or destruction that changes ambient humidity levels or canopy cover poses a threat to this subspecies. Thorough knowledge of the impacts of habitat fragmentation is unknown for both metapopulations of *T. p.* ssp. *floridanum* because information on dispersal mechanisms of this

subspecies is currently lacking. Habitat fragmentation is likely a stressor impacting this subspecies, but the best available data do not indicate that it rises to the level of a threat. Water withdrawals may still be of some concern; however, the impact of this factor is not currently known, and therefore, we have determined it to be a stressor, but it is not rising to the level of a threat at this time.

Conservation efforts are currently providing some benefits to this subspecies but are not sufficient to ameliorate the habitat threats. Therefore, based on the best information available, we have determined that the threats to *Trichomanes puctatum* ssp. *floridanum* from habitat destruction, modification, or curtailment are occurring throughout the entire range of the species and are expected to continue into the future.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The best available data do not indicate that overutilization for commercial, recreational, scientific, or educational purposes is a threat to *Trichomanes punctatum* ssp. *floridanum.*

Factor C. Disease or Predation

No diseases or incidences of predation have been reported for *Trichomanes punctatum* ssp. *floridanum.* Therefore, the best available data do not indicate that disease or predation is a threat to the subspecies.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

Under this factor, we examine whether threats to the subspecies discussed under the other factors are continuing due to an inadequacy of an existing regulatory mechanism. Section 4(b)(1)(A) of the Act requires the Service to take into account ''those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species. . . .'' In relation to Factor D under the Act, we interpret this language to require the Service to consider relevant Federal, State, and tribal laws, regulations, and other such mechanisms that may minimize any of the threats we describe in threat analyses under the other four factors, or otherwise enhance conservation of the species. We give strongest weight to statutes and their implementing regulations and to management direction that stems from those laws and regulations. An example would be State governmental actions enforced under a State statute or constitution or Federal action under statute.

Having evaluated the impact of the threats as mitigated by any such conservation efforts, we analyze under Factor D the extent to which existing regulatory mechanisms are inadequate to address the specific threats to the species. Regulatory mechanisms, if they exist, may reduce or eliminate the impacts from one or more identified threats. In this section, we review existing Federal, State, and local regulatory mechanisms to determine whether they effectively reduce or remove threats to *Trichomanes punctatum* ssp. *floridanum.*

Federal

The only known extant populations of *Trichomanes punctatum* ssp. *floridanum* occur on State- or County-owned properties and development of these areas will likely require no Federal permit or other authorization. Therefore, projects that affect *T. p.* ssp. *floridanum* on State- and County-owned lands do not have a Federal oversight, such as complying with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*), unless the project has a Federal nexus (Federal funding, permits, or other authorizations). Therefore, *T. p.* ssp. *floridanum* has no direct Federal regulatory protection in its known occupied habitats.

State

FNAI considers the State status of *Trichomanes punctatum* ssp. *floridanum* to be S1, ''critically imperiled in Florida because of extreme rarity (five or fewer occurrences or less than 1,000 individuals) or because of extreme vulnerability to extinction due to some natural or man-made factor'' (FNAI 2013, *http://fnai.org/PDF/Element_tracking_summary_current.pdf*). The IRC considers its status as ''critically imperiled'' (Gann *et al.* 2002, pp. 552–554).

The Florida Department of Agriculture and Consumer Services (FDACS) has listed *Trichomanes punctatum* ssp. *floridanum* on the Regulated Plant Index (Index) as endangered under Chapter 5B–40, Florida Administrative Code (State of Florida 2013, Florida Statutes: *https://www.flrules.org/gateway/RuleNo.asp?title=PRESERVATION%20OF%20NATIVE%20FLORA%20OF%20FLORIDA&ID=5B–40.0055*). This listing provides little or no habitat protection beyond the State's Development of Regional Impact process, which discloses impacts from projects, but provides no regulatory protection for State-listed plants on private lands. Florida Statutes 581.185 sections (3)(a) and (b) prohibit any person from willfully destroying or harvesting any species listed as endangered or threatened on the Index, or growing such a plant on the private land of another, or on any public land, without first obtaining the written permission of the landowner and a permit from the Florida Department of Plant Industry. The statute further provides that any person willfully destroying or harvesting; transporting, carrying, or conveying on any public road or highway; or selling or offering for sale any plant listed in the Index as endangered must have a permit from the State at all times when engaged in any such activities. Further, section (10) of the statute provides for consultation similar to section 7 of the Act for listed species, by requiring the Department of Transportation to notify the FDACS and the Endangered Plant Advisory Council of planned highway construction at the time bids are first advertised, to facilitate evaluation of the project for listed plant populations, and to ''provide for the appropriate disposal of such plants'' (i.e., transplanting).

However, this statute provides no substantive protection of habitat or protection of potentially suitable habitat at this time. Subsections (8)(a) and (b) of the statute waive State regulation for certain classes of activities for all species on the Index, including the clearing or removal of regulated plants for agricultural, forestry, mining, construction (residential, commercial, or infrastructure), and fire-control activities by a private landowner or his or her agent.

The Florida Forest Service (FFS) is the lead managing agency for State forests, as outlined in the Management Lease from the landowner (Board of Trustees of the Internal Improvement Trust Fund of the State of Florida) with guidance provided in Chapters 253, 259, and 589 of the Florida Statutes (State of Florida, 2013 Florida Statutes, *http://www.leg.state.fl.us/Statutes/index.cfm?Mode=View%20Statutes&Submenu=1&Tab=statutes*). FFS is responsible for the management and supervision of the multiple-use guidelines of Withlacoochee State Forest. For research on State Forest lands, prior approval is required. Research deemed legitimate will be issued a State Forest Use Permit (FDACS–11228) or letter of authorization (The Florida Forest Service 2013, State Forest Handbook). Although there is no imminent threat to Withlacoochee State Forest being modified (e.g., logged), altered (e.g., installation of pipelines), or sold for

development, the State may be allowed to proceed with such actions only after they have been reviewed and approved at public meetings by the Acquisition and Restoration Council (ARC) and, depending upon the issue, by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida.

Although the MFLs established by the South Florida Water Management District (SFWMD) in southeast Florida (a separate entity than the Southwest Florida Water Management District (SWFWMD) described earlier) are not directly applicable in the area of Miami Rock Ridge where *Trichomanes punctatum* ssp. *floridanum* occurs, they do indirectly limit ground water withdrawals in other areas of south Florida, including other areas of the Miami Rock Ridge. Unfortunately, MFL thresholds in place that establish water withdrawal standards are set so low that protection measures are rarely triggered. These low water level standards may be further exacerbated during times of drought, resulting in even greater impacts to the water table and the overall regional hydrology. Furthermore, MFL standards also do not apply to wells on private property or for consumptive use. The lowering of ground water and associated changes in local ambient humidity have already occurred throughout south Florida and have likely contributed to the decline of *T. p.* ssp. *floridanum* and possibly limited distribution and resilience of the subspecies (Grossenbacher 2013, pers. comm.). Plants are likely to be further stressed by the continued lowering of ground water if additional large wells are created on private property for such activities as agriculture or during extended periods of drought because these types of circumstances are not regulated by the water withdrawal standards established by the SFWMD. In general, this regulatory mechanism has not been sufficient to reduce or remove the threat to *T. p.* ssp. *floridanum* posed by changes in hydrology discussed under *Factor A* by ensuring that current water levels will persist into the future.

Sumter County MFLs identified and adopted by the SWFWMD protect the Withlacoochee River and the Tsala Apopka lake chain, which connects to the Withlacoochee in the vicinity of Jumper Creek Tract where *Trichomanes punctatum* ssp. *floridanum* occurs. Maintaining designated MFLs will have a direct bearing on the design of future water supply development projects, of which there are several already proposed in Sumter County (Deangelis 2014c, pers. comm.). However, it is uncertain how these future projects would impact extant occurrences of *T. p.* ssp. *floridanum* or suitable habitat for the subspecies.

Local

In 1984, section 24–49 of the Code of Miami-Dade County established regulation of County-designated NFCs. These regulations were placed on specific properties throughout the County by an act of the Board of County Commissioners in an effort to protect environmentally sensitive forest lands. The Miami-Dade County Department of Regulatory and Economic Resources (RER) has regulatory authority over these County-designated NFCs and is charged with enforcing regulations that provide partial protection of remaining upland forested areas designated as NFC on the Miami Rock Ridge. NFC regulations are designed to prevent clearing or destruction of native vegetation within preserved areas. Miami-Dade County Code typically allows up to 10 percent of a rockland hammock designated as NFC to be developed for properties greater than 5 acres and requires that the remaining 90 percent be placed under a perpetual covenant for preservation purposes (Joyner 2013a, 2014, pers. comm; Lima 2014, pers. comm.). However, for properties less than 5 acres, up to one-half an acre can be cleared if the request is deemed a reasonable use of property; this allowance oftentimes can be greater than 10 percent of the property (Lima, 2014, pers. comm.). NFC landowners are also required to obtain an NFC permit for any work, including removal of nonnatives within the boundaries of the NFC on their property. When discovered, RER pursues unpermitted work through appropriate enforcement action and seeks restoration when possible. The NFC program is responsible for ensuring that NFC permits are issued in accordance with the limitations and requirements of the county code and that appropriate NFC preserves are established and maintained in conjunction with the issuance of an NFC permit when development occurs.

Although the NFC program is designed to protect rare and important upland (non-wetlands) habitats in south Florida, it is a regulatory strategy with limitations. For example, in certain circumstances where landowners can demonstrate that limiting development to 10 percent does not allow for ''reasonable use'' of the property, additional development may be approved. Furthermore, Miami-Dade County Code provides for up to 100 percent of the NFC to be developed on a parcel in limited circumstances for parcels less than 2.02 ha (5 ac) in size and only requires coordination with the landowner if they plan to develop property or perform work within the NFC designated area. As such, many of the existing private forested NFC parcels remain fragmented, without management obligations or preserve designation, as development has not been proposed at a level that would trigger the NFC regulatory requirements. Often, nonnative vegetation over time begins to dominate and degrade the undeveloped and unmanaged NFC landscape until it no longer meets the legal threshold of an NFC, which requires the land to be dominated by native vegetation. When development of such degraded NFCs is proposed, Miami-Dade County Code requires delisting of the degraded areas as part of the development process. Property previously designated as NFC is removed from the list even before development is initiated because of the abundance of nonnative species, making it no longer considered to be jurisdictional or subject to the NFC protection requirements of Miami-Dade County Code (Grossenbacher 2013, pers. comm.).

Although *Trichomanes punctatum* ssp. *floridanum* is currently afforded some protection from outright destruction on public conservation land, changes in the surrounding landscape that affect the subspecies are not regulated. Any undocumented occurrences of *T. p.* ssp. *floridanum* and suitable habitat on private lands are at risk. For example, the private property known as ''Monkey Jungle'' (historically referred to as Cox Hammock) is a public attraction and is home to a considerable number of primate species. Upon recent visitation to this site (Adimey 2013a, field notes) the habitat features appeared to be similar to other hammocks where *T. p.* ssp. *floridanum* currently is known to live (i.e., large solution holes, high humidity, dense canopy, standing water). Although much of the hammock has been altered to accommodate captive animals and visitors, there is still a significant portion of the hammock that remains untouched and overgrown with extensive nonnative, invasive plant species. ''Monkey Jungle'' receives limited protection under the Miami-Dade County Environmental Protection Ordinance as an NFC, where only portions of NFCs can be cleared once a permit is obtained from the County. The landowner could apply for a permit and destroy undocumented populations of *T. p.* ssp. *floridanum* and the subspecies' habitat on this site. Because the site is private and not managed as

a preserve (i.e., it is not controlled for nonnative, invasive plant species), degradation of potential habitat for *T. p.* ssp. *floridanum* is likely. Furthermore, a change in ownership, accompanied by subsequent modifications in land-use, may cause extirpation of any undocumented *T. p.* ssp. *floridanum* populations or negatively impact suitable habitat. Additionally, Miami-Dade County has oversight of any work or research completed within the local preserve areas; permits are required for any outside work or research on County-owned lands in order to further protect the habitat from potential direct or indirect impacts (Gil 2013a, pers. comm.).

Because a comprehensive survey in Sumter County has not yet been conducted, there is a chance of finding new populations of *Trichomanes punctatum* ssp. *floridanum* in the area. Any undocumented occurrences and suitable habitat that could be important for reintroduction or recolonization of this subspecies in Sumter County, especially on private lands, are potentially at risk due to development. Under section 13–644(a)(1) of the County code, ''[m]ajor developments shall identify and protect habitats of protected wildlife and vegetation species,'' and in section 13–644(a)(1)2.b.2, ''[n]o permit will be issued for development which results in unmitigated destruction of specimens of endangered, threatened or rare species.'' Therefore, County code prevents unmitigated destruction of endangered, threatened, or rare species only when associated with ''major developments.'' However, these sections do not prevent land destruction or development on private land where any undocumented populations of *T. p.* ssp. *floridanum* or suitable habitat for future reintroduction are vulnerable. Current zoning in the Wahoo area limits development to one unit per 4 ha (10 ac); therefore, ''major developments'' do not seem to be likely in that area. In general, existing county ordinances do not prevent the conversion of habitat to agricultural use or building on sites with endangered, threatened, or rare plant species. Without complete survey information for Sumter County, it is difficult to assess the extent to which unknown occurrences and suitable habitat on private lands are at risk. Agriculture and development are ongoing and promoted in this County, and no regulatory mechanisms exist that protect *T. p.* ssp. *floridanum* and its habitat on private lands.

Summary of Factor D

Currently, *Trichomanes punctatum* ssp. *floridanum* is found only on State and County lands; however, there is no regulatory mechanism in place that provides substantive protection of habitat or protection of potentially suitable habitat at this time. In addition, subsections of applicable statutes waive State regulation for private landowners or their agents, allowing certain activities to clear or remove species on the Index. Little, if any, protection is afforded to *T. p.* ssp. *floridanum* by the established MFLs in south Florida as they are set very low, are rarely triggered, and are not applicable in the portion of the Miami Rock Ridge where the subspecies currently lives. Established MFLs in Sumter County can positively impact areas where *T. p.* ssp. *floridanum* occurs, provided that these designated MFLs are maintained when future water supply development projects are undertaken. The NFC program in Miami is designed to protect rare and important upland (non-wetlands) habitats in south Florida; however, this regulatory strategy has several limitations that can negatively affect *T. p.* ssp. *floridanum.* Sumter County code prevents unmitigated destruction of endangered, threatened, or rare species only when associated with ''major developments'' and does not prevent conversion of habitat to agricultural use or building on private property.

Although all extant populations of *Trichomanes punctatum* ssp. *floridanum* are afforded some level of protection because they are on public conservation lands, existing regulatory mechanisms have not led to a reduction or removal of threats posed to the subspecies by a wide array of sources (see discussions under Factors A and E).

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

Other natural or manmade factors affect *Trichomanes punctatum* ssp. *floridanum* to varying degrees. Specific threats include the spread of nonnative, invasive species; potentially incompatible management practices (e.g., inadvertent spraying of *T. p.* ssp. *floridanum* while controlling for nonnatives); direct impacts to plants from recreation and other human activities; small population size and isolation; climate change; and the related risks from environmental stochasticity (extreme weather). Each of these threats and its specific effect on *T. p.* ssp. *floridanum* are discussed in detail below.

Nonnative Species

Nonnative species can stress, alter, or even destroy native species and their habitats. The threat of nonnative plant species is ongoing due to their: (1) Number and extent, (2) ability to out-compete native species, (3) abundant seed sources, and (4) extensive disturbance within habitats. Further challenges exist due to limitation of resources to combat this threat, as well as the difficulty in managing fragmented hammocks bordered by urban development, which often can serve as seed sources for nonnative species (Bradley and Gann 1999, p. 13). Nonnative, invasive plants compete with native plants for space, light, water, and nutrients, and they limit growth and abundance of natural vegetation and can make habitat conditions unsuitable for native plants.

In south Florida, at least 162 nonnative plant species are known to invade rockland hammocks; impacts are particularly severe on the Miami Rock Ridge (Service 1999, pp. 3–135). Nonnative plant species have significantly affected rockland hammock and mesic hammock habitats where *Trichomanes punctatum* ssp. *floridanum* occurs and are considered one of the threats with greatest impact to the subspecies (Snyder *et al.* 1990, p. 273; Gann *et al.* 2002, pp. 552–554; FNAI 2010, pp. 22, 26). Nonnative plants outcompete and displace *T. p.* ssp. *floridanum* in solution holes, promoting overshading and forming dense strata (layers) in hammocks, which alter the habitat and its surrounding conditions (Possley 2013f, pers. comm.). It has also been suggested that the insular nature of south Florida, as well as the hammocks themselves, predispose this habitat to invasion by nonnative plants (*e.g.,* the proximity of seed sources, which increases the volume of nonnatives and accelerates the time it takes for the arrival and establishment of nonnatives) (Horvitz *et al.* 1998, p. 961). In many Miami-Dade County parks, nonnative plant species comprise 50 percent of the flora in hammock fragments (Service 1999, pp. 3–135). Horvitz (*et al.* 1998, p. 968) suggests the displacement of native species by nonnative species in conservation and preserve areas is a complex problem with serious impacts to biodiversity conservation, as management in these areas generally does not protect native species and ecological processes, as intended. Problematic nonnative invasive plants in Miami-Dade County associated with *Trichomanes punctatum* ssp. *floridanum* include *Schinus*

terebinthifolius (Brazilian pepper), *Bischofia javanica* (bishop wood), *Syngonium podophyllum* (American evergreen), *Jasminum fluminense* (Brazilian jasmine), *Rubus niveus* (mysore raspberry), *Thelypteris opulenta* (jeweled maiden fern), *Nephrolepis multiflora* (Asian swordfern), *Schefflera actinophylla* (octopus tree), *Jasminum dichotomum* (Gold Coast jasmine), *Epipremnum pinnatum* (centipede tongavine), and *Nephrolepis cordifolia* (narrow swordfern) (Possley 2013h-i, pers. comm.).

In Sumter County, the most problematic nonnative invasive species occurring in *Trichomanes punctatum* ssp. *floridanum* habitat are *Tradescantia fluminensis* (small leaf spiderwort), and *Paederia foetida* (skunkvine) (Werner 2014, pers. comm.). Furthermore, *Citrus aurantium* (bitter orange) is found in this locale and is considered problematic due to its tendency to attract feral hogs, another nonnative species associated with extensive habitat destruction (see below). Agricultural fields in proximity to the Sumter metapopulation are a nonnative seed source, increasing potential encroachment of nonnative plants to the area (Werner 2013b-c, pers. comm.).

In some instances, management of nonnative vegetation may also be detrimental, in that nonnative species may actually provide the necessary canopy to limit sunlight exposure and control humidity and removing the nonnative species exposes the fern. In the case of Castellow Hammock, the majority of the shade near two of the large solution holes containing *Trichomanes punctatum* ssp. *floridanum* is provided by giant *Schinus terebinthifolius* trees; eliminating these trees could likely result in detrimental effects to *T. p.* ssp. *floridanum* residing in the underlying solution holes. In hammocks such as Castellow, desiccation from excessive sun exposure due to the removal of *S. terebinthifolius* canopy has already occurred. In this case, the subpopulation of *T. p.* ssp. *floridanum* below where the *S. terebinthifolius* tree was turned brown; however, *T. p.* ssp. *floridanum* could eventually revitalize if sufficient canopy is re-established to limit sunlight exposure (Possley 2013e, pers. comm.). Additionally, nonnative plant control may also become a threat when *T. p.* ssp. *floridanum* are inadvertently sprayed while conducting local nonnative removal efforts (Possley 2013e, pers. comm.).

Nonnative plant species are also a concern on private lands, where often these species are not controlled due to associated costs, lack of interest, or lack of knowledge of detrimental impacts to the ecosystem. Undiscovered populations of *Trichomanes punctatum* ssp. *floridanum* on private lands could certainly be at risk. Overall, active management is necessary to control for nonnative species and to protect unique and rare habitat where *T. p.* ssp. *floridanum* occurs (Snyder *et al.* 1990, p. 273). Treatment of nonnative plant species should consider canopy and humidity needs of *T. p.* ssp. *floridanum.*

Nonnative feral hogs living in the Withlacoochee State Forest are also considered a threat to this plant. Surveys in Sumter County have revealed evidence of hogs laying against or rubbing their bodies against large rocks, removing existing vegetation in the process. Recently, van der Heiden and Johnson (2013, p. 11) found one small rock where *Trichomanes punctatum* ssp. *floridanum* had been scraped off when a hog rubbed itself on the rock after wallowing in the mud. Furthermore, rooting from hogs can destroy existing habitat by displacing smaller rocks where *T. p.* ssp. *floridanum* is found to grow and potentially damaging or eliminating a cluster (Werner 2013d, pers. comm.). In Withlacoochee State Forest, damaged areas from feral hogs are also more susceptible to invasion from nonnative plant species, such as *Urena lobata* (Caesarweed) and *Tradescantia fluminensis* (small-leaf spiderwort) (Werner 2013a, pers. comm.). If feral hogs continue to forage in areas where *T. p.* ssp. *floridanum* lives, it is possible entire clusters inhabiting one rock/boulder could be eliminated.

In recent years, scientists in south Florida have noticed an increase in sightings of the nonnative genus *Liguus* (Cuban tree snails). Although snail grazing has not been observed on *Trichomanes punctatum* ssp. *floridanum,* it has been documented on other rare ferns living in the same habitat and could possibly be a threat in the future, either by this snail or another introduced species (Possley 2013b, c, pers. comm.).

Climate Change

Climatic changes, including sea level rise (SLR), are occurring in the State of Florida and are impacting associated plants, animals, and habitats. The term ''climate,'' as defined by the Intergovernmental Panel on Climate Change (IPCC), refers to the mean and variability of different types of weather conditions over time, with 30 years being a typical period for such measurements, although shorter or longer periods also may be used (IPCC 2013, p. 1450). The term ''climate change'' thus refers to a change in the mean or variability of one or more measures of climate (e.g., temperature or precipitation) that persists for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or both (IPCC 2013, p. 1450). A recent compilation of climate change and its effects is available from reports of the Intergovernmental Panel on Climate Change (IPCC) (IPCC 2013, entire).

Various changes in climate may have direct or indirect effects on species. These effects may be positive, neutral, or negative, and they may change over time, depending on the species and other relevant considerations, such as interactions of climate with other variables (*e.g.,* habitat fragmentation) (IPCC 2007, pp. 8–14, 18–19). Projected changes in climate and related impacts can vary substantially across and within different regions of the world (e.g., IPCC 2007, pp. 8–12). Therefore, we use ''downscaled'' projections when they are available and have been developed through appropriate scientific procedures (see Glick *et al.* 2011, pp. 58–61, for a discussion of downscaling). As to *Trichomanes punctatum* ssp. *floridanum,* downscaled projections suggest that SLR is the largest climate-driven challenge to low-lying coastal areas in the subtropical ecoregion of southern Florida (U.S. Climate Change Science Program (USCCSP) 2008, pp. 5–31, 5–32). All Miami-Dade County populations of *T. p.* ssp. *floridanum* occur at elevations 2.83–4.14 m (9.29–13.57 ft) above sea level, making the subspecies highly susceptible to increased storm surges and related impacts associated with SLR, whereas the Sumter County populations are at approximately 10.40 m (34.12 ft) above sea level and significantly farther from the coast.

The long-term record at Key West shows that sea level rose on average 0.229 cm (0.090 in) annually between 1913 and 2013 (National Oceanographic and Atmospheric Administration (NOAA) 2013, p. 1). This equates to approximately 22.9 cm (9.02 in) over the last 100 years. IPCC (2008, p. 28) emphasized it is very likely that the average rate of SLR during the 21st century will exceed the historical rate. The IPCC Special Report on Emission Scenarios (2000, entire) presented a range of scenarios based on the computed amount of change in the climate system due to various potential amounts of anthropogenic greenhouse gases and aerosols in 2100. Each scenario describes a future world with varying levels of atmospheric pollution

leading to corresponding levels of global warming and corresponding levels of SLR. The IPCC Synthesis Report (2007, entire) provided an integrated view of climate change and presented updated projections of future climate change and related impacts under different scenarios.

Subsequent to the 2007 IPCC Report, the scientific community has continued to model SLR. Recent peer-reviewed publications indicate a movement toward increased acceleration of SLR. Observed SLR rates are already trending along the higher end of the 2007 IPCC estimates, and it is now widely held that SLR will exceed the levels projected by the IPCC (Rahmstorf *et al.* 2012, p. 1; Grinsted *et al.* 2010, p. 470). Taken together, these studies support the use of higher end estimates now prevalent in the scientific literature. Recent studies have estimated global mean SLR of 1.0–2.0 m (3.3–6.6 ft) by 2100 as follows: 0.75–1.90 m (2.50–6.20 ft; Vermeer and Rahmstorf 2009, p. 21530), 0.8–2.0 m (2.6–6.6 ft; Pfeffer *et al.* 2008, p. 1342), 0.9–1.3 m (3.0–4.3 ft; Grinsted *et al.* 2010, pp. 469–470), 0.6–1.6 m (2.0–5.2 ft; Jevrejeva *et al.* 2010, p. 4), and 0.5–1.4 m (1.6–4.6 ft; National Research Council 2012, p. 2).

Other processes expected to be affected by projected warming include temperatures, rainfall (amount, seasonal timing, and distribution), and storms (frequency and intensity) (see ''Environmental Stochasticity'', below). Models where sea level temperatures are increasing also show a higher probability of more intense storms (Maschinski *et al.* 2011, p. 148). The Massachusetts Institute of Technology (MIT) modeled several scenarios combining various levels of SLR, temperature change, and precipitation differences with human population growth, policy assumptions, and conservation funding changes (see ''Alternative Future Landscape Models'', below). All of the scenarios, from small climate change shifts to major changes, indicate significant effects on coastal Miami-Dade County. The Science and Technology Committee of the Miami-Dade County Climate Change Task Force (Wanless *et al.* 2008, p. 1) recognizes that significant SLR is a serious concern for Miami-Dade County in the near future. In a January 2008 statement, the committee warned that sea level is expected to rise at least 0.9–1.5 m (3.0–5.0 ft) within this century (Wanless *et al.* 2008, p. 3). With a 0.9–1.2 m (3.0–4.0 ft) rise in sea level (above baseline) in Miami-Dade County, spring high tides would be at about 1.83–2.13 m (6.0–7.0 ft); freshwater resources would be gone; the Everglades would be inundated on the west side of Miami-Dade County; the barrier islands would be largely inundated; storm surges would be devastating to coastal habitat and associated species; and landfill sites would be exposed to erosion, contaminating marine and coastal environments. Freshwater and coastal mangrove wetlands will be unable to keep up with or offset SLR of 0.61 m (2.0 ft) per century or greater. With a 1.52 m (5.0 ft) rise, Miami-Dade County will be extremely diminished (Wanless *et al.* 2008, pp. 3–4).

Prior to inundations from SLR, there will likely be habitat transitions related to climate change, including changes to hydrology and increasing vulnerability to storm surge. Hydrology has a strong influence on plant distribution in coastal areas (IPCC 2008, p. 57). Such communities typically grade from salt to brackish to freshwater species. From the 1930s to 1950s, increased salinity of coastal waters contributed to the decline of cabbage palm forests in southwest Florida (Williams *et al.* 1999, pp. 2056–2059), expansion of mangroves into adjacent marshes in the Everglades (Ross *et al.* 2000, pp. 101, 111), and loss of pine rockland in the Keys (Ross *et al.* 1994, pp. 144, 151–155). In Florida, pine rocklands transition into rockland hammocks, and, as such, these habitat types are closely associated in the landscape. A study conducted in one pine rockland location in the Florida Keys (with an average elevation of 0.89 m (2.90 ft)) found an approximately 65 percent reduction in an area occupied by South Florida slash pine over a 70-year period, with pine mortality and subsequent increased proportions of halophytic (salt-loving) plants occurring earlier at the lower elevations (Ross *et al.* 1994, pp. 149–152). During this same time span, local sea level had risen by 15 cm (6 in), and Ross *et al.* (1994, p. 152) found evidence of groundwater and soil water salinization. Extrapolating this situation to hardwood hammocks is not straightforward, but it suggests that changes in rockland hammock species composition may not be an issue in the immediate future (5–10 years); however, over the long term (within the next 10–50 years), it may be an issue if current projections of SLR occur and freshwater inputs are not sufficient to maintain high humidities and prevent changes in existing canopy species through salinization (Saha *et al.* 2011, pp. 22–25). Ross *et al.* (2009, pp. 471–478) suggested that interactions between SLR and pulse disturbances (*e.g.,* storm surges) can cause vegetation to change sooner than projected based on sea level alone. Patterns of human development will also likely be significant factors influencing whether natural communities can move and persist (IPCC 2008, p. 57; USCCSP 2008, p. 7–6).

Impacts from climate change including regional SLR have been studied for coastal hammocks but not rockland hammock habitat. Saha (*et al.* 2011, pp. 24–25) conducted a risk assessment on rare plant species in ENP and found that impacts from SLR have significant effects on imperiled taxa. This study also predicted a decline in the extent of coastal hammocks with initial SLR, coupled with a reduction in freshwater recharge volume and an increase in pore water (water filling spaces between grains of sediment) salinity, which will push hardwood species to the edge of their drought (freshwater shortage and physiological) tolerance, jeopardizing critically imperiled and/or endemic species with possible extirpation. In south Florida, SLR of 1–2 m (0.30–0.61 ft) is estimated by 2100, which is on the higher end of global estimates for SLR. These projected increases in sea level pose a threat to coastal plant communities and habitats from mangroves at sea level to salinity-intolerant, coastal rockland hammocks where elevations are generally less than 2.00 m (6.1 ft) above sea level (Saha *et al.* 2011, p. 2). Loss or degradation of these habitats can be a direct result of SLR or in combination of several other factors, including diversion of freshwater flow, hurricanes, and exotic plant species infestations, which can ultimately pose a threat to rare plant populations (Saha *et al.* 2011, p. 24).

Saha (*et al.* 2011, p. 4) suggested that the rising water table accompanying SLR will shrink the vadose zone (the area which extends from the top of the ground surface to the water table); increase salinity in the bottom portion of the freshwater lens, thereby increasing brackishness of plant-available water; and influence tree species composition of coastal hardwood hammocks based upon species-level tolerance to salinity and/or drought. Evidence of population declines and shifts in rare plant communities, along with multi-trophic effects, already have been documented on the low-elevation islands of the Florida Keys (Maschinski *et al.* 2011, p. 148). Altered freshwater inputs can lead to the disappearance or decline of critically imperiled coastal plant species such as *Trichomanes punctatum* ssp. *floridanum.* Shifts in freshwater flows, annual precipitation, and variability in SLR can impact salinity regimes. Although it is unknown if salinity

changes will impact existing habitat where *T. p.* ssp. *floridanum* currently lives, it should be noted that salinity-intolerant plants can become stressed within a few weeks from exposure to saline conditions, and persistent conditions can promote colonization by more salinity-tolerant species, thereby leading to an irreversible composition change even if the salinity is lower over subsequent years (Saha *et al.* 2011, p. 23).

In some areas of south Florida, precipitation is the main source of fresh water. Predictive climate change models demonstrate periods of drought will pose a threat to existing populations of *Trichomanes punctatum* ssp. *floridanum.* Saha (*et al.* 2011, pp. 19–21) found that during times of drought and resultant salinity stress, coastal hardwood tree density from the canopy was lost, while other species showed an increase. Areas with a deeper freshwater lens, such as rockland hammocks, may be able to sustain vegetation during periods of drought; however, this is currently unknown. Some tree species in coastal hammocks have the ability to access pockets of fresh water and tolerate mild salinities. These initial responses to salinity increases may trigger responses similar to drought, while prolonged exposure may cause irreversible toxicity caused by accumulation of salts (Munns 2002, p. 248), causing a reduction in canopy or mortality (Maschinski *et al.* 2009, entire paper). Impacts from climate change causing shifts in local plant communities and invasion of additional nonnative plant species may be lessened by the ability of hardwood hammocks (such as rockland hammocks) to harvest rainfall water and retain it in the highly organic soil and lower their transpiration (i.e., the process of water movement through a plant and its evaporation from leaves and stems) during the dry season (Saha *et al.* 2011, p. 24).

Drier conditions and increased variability in precipitation associated with climate change are expected to hamper successful regeneration of forests and cause shifts in vegetation types through time (Wear and Greis 2012, p. 39). With regard to *Trichomanes punctatum* ssp. *floridanum,* any weather shifts causing less precipitation would likely impact the viability of existing populations and could potentially limit future reproduction if droughts were to become a common occurrence. Ecosystem shifts would result in rockland and mesic hammocks having drier conditions; regular droughts; and changes in humidity, temperature and canopy. Increases in the scale, frequency, or severity of droughts and wildfires (see ''Fires'' section, below) could have negative effects on this taxon considering its general vulnerability due to small population size, restricted range, few populations, and relative isolation.

Climate change impacts specifically for *Trichomanes punctatum* ssp. *floridanum* may be numerous and vary depending on factors such as severity, the speed at which climate changes occur, timing, health of the species, and habitat and tolerance of species. Overall, healthy ecosystems can support greater biodiversity, which is considered one of the best strategies to combat impacts of climate change. Removing nonnative plants and minimizing natural disturbance impacts and other exogenous stresses can improve resiliency to climate change impacts (Maschinski *et al.* 2011, p. 159). In general, the best ways to prepare and protect rare species, such as *T. p.* ssp. *floridanum,* from impacts of climate change include actively managing habitats to improve resilience, population growth, and potential for natural dispersal, and controlling for nonnative species. Efforts to actively manage for resilience are currently limited for both metapopulations of *T. p.* ssp. *floridanum* due to logistic feasibility, insufficient funding and research, small and fragmented existing populations, and lack of successful reintroduction efforts into the wild.

Alternative Future Landscape Models

To accommodate the large uncertainty in SLR projections, researchers must estimate effects from a range of scenarios. Various model scenarios developed at MIT and GeoAdaptive Inc. have projected possible trajectories of future transformation of the peninsular Florida landscape by 2060 based upon four main drivers: climate change, shifts in planning approaches and regulations, human population change, and variations in financial resources for conservation (Vargas-Moreno and Flaxman 2010, pp. 1–6). The scenarios do not account for temperature, precipitation, or species habitat shifts due to climate change, and no storm surge effects are considered. The current MIT scenarios in Florida range from an increase of 0.09–1.0 m (0.3–3.3 ft) by 2060.

Based on the most recent estimates of SLR and the best available data at this time, we evaluated potential effects of SLR using the current ''worst case'' (*e.g.,* the highest range for SLR) MIT scenario as well as comparing elevations of remaining rockland hammock fragments in Miami-Dade County and mesic hammocks in Sumter County with extant populations of *Trichomanes punctatum* ssp. *floridanum.* The ''worst case'' MIT scenario assumes SLR of 1.0 m (3.3 ft) by 2060, low financial resources, a ''business as usual'' approach to planning, and a doubling of human population.

Based on the 1.0-m (3.3-ft) scenario, none of the rockland hammocks in Miami-Dade County where extant populations of *Trichomanes punctatum* ssp. *floridanum* occur would be inundated. However, all four populations would be within 9.66 km (6.0 mi) of saltwater, increasing the likelihood of localized vegetation shifts within the rockland hammocks and vulnerability to natural stochastic events such as hurricanes and tropical storms. The 1.0-m SLR scenario shows existing rockland hammocks in Miami-Dade County (that do not contain *T. p.* ssp. *floridanum*) directly adjacent to saltwater. Although these existing hammocks are located in higher elevation areas along the coastal ridge, changes in the salinity of the water table and soils, along with additional vegetation shifts in the region, are likely. A few remaining rockland hammocks further inland (e.g., Big and Little George Hammocks) are located in highly urbanized areas; these hammocks are small and fragmented, reducing the chances of further development due to SLR in the area. Actual impacts may be greater or less than anticipated based upon the high variability of factors involved (e.g., SLR, human population growth) and the assumptions made in this model.

A projected SLR (using elevation data) of 2.0 m (6.6 ft) appears to inundate much larger portions of urban Miami-Dade County. This evaluation was not based on any modeling, as opposed to the previous 1.0-m scenario; rather, this scenario examines current elevation based on LiDAR data. Under this 2.0-m (6.6-ft) SLR scenario, none of the four hammocks where *Trichomanes punctatum* ssp. *floridanum* is known to occur will be inundated, but all will be within approximately 2.41 km (1.5 mi) of saltwater in the inundated transverse glades joining the enlarged Biscayne Bay. Castellow Hammock will be the least impacted at approximately 2.41 km (1.5 mi) from saltwater, while Hattie Bauer will be adjacent to saltwater. Fuchs and Meissner hammocks will be 1.61 km (1.0 mi) from saltwater and will be surrounded by more wetlands. This scenario will leave all these locations extremely vulnerable to vegetation shifts, natural stochastic events, and loss of existing habitat and land

protection. Of the remaining rockland hammocks not containing *T. p.* ssp. *floridanum* in south Florida, most would be fully or partially inundated after a 2.0-m (6.6-ft) SLR, except for the hammocks located on the higher elevated coastal ridge, which would still be adjacent to saltwater.

Due to the higher elevation and inland location of Sumter County in north Florida, existing populations of *Trichomanes punctatum* ssp. *floridanum* and associated habitat will not be impacted by 1.0- and 2.0-m (3.3- and 6.6-ft) rises in sea level. The 2.0-m (6.6-ft) SLR scenario would still leave the Sumter occurrences approximately 37.0 km (23.0 mi) from saltwater. Regional shifts in water table salinity, soils, or vegetation are not expected.

Environmental Stochasticity

Endemic species whose populations exhibit a high degree of isolation, such as *Trichomanes punctatum* ssp. *floridanum,* are extremely susceptible to extinction from both random and nonrandom catastrophic natural or human-caused events. Small populations of species, without positive growth rates, are considered to have a high extinction risk from site-specific demographic and environmental stochasticity (Lande 1993, pp. 911–927). Populations at the edge of a species' range, as may be the case with *T. p.* ssp. *floridanum* in Sumter County, may be particularly vulnerable to environmental stochasticity, as they may also be at the edge of their physiological and adaptive limits (Baguette 2004, p. 216).

The climate in Florida is driven by a combination of local, regional, and global events, regimes, and oscillations (*e.g.,* El Niño Southern Oscillation with a frequency of every 4 to 7 years, solar cycle every 11 years, and the Atlantic Multi-decadal Oscillation); however, the exact magnitude, direction, and distribution of these climatic influences on a regional level are difficult to project. There are three main ''seasons'' in Florida: (1) The wet season, which is hot, rainy, and humid from June through October; (2) the official hurricane season that extends one month beyond the wet season (June 1 through November 30), with peak season being August and September; and (3) the dry season, which is drier and cooler, from November through May (Miller 2013, pers. comm.). In the dry season, periodic surges of cool and dry continental air masses influence the weather with short-duration rain events followed by long periods of dry weather.

Florida is considered the most vulnerable State in the United States to hurricanes and tropical storms (Florida Climate Center, *http://coaps.fsu.edu/climate_center*). Based on data gathered from 1856 to 2008, Klotzbach and Gray (2009, p. 28) calculated the climatological probabilities for each State being impacted by a hurricane or major hurricane in all years over the 152-year timespan. Of the coastal States analyzed, Florida had the highest climatological probabilities, with a 51 percent probability of a hurricane (Category 1 or 2) and a 21 percent probability of a major hurricane (Category 3 or higher). From 1856 to 2008, Florida experienced 109 hurricanes and 36 major hurricanes. Given the few isolated populations and restricted range of *Trichomanes punctatum* ssp. *floridanum* in locations prone to storm influences (i.e., Miami-Dade County), this subspecies is at substantial risk from hurricanes, storm surges, and other extreme weather events.

Natural stochastic events can pose a threat to the persistence of *Trichomanes punctatum* ssp. *floridanum* through the destruction of existing habitat. Some climate change models predict increased frequency and duration of severe storms, including hurricanes and tropical storms (McLaughlin *et al.* 2002, p. 6074; Cook *et al.* 2004, p. 1015; Golladay *et al.* 2004, p. 504). Other models predict hurricane and tropical storm frequencies in the Atlantic are expected to decrease between 10–30 percent by 2100 (Knutson *et al.* 2008, pp. 1–21). For those models that predict fewer hurricanes, predictions of hurricane wind speeds are expected to increase by 5–10 percent due to an increase in available energy for intense storms. Increases in hurricane winds can elevate the chances of damage to existing canopy.

In south Florida, tropical hardwood hammocks forests are known to experience frequent disturbances from hurricanes (Horvitz *et al.* 1998, p. 947). Hurricanes and tropical storms can damage existing canopy, which provides shade and cover from wind; canopy loss of any kind is believed to be the threat with greatest impact to existing metapopulations of *Trichomanes punctatum* ssp. *floridanum* (Adimey 2013b, field notes; Possley 2013p, pers. comm.). For example, impacts from Hurricane Andrew in 1992 were thought to be responsible for the temporary loss of this subspecies from Hattie Bauer Hammock, where it had been observed for many years. Following this hurricane, the canopy was destroyed, allowing increased exposure to sunlight for several years. *T. p.* ssp. *floridanum* was not seen again in Hattie Bauer Hammock until 2011 (Possley 2013p, pers. comm.). Destruction of habitat due to hurricanes has also been documented in Sumter County in the Indian Ledges Hammock located near the town of Wahoo. This hammock, known to host a variety of rare ferns, orchids, and large trees, sustained severe damage from several hurricanes in 2004; very few original plant species once found in Indian Ledges Hammock exist in this location today (Deangelis 2014a, pers. comm.).

Historically, *Trichomanes punctatum* ssp. *floridanum* may have benefitted from more abundant and contiguous habitat to buffer it from storm events. The destruction and modification of native habitat, combined with small population size, has likely contributed over time to the stress, decline, and, in some instances, extirpation of populations or local occurrences due to stochastic events.

A study conducted by Horvitz *et al.* (1998, p. 947) found that the regeneration of forest species after stochastic events depended on the amount of canopy disturbance, the time since disturbance, and the biological relationship between the individual species and its environment. Following Hurricane Andrew, the relative abundance and life-stage changed for many nonnative plant species within Miami-Dade County. These shifts continued to occur as a result of subsequent stochastic events, suggesting hurricanes can alter long-term hammock structure and the ongoing changes in species composition (Horvitz *et al.* 1998, pp. 961, 966).

Stochastic events resulting in changes in normal precipitation (amount, seasonal timing, and distribution) and extreme temperature fluctuations may also impact *Trichomanes punctatum* ssp. *floridanum.* During the winter dry season, *T. p.* ssp. *floridanum* can become desiccated without periodic rainfall and then recover during the wet season. Multi-year droughts may negatively impact populations. While droughts are natural events, they are a threat because there are so few populations of this subspecies. Specific range requirements regarding humidity, temperature, and precipitation are not known at this time for *T. p.* ssp. *floridanum,* making it difficult to accurately determine what impacts will occur from modifications in current environmental conditions where extant metapopulations occur. Extreme temperature changes such as cold events in south Florida or freezing temperatures in central Florida could have devastating impacts on this

subspecies. The small size of each population makes this plant especially vulnerable, in which the loss of even a few individuals could reduce the viability of a single population.

Due to the small size of existing populations of *Trichomanes punctatum* ssp. *floridanum,* its genetic variability and overall resilience is likely low. These factors, combined with additional stress from habitat modifications (*e.g.,* hydrological changes) may increase the inherent risk of stochastic events that impact this subspecies (Matthies *et al.* 2004, pp. 481–488). Additionally, stochastic events are expected to exacerbate the impacts of regional drainage and subsequent drops in humidity. For these reasons, *T. p.* ssp. *floridanum* is at risk of extirpation during extreme stochastic events. We have determined that these natural stochastic events as addressed above are a threat to the persistence of this subspecies in the future (Adimey 2013b, field notes; Possley 2013p, pers. comm.).

Fires

Although fires are not a current concern for existing populations of *Trichomanes punctatum* ssp. *floridanum,* they have been known to impact populations in the past. Craighead (1963, p. 39) noted that extensive fires in hammocks eliminated ferns in much of their former range. Drainage efforts in the early 1900s also influenced the occurrence of fire; Phillips (1940, p. 166) noted that the frequent occurrence of fires in the late 1930s in southern Florida resulted in widespread destruction of flora. Fires may have been a factor in the disappearance of this taxon in Royal Palm Hammock, which suffered multiple fires in the first half of the 1900s according to photographs from J.K. Small (1916, *http://www.floridamemory.com/items/show/49132;* 1917, *http://www.floridamemory.com/items/show/49465*). In recent decades, wildfires have been controlled in most rockland hammocks due to the extensive urbanization in Miami-Dade County. However, fires do have the potential to impact *T. p.* ssp. *floridanum* during periods of prolonged drought. While fires are a natural component of some ecosystems in south Florida, fires in hammocks can set back succession to pine rockland or other communities and will directly kill many plant species that are not adapted to fires.

Generally, hammock environments are considered less susceptible to wildfires because their shaded, humid microclimate is not conducive to fire spread (Snyder *et al.* 1990, p. 258). Additionally, rockland hammocks occupy elevated, rarely inundated, and fire-free sites in all three of the major rockland areas in south Florida (Snyder *et al.* 1990, p 239). Mesic hammocks are also considered fire resistant in that many occur as ''islands'' on high ground within basin or floodplain wetlands, as patches of oak/palm forest in dry prairie or flatwoods communities, on river levees, or in ecotones between wetlands and upland communities, and possess high moisture soils due to heavy shading of the ground layer and accumulation of litter (FNAI 2010, p. 20). Additionally, wildfires are now considered a minor stressor in mesic hammocks because of the use of prescribed burns (Werner 2013d, pers. comm; Possley 2013l, pers. comm.).

Snyder (*et al.* 1990, p. 238) points out that the high organic content of hammock soils in south Florida can enable it to burn; however, soil fires typically only burn in hammocks in times of drought or when they are intentionally set (Snyder *et al.* 1990, pp. 258–260). This stressor is considered minimal in that fires typically will go out when they reach hammock margins, whether entering from pineland or some other community due to the presence of hardwood leaf litter lying directly on moist organic soil with minimal herbaceous fuel.

Although wildfires are known to occur in Miami-Dade and Sumter Counties, they are not currently considered a threat at this time due to regional prescribed burn efforts, the natural fire-resistant features of these two habitats, and, in Sumter County, hydric hammock surrounding *Trichomanes punctatum* ssp. *floridanum* populations. However, under future projected climate change scenarios, we expect drought conditions to exacerbate the effects on *T. p.* ssp. *floridanum* to a level at which fire becomes a threat in the future.

Public Use/Encroachment

In Miami-Dade County, two of the four hammocks containing *Trichomanes punctatum* ssp. *floridanum* (Castellow and Hattie Bauer) are accessible to the public. However, in both cases, *T. p.* ssp. *floridanum* is not accessible from the nature trail (Possley 2013h, pers. comm.). If public use were to increase significantly at any of the Miami-Dade hammocks, populations of *T. p.* ssp. *floridanum* could become at risk. For example, because the taxon grows along the rim and walls of solution holes, people climbing into these holes could damage existing populations; increased use could also introduce additional nonnative seed sources into the habitat. Similarly, climbing on boulders where the fern occurs in Sumter County could also cause damage. However, due to the low amount of visitation at the Withlacoochee State Forest (Werner 2013b-c, pers. comm.), public use and encroachment does not appear to be occurring at this time, and we have determined it does not pose a threat to *T. p.* ssp. *floridanum.*

Small Population Size and Isolation

Low population resilience is a serious concern for species that are restricted to geographically limited areas, as they are inherently more vulnerable to extinction than widespread species due to an increased risk of genetic bottlenecks, random demographic fluctuations, climate change, and localized catastrophes such as hurricanes and disease outbreaks (Mangel and Tier 1994, p. 607; Pimm *et al.* 1988, p. 757). These problems are further magnified when populations are few, populations are restricted to very small geographic areas, and numbers of individuals are limited, as in the case of *Trichomanes punctatum* ssp. *floridanum.* Although robust population viability analyses (including minimum viable population calculations) have not been conducted for this subspecies, indications are that most existing populations are minimal in terms of abundance and size. Lack of dispersal between occurrences is also a stressor that contributes to the low population resilience for this subspecies (see ''Habitat Fragmentation'' under *Factor A*).

Limited genetic variability will also impact population resilience. The ability of populations to adapt to environmental change is dependent upon genetic variation, a property of populations that derives from its members possessing different forms (i.e., alleles) of the same gene (Primack 1998, p. 283). High genetic diversity can enhance a species' persistence in a changing environment (Lynch and Lande 1993, pp. 246–247). Although *Trichomanes punctatum* ssp. *floridanum* can grow in clusters, separate clusters are not necessarily different individuals, as they may have been connected by one or more stems in the past (Possley 2014b, pers. comm.). Thus, a population of *T. p.* ssp. *floridanum* containing many clusters may not have greater genetic diversity than a population with few clusters. Because there are only six extant populations of *T. p.* ssp. *floridanum,* with few plants, the genetic variability is considered low, and the subspecies is inherently at risk due to stochastic events and changes in environmental

conditions (Matthies *et al.* 2004, pp. 481–488).

In summary, population resilience is impacted by factors such as small population size, vulnerability to random demographic fluctuations or natural catastrophes, and low genetic diversity, which is further magnified by synergistic (interaction of two or more components) effects with other threats, such as those discussed above. In evaluating the stressor of low population resilience to *Trichomanes punctatum* ssp. *floridanum* that could arise due to small population size, we reviewed the limited data available concerning abundance at each of the occurrences across the subspecies' range. This represents a conservative classification of small population size, as available data do not discriminate among individual plants and life-history stages. These small populations are at risk of adverse effects from reduced genetic variation, an increased risk of inbreeding depression, and reduced reproductive output. Many of these populations are small and isolated from each other, decreasing the likelihood that they could be naturally reestablished in the event that extinction from one location would occur.

Conservation Efforts To Reduce Other Natural or Manmade Factors Affecting Its Continued Existence

Miami-Dade County and the State of Florida have ongoing nonnative plant management programs to reduce threats on public lands, as funding and resources allow. In Miami-Dade County, nonnative, invasive plant management is very active, with a goal to treat all publically owned properties at least once a year and more often in many cases. Annual monitoring of *Trichomanes punctatum* ssp. *floridanum* is conducted by Fairchild, which records health and size of individual clusters of the subspecies along with potential new stressors, including nonnative, invasive species or habitat destruction; reports are forwarded to the County preserve manager for further attention (Possley 2013p, pers. comm.). IRC also conducts research and monitoring in various hammocks within Miami-Dade County for various rare and endangered plant species; nonnative, invasive species are documented, along with any occurrence of human disturbance (van der Heiden 2013i, pers. comm.). In Sumter County, the Florida Park Service surveys each State-owned property at least once a year to manage for nonnative plants (Werner 2013a–b, pers. comm.). Furthermore, Withlacoochee State Forest conducts prescribed burning on an annual basis, controlling regional wildfires in dry swamps and mesic hammocks.

Continuing efforts to propagate *Trichomanes punctatum* ssp. *floridanum* in-vitro may eventually lead to the establishment of healthy populations that can be reintroduced in locations where the taxon once occurred or introduced to new areas deemed appropriate. These efforts can assist with combating potential or realized impacts from natural stochastic events that may harm or destroy existing populations.

Summary of Factor E

Stochastic events resulting in changes in canopy structure and environmental conditions within the taxon's current habitat are considered threats to existing and future populations of *T. p.* ssp. *floridanum.* This is especially alarming since droughts, tropical storms, and hurricanes are common occurrences in Florida. Changes associated with these events have the potential to limit reproduction and compromise overall health in the long term, making plants more vulnerable to other stressors (*e.g.,* periodic, long-term droughts, hurricanes) or cause extirpations. As few populations remain, the entire taxon is at risk of extinction during these events. Climatic changes, including SLR, are longer term concerns expected to exacerbate existing impacts and ultimately reduce the extent of available habitat for *T. p.* ssp. *floridanum.*

The presence of nonnative species, including other plants and feral hogs, is also a threat, but may be reduced on public lands due to active programs by Miami-Dade County and the State. The majority of the remaining populations of this plant are small and geographically isolated, and genetic variability is likely low, increasing the inherent risk due to overall low resilience of this subspecies. Furthermore, the isolated existence of *Trichomanes punctatum* ssp. *floridanum* makes natural recolonization of extirpated populations virtually impossible without human intervention. Although considered stressors, wildfires and public use at extant sites are minimal and do not rise to the level of a threat.

Cumulative Effects of Threats

When two or more threats affect *Trichomanes punctatum* ssp. *floridanum* occurrences, the effects of those threats could interact or become compounded, producing a cumulative adverse effect that is greater than the impact of either threat alone. The most obvious cases in which cumulative adverse effects would be significant are those in which small populations (Factor E) are affected by threats that result in destruction or modification of habitat (Factor A). The limited distributions and small population sizes of *T. p.* ssp. *floridanum* make it extremely susceptible to the detrimental effects of further habitat modification, degradation, and loss, as well as other anthropogenic threats. Mechanisms leading to the decline of this taxon, as discussed above, range from local (*e.g.,* hydrology changes, agriculture) to regional (*e.g.,* development, fragmentation, nonnative species) to global influences (*e.g.,* climate change, SLR). The synergistic effects of threats, such as impacts from hurricanes on a species with a limited distribution and small populations, make it difficult to predict population viability. While these stressors may act in isolation, it is more probable that many stressors are acting simultaneously (or in combination) on populations of *T. p.* ssp. *floridanum,* making this subspecies more vulnerable.

Proposed Determination

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, we may list a species based on (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination.

We have carefully assessed the best scientific and commercial data available regarding the past, present, and future threats to *Trichomanes punctatum* ssp. *floridanum. T. p.* ssp. *floridanum* has been extirpated from the majority of its historical range, and the primary threats of habitat destruction and modification resulting from human population growth and development, agricultural conversion, regional drainage, and resulting changes in canopy and hydrology (Factor A); competition from nonnative, invasive species (Factor E); changes in climatic conditions, including sea level rise (Factor E); and natural stochastic events (Factor E) remain threats for existing populations. Existing regulatory mechanisms have

not led to a reduction or removal of threats posed to the subspecies from these factors (see Factor D discussion). These threats are ongoing, rangewide, and expected to continue in the future. Populations of *T. p.* ssp. *floridanum* are relatively small and isolated from one another, and their ability to recolonize suitable habitat is unlikely without human intervention. Because of the current condition of the extant populations and life-history traits of the subspecies, it is vulnerable to natural or human-caused changes in its currently occupied habitats. The threats have had and will continue to have substantial adverse effects on *T. p.* ssp. *floridanum* and its habitat. Although attempts are ongoing to alleviate or minimize some of these threats at certain locations, all populations appear to be impacted by one or more threats.

The Act defines an endangered species as ''any species which is in danger of extinction throughout all or a significant portion of its range'' and a threatened species as ''any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' As described in detail above, this plant is currently at risk throughout all of its range due to the immediacy, severity, significance, timing, and scope of those threats. Impacts from these threats are ongoing and increasing; singly or in combination, these threats place the subspecies in danger of extinction. The risk of extinction is high because the populations are small, are isolated, and have limited to no potential for recolonization. Numerous threats are currently ongoing and are likely to continue in the foreseeable future, at a high intensity and across the entire range of this subspecies. Furthermore, natural stochastic events and changes in climatic conditions pose a threat to the persistence of the subspecies, especially in light of the fact these events cannot be controlled and mitigation measures have yet to be addressed. Individually and collectively, all these threats can contribute to the local extirpation and potential extinction of this subspecies. Because these threats are placing this subspecies in danger of extinction throughout its range, we have determined this plant meets the definition of an endangered species. Therefore, on the basis of the best available scientific and commercial information, we propose to list *Trichomanes punctatum* ssp. *floridanum* as an endangered species in accordance with sections 3(6) and 4(a)(1) of the Act. We find that a threatened species status is not appropriate for *T. p.* ssp. *floridanum* because of the contracted range of the subspecies and because the threats are occurring rangewide, are ongoing, and are expected to continue into the future.

Under the Act and our implementing regulations, a species may warrant listing if it is endangered or threatened throughout all or a significant portion of its range. The threats to the survival of *Trichomanes punctatum* ssp. *floridanum* occur throughout the subspecies' range and are not restricted to any particular significant portion of that range. Accordingly, our assessment and proposed determination applies to the subspecies throughout its entire range.

Significant Portion of the Range

Because we have determined that *Trichomanes punctatum* ssp. *floridanum* is an endangered species throughout all of its range, no portion of its range can be ''significant'' for purposes of the definitions of ''endangered species'' and ''threatened species.'' See the Service's SPR Policy (79 FR 37578, July 1, 2014).

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation by Federal, State, Tribal, and local agencies; private organizations; and individuals. The Act encourages cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act requires the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed and preparation of a draft and final recovery plan. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to develop a recovery plan. The plan may be revised to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan identifies recovery criteria for review of when a species may be ready for downlisting (from endangered to threatened) or delisting and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. If we list *Trichomanes punctatum* ssp. *floridanum,* when completed, the draft and final recovery plans would be available on our Web site (*http://www.fws.gov/endangered*) or from our South Florida Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (*e.g.,* restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

If this subspecies is listed, funding for recovery actions would be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the State of Florida would be eligible for Federal funds to implement management actions that promote the protection or recovery of *Trichomanes punctatum* ssp. *floridanum.* Information on our grant programs that are available

to aid species recovery can be found at: *http://www.fws.gov/grants.*

Although *Trichomanes punctatum* ssp. *floridanum* is only proposed for listing under the Act at this time, please let us know if you are interested in participating in conservation efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for conservation planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within the subspecies' habitat that may require conference or consultation or both as described in the preceding paragraph include, but are not limited to, federally funded or authorized actions such as habitat restoration and control of nonnatives and any other landscape-altering activities.

With respect to endangered plants, prohibitions outlined at 50 CFR 17.61 make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or to remove and reduce to possession any such plant species from areas under Federal jurisdiction. In addition, for endangered plants, the Act prohibits malicious damage or destruction of any such species on any area under Federal jurisdiction, and the removal, cutting, digging up, or damaging or destroying of any such species on any other area in knowing violation of any State law or regulation, or in the course of any violation of a State criminal trespass law. Exceptions to these prohibitions are outlined in 50 CFR 17.62.

We may issue permits to carry out otherwise prohibited activities involving endangered plants under certain circumstances. Regulations governing permits are codified at 50 CFR 17.62. With regard to endangered plants, the Service may issue a permit authorizing any activity otherwise prohibited by 50 CFR 17.61 for scientific purposes or for enhancing the propagation or survival of endangered plants.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of the species proposed for listing. If we list *Trichomanes punctatum* ssp. *floridanum,* the following activities could potentially result in a violation of section 9 of the Act; this list is not comprehensive:

(1) Import the subspecies into, or export the subspecies from, the United States without authorization;

(2) Remove and reduce to possession the subspecies from areas under Federal jurisdiction; maliciously damage or destroy the subspecies on any such area; or remove, cut, dig up, or damage or destroy the subspecies on any other area in knowing violation of any law or regulation of any State or in the course of any violation of a State criminal trespass law;

(3) Sell or offer for sale in interstate or foreign commerce the subspecies; except for properly documented antique specimens of the taxon at least 100 years old, as defined by section 10(h)(1) of the Act;

(4) Unauthorized delivering, carrying, or transporting of the subspecies, including import or export across State lines and international boundaries;

(5) Introduction of nonnative species that compete with or prey upon *Trichomanes punctatum* ssp. *floridanum;*

(6) Unauthorized release of biological control agents that attack any life stage of this subspecies; and

(7) Unauthorized manipulation or modification of the habitat where *Trichomanes punctatum* ssp. *floridanum* is present on Federal lands including, but not limited to, unauthorized water withdrawal from solution holes and unauthorized removal of canopy.

At this time, we are unable to identify specific activities that would not be considered to result in a violation of section 9 of the Act because *Trichomanes punctatum* ssp. *floridanum* occurs in a variety of habitat conditions across its range and it is likely that site-specific conservation measures may be needed for activities that may directly or indirectly affect the subspecies.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the South Florida Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Critical Habitat

Section 3(5)(A) of the Act defines critical habitat as ''(i) the specific areas within the geographical area occupied by the species, at the time it is listed . . . on which are found those physical or biological features (I) Essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed . . . upon a determination by the Secretary that such areas are essential for the conservation of the species.'' Section 3(3) of the Act (16 U.S.C. 1532(3)) also defines the terms ''conserve,'' ''conserving,'' and ''conservation'' to mean ''to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this chapter are no longer necessary.''

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12), require that, to the maximum extent prudent and determinable, the Secretary shall designate critical habitat at the time the species is determined to be an endangered or threatened species. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist:

(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or

(2) such designation of critical habitat would not be beneficial to the species.

As discussed in the Factor B analysis (see above), there is currently no imminent threat of take attributed to collection or vandalism for this species, and identification and mapping of critical habitat is not expected to initiate any such threat. Therefore, in the

absence of finding that the designation of critical habitat would increase threats to a species, if there are any benefits to a critical habitat designation, a finding that designation is prudent is warranted. Here, the potential benefits of designation include: (1) Triggering consultation under section 7 of the Act, in new areas for actions in which there may be a Federal nexus where it would not otherwise occur because, for example, it is unoccupied; (2) focusing conservation activities on the most essential features and areas; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the species.

Because we have determined that the designation of critical habitat will not likely increase the degree of threat to the species and may provide some measure of benefit, we determine that designation of critical habitat is prudent for *Trichomanes punctatum* ssp. *floridanum.*

Our regulations (50 CFR 424.12(a)(2)) further state that critical habitat is not determinable when one or both of the following situations exists: (1) Information sufficient to perform required analysis of the impacts of the designation is lacking; or (2) the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat.

Our regulations at 50 CFR 424.19 require the Service to ''make available for public comment the draft economic analysis of the designation'' at the time the proposed critical habitat rule is published in the **Federal Register**. At this point, a careful assessment of the economic impacts that may occur due to a critical habitat designation is still ongoing, and we are still in the process of acquiring the information needed to perform this assessment. Accordingly, we find designation of critical habitat for *Trichomanes punctatum* ssp. *floridanum* to be not determinable at this time.

Required Determinations

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

National Environmental Policy Act

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act need not be prepared in connection with listing a species as an endangered or threatened species under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. We are not aware of any *Trichomanes punctatum* ssp. *floridanum* populations on tribal lands.

References Cited

A complete list of references cited in this rulemaking is available on the Internet at *http://www.regulations.gov* and upon request from the South Florida Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the South Florida Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245, unless otherwise noted.

■ 2. Amend § 17.12(h) by adding an entry for ''*Trichomanes punctatum* ssp. *floridanum*'' to the List of Endangered and Threatened Plants in alphabetical order under FERNS AND ALLIES to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*	*	
FERNS AND ALLIES							
*	*	*	*	*	*	*	
Trichomanes punctatum ssp. floridanum.	Florida bristle fern ..	U.S.A. (FL)	Hymenophyllaceae	E		NA	NA.
*	*	*	*	*	*	*	

* * * * *

Dated: September 26, 2014.

Rowan W. Gould,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2014–23686 Filed 10–8–14; 8:45 am]

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Part III

Department of Health and Human Services

Centers for Medicare and Medicaid Services

42 CFR Parts 409, 410, 418, et al.

Medicare and Medicaid Program: Conditions of Participation for Home Health Agencies; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

42 CFR Parts 409, 410, 418, 440, 484, 485 and 488

[CMS–3819–P]

RIN 0938–AG81

Medicare and Medicaid Program: Conditions of Participation for Home Health Agencies

AGENCY: Centers for Medicare and Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the current conditions of participation (CoPs) that home health agencies (HHAs) must meet in order to participate in the Medicare and Medicaid programs. The proposed requirements would focus on the care delivered to patients by home health agencies, reflect an interdisciplinary view of patient care, allow home health agencies greater flexibility in meeting quality care standards, and eliminate unnecessary procedural requirements. These changes are an integral part of our overall effort to achieve broad-based, measurable improvements in the quality of care furnished through the Medicare and Medicaid programs, while at the same time eliminating unnecessary procedural burdens on providers.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on December 8, 2014.

ADDRESSES: In commenting, please refer to file code CMS–3819–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the instructions under the more search options tab.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3819–P, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3819–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 (one original) before the close of the comment period to either of the following addresses: a. 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. 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–9994 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.

Submission of comments on paperwork requirements. You may submit comments on this document's paperwork requirements by following the instructions at the end of the ''Collection of Information Requirements'' section in this document.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:
Danielle Shearer (410) 786–6617.
Jacqueline Leach (410) 786–4282.
Maria Hammel (410) 786–1775.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Introduction

As the single largest payer for health care services in the United States, the Federal government assumes a critical responsibility for the delivery and quality of care furnished under its programs. Historically, we have adopted a quality assurance approach that has been directed toward identifying health care providers that furnish poor quality care or fail to meet minimum Federal standards. Facilities not meeting requirements would either correct the inappropriate practice(s) or would be terminated from participation in the Medicare or Medicaid programs. We have found that this problem-focused approach has inherent limits. Ensuring quality through the enforcement of prescriptive health and safety standards, rather than improving the quality of care for all patients, has resulted in expending much of our resources on dealing with marginal providers, rather than on stimulating broad-based improvements in the quality of care delivered to all patients.

Obtaining quality health care for Federal beneficiaries from CMS-certified providers and suppliers requires taking advantage of continuing advances in the health care delivery field. As a result, we are proposing to revise the home health agency requirements to focus on a patient-centered, data-driven, outcome-oriented process that promotes high quality patient care at all times for all patients. We have developed a proposed set of fundamental requirements for Home Health Agency (HHA) services that would encompass patient rights, comprehensive patient assessment, and patient care planning and coordination by an interdisciplinary team. Overarching these requirements would be a quality assessment and performance improvement program that would build on the philosophy that a provider's own quality management system is key to improved patient care performance. The objective would be to achieve a balanced regulatory approach by ensuring that a HHA furnished health care that met essential health and quality standards, while ensuring that it monitored and improved its own performance.

Health Disparities

In 1985, the Secretary of the Department of Health and Human Services issued a landmark report which revealed large and persistent gaps in health status among Americans of different racial and ethnic groups and served as an impetus for addressing health inequalities for racial and ethnic minorities in the U.S. This report led to the establishment of the Office of Minority Health (OMH) within the Department of Health and Human Services (HHS), with a mission to address these disparities throughout the Nation. National concerns for these differences in health outcomes between populations, termed health disparities, and the associated excess mortality and morbidity rates have been expressed as a high priority in national health status reviews, including Healthy People 2000, 2010, and 2020. In 2011, HHS also issued the HHS Action Plan to Reduce Racial and Ethnic Health Disparities (found at *http://www.minorityhealth.hhs.gov/npa/templates/content.aspx?lvl=1&lvlid=33&ID=285*).

Since this time, research has extensively documented the pervasiveness of disparities in health care and has led to the acknowledgement of disparities as a national problem, expansion of populations identified as vulnerable, development of programs and strategies to reduce disparities for vulnerable populations, and the emergence of new leadership to address these disparities. Vulnerable populations include groups of people who have systematically experienced greater obstacles to health based on their racial or ethnic groups; religion; socioeconomic status; gender; age; mental health; cognitive, sensory, or physical disability; sexual orientation or gender identity; geographic location; or other characteristics historically linked to discrimination or exclusion. We are aware that other populations at risk may include pregnant women, infants, persons with limited English proficiency (LEP), and persons with disabilities (for example, visual, hearing, cognitive or perceptual impairments) or special health care needs.

Although there has been much attention at the national level given to ideas for reducing health disparities in vulnerable populations, we remain vigilant in our efforts to improve health care quality for all persons by improving health care access and by eliminating real and perceived barriers to care that may contribute to less than optimal health outcomes for vulnerable populations. Despite the long-term implementation of some strategies like providing oral interpretation services to persons with LEP in hospitals, effective communication and its impact on health care outcomes continues to be in the forefront of the national discussion.

We believe some aspects of this proposed rule, such as requiring patient rights to be explained to a patient in the language and manner that he or she understands, would address the needs of vulnerable populations and contribute to eliminating health disparities. We are specifically requesting comments in regard to how our proposed requirements could be used to address disparities.

II. Background

A. The Home Health Benefit

Home health services are covered for the elderly and disabled under the Hospital Insurance (Part A) and Supplemental Medical Insurance (Part B) benefits of the Medicare program, and are described in section 1861(m) of the Social Security Act (the Act). These services, provided under a plan of care that is established and periodically reviewed by a physician, must be furnished by, or under arrangement with, an HHA that participates in the Medicare or Medicaid programs, and are provided on a visiting basis in the beneficiary's home. Services may include the following:

- Part-time or intermittent skilled nursing care furnished by or under the supervision of a registered professional nurse.
- Physical therapy, speech-language pathology, and occupational therapy.
- Medical social services under the direction of a physician.
- Part-time or intermittent home health aide services.
- Medical supplies (other than drugs and biologicals) and durable medical equipment.
- Services of interns and residents if the HHA is owned by or affiliated with a hospital that has an approved medical education program.
- Services at hospitals, skilled nursing facilities, or rehabilitation centers when they involve equipment too cumbersome to bring to the home.

Under the authority of sections 1861(o) and 1891 of the Act, the Secretary has established in regulations the requirements that an HHA must meet to participate in the Medicare program. These requirements are set forth in regulations at 42 CFR part 484, Home Health Services. Current regulations at 42 CFR 440.70(d) specify that HHAs participating in the Medicaid program must also meet the Medicare Conditions of Participation (CoPs). Section 1861(o)(6) of the Act requires that an HHA must meet the CoPs specified in section 1891(a) of the Act, and other CoPs as the Secretary finds necessary in the interest of the health and safety of patients. Section 1891(a) of the Act establishes specific requirements for HHAs in several areas, including patient rights, home health aide training and competency, and compliance with applicable federal, state, and local laws. The CoPs for HHAs protect all individuals under the HHA's care, unless a requirement is specifically limited to Medicare beneficiaries. Section 1861(o) of the Social Security Act (the Act) describes an HHA for purposes of participation in the Medicare program in broadly descriptive terms. All the requirements are stated generally as applicable to the HHA's overall activity, and not specifically to the Medicare patient. This provision, which was reaffirmed by Congress in the OBRA 1987 amendments to section 1891(a) of the Act, has been in the law since the inception of the Medicare program, and CMS' interpretation of it has remained the same. Under section 1891(b) of the Act, the Secretary is responsible for assuring that the CoPs, and their enforcement, are adequate to protect the health and safety of individuals under the care of an HHA, and to promote the effective and efficient use of Medicare funds. To implement this requirement, State survey agencies and CMS-approved accrediting organizations conduct surveys of HHAs to determine whether they are complying with the conditions of participation.

B. Previous HHA Conditions of Participation Rules

On March 10, 1997 (62 FR 11004), we published a proposed rule, entitled, ''Revision of the Conditions of Participation for Home Health Agencies and Use of the Outcome and Assessment Information Set (OASIS) as Part of the Revised Conditions of Participation for Home Health Agencies,'' that would have revised the entire set of HHA CoPs. Due to the significant volume of public comments and the rapidly changing nature of the HHA industry at that time, this rule, in its entirety, was never finalized.

Rather than finalizing all portions of the March 1997 rule, we published a final regulation (64 FR 3764, January 25, 1999) that only finalized the OASIS regulations. The January 1999 final rule required that each patient receive from the HHA a patient-specific, comprehensive assessment that identifies the patient's medical, nursing,

rehabilitation, social, and discharge planning needs.

We also issued an interim final rule with comment period on January 25, 1999 (64 FR 3748) that required HHAs to use the Outcome and Assessment Information Set (OASIS) data collection instrument that standardizes parts of the assessment. This rule also required HHAs to transmit the data to CMS. Section 1891(c)(2)(C) and section 1891(d)(1) of the Social Security Act (the Act) require the Secretary to establish a standardized assessment instrument for measuring the quality of care and services furnished by HHAs. The OASIS data collection instrument and data transmission rule was finalized on December 23, 2005 (70 FR 76199) in order to implement this statutory requirement.

Although the OASIS requirements were finalized in separate rules, we intended to proceed with another rule to finalize the remainder of the requirements of the March 1997 proposed rule. However, Section 902 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) added section 1871(a)(3) to the Act. This section provided that, effective December 8, 2003, the Secretary, in consultation with the Director of the Office of Management and Budget (OMB), would have to establish and publish regular timelines for the publication of Medicare proposed regulations based on the previous publication of Medicare proposed or interim final regulations. Section 902 of the MMA further provided that the timeline could vary among different regulations, but could not be longer than 3 years, except under exceptional circumstances. Pursuant to the MMA, we issued a notice implementing this provision in the **Federal Register** on December 30, 2004 (69 FR 78442). In that notice, we interpreted section 902 as rendering ineffective any proposed Medicare regulations that had been outstanding for 3 years or more as of December 8, 2003; this included the HHA CoPs. Therefore, out of an abundance of caution, we decided not to finalize the remaining provisions of the March 10, 1997 proposed rule, but begin rulemaking again.

C. Transforming the HHA Conditions of Participation

Before we began development of new proposed CoPs for Medicare and Medicaid participating HHAs, we received recommendations from home health providers, professional associations and practitioner communities, consumer advocates and state and other governmental agencies with an interest or responsibility in HHA regulation and oversight. We also took into account the comments that were submitted by the public on the March 1997 proposed rule and suggestions submitted by the HHA industry in the summer of 2011, as well as developments since that time within the industry. In light of this information, we have used the following principles to assist in the development of the new HHA CoPs:

- Develop a more continuous, integrated care process across all aspects of home health services, based on a patient-centered assessment, care planning, service delivery, and quality assessment and performance improvement.
- Use a patient-centered, interdisciplinary approach that recognizes the contributions of various skilled professionals and their interactions with each other to meet the patient's needs. Stress quality improvements by incorporating an outcome-oriented, data-driven quality assessment and performance improvement program specific to each HHA.
- Eliminate the focus on administrative process requirements that lack adequate consensus or evidence that they are predictive of either achieving clinically relevant outcomes for patients or preventing harmful outcomes for patients.
- Safeguard patient rights.

Based on these principles, we are proposing new HHA CoPs that would revise or eliminate many current requirements and would focus provider efforts on the services delivered to the patient, the quality of care furnished by the HHA, and quality assessment and performance improvement efforts. We propose to establish the following four CoPs (in addition to retaining the current requirements at § 484.55, Comprehensive assessment of patients):

- ''Patient rights'' would emphasize a HHA's responsibility to respect and promote the rights of each home health patient.
- ''Care planning, coordination of services, and quality of care'' would incorporate the interdisciplinary team approach to provide home health services focusing on the care planning, coordination of services, and quality of care processes.
- ''Quality assessment and performance improvement'' (QAPI) would charge each HHA with responsibility for carrying out an ongoing quality assessment, incorporating data-driven goals, and an evidence-based performance improvement program of its own design to affect continuing improvement in the quality of care furnished to its patients.
- ''Infection prevention and control'' would require HHAs to follow accepted standards of practice to prevent and control the transmission of infectious diseases and to educate staff, patients, and family members or other caregivers on these accepted standards. The HHA would be required to incorporate an infection control component into its QAPI program.

In the revised CoPs, we propose to retain and/or include process-oriented requirements that are predictive of ensuring desired outcomes. We propose to eliminate many of the process details from the current requirements where they do not achieve this goal. For example, we propose to remove the process requirement under current § 484.12(c) that a HHA and its staff comply with accepted professional standards and principles. Instead, we propose to modify this requirement by referencing current clinical practice guidelines and professional standards specific to home care (for example, the ANA Scope and Standards of Practice for Home Health Nurses) as factors to be considered in the HHA's overall QAPI program. We are not proposing to incorporate by reference any specific clinical practice guidelines or professional standards of practice. The HHA would be responsible for identifying its own performance problems through its QAPI program, addressing them, and continuously striving to improve the quality of clinical care, patient outcomes and satisfaction, as well as efficiency and economy. We also propose to remove the requirements that the HHA send a summary of care to the attending physician at least once every 60 days, that the HHA have a group of professional personnel to advise its operation, and that the HHA conduct a quarterly evaluation of its program via chart reviews.

We believe that the proposed CoPs, which are based on the principles of continuous and ongoing quality assessment and performance improvement, reflect a fundamental change in our regulatory approach—a change that to a large extent establishes a shared commitment between CMS and HHA providers to achieve improvements in the quality of care furnished to HHA patients. This approach has already been implemented through the Conditions of Participation/Conditions for Coverage (CoPs/CfCs) for end-stage renal disease suppliers, hospitals, hospices, transplant centers, and organ procurement organizations.

The proposed HHA CoPs would prompt HHAs to invest internally in their responsibility to continuously improve performance, rather than relying solely on an external approach in which prescriptive federal requirements are enforced through the survey process. We anticipate that this patient-centered, outcome-oriented approach will result in an enhanced working relationship between state survey agencies and HHAs. These requirements would provide a basis for improved performance that will help to ensure that quality home health care is provided to all patients.

These proposed regulations contain two critical improvements that would support and extend our focus on patient-centered, outcome-oriented surveys. First, the proposed regulations are designed to enable surveyors to look at outcomes of care, because the regulations would specify that each individual receive the care which his or her assessed needs demonstrate is necessary, rather than focusing simply on the services and processes that must be in place. Second, the addition of a strong QAPI requirement would not only stimulate the HHA to continuously monitor its performance and find opportunities for improvement, it would also afford the surveyor the ability to assess how effectively the provider was pursuing a continuous quality improvement agenda. All of the changes would be directed toward improving patient-centered outcomes of care, and engaging the patient, family and physician in the care planning and care delivery processes. We believe that the overall approach of the proposed CoPs would provide HHAs with greatly enhanced flexibility. At the same time, the proposed requirement for a program of continuous quality assessment and performance improvement would increase performance expectations for HHAs, in terms of achieving needed and desired outcomes for patients and increasing patient satisfaction with services provided.

III. Provisions of the Proposed Rule

A. Overview

Under our proposal, the HHA CoPs would continue to be set forth in regulations under 42 CFR part 484. However, since many of the current requirements in part 484 would be revised, consolidated with other requirements, or eliminated, this proposed rule would make extensive changes in the current organizational scheme. The most significant change would be grouping together all CoPs directly related to patient care and place them near the beginning of part 484. Regulations concerning the organization and administration of a HHA would follow in a separate subpart titled ''Organizational Environment.'' This format would be better in keeping with the patient-centered orientation of these regulations, and would reinforce our view that patient assessment, care planning, and quality assessment and performance improvement efforts are central to the delivery of high quality care.

B. Proposed Subpart A, General Provisions

We propose to reorganize this section to clarify the basis and scope of this part. Specifically, § 484.1 would set out the statutory authority for these regulations. Part 484 is based on sections 1861(o) and 1891 of the Act, which establish the conditions that a HHA must meet in order to participate in the Medicare program. Part 484 is also based on section 1861(z) of the Act, which specifies the institutional planning standards that HHAs must meet. These provisions serve as the basis for survey activities for the purposes of determining whether an agency meets the requirements for participation in Medicare. Currently, § 484.1(a)(3) refers to section 1895 of the Act, which serves as the basis for the establishment of a prospective payment system for home health services covered under Medicare. This section of the Act is already cited at § 484.200 as the basis for subpart E of this part, Prospective Payment System for Home Health Agencies, therefore, we propose to delete § 484.1(a)(3).

At § 484.2, we propose to clarify some of the definitions for terms used in the HHA CoPs. The definition for ''branch office'' would be modified by adding the requirement that the parent agency offer more than the sharing of services; specifically, that it provide supervision and administrative control of branches on a daily basis to the extent that the branch depends upon the parent agency's supervision and administrative functions in order to meet the CoPs, and could not do so as an independent entity. The supervision and administrative control would have to assure that the quality and scope of items and services provided was of the highest practicable level for all patients, so as to meet their medical, nursing, and rehabilitative needs. Though the definition would no longer require the branch office to be ''sufficiently close,'' the parent agency would have to be available to meet the needs of any situation and respond to issues that could arise with respect to patient care or administration of the agency. A violation of a CoP in one branch office would apply to the entire HHA.

We also propose minor changes in the language of the current definitions for ''clinical note,'' ''parent home health agency,'' ''proprietary agency,'' and ''subdivision.'' These changes would achieve greater clarity within these definitions and achieve consistency with the other definitions contained in this section.

We also propose to eliminate current definitions of the terms ''bylaws'' and ''supervision.'' We believe the meanings of these terms are self-evident, and would provide sub-regulatory guidance on them in the future, should there be a need for such guidance. We are proposing to eliminate the definition for ''home health agency'' because its definition is set out by statute at section 1861(o) of the Act. We propose to delete the term ''progress notes'' because notations in the clinical record and more typically referred to as ''clinical notes,'' a term that is well defined and understood in the HHA industry.

We propose to delete the term ''subunit'' because the distinction between the requirements that the parent HHA and a subunit must meet are minor. Currently, a subunit must be able, independently, to meet the CoPs. The distinction between a ''subunit'' of a HHA and an independent HHA is that a ''subunit'' may share the same governing body, administrator, and group of professional personnel with its parent HHA. In practice, the requirement that a ''subunit'' must independently meet the CoPs renders this distinction moot, and we believe that an entity operating for all intents and purposes as a distinct HHA should be treated as such. Therefore, upon finalization of this rule, existing subunits, which already operate under their own provider number, would be considered distinct HHAs and would be required to independently meet all CoPs without sharing a governing body or administrator. We propose to delete the requirements for the group of professional personnel; therefore it would no long matter if this group was shared among HHAs. Based on state-specific laws and regulations, this federal regulatory change would permit a subunit to apply to become a branch of its existing parent HHA if the parent provided ''. . . direct support and administrative control'' of the branch. The state survey agency and CMS Regional Office are responsible for approving a HHA's application for a branch office, in accordance with current CMS guidance as set out in various survey and certification letters

and section 2182.4B of the State Operations Manual. No new subunits would be approved upon implementation of this regulation, only ''branch offices.''

Finally, we propose to add definitions for the terms ''in advance,'' ''quality indicator,'' ''representative,'' ''supervised practical training,'' and ''verbal order.'' We would add a definition for the term ''quality indicator'' because the use of quality indicators is central to a HHA's successful implementation of a quality assessment and performance improvement program. HHAs already have numerous quality indicators available to them through the OASIS. The OASIS data set provides empirical data to measure the quality of care a Medicare patient receives from an HHA, including care delivery, patient outcomes, and potentially avoidable events. The data are able to demonstrate trends across time. The OASIS data and the measures calculated from that data are indicators of quality that can be used for internal quality improvement efforts, in the survey process, and in the consumer decision-making process. However, the HHA quality indicators would not be limited to data gathered by the OASIS instrument or even measures calculated by CMS. HHAs may also identify quality indicators from outside sources such as research projects, collaborative QIO endeavors, and accrediting bodies, to name a few.

We propose to define the term ''representative'' in a patient-centered manner that enables patients to choose their representatives, if they wish to do so. We believe that the patient receiving services should be involved in the person-centered care planning process, and recognize that there are times when patients may want to involve other people in that process to assist in making decisions. Likewise, patients may also choose to designate another person to make all decisions on the patient's behalf. We believe that defining a ''representative'' in a manner that recognizes patient choice, both in who the representative is and in the role that the representative will play, would be beneficial to patients. We also propose to explicitly recognize legal guardians in situations where the patient has one. If a HHA has reason to believe that the representative is not acting in accordance with what the patient would want, is making decisions that could cause harm to the patient, or otherwise cannot perform the required functions of a representative, we would expect the HHA to make referrals and/or reports to the appropriate agencies and authorities to assure the health and safety of the patient.

We would define the term ''verbal orders'' to mean those physician orders that are delivered verbally (meaning spoken), by the physician, to a nurse or other qualified medical personnel, and recorded in the plan of care. ''In advance'' and ''supervised practical training'' would be defined to provide clarity for clinical care purposes.

As discussed in detail in section III.D.4 of this preamble, we are proposing modifications to the current personnel qualifications requirements. Therefore, we would not retain the provisions of current § 484.4, ''Personnel qualifications,'' under proposed subpart A, General Provisions. These modifications would be set forth under proposed § 484.80, ''Home health aide services,'' and proposed § 484.115, ''Personnel qualifications.''

We are also proposing to retain the current definitions of ''primary home health agency,'' ''public agency,'' and ''summary report'' without change.

C. Proposed Subpart B, Patient Care

1. Release of Patient Identifiable Outcome and Assessment Information Set (OASIS) Information (Proposed § 484.40)

At § 484.40, we propose to recodify the current requirements of § 484.11, which require an HHA and its agents to ensure the confidentiality of all patient-identifiable information in the clinical record, including the OASIS data.

2. Reporting OASIS Information (Proposed § 484.45)

In this CoP, we propose to include most of the current requirements of § 484.20, which relate to the electronic reporting of the OASIS data. We propose to replace the current requirement that an HHA transmit data using electronic communications software that provides a direct telephone connection from the HHA to the state agency or CMS OASIS contractor. This requirement does not reflect current technology; therefore, we believe that it is no longer appropriate. Instead, we propose to add a requirement that the OASIS data be transmitted in accordance with current CMS transmission policy, which currently requires HHAs to transmit data using electronic communications software that complies with the Federal Information Processing Standard (FIPS 140–2, issued May 25, 2001).

3. Patient Rights (Proposed § 484.50)

At § 484.50, we propose to re-designate and modify the patient rights provisions that are found at current § 484.10. Section 1891(a)(1) of the Act states a HHA must protect and promote the rights of each individual under its care. Currently, the patient rights provisions are organized into the following six standards: (1) Notice of rights; (2) Exercise of rights and respect for property and person; (3) Right to be informed and to participate in planning care and treatment; (4) Confidentiality of medical records; (5) Patient liability for payment; and (6) the Home Health hotline.

In this rule, we propose to reorganize patient rights under six standards: (1) Notice of rights; (2) Exercise of rights; (3) Rights of the patient; (4) Transfer and discharge; (5) Investigation of complaints; and (6) Accessibility. While the proposed patient rights provisions retain much of the basic focus of the current provisions, we believe our proposal presents a clearer and more organized view of our expectation of how HHAs should promote patient rights by focusing on ensuring patient safety and improving patient outcomes.

The current ''Notice of rights'' standard states only that the HHA must provide written notice of the patient's rights in advance of furnishing care, and that the HHA must maintain documentation demonstrating compliance. In proposed § 484.50(a), we state that each patient and patient representative (if the patient has one), has the right to be informed of his or her rights in a language and manner the individual understands. More specifically, under proposed § 484.50(a)(1), we propose that the HHA provide the patient and patient's representative with verbal notice of the patient's rights in the primary or preferred language of the patient or representative, and in a manner that the individual can understand, during the initial evaluation visit, and in advance of care being furnished by the HHA. The patient's representative, who could be a family member or friend who accompanies the patient, may act as a liaison between the patient and the HHA to help the patient communicate, understand, remember, and cope with the interactions that take place during the visit, and explain any instructions to the patient that are delivered by the HHA staff. The representative would not need to be the patient's legal representative.

If a patient is unable to effectively communicate directly with HHA staff, then the HHA may effectively communicate patient rights information to the patient's representative. Communications with the representative would be required to be

in the representative's primary or preferred language and in a manner that he or she can understand. Whether communicating with a patient or representative, HHA staff would be required to provide language assistance services or auxiliary aids and services at no cost, and provide notice of the availability of assistance, when necessary, to ensure effective communication between patients, representatives, and HHA staff. We note that the requirement to provide assistance and aids already exists as part of relevant statutes (for example, Title VI of the Civil Rights Act of 1964) and the regulations that implement these statutes (see 45 CFR parts 480, 405, and 490), and that HHAs agree to abide by these regulations as part of the provider agreement that they sign in order to participate in Medicare (see 42 CFR part 489). Compliance with the existing statutes, regulations, and sub-regulatory guidance documents would satisfy the intent of this proposed provision.

If the patient or representative prefers using an interpreter of his or her own, he or she may do so. The HHA must ensure that the communication via the interpreter of choice is effective. HHAs may wish to document the offer and refusal of a professional interpreter in the patient's clinical record as evidence of compliance with the requirements of this section. A professional interpreter is not considered to be a patient's representative. Rather, it is the professional interpreter's role to pass information from the HHA to the patient.

We also propose to require that the patient be provided a written copy of the patient rights information. This could be provided in English or in the patient's primary or preferred language for present or future reference. The written information would be required to be provided in alternate formats free of charge for persons with disabilities, when necessary, to ensure effective communication. In addition, written notice would be required to be understandable to persons who have limited English proficiency. Furthermore, HHAs would be required to inform patients of the availability of the services and instruct patients how to access those services.

While we propose these requirements under the authority of sections 1861(o) and 1891 of the Act, Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*) and Section 504 of the Rehabilitation Act of 1973 also apply to HHAs, as well as other health care providers. Our proposed requirement has been designed to be compatible with guidance related to title VI of the Civil Rights Act of 1964. The Department of Health and Human Services' (HHS) guidance related to Title VI, ''Guidance to Federal Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons'' (August 8, 2003, 68 FR 47311) applies to those entities that receive federal financial assistance from HHS, including HHAs that participate in Medicare and Medicaid. This guidance may assist HHAs in ensuring that patient rights information is provided in a language and manner the patient understands.

Proposed § 484.50(a)(2) would require the HHA to provide each patient with specific business contact information for the HHA's administrator so that patients and caregivers could report complaints and specific patient rights violations to the HHA administrator, and so that patients and caregivers can ask questions about the care being provided.

We are also proposing at § 484.50(a)(3) that the HHA provide a copy of the OASIS privacy notice to all patients from whom the OASIS data are collected at the same time that the general notice of rights is provided to the patient. The OASIS privacy notice would inform the patient why the OASIS information was being collected and describe the rights of the patient regarding the collection of this information. The OASIS privacy notice is available in English and Spanish, and can be found at *http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/OASIS/Regulations.html.* Use of the OASIS Privacy Notice is required by the Federal Privacy Act of 1974, and must be used, in addition to other notices that may be required by other privacy laws and regulations. There is additional discussion of the use of the OASIS Privacy Notice in the Dec. 23, 2005 rule (70 FR 76199, 76201), where we referred to a variety of provisions governing the privacy and security of the Federal automated information systems.

Finally, at § 484.50(a)(4), we would require that the HHA obtain the patient's or representative's signature confirming that he or she has received a copy of the notice of rights and responsibilities.

The current standard at § 484.10(b) sets out requirements for the exercise of patient rights and respect for property and person as one standard. We have stressed the importance of these two individual concepts by proposing to separate the requirements into 2 standards at § 484.50(b), ''Exercise of rights'' and at § 484.50(c), ''Rights of the patient.'' Under proposed § 484.50(b), in the event that a patient was declared incompetent under state law by a court of proper jurisdiction, the rights of that patient could be exercised by the person appointed by the state Court. If a state court had not made a declaration, any representative, as chosen by the patient, could exercise the rights of the patient in accordance with the patient's preferences. In situations where a patient has been adjudged to lack legal capacity under state law by a court of proper jurisdiction, the patient would be allowed to exercise his or her rights to the extent allowed by the court order. We propose these provisions in recognition of the complexities of representation. There are many circumstances under which representatives may be used, and the extent of such representation varies from one patient to another. Some patients may require total representation because they are unable to communicate and advocate for themselves. Others may be able to participate in their care to a certain degree and require representation as a supportive mechanism. Still other patients may wish to hand off decision-making and advocacy responsibilities to another person even though these patients are fully capable of fulfilling this role themselves. Our goal is to provide guidance to HHAs regarding how to address these situations and intricacies in the most patient-centered, patient-directed way possible. We specifically seek public comment on ways to assure that patient choice is respected and upheld, while also balancing the need to assure patient safety.

Proposed § 484.50(c) would set forth the explicit rights of each home health patient. At § 484.50(c)(1), we propose that the patient would have a right to have his or her property and person treated with respect. At § 484.50(c)(2), we propose that the patient would have a right to be free from verbal, mental, sexual and physical abuse, including injuries of unknown source, neglect, and misappropriation of property. If an injury of unknown source is identified, we would expect the HHA to investigate the injury in order to determine its cause and take action to prevent further injuries related to that source. Under proposed § 484.50(c)(3), the patient would have a right to make complaints to the HHA regarding treatment or care that was (or failed to be) furnished which the patient and/or their family believe was inappropriate. Under proposed § 484.50(c)(4), patients and their representatives would also have the right to participate in, be informed about, and consent or refuse care.

Moreover, each patient would have the right to participate in and be informed about the patient-specific comprehensive assessment, including an assessment of the patient's goals and care preferences. We expect that this assessment would focus on goals and preferences that are specific to the delivery of home health care. Additionally, each patient would have the right to participate in and be informed about the care that the HHA will furnish based on the needs identified during the comprehensive assessment, establishing and revising that plan, the disciplines that will furnish care, the frequency of visits, identifying expected outcomes of care, and any factors that could impact treatment effectiveness. In accordance with proposed § 484.50(c)(4)(iii), each patient would also have the right to receive a copy of his or her individualized HHA plan of care to be kept in his or her home, including all updated plans of care, as described in proposed § 484.60. HHAs would be required at § 484.50(c)(4)(viii) to inform the patient about any changes in the care to be furnished in advance of those changes being made in the patient's plan of care. In addition to being involved in the care planning process, we would add a requirement at § 484.50(c)(5) that patients have the right to receive all of the services outlined in the plan of care. Additionally, we propose to retain the current requirements from current § 484.10(d), which concern the patient's right to the confidentiality of his or her clinical records, under proposed § 484.50(c)(6). In order to maintain confidentiality within the patient's home, as we are proposing at § 484.50(c)(4)(iii), we would expect an HHA to educate a patient and family about how to store the copy of the patient's plan of care in the patient's home.

Proposed § 484.50(c)(7), would retain the requirements of the current standard at § 484.10(e), Patient liability for payment. Patients would be informed about which services would be covered, which services might or might not be covered, and the patient's liability for payment. This patient liability requirement would be related to the home health advance beneficiary notice (ABN) and home health change of care notices; therefore, we propose to reference the current requirements at § 411.408(d)(2) and § 411.408(f). HHAs would be required to comply with all ABN requirements, including restrictions related to who may receive the ABN on the patient's behalf.

In accordance with the requirements of the Medicare provider agreement, HHAs must not discriminate against Medicare beneficiaries, and if a participating HHA accepts non-Medicare patients at any given level of acuity, it must also accept Medicare beneficiaries at a similar level of acuity as a condition of participating in the Medicare program. HHAs that provide services to non-Medicare patients while refusing services to Medicare patients in similar situations risk having their provider agreements terminated, in accordance with § 489.53(a)(2).

At proposed § 484.50(c)(8), we would retain the basic concept of the requirement at current § 484.10(e) regarding patient payment liabilities. A patient would have the right to receive proper written notice, in advance of a specific service being furnished, if the HHA believes that the service may be non-covered care; or in advance of the HHA reducing or terminating on-going care. We propose to revise this current requirement by cross-referencing the regulations regarding expedited reviews, found at 42 CFR part 405, subpart J. These requirements protect patients from unexpected bills for usually covered care, which may not be covered by Medicare in a particular instance, and ensures patient access to the expedited review process.

We would retain the current standard found at § 484.10(f), regarding the home health hotline at proposed § 484.50(c)(9). The home health hotline provides an important avenue for patients to register complaints against, or pose questions about, an HHA. Patients would still retain the right to be informed of the availability of the toll-free home health hotline in their state, including the telephone number and the hours of operation. The patients would be advised that the purpose of the hotline was to receive complaints or questions about local HHAs. Additionally, under § 484.50(c)(10), patients would be advised of the names, addresses, and telephone numbers for relevant Federally and State-funded consumer information, consumer protection, and advocacy agencies. HHAs should select agencies that have a public service mission and provide assistance free of charge, such as area Agencies on Aging, Aging and Disability Resource Centers, legal service programs, State Health Insurance Programs, and Adult Protective Services. HHAs would have the discretion to select, for inclusion in the list, those local agencies and organizations that are likely to be most appropriate for the needs of each HHA's unique patient population.

We also propose at § 484.50(c)(11), that patients have the right to be free from discrimination or reprisal for exercising their rights, whether by voicing grievances to the HHA or to an outside entity, such as those advocacy and protection agencies described above. Examples of discrimination or reprisal may include a reduction of current services or a complete discontinuation of services and discharge from the HHA.

Finally, we propose at § 484.50(c)(12) that patients have the right to be informed of their right to access auxiliary aids and language services, and to be provided instruction on how to access these services. We believe that making auxiliary aids and language services available to patients, to facilitate an understanding of their rights and to facilitate the provision of care throughout the care planning and care delivery process will improve the quality and effectiveness of the care that is delivered, and will improve the patient's experience of care as a whole.

We propose to add a new standard at § 484.50(d), which would mandate that all patients and representatives (if any), have the right to be informed of the HHA's policies governing admission, transfer, and discharge. This proposed standard would list the criteria by which an HHA could discharge or transfer a patient. The proposed criteria are designed to help prevent the untimely discharge of home health patients and ensure that patients are discharged or transferred only under appropriate circumstances. This proposed standard would require that the HHA inform its patients of its policies governing admission, transfer, and discharge in advance of the HHA providing care. Under this proposed standard, an HHA could only transfer, discharge, or terminate care for the following reasons: (1) When the HHA could no longer meet the patient's needs, based on the patient's acuity; (2) when the patient or payer could no longer pay for the services provided by the HHA; (3) when the physician and HHA agreed that the patient no longer needed HHA services because the patient's health and safety had improved or stabilized sufficiently; (4) when the patient refused HHA services or otherwise elected to be transferred or discharged (including if the patient elected the Medicare hospice benefit); (5) when there was cause; (6) when a patient died; or (7) when the HHA ceased to operate.

In accordance with the requirements of proposed § 484.50(d)(1), if the care needs of a patient exceeded the HHA's ability to provide services, the HHA

would be required to ensure that the patient received a safe and appropriate transfer to another care entity better suited to meeting the patient's needs. There are no regulations in the current CoPs that address these issues. However, this provision is consistent with the decision in *Lutwin v. Thompson* 361 F.3d 146 (2nd Cir. 2004) regarding the provision of notice when services are reduced or terminated.

Likewise, although current CMS guidance (Pub. L. 100–02, Chapter 7, Section 10.10, Discharge Issues) allows discharge for cause, there are no regulations in the current CoPs that address these issues. We are proposing to add § 484.50(d)(5) to permit discharge for cause if the patient's (or other persons in the patient's home) behavior is so disruptive, abusive, or uncooperative that the delivery of care to the patient or the ability of the HHA to operate effectively and safely is seriously impaired. Before discharging a patient for cause, the HHA would be required to advise the patient, the representative (if any), the physician who is responsible for the home health plan of care, and the patient's primary care practitioner or other health care professional who will be responsible for providing care and services to the patient after discharge from the HHA (if any) that a discharge for cause was being considered, make efforts to resolve the problem(s) presented by the patient's behavior or by other person(s) in the home (as applicable), or situation (such as a dangerous animal being loose in the home), document the problem(s) and efforts made to resolve the problem(s), and enter this documentation into its clinical records. Additionally, we propose that the HHA would be required to provide the patient and representative (if any), with contact information for other agencies or providers who may be able to provide care following the discharge. It would be incumbent upon the HHA to take all reasonable steps to resolve safety and noncompliance issues prior to taking steps to discharge a patient.

Given the vulnerability of home health patients and in the interest of patient safety, we propose a standard at § 484.50(e), ''Investigation of complaints,'' that would expand upon the current complaint investigation requirements at § 484.10(b)(5). Proposed § 484.50(e)(1)(i) would require the HHA to investigate complaints made by patients, representatives, caregivers, and families regarding treatment or care that is (or fails to be) furnished, is furnished inconsistently, or is furnished inappropriately. In addition, HHAs would be required to investigate allegations of mistreatment, neglect, or verbal, mental, psychosocial, sexual, and physical abuse, including injuries of unknown source, and/or misappropriation of patient property by anyone furnishing services on behalf of the HHA. This requirement would clarify that all patient complaints should be investigated by HHAs. Proposed § 484.50(e)(1)(ii) would require the HHA to document both the existence and the resolution of the complaint, while § 484.50(e)(1)(iii) would require the HHA to take immediate action to prevent further potential abuse while the complaint was being investigated. We believe that HHAs should be permitted the flexibility to establish their own policies and procedures for documenting and resolving complaints, and we would expect HHAs to consistently adhere to these policies and procedures.

Proposed § 484.50(e)(2) would require any HHA staff, regardless of whether they are employed directly or obtained under arrangements with another entity, to immediately report to the HHA administrator or other appropriate authorities any incidences of mistreatment, neglect, or abuse, and/or any misappropriation of patient property, which they have noticed during the normal course of providing services to patients. Since HHA staff is in a unique position to recognize signs of patient abuse in the home, this proposed requirement would serve to further ensure the health and safety of home health patients. ''Appropriate authorities'' may include, but are not limited to, state and local law enforcement, health care ombudsmen, and State survey agencies.

To address effective communication with patients who are LEP or have disabilities, we are proposing a new standard at § 484.50(f), ''Accessibility.'' We propose that information that is provided to patients would be provided in plain language, and in a manner that is both accessible and timely to the individual. For people with disabilities, providing access includes the use of accessible Web sites and the provision of auxiliary aids and services, such as qualified interpreters and alternate formats. For persons with LEP, providing access includes providing oral interpretation and written translations.

4. Comprehensive Assessment of Patients (Proposed § 484.55)

We propose to retain the majority of the substantive requirements of current § 484.55, with significant reorganization. We propose to retain the requirement that each patient be required to receive a patient-specific comprehensive assessment. We also propose to retain the requirement that, for Medicare beneficiaries, the HHA would be required to verify the patient's eligibility for the Medicare home health benefit, including the patient's homebound status, at the specified timeframes. Furthermore, we propose to retain all requirements related to the initial assessment visit at standard (a), as well as the completion of the comprehensive assessment requirements at standard (b).

We propose to establish a new standard (c), ''Content of the comprehensive assessment,'' that would incorporate much of the content currently set forth in the introductory paragraph of the CoP, the drug regimen review currently set forth in standard (c), and the incorporation of the OASIS data items requirement currently set forth at standard (e). We also propose new content requirements, such as an assessment of psychosocial and cognitive status, which we believe would provide for a more holistic patient assessment. We propose to require that the comprehensive assessment must accurately reflect the patient's status, and would assess or identify (as applicable) the following:

- The patient's current health, psychosocial, functional, and cognitive status;
- The patient's strengths, goals, and care preferences, including the patient's progress toward achievement of the goals identified by the patient and the measurable outcomes identified by the HHA;
- The patient's continuing need for home care;
- The patient's medical, nursing, rehabilitative, social, and discharge planning needs;
- A review of all medications the patient is currently using;
- The patient's primary caregiver(s), if any, and other available supports; and
- The patient's representative (if any).

The assessment would also be required to incorporate items from the information collection set out in the OASIS data set, using the language and groupings of the OASIS items, as specified by the Secretary.

We propose to retain the majority of the content of the requirements of current § 484.55(d), with one change. Currently § 418.55(d)(2) generally requires that an update of the comprehensive assessment must be completed within 48 hours of a patient returning home after a hospital admission. This fixed requirement does not allow ordering physicians to modify the time frame for the HHA to resume

its care. We believe that it is in the best interest of patients to allow for more physician discretion so that physicians can tailor the resumption of home health care to the specific needs of a patient. Therefore, we propose to revise § 484.55(d)(2) to allow for a physician-ordered resumption of care date as an alternative to the fixed 48 hour time frame.

5. Care planning, Coordination of Services, and Quality of Care (Proposed § 484.60)

Current regulations concerning the plan of care are set forth at § 484.18, ''Acceptance of patients, plan of care, and medical supervision.'' We propose to revise that requirement, as well as current § 484.14(g), ''Coordination of patient services,'' by creating a new condition of participation, ''Care planning, coordination of services, and quality of care'' at § 484.60. This section would specify that the HHA would have to provide the patient a plan of care that would set out the care and services necessary to meet the patient-specific needs identified in the comprehensive assessment, and the outcomes that the HHA anticipates would occur as a result of developing the individualized plan of care and subsequently implementing its elements. We propose five standards under this CoP, which we believe reflect and encourage the interdisciplinary approach to home health care delivery. We would reorganize the current standards to place the events in the care planning process in sequential order: (1) Plan of care at § 484.60(a); (2) conformance with physician orders at § 484.60(b); (3) review and revision of the plan of care at § 484.60(c); (4) coordination of care at § 484.60(d); and (5) discharge or transfer summary at § 484.60(e).

In this CoP, we propose to require that patients be accepted for treatment on the basis of a reasonable expectation that the patient's medical, nursing, rehabilitative, and social needs could be met adequately by the agency in the patient's place of residence. Each patient would receive an individualized written plan of care which would specify the care and services necessary to meet the patient's needs, including the patient and caregiver education and training that the HHA will provide, specific to the patient's care needs. A copy of this individualized plan would be provided to each patient and representative (if any), in accordance with the proposed patient rights requirements at § 484.50(c)(4)(iii). We believe that providing each patient with a copy of his or her plan of care will improve HHA-patient communications and enable patients to more thoroughly understand the care that they are to receive. We also believe that part of providing this information is teaching patients and their families how to protect the information in order to ensure their right to a confidential record, as would be required in proposed § 484.50(c)(6). The individualized plan of care would be revised or added to at intervals as necessary to continue to meet patient care needs.

We also propose that the plan of care include the patient-specific measurable outcomes which the HHA anticipates would result from its implementation. As described in proposed § 484.50(c)(4), the patient has the right to participate in his or her care planning, including the establishment of goals and outcomes of care. We would expect the plan of care to be reflective of the improvement, maintenance, and/or prevention goals and outcomes specific to each patient's condition. As noted in a recent update to the Medicare Benefit Policy Manual (CR 8458, *http://www.cms.gov/Regulations-and-Guidance/Guidance/Transmittals/Downloads/R179BP.pdf*), consistent with the settlement agreement in the case of Jimmo v. Sebelius, maintenance of the patient's current condition and prevention or slowing of further deterioration of the patient's condition may both warrant the use of skilled care provided under the Medicare home health benefit. All services furnished by the HHA for all purposes would be provided in accordance with accepted standards of practice.

Under proposed § 484.60(a)(1), Plan of care, we propose that all home health services furnished to patients would follow an individualized written plan of care, setting out, among other things, the frequency and duration of therapeutic interventions. The plan would be established, periodically reviewed, and signed by a doctor of medicine, osteopathy, or podiatric medicine acting within the boundaries of all applicable state laws and regulations. An evidence and outcome-based approach to patient care that can be understood by the patient and caregivers, with specificity of orders and adherence to best practice interventions, would provide a basis for the development of the optimal plan of care and goals. Patients participating in the shared decision-making model, where there is a mutually respectful exchange that recognizes the individuality of the patient and a process in which responsibility is divided among the patient, physician, and agency acting on physician orders, will better understand the goals of treatment. These patients are more likely to actively participate in the treatment process and achieve better treatment outcomes. (''A typology of preferences for participation in healthcare decision making,'' *http://www.pubmedcentral.nih.gov/articlerender.fcgi?artid=1637042*) The shared decision making model has been embraced in literature (''Decision-making in the physician–patient encounter: revisiting the shared treatment decision-making model'', *http://www.sciencedirect.com/science/article/pii/S0277953699001458;* ''Four Models of the Physician-Patient Relationship,'' JAMA (1992).; ''Physician Recommendations and Patient Autonomy: Finding a Balance between Physician Power and Patient Choice,'' *http://annals.org/article.aspx?articleid=710110*), and the Institute of Medicine has recommended including it in medical school curricula as a mechanism to improve care (Institute of Medicine, ''Improving Medical Education: Enhancing the Behavioral and Social Science Content of Medical School Curricula'' (2004)) (See also *brown.edu/.../Mod2SharedDecMaking/Teachingmats/Handout1SDMDefined.doc*). This standard would require that each patient's home health services be furnished under a written, patient-specific plan of care that would identify patient-specific measurable outcomes and goals selected jointly by the HHA and the patient.

We are soliciting public comments regarding methods to engage patients and the physicians who are responsible for their plans of care in the care planning and management process. Specifically, we are interested in ways to maximize the level of involvement of the physician who is most involved in the patient's care prior to admission to the home health agency, and who is responsible for overall treatment of the condition(s) that led to the need for home health care. We believe that the continual involvement of physicians may facilitate better transitions of care, improve patient outcomes, and reduce acute care admissions by clearly establishing (and updating) treatment goals and plans, and effectively delivering care that meets those goals. We are also interested in ways to facilitate communication between the HHA and other physicians and practitioners (such as nurse practitioners and physician assistants) who may be furnishing care for issues that are not directly connected to the issues being addressed by the HHA. Additionally, we are interested in ways

to facilitate communication with those physicians and practitioners who will be responsible for managing the patient's care after the patient is discharged from the HHA. We believe that actively soliciting input from these clinicians may help improve the transitions into and out of home health care.

The individualized plan of care would be required to include all pertinent diagnoses; the patient's mental, psychosocial, and cognitive status; the types of services, supplies, and equipment required; the frequency and duration of visits to be made; prognosis; rehabilitation potential; functional limitations; activities permitted; nutritional requirements; all medications and treatments; safety measures to protect against injury; patient and caregiver education and training to facilitate timely discharge or referral; patient-specific measurable outcomes/goals; and any additional interventions/orders the HHA or physician chose to include. We note that it is important for HHAs to consider the social determinants that may contribute to poor health outcomes, as many current approaches to prevention, treatment, and disease control are limited to an individual's diagnosis and related risk factors. There is often a lack of awareness and/or assessment of the factors that may enhance or create a barrier to good health outcomes. Factors such as low income, lack of access to a primary care practitioner, poor nutrition due either to poor choices and/or lack of availability of healthy and affordable food items (for example, ''food deserts''), and other environmental, social, and/or emotional issues may affect compliance and/or adherence with medical care and treatment. The HHA staff must be aware of the social and/or economic circumstances in which people are born, grow up, live, work, and age, as well as what are in place for their overall health care. This contributes to the HHAs ability to identify state, local, and/or federal resources the patient may need in order to design a holistic plan of care that may result in improved health outcomes, care, and treatment results. For example, if an elderly, low income, insulin dependent diabetic patient is not able to afford regular meals, the home health agency staff may refer to local resources such as a food bank, meals on wheels, or other resource. Diabetic patients must have regular meals for blood sugar control. Lack of awareness and intervention related to this factor may result in a poor outcome for the patient. The Underserved Populations (UP) Network provides resources, tools, and webinars for agencies via *http://www.homehealthquality.org/UP.aspx* focused on improving outcomes.

In order to implement the individualized physician-prescribed plan of care, agencies often develop a discipline-oriented plan, wherein each specific service being provided (for example, physical therapy, occupational therapy, and speech-language pathology) sets out findings, treatment goals, and interventions planned in order to achieve those goals in compliance with the physician's orders.

If HHA services are initiated following a patient's hospital discharge, we propose to require that the HHA must include an assessment of the patient's level of risk for hospital emergency department visits and hospital re-admission. In order to establish the patient's risk level, we believe that HHAs would identify the patient's specific risk factors. We propose that HHAs would be required to include in the patient's individualized plan of care all appropriate interventions that are necessary to address and mitigate those identified risk factors that contribute to the HHA's establishment of a particular risk level for a patient. Resources to assist HHAs in assessing re-hospitalization risks are available at *http://www.homehealthquality.org.*

Proposed § 484.60(b), ''Conformance with physician orders,'' would provide that drugs, services, and treatments be administered only as ordered by the physician who is responsible for the home health plan of care, a requirement that is currently set forth at § 484.18(c). This proposed standard also would reflect the vaccination policies of the final rule with comment period published in the **Federal Register** on October 2, 2002 (67 FR 61808), also set forth at § 484.18(c). That rule provided an exception from the physician order requirement for the administration of influenza and pneumococcal polysaccharide vaccines. The current requirement allows influenza and pneumococcal polysaccharide vaccines to be administered based on a HHA policy developed in consultation with a physician, and after an assessment for contraindications. We propose to retain this requirement at § 484.60(b)(2). Proposed § 484.60(b)(4) would maintain the requirement that only personnel authorized by applicable state laws and regulations and the HHA's internal policies, may accept verbal orders from physicians. We would maintain the intent of the current requirement at § 484.18(c) by proposing at § 484.60(b)(5) that a registered nurse (RN) or other qualified practitioner who is licensed to practice by the state must document the order in writing in the patient's clinical record, with a signature, time, and date. As described in the definitions section, for purposes of this rule, verbal orders are those physician orders that are spoken to qualified medical personnel. Verbal orders would also have to be recorded in the patient's plan of care. Reliance on a HHA to maintain physician orders in written form would protect patients by ensuring that the plan of care incorporated all services and treatments ordered by the physician who is responsible for the home health plan of care. If a physician faxed orders or otherwise transmitted them through other electronic methods from his or her office, those orders would be required to be included in the patient's clinical record and plan of care. The proposed rule would provide an opportunity for an HHA to establish policies defining who is authorized to accept physicians' verbal orders. The categories of practitioners identified as being authorized to accept physicians' verbal orders by the HHA would be required to be consistent with state requirements.

We would also require, under proposed § 484.60(b)(5), that verbal orders be authenticated, dated, and timed by the physician according to the HHA's internal policies and applicable state laws and regulations. Many states in their licensure requirements, and HHAs in their policies, have established timeframes for physician countersignature of verbal orders in accordance with the agency's risk tolerance, legal liability, and logistical concerns. Although timeframes may vary, we support state requirements and HHA flexibility in this regard, and do not propose a separate timeframe requirement for physician countersignature for verbal orders for HHA providers. In addition to all applicable state requirements and agency policies, HHAs should also be aware of CMS payment reimbursement requirements, which state that a final claim for each episode of care may not be submitted until all orders are signed.

Under proposed § 484.60(c), ''Review and revision of the plan of care,'' we propose that the individualized plan of care be reviewed and revised by the physician who is responsible for the HHA plan of care and the HHA as frequently as the patient's condition or needs requires, but no less frequently than once every 60 days, beginning with the start of care date. While the provision would require review and revision at least every 60 days, we

expect that physicians and agency staff would communicate more frequently if a patient's condition warranted it. To ensure patient health and safety, we propose that the HHA promptly alert the physician who is responsible for the HHA plan of care to any changes in the patient's condition or needs that would suggest that measurable outcomes are not being achieved and/or that the HHA should alter the plan. At § 484.60(c)(2), we propose to require that the HHA revise the plan of care, as necessary, to reflect current information from the patient's updated comprehensive assessment, and to record the patient's progress towards meeting the patient-specific measurable outcomes and goals selected by the HHA and patient, as specified in the plan of care. It would be the HHA's responsibility to make certain that all aspects of the revised plan of care were implemented.

Furthermore, we propose that it would be the HHA's responsibility to notify the patient, representative (if any), caregivers, and the physician who is responsible for the HHA plan of care, when the individualized plan of care is updated due to a significant change in the patient's health status. We also propose that, when the HHA makes updates related to plans for the patient's discharge, the HHA would communicate these changes with the patient and representative, caregivers, the physician who is responsible for the HHA plan of care, and the patient's primary care practitioner or other health care professional who will be responsible for providing care and services (if any) to the patient after discharge from the HHA. We believe that communicating with the patient and those who will be continuing to furnish services to the patient after home health services are discontinued regarding changes related to plans for discharge prior to the discharge would allow time for important discussions, preparations, and coordination activities. We note that the patient's primary care practitioner or other health care professional who will be responsible for providing care and services to the patient after discharge from the HHA may be a specialist, a nurse practitioner, a physician assistant, or another type of medical service. In proposed § 484.60(d), ''Coordination of care,'' we propose to require that the HHA must integrate services, whether services are provided directly or under arrangement, to assure the identification of patient needs and factors that could affect patient safety and treatment effectiveness, the coordination of care provided by all disciplines, and communication with the physician. The proposed standard at § 484.60(d)(2) would also require the HHA to coordinate care delivery to meet each patient's needs, and to involve the patient, representative (if any), and caregiver(s), as appropriate, in the coordination of care activities. It is our goal to support and foster collaboration and communication among the professional disciplines responsible for caring for a patient. It would be the agency's responsibility to determine the degree of coordination necessary to meet the needs of the patient, and to develop an approach that best implemented the coordination of the patient's care. It would also be the agency's responsibility to determine the most appropriate and effective way to provide evidence during a survey that these care coordination activities were occurring on a continual basis for every patient, and that the agency was assessing the impact of care coordination activities on patient care utilizing the HHA's quality assessment and performance improvement program, if appropriate.

Finally, under proposed § 484.60(d)(3), we propose that the HHA ensure that each patient and caregiver, where applicable, receive ongoing training and education from the HHA regarding the care and services identified in the plan of care that the patient and caregiver are expected to implement. This proposed requirement is consistent with those in the current payment-related regulations at § 409.42(c)(1). Ongoing patient training and education includes all periods of time that the patient is receiving care from an HHA, from admission through the day of discharge. The training would include educating the patient about his or her post HHA discharge care duties and the need (as appropriate) to follow-up with the patient's primary care practitioner or other health care professional who will be responsible for providing care and services to the patient after discharge from the HHA. The HHA would be required to ensure that each patient and caregiver receives any training necessary to achieve the patient-specific measurable outcomes outlined in the plan of care, which are necessary for a timely discharge from the HHA. Each skilled professional would be expected to be responsible for educating the patient and/or caregiver about the care and services as appropriate to the discipline.

Under Medicare's home health benefit, when applicable, HHAs are expected to provide education and training to their patients. For instance, HHAs are expected to provide education and training to help insulin dependent diabetes mellitus (IDDM) patients and other diabetic patients self-manage their diabetes. Many homebound patients with diabetes require short-term management for skilled observation, assessment, teaching, and training activities. If the patient is unable to learn to self-manage, including self-administer medication, the HHA would be expected to provide the teaching and training to a care-giver or family member. We also encourage HHAs to take advantage of the help and support available from organizations that teach innovative techniques associated with diabetes self-management training (DSMT). Collaborating with these organizations may allow HHAs to achieve greater success in enabling patients and/or their caregivers to better achieve self-management, and may provide the HHAs with innovative care suggestions regarding their patients.

At § 484.60(e), Discharge or transfer summary, we propose that HHAs would compile a discharge or transfer summary for each discharged or transferred patient. The summary would be required to include the following:

- The initial reason for referral to the HHA,
- A brief description of the patient's HHA care,
- A description of the patient's clinical, mental, psychosocial, cognitive, and functional status at the start of care,
- A list of all services provided by the HHA to the patient,
- The start and end dates of HHA care,
- A description of the patient's clinical, mental, psychosocial, cognitive, and functional status at the end of care,
- The patient's most recent drug profile,
- Any recommendations for follow-up care,
- The patient's current individualized plan of care, and
- Any additional documentation that will assist in post-discharge or transfer continuity of care, or that is requested by the receiving practitioner or facility.

We propose to include these elements in the discharge or transfer summary to provide the clear and comprehensive summary that is necessary for effective and efficient follow-up care planning and implementation as the patient transitions from HHA services to another appropriate health care setting.

6. Quality Assessment and Performance Improvement (QAPI) (Proposed § 484.65)

Beginning with the 1999 Institute of Medicine (IOM) report entitled ''To Err is Human: Building a Safer Health System,'' the focus in health care changed from an incident-based, after-the-fact quality improvement focus to a pre-emptive, proactive quality assessment and performance improvement focus. CMS evaluated and responded to the recommendations in the IOM report through a coordinated effort called, ''Doing What Counts for Patient Safety: Federal Actions to Reduce Medical Errors and Their Impact.'' As part of our effort to reduce medical errors, and improve the quality of health care in all settings, we propose to replace two current HHA CoPs, § 484.16, ''Group of professional personnel,'' and § 484.52, ''Evaluation of the agency's program,'' with a single, new CoP, at § 484.65, ''Quality Assessment and Performance Improvement'' (QAPI). Overall, this proposed QAPI CoP is consistent with the QAPI program requirements for end stage renal disease facilities (§ 494.110), hospitals (§ 482.21), hospices (§ 418.58), organ procurement organizations (§ 486.348), and transplant centers (§ 482.96).

We believe that the proposed QAPI CoP would provide an opportunity for HHAs to develop a program that would enable them to identify areas for improvement which would help to ensure quality care and patient safety. In addition, we are emphasizing that the HHA would be required to take actions to prevent and reduce medical errors as part of their overall QAPI program. We have organized this new CoP into the following five standards: (1) Program scope; (2) Program data; (3) Program activities; (4) Performance improvement projects; and (5) Executive responsibilities.

The current CoPs rely on a problem-oriented, external, after the fact (occurrence) approach to resolve patient care issues. The proposed QAPI CoP would require proactive performance monitoring through an effective, ongoing, agency-wide, data-driven QAPI program that is under the supervision of the home health agency governing body.

In proposed § 484.65(a), ''Program scope,'' we propose that this data-driven QAPI program would be capable of showing measurable improvement in indicators for which there was evidence that the improvement led to improved health outcomes (for example, reduced hospitalizations and readmissions), safety, and quality of care for patients. The HHA would also have to measure, analyze, and track quality indicators, including adverse patient events, as well as other indicators of performance so that the agency could adequately assess its processes, services, and operations.

We propose, at § 484.65(b), ''Program data,'' that a HHA's QAPI program utilize quality indicator data, including measures derived from the OASIS (CMS provided reports), where applicable, and other relevant data, to assess the quality of care provided to patients, and identify and prioritize opportunities for improvement. Quality assessment efforts, including data collection, should focus on high priority safety and health conditions, and other goals identified by a HHA. The tools, collected data, and associated quality measures would be used by the HHA to monitor the effectiveness and safety of its services, as well as the quality of its care. In addition, the HHA would use the quality measures that are calculated based on the data collected to identify opportunities for improvement. We also propose that the HHA's governing body would be responsible for approving the frequency of, and level of detail to be used in data collection. This level of flexibility would allow HHAs to establish data collection and analysis policies and procedures that reflect currently accepted standards and practices.

At § 484.65(c), Program Activities, we would require a HHA's QAPI program activities to focus on high risk, high volume, or problem-prone areas of service, and to consider the incidence, prevalence, and severity of problems in those areas. We also propose that the HHA immediately correct any identified problems that directly or potentially threaten the health and safety of patients. Additionally, the HHA's QAPI activities would have to track incidents and adverse patient events, as well as analyze those events, so that preventive actions and mechanisms could be implemented by the HHA. We also propose that after steps have been taken to improve an area of concern, the HHA would continue to monitor the area in order to assure that improvements were sustained over time.

Proposed § 484.65(d), Performance improvement projects, would require that the HHA's performance improvement projects, conducted at least annually, reflect the scope, complexity, and past performance of the HHA's services and operations. An agency would need to focus on those areas of past performance which have proven to be problematic for the HHA over time or areas where there was clear evidence of poor patient outcomes, as well as areas of high-risk and high-volume. High-risk and high-volume areas will vary based on a HHA's patient population and other unique characteristics. For example, wound care could be a high-risk area for a HHA because the HHA does not perform the care very often, and thus may not be up-to-date on the latest techniques. Likewise, wound care could be a high-volume area for another HHA with a large number of patients requiring wound care services, increasing the likelihood of a problem occurring due to the sheer number of wound care visits that would occur. Data gathered either through the OASIS data set or through other measurement data collection tools, and subsequent analysis of the data, would be used to identify these areas. Within this standard, we also propose that the HHA document the QAPI projects undertaken, the reasons for conducting these projects, and the measurable progress achieved.

Finally, under proposed § 484.65(e), ''Executive responsibilities,'' we would require that the HHA's governing body assume responsibility for the agency's QAPI program. This subsection would require that the governing body assume the overall responsibility for ensuring that the QAPI program reflected the complexity of the HHA and its services, involved all services (including those provided under contract or arrangement), focused on indicators related to improved outcomes, and took actions that addressed the HHA's performance across the spectrum of care, including the prevention and reduction of medical errors. In the opening paragraph of § 484.65 we also propose to require the HHA to maintain documentary evidence of its QAPI program and to demonstrate its operation to CMS during the survey process.

The governing body would be required to define, implement, and maintain a program for quality improvement and patient safety that was ongoing and agency-wide. The governing body would be required not only to ensure that performance improvement efforts were prioritized, but that they were also evaluated for effectiveness. We note that it is the governing body which would be ultimately responsible for establishing the HHA's expectations for patient safety through an agency-wide QAPI program. Therefore, we propose that the governing body establish clear expectations for patient safety. We also propose that the governing body would appropriately address any findings of fraud or waste in order to assure that

resources are appropriately used for patient care activities and that patients are receiving the right care to meet their needs.

We believe small and mid-size HHAs would be able to effectively implement this condition as easily as larger HHAs. The proposed QAPI CoP would provide HHAs with enough flexibility to implement the quality assessment and performance improvement process without inordinate expenditure of capital or human resources. An HHA could also use outside resources to assist in development and support of its QAPI program. Each HHA's QAPI program should be individualized to reflect the size, scope, and complexity of its services and patient population. Therefore, we do not believe there is a need to differentiate our expectations for QAPI between small-to-mid-size HHAs and larger HHAs.

We have also chosen not to be prescriptive in this requirement because every HHA is different, and mandating ''a one-size-fits-all,'' process-oriented quality assessment and performance improvement program would not be beneficial to the patients or the HHA. Each HHA would be expected to conduct its QAPI program in a way that best meets its needs and the needs of that HHA's patients. HHAs would be able to utilize data from the OASIS data set through the risk-adjusted outcome-based quality improvement (OBQI), outcome-based quality management (OBQM), and process based quality improvement (PBQI) reports. Case-mix-adjusted outcome reports give agencies a ''snapshot'' of their individual agency's performance. The OASIS data set provides much of the necessary data items for CMS and HHAs to measure outcomes, potentially avoidable events, and patient/agency risk adjustment factors and for CMS to generate OBQI, OBQM, and PBQI reports. (The Outcome-Based Quality Improvement (OBQI) Manual (September 2002) and CASPER Reporting Application are located in the download section of CMS' HHQI OASIS OBQI Web page at *http://www.cms.gov/HomeHealthQualityInits/16_HHQIOASISOBQI.asp#TopOfPage* and *http://www.cms.gov/HomeHealthQualityInits/18_HHQIOASISOBQM.asp#TopOfPage*. The PBQI Manual (May 2010) is located in the ''downloads'' section of CMS'OASIS PBQI/Process Measures Web page section at *http://www.cms.gov/HomeHealthQualityInits/15_PBQIProcessMeasures.asp#TopOfPage*). The OBQI, OBQM, and PBQI reports can be used to assess the quality of care at HHAs and provide information to assist them in ongoing quality improvement.

In addition to these resources, there are other existing resources already in place through *http://www.homehealthquality.org* that support issues addressed in this proposed CoP. The Home Health Quality Initiative (HHQI) is part of the Quality Improvement Organization program established by CMS. Established in 2007, its goal is to improve the quality of home care services patients receive as measured by improvement in selected publicly reported and other clinical measures. Participation in the HHQI is free to all Medicare-participating HHAs. Participating HHAs have access to many resources that may aide in their QAPI efforts, such as best practice intervention packages that offer practical applications of quality improvement strategies to improve performance, individualized data reports via a secure online portal to assist with measuring progress, networking and educational opportunities via webinars scheduled at least monthly, and prompt assistance to address needs and questions. In particular, the HHQI provides resources related to falls prevention, flu and pneumonia vaccinations, oral medication management, and patient self-management.

Through the survey process, we intend to assess whether HHAs have all of the components of a QAPI program in place. Surveyors would expect HHAs to demonstrate, with the objective data from the OASIS data set and other sources available to the HHA, that improvements had taken place with respect to actual care outcomes, processes of care, patient satisfaction levels and/or other quality indicators. Additionally, surveyors would expect the HHA to demonstrate that all disciplines are involved in its QAPI program, consistent with the requirements of proposed § 484.75(c), below.

We believe that physician involvement in efforts to improve the outcome of patient care is vital and, as previously noted, we have addressed this issue by proposing the physician involvement requirement at proposed § 484.60, ''Care planning, coordination of services, and quality of care.'' We have also addressed this issue by requiring all HHA skilled professionals, which would include physicians employed by or under contract with the HHA, to participate in the HHA's QAPI program (see proposed § 484.75). Likewise, we encourage each HHA to consider the voluntary input of physicians who are not employed by or under contract with the HHA in designing, implementing, and evaluating its QAPI program. Physicians not employed by or under contract with the HHA may be in a unique position to provide a HHA's management and care delivery team with structured feedback and insight on ways that performance could be improved. We believe it would be overly burdensome and beyond the scope of these regulations to require non-employee and non-contract physicians to participate in specific QAPI activities. However, in developing an effective QAPI program, HHAs have found that including a physician in the planning and organization phase has helped to focus and refine the QAPI program.

7. Infection Prevention and Control (Proposed § 484.70)

In the current HHA CoPs, there is no requirement for an HHA-wide infection control program; however the current regulation at § 484.12(c) states that the HHA and its staff must comply with accepted professional standards and principles that apply to professionals furnishing services in an HHA. Infection control practices are part of accepted professional standards and principles, and thus should not be new to HHAs. We are proposing to establish a new CoP at § 484.70, ''Infection prevention and control,'' because we believe that it is appropriate to address this important issue as a distinct part of the regulatory process. We would organize this new condition under the following three standards: (1) Prevention, (2) control, and (3) education.

The effects of infectious and communicable diseases on patient health are significant. In response to this issue, the health care industry developed guidelines and recommendations for managing infection control programs that include health care settings. (''Requirements for infrastructure and essential activities of infection control and epidemiology in out-of-hospital settings: A Consensus Panel report'' Association of Professionals in Infection Control (APIC) and the Society for Healthcare Epidemiology of America (SHEA), American Journal of Infection Control 27 (1999)) Additionally, accreditation organizations such as the Joint Commission responded to the issue of infection control by designing new infection control standards for, among others, home care providers. Other accrediting bodies have also chosen to include infection control requirements in their home care standards as well. Because of the negative impact on

patient health and safety posed by infectious and communicable diseases, and the significant amount of attention generated by this issue, we believe that HHAs need to address infection prevention and control in a more comprehensive manner.

We recognize that a HHA cannot be entirely responsible for the maintenance of a completely infection-free environment in an individual's home (where there are variables beyond the control of the HHA). However, by following ''current best practices'' (for example, following the standard precaution of wearing gloves when handling blood or blood products) in implementing the plan of care, the potential risks of infectious and communicable diseases can be greatly reduced for patients, families, and staff. We propose in § 484.70(a) that HHAs follow infection prevention and control best practices, which include the use of standard precautions, to curb the spread of disease.

Under proposed standard § 484.70(b), ''Control,'' we would expect the HHA to maintain a coordinated agency-wide program for the surveillance, identification, prevention, control, and investigation of infectious and communicable diseases. (Also see ''Definitions for Surveillance of Infections in Home Health Care,'' February 2008, *http://www.apic.org/AM/Template.cfm?Section=Search&section=Surveillance_Definitions&template=/CM/ContentDisplay.cfm&ContentFileID=9898*.) Many states have rules requiring reporting of certain communicable diseases to the department of health. In turn, the department of health typically conducts investigations. We would expect HHAs to work in conjunction with their respective health departments, who work in conjunction with the CDC, when developing and implementing their programs.

Additionally, under this proposal, the program would be expected to be an integral part of the agency's QAPI program. As part of the QAPI program, the infection prevention and control program would identify infectious and communicable disease problems that affect the provision of home health services, track patterns and trends, establish a corrective plan, and monitor for improvement and effectiveness of corresponding interventions.

Because infection prevention and control education is crucial to preventing the spread of communicable diseases, we are proposing an education standard within this CoP at § 484.70(c). HHAs would be expected to provide education on ''current best practices'' to staff, patients, and caregivers. This could be accomplished through in-service training for staff, and through the use of printed material, instructional videos, and in-home demonstration for patients and their families/caregivers. The training provided to patients and caregivers should be specific to their individual needs, such as safe practices for performing assisted monitoring of blood glucose as part of typical diabetes management. (See Infection Prevention during Blood Glucose Monitoring and Insulin Administration at *http://www.cdc.gov/injectionsafety/blood-glucose-monitoring.html*). The exact content and frequency of staff, patient, and caregiver education would be left to the discretion of individual HHAs, as established in their policies and procedures.

The proposed condition would allow the HHA flexibility in meeting its prevention, control, and education standards. For example, the amount of staff education time needed for infection control would depend on both staff experience and the patient population. While we would expect ''current best practices'' to be followed, we are not proposing any specific approaches to meeting this requirement; readers should visit the CDC Web site at *http://www.cdc.gov/HAI/settings/outpatient-care-guidelines.html* for more information about core infection control practices that apply to all outpatient health care settings.

We believe that this proposed infection control CoP follows, and is consistent with, the functions of infection control as defined in the APIC/SHEA Consensus Panel report. The report recommended that health care providers intervene directly to prevent infections; obtain and manage critical data and information, including surveillance for infections; develop and recommend policies and procedures; and educate and train health care workers, patients, and nonmedical caregivers. Further, we believe that the three-pronged approach of prevention, control, and education, as outlined in the proposed standards under this CoP, would accomplish the three principal goals of infection control as presented in the Consensus Panel report. These three goals are: (1) Protect the patient; (2) protect the health care worker (and others in the health care environment); and (3) accomplish the previous two goals in a manner that is timely, efficient, and cost-effective whenever possible. By maintaining an effective infection prevention and control program that is also an integral part of a QAPI program, a HHA would provide clear evidence of its efforts to minimize the spread of infectious and communicable diseases.

8. Skilled Professional Services (Proposed § 484.75)

This proposed new condition would consolidate and revise current conditions at § 484.30, ''Skilled nursing services''; § 484.32, ''Therapy services''; and § 484.34, ''Medical social services''; and set forth the requirements for skilled professional services. Instead of specifically identifying tasks, we would broadly describe the expectations of the skilled professionals who participate in the interdisciplinary team approach to home health care delivery. Specifically, we would reduce the regulation's focus on administrative agency process requirements and shift the focus to outcomes of care. Skilled professionals, within this context, would provide services to HHA patients directly as employees of the HHA or under a contractual agreement. We propose that skilled professionals actively participate in the coordination of all aspects of care where appropriate. By doing so, they would become more aware of the need to function as part of an interdisciplinary team.

We have organized this proposed condition into three areas: (1) Provision of services by skilled professionals; (2) responsibilities of skilled professionals; and (3) supervision of skilled professional assistants. Skilled professional services, as proposed in § 484.75(a), include physician services, skilled nursing services, physical therapy, speech-language pathology services, occupational therapy, and medical social work services. This is consistent with the description of the home health services under the hospital insurance benefits at part 409, subpart E. Provision of services by skilled professionals, as proposed in § 484.75(b), would specify that skilled professional services may only be provided by health care professionals who meet the appropriate criteria spelled out in proposed § 484.115, ''Personnel qualifications,'' and who practice according to the HHA's policies and procedures.

We propose in § 484.75(b), ''Responsibilities of skilled professionals,'' that skilled professionals who provide services to HHA patients directly, or under arrangement, participate in coordinating all aspects of care, including:

- Assuming responsibility for the ongoing interdisciplinary assessment and development of the individualized plan of care in partnership with the patient, representative (if any), and caregiver(s);

- Providing services that are ordered by the physician as indicated in the plan of care;
- Providing patient, caregiver, and family counseling;
- Providing patient and caregiver education;
- Preparing clinical notes;
- Communicating with the physician who is responsible for the home health plan of care and other health care practitioners (as appropriate) related to the current home health plan of care; and
- Participating in the HHA's quality assessment and performance improvement program and HHA-sponsored in-service training.

We believe that an interdisciplinary approach is crucial for meeting the needs of home health patients.

In addition to the requirements for licensed professional services described above, we propose to include a requirement governing the supervision of skilled professional assistants at § 484.75(c). This would require a RN identified by the HHA to supervise the care provided by nurses such as licensed vocational nurses and licensed practical nurses. We also propose that all rehabilitative therapy assistant services would be provided under the supervision of a physical therapist (PT) or occupational therapist (OT) who meets the appropriate requirements of § 484.115. Furthermore, we believe that it is essential for all medical social services to be provided under the overall supervision of a MSW-prepared social worker who meets the requirements of § 484.115.

9. Home Health Aide Services (Proposed § 484.80)

Section 1891(a)(3)(D) of the Act requires the Secretary to establish minimum standards for home health aide training and competency evaluation programs. Section 1861(m)(4) of the Act requires Medicare-covered home health aide services to be furnished only by individuals who have successfully completed a training program approved by the Secretary. Currently, the CoP concerning home health aide services is set forth at § 484.36. In this rule, we propose to retain the current requirements while making clarifying and organizational changes to § 484.36. As part of our reorganization, this revised condition would be re-located at proposed § 484.80.

We also propose to incorporate into this new CoP the provisions concerning the qualification requirements for becoming a home health aide, currently located at § 484.4. In this proposed rule, these requirements would now be organized as nine standards under proposed § 484.80: (1) Home health aide qualifications; (2) content and duration of home health aide classroom and supervised practical training; (3) competency evaluation; (4) in-service training; (5) qualifications for instructors conducting classroom and supervised practical training; (6) eligible training and competency evaluation organizations; (7) home health aide assignments and duties; (8) supervision of home health aides; and (9) individuals furnishing Medicaid personal care aide-only services under a Medicaid personal care benefit.

As noted above, provisions concerning the qualifications for home health aides are set forth at current § 484.4, Personnel qualifications. We believe these specific qualifications would be more appropriately located in the section covering home health aide services. At proposed § 484.80(a)(1), we would specify the necessary requirements for an individual to be considered a qualified home health aide. A qualified home health aide would be an individual who has successfully completed one of the following: (1) A training and competency evaluation program that meets the requirements described in § 484.80(b) and § 484.80(c); or (2) a competency evaluation program that meets the requirements described in § 484.80(c); or (3) a nurse aide training and competency evaluation program that is approved by the state as meeting the requirements of § 483.151 through § 483.154 (State review and approval of nurse aide training and competency evaluation programs) and is currently listed in good standing on the state nurse aide registry; or (4) a state licensure program that meets the requirements described in § 484.80(b) and § 484.80(c).

In light of the high turnover rate within the home health aide work force, we believe that flexibility in qualification requirements would enable HHAs to recruit qualified aides from a wider pool of employee prospects. While the duties of nurse aides and home health aides are quite similar, the main difference is the environment in which the aides perform the services. An agency's internal policies and procedures would govern the home health aide orientation training to reflect the differences in duties, and the environments in which the duties are performed. HHAs would be free to add additional aide training requirements as desired in order to address any specialized needs within the HHA's patient population (for example, additional skills related to dealing with pediatric patients for HHAs that have pediatric programs).

Under proposed § 484.80(a)(2), we would retain the intent of the current requirement at § 484.4, and specify when a home health aide is deemed to have completed a program (as specified in proposed § 484.80(a)(1) above). This determination would be based on whether, since the most recent completion of a program, there was a period of 24 months or greater since completion of the last home health aide training during which none of the services furnished by the aide were for compensation. We would also stipulate that, if there had been a 24-month or greater lapse in furnishing services, the aide would need to complete another program before the home health aide can provide services, as specified in § 484.80(a)(1).

In this rule, we propose to retain the requirements for content and duration of training from current § 484.36(a). However, we have clarified this section. We propose, at § 484.80(b), to set forth the requirements for training content and its duration, training methods (classroom and practical), and training documentation. Proposed § 484.80(b)(1) and (2) regarding home health aide classroom and practical training instructor and duration requirements would be the same as in the current rule. The current regulation at § 484.36(a) contains provisions regarding qualifications for instructors of home health aide training and specifies which organizations are eligible to provide training. We would retain and reorganize these two provisions into two separate standards at § 484.80(e) and § 484.80(f), respectively. In addition, we would remove the definition for ''supervised practical training'' which appears in the current standard, and move it to a more appropriate place under § 484.2, Definitions.

The current requirement at § 484.36(a)(1)(i) requires that ''communication skills'' be part of the content of training for home health aides. Since home health aides are members of the interdisciplinary team and often visit a patient multiple times each week, they are in a position to observe changes in a patient's status and note the needs that are crucial and relevant to future treatment decisions for that patient. As such, home health aides should be able to report and document these changes in an appropriate manner to ensure that observations of a patient's status are described accurately to ensure optimal care. Therefore, in this proposed rule,

we would require at § 484.80(b)(3)(i) that communication skills include the aide's ability to read, write, and verbally report clinical information to patients, representatives, and caregivers, as well as to other HHA staff. The intent of this proposed change is to ensure that home health aides would be able to communicate effectively with patients, caregivers, and HHA staff. We would not specify the primary language for employees of HHAs because we recognize that many languages may exist within a community. However, we believe that it is important that the HHA attempt to match patients with staff relative to their abilities to communicate with one another.

We propose to add a new skill requirement related to recognizing and reporting changes in skin condition, including pressure ulcers. Home health aides are often the staff members who have the most frequent in-person contact with patients, and are therefore more likely to be in a position to notice changes in skin condition and early stage pressure ulcers. Early identification and reporting by home health aides would enable early intervention by the HHA to treat and reverse such changes. We believe that this early intervention would be beneficial to patients.

At § 484.80(b)(4), we propose to retain the current provision at § 484.36(a)(3) with minor revisions. This provision would require the HHA to maintain documentation that the requirements for content and duration of home health aide classroom and supervised practical training have been met. Similarly, we propose to retain the HHA documentation requirement currently set out at § 484.36(b)(5), which requires the HHA to document that the requirements for both the competency evaluation and in-service training have been met. However, as noted above, we are now proposing to reorganize the current standard at § 484.36(b) into two separate standards, § 484.80(c) Competency evaluation, and § 484.80(d) In-service training. Therefore, we propose to incorporate a documentation provision, which would require the HHA to document that the requirements of the standard have been met.

We propose to address various requirements for the competency evaluation of home health aides in § 484.80(c). We propose to retain the requirement currently found at § 484.36(b)(1), which states that an individual may furnish home health aide services on behalf of an HHA only after the successful completion of a competency evaluation program as described in that section.

As noted in the previous section, we propose to better define the term ''communication skills,'' and would now require communication training as part of the home health aide training program (§ 484.80(b)(3)(i)). We also propose to include this skill among the subject areas which would be evaluated by observation of the home health aide performing the tasks.

An effective way to assess aide competency is by observing the performance of the aide with a patient. Direct observation of the aide providing services to a patient would provide assurance that the aide has knowledge and understanding of the task at hand. We believe it would be acceptable to conduct aide training on a mannequin, and to conduct a competency evaluation on a ''pseudo-patient.'' However, the pseudo-patient for the competency evaluation would have to be an individual, such as another aide or volunteer, whose age is representative of the primary population served by the HHA. The following skills would be evaluated: Communication skills, reading and recording vital signs, personal hygiene techniques, safe transfer techniques, and normal range of motion and positioning criteria (specified under paragraphs (b)(3)(i), (b)(3)(iii), (b)(3)(ix), (b)(3)(x), and (b)(3)(xi)). The skills would be evaluated by observing the aide's performance carrying out the task with a patient or volunteer. The task would be required to be carried out to completion to assure that the aide was capable of performing tasks thoroughly, correctly, and independently. In accordance with proposed § 484.80(c)(2), the competency evaluation described in this paragraph may be offered by any organization, except an HHA that has been subject to certain corrective actions as described in proposed paragraph (f) of this section.

Section 484.80(c)(3) would maintain the current requirement that a RN must perform the competency evaluation. In addition to the RN, we are now proposing that the competency evaluation be done in consultation with other skilled professionals, as appropriate, since we believe it is essential that a home health aide's competency be demonstrated in each specific task performed. However, we continue to believe that it is necessary that a RN actually perform the competency evaluation. Since we depend upon a RN to provide the foundation of home health aide training, it is necessary to use a RN to evaluate the skills learned in that training.

This rationale for the use of a RN in performing the competency evaluation is also the basis for the proposed change to the current regulation at § 484.36(b)(4)(i), which requires that if a home health aide is going to perform a task for which he or she was rated ''unsatisfactory,'' it must be performed under the supervision of a licensed nurse (either a licensed practical nurse or a RN) until he or she achieves an evaluation of ''satisfactory.'' We would modify this requirement at § 484.80(c)(4) by requiring that the task be performed under the supervision of a RN, not a licensed practical nurse.

In the current rule, at § 484.36(b), the provisions regarding in-service training and competency evaluations of home health aides are combined. We believe that these requirements should be separated into two standards: Competency evaluation, as discussed above, at proposed § 484.80(c), and in-service training at proposed § 484.80(d). Creating two standards would emphasize the importance of each of these areas. We would retain 12 as the minimum number of hours of in-service training required for a 12-month period. The training could occur while an aide was furnishing care to a patient. We continue to believe that requiring 12 hours of training in a 12-month period would not place an unreasonable burden on the resources of the organization furnishing the training. Using the 12-month period would allow HHAs considerable flexibility in scheduling and in providing training. We would expect that the start dates for the 12-month in-service training period would be the aides' dates of hire or calendar year, as defined by the HHA.

The proposed requirements for the home health aide competency evaluation discussed above, when coupled with this proposed requirement for in-service training, as well as ongoing aide supervision (as proposed in § 484.80(h)), would provide an environment conducive to safe and appropriate patient care. Further, by continuing to emphasize ongoing in-service training, HHAs would have the opportunity to develop programs that would promote aide understanding of selective aspects of care and advance aide competency in general. Proposed § 484.80(b) would set forth the elements that must comprise home health aide classroom and supervised practical training, thus suggesting that those elements of training should form a basis for ongoing in-service training. Because each HHA is unique and serves various populations, the proposed standard would allow a HHA to tailor its in-service training to the unique needs of the population it serves.

We would retain the requirements in this proposed rule that aide in-service

training could be offered by any organization, and that the training would be required to be supervised by a RN. We propose to relocate the requirement that the RN possess a minimum of 2 years of nursing experience, of which at least 1 year is in home health care, to standard (e), Qualifications for instructors conducting classroom and supervised practical training. We continue to believe that RNs with nursing experience in the home health field should be the principal instructors in the basic training of home health aides, since this is the foundation of an aide's education in patient care. Supplemental education, such as in-service training, could be adequately handled by qualified RNs who may not possess as much experience. For some basic aide training, however, individuals other than a RN may be able to provide instruction. When other individuals provide instruction to home health aides, classroom and practical training would be required to be under the general supervision of a RN who possessed a minimum of 2 years nursing experience, at least 1 year of which would have to be in home health care.

We propose to retain the current requirements at § 484.36(a)(2)(i) regarding organizations that offer aide training (generally, HHAs), with some revision and reorganization under a new standard at § 484.80(f), ''Eligible training and competency evaluation organizations.'' We propose to retain the current requirement that home health aide training may be provided by any organization, except an organization that falls under one of the exceptions specified in the regulation. These exceptions include, but are not limited to, agencies that have been found out of compliance with the home health aide requirements any time in the last 2 years, agencies that permitted an unqualified individual to function as a home health aide, and agencies that have been found to have compliance deficiencies that endangered patient health and safety. When selecting an outside organization to provide aide training, we encourage HHAs to select organizations with demonstrated knowledge and experience related to the subject matter(s) being taught.

We propose, at § 484.80(g), Home health aide assignments and duties, to set forth aide responsibilities and duties, and are retaining most of current § 484.36(c), Assignment and duties of the home health aide. However, we would make revisions to further support an interdisciplinary approach to care (as typified here and in § 484.60, Care planning, coordination of services, and quality of care).

Proposed § 484.80(g)(1) would provide that the home health aide would be assigned to a specific patient by the RN or other appropriate skilled professional (that is, physical therapist, speech-language pathologist, or occupational therapist). This proposed revision reflects an interdisciplinary team approach by adding the opportunity for additional skilled professionals to designate home health aide assignments. To the extent possible, we believe that there should be consistent assignment of aides to patients in order to facilitate continuity of care and communication. Currently, under § 484.36(c)(1), an appropriate skilled professional responsible for the supervision of the home health aide may provide only written patient care instructions for the home health aide. A RN is solely responsible for the assignments of home health aides to specific patients. However, we believe, for example, that if a patient is receiving physical therapy services, then the appropriate skilled professional (for example, a physical therapist) should be allowed to assign an aide to this patient. This is consistent with the current requirement at § 484.36(c) which require that the written patient care instructions for the home health aide be prepared by the appropriate professional responsible for the supervision of that home health aide. The ability to assess patients and take into account the many aspects of the patient's functioning would allow the RN or other skilled professional to identify patient needs, and match the skills of a particular home health aide to those needs.

Proposed § 484.80(g)(2) would require that the home health aide provide services that are ordered by the physician in the plan of care, that the home health aide is permitted to perform under state law, and that are consistent with the home health aide training. Home health aides could not furnish services outside of their scope of practice as defined by local and state laws, and the HHA's internal policies. In § 484.80(g)(3), we propose to retain the inclusive listing of duties for home health aides currently under § 484.36(c)(2).

At § 484.80(g)(4), we propose a requirement that home health aides be members of the interdisciplinary team, must report changes in the patient's condition to a RN or other appropriate skilled professional, and must complete appropriate records in compliance with the HHA's policies and procedures. As part of the interdisciplinary team, home health aides would be required to communicate to a RN or qualified therapist observations and experiences when caring for patients. Home health aides may observe changes in patient needs that are crucial to future treatment decisions, and these changes should be reported to the appropriate HHA professional in order to implement effective and appropriate changes in care. Under proposed § 484.80(g)(4), our intention is to reflect an interdisciplinary approach to care. In this case, the provision would emphasize the home health aide's role as a member of the interdisciplinary team. Because an aide may be the member of the home health team who is most often in the home with the patient, the aide may be the one most likely to note changes in a patient's condition. As observation skills are a required content area in aide training (see § 484.80(b)(3)(ii)), we would expect that aides be taught to identify any changes that may need to be reported to the RN or other skilled professional.

On-going home health aide supervision, as described in proposed § 484.80(h), ''Supervision of home health aides,'' is a necessary component of quality care for HHAs, and ensures that services provided by home health aides are in accordance with the agency's policies and procedures and in accordance with state and federal law. In this proposed standard, we would differentiate the aide supervision requirements based on the skill level of the care required by the patient. In proposed § 484.80(h)(1), we propose that if a patient is receiving skilled care, the home health aide supervisor (RN or therapist) must make an onsite visit to the patient's home no less frequently than every 14 days. The home health aide would not have to be present during this visit. If a potential deficiency in home health aide service was noted by the home health aide supervisor, then the supervisor would have to make an on-site visit to the location where the patient was receiving care in order to observe and assess the home health aide while he or she is performing care. In addition to the regularly scheduled 14-day supervision visits and the as-needed observation visits, HHAs would be required to make an annual on-site visit to a patient's home to observe and assess each home health aide while he or she is performing patient care activities. The HHA would be required to observe each home health aide with at least one patient, and would be allowed to increase the number of home health aide-patient interaction observations as necessary to assure a full assessment of

the aide's patient care knowledge and skills.

In proposed § 484.80(h)(2), we would require that if home health aide services are provided to a patient who is not receiving skilled care, the RN must make an on-site visit to the location where the patient is receiving care no less frequently than every 60 days in order to observe and assess each home health aide while he or she is performing care.

Irrespective of the 14-day and 60-day requirements, the agency would be responsible for maintaining appropriate supervision of a home health aide, and could utilize more frequent supervision at its discretion (for example, when a home health aide learns new skills). The HHA would also be expected to increase supervisory oversight for those home health aides for whom a request for supervision had been made either by the patient, representative, caregiver, or a family member.

At proposed § 484.80(h)(3), we would require that if a deficiency in home health aide services was verified by the home health aide supervisor during an on-site visit, then the agency would have to conduct, and the home health aide would have to complete, a competency evaluation in accordance with paragraph (c) of this section. This proposed requirement would allow agencies to re-teach and reassess important home health aide skills to ensure that the home health aide provided safe and effective care to all patients at all times.

We also propose to add a new paragraph at § 484.80(h)(4) to ensure that home health aide supervision visits focus on the aide's ability to demonstrate initial and continued satisfactory performance in meeting essential criteria. Supervision visits would be required to assess the home health aide's success in following the patient's plan of care; completing tasks assigned to the home health aide; communicating with the patient, representative (if any), caregivers, and family; demonstrating competency with assigned tasks; complying with infection prevention and control policies and procedures; reporting changes in the patient's condition; and honoring patient rights.

We would not set forth a specific requirement relative to the method of documenting the supervisory visit, but we expect that the HHA would develop a method of documentation that best fit its needs. Proposed § 484.80(h)(5) would retain, with minor revisions, the current requirements found under § 484.36(d)(4) as they relate to the HHA's responsibilities for home health aides who are furnishing services under arrangement (that is, the aides are not employees of the HHA). The HHA would be required to ensure the quality of home health aide services, supervise aides as proposed in this section, and ensure that aides have met the training and competency evaluation requirements of this proposed part.

At proposed § 484.80(i), Individuals furnishing Medicaid personal care aide-only services under a Medicaid personal care benefit, we propose to retain the requirements at current § 484.36(e), with some minor clarifying revisions. Under this provision, a Medicare-certified HHA that provides personal care aide services to Medicaid patients under a State Medicaid personal care benefit would be required to determine and ensure the competency of individuals for those Medicaid-approved services performed. Placing this requirement within the HHA CoPs would afford protections to all individuals served in that setting, regardless of payer source. The requirements are designed to protect the patient, and are consistent with § 440.167(a), which states that patients receiving personal care services in their home are required to have a physician's authorization in accordance with a plan of treatment or a service plan approved by the state. Changes in the overall language of this provision would be made for the sake of clarity. In addition, the reference to § 440.170 in the current regulation at § 484.36(e)(2) is incorrect; it should read § 440.167. Therefore, we propose to make the necessary correction.

D. Proposed Subpart C, Organizational Environment

1. Compliance With Federal, State, and Local Laws and Regulations Related to Health and Safety of Patients (Proposed § 484.100)

Provisions concerning compliance with federal, state, and local laws are presently located at current § 484.12, ''Condition of Participation: Compliance with Federal, State and local laws, disclosure and ownership information, and accepted professional standards and principles.'' We propose to retain most of the provisions contained in this condition with minor changes, which are discussed below. This proposed condition would now be set forth at § 484.100.

We propose to incorporate the standard at current § 484.12(a) into the general opening statement of the condition at § 484.100. At proposed § 484.100(a), we would continue to require HHAs to comply with the requirements of part 420, subpart C by disclosing the names and addresses of all persons with an ownership or controlling interest, the name and address of each officer, director, agent, or managing employee, and the name and address of the entity responsible for the management of the HHA along with the names and addresses of the CEO and chairperson of the board of that entity. Section 1126(b) of the Act, codified in regulations at § 420.201 of our rules, specifies that the term ''managing employee'' means an individual, including a general manager, business manager, administrator, or director, who exercises operational or managerial control over the entity, or who directly or indirectly conducts the day-to-day operations of the entity. Accordingly, for purposes of this rule, ''director'' would refer to a corporate director and not a medical director or nursing director. Section 420.201 defines an ''agent'' as any person who has been delegated the authority to obligate or act on behalf of a provider. In this rule, we would intend an ''officer'' to be any person who is responsible for the overall management of the operation of the HHA; we also would require that the HHA provide information on all individuals who are officers of the HHA under the law of the state in which the HHA is incorporated. Because the business address of an agency is self-explanatory, the additional address we would request in the standard would refer to a residential address for all individuals to whom the rule applies. A Post Office Box address would not be considered a business or residential address and would not be satisfactory for purposes of compliance with this proposed requirement.

We propose to remove the provisions regarding state licensure from current paragraph § 484.12(a) and incorporate them into the proposed state licensure standard at § 484.100(b). Under the provisions of proposed § 484.100(b), a HHA, its branches, and its staff would be licensed, certified, or registered, as applicable, by the state licensing authority if the state had established licensure requirements. In addition, the Act at § 1861(o)(4) requires that a HHA, which would include a branch, must be licensed, or approved as meeting the standards established for licensing, in any state in which state or local law provides for the licensing or other approval of HHAs and their subsidiaries. If a state requires a HHA to have a license, then we would require that the provider be in compliance with that state's law or regulation. In addition, state licensure requirements are enforced at the state level and would

be subject to state jurisdiction. Therefore, the provisions of this proposed rule would not affect providers that have been granted waivers of state requirements.

State surveyors are not, and have never been, responsible for citing HHAs for violating the rules of regulatory bodies other than the State or CMS. When a HHA is found to be out of compliance with a federal, state, or local law by another regulatory agency with jurisdiction and authority to cite noncompliance (for example, OSHA or the Department of Justice), CMS decides whether that violation should also constitute a violation of the HHA CoPs. Both the title of this proposed CoP and its introductory paragraph would refer to only those federal, state, and local laws and regulations which were ''related to the health and safety of patients.'' We would cite agencies when the violation of federal, state, or local laws or regulations could potentially affect the health and safety of the HHA's patients, and the rights and well-being of patients.

Finally, we propose to move the current requirements at § 484.14(j), Laboratory services, to § 484.100(c). Because this standard covers compliance with a federal regulation, we believe that it would be better suited under this proposed CoP governing compliance with federal, state, and local laws rather than under its current location at the end of the CoP covering organization, services, and administration of an HHA. Section 484.100(c) would require that HHAs engaged in certain types of lab testing, with an appliance that has been approved for that purpose by the Food and Drug Administration, conduct testing in compliance with the requirements of 42 CFR part 493 (Laboratory Requirements).

This section would also prohibit HHAs from substituting their own self-administered testing equipment, such as glucometers, in lieu of a patient's self-administered testing equipment when assisting a patient in administering the test. We propose this requirement to ensure that patients have access to their test results on their own equipment that is maintained in their home. This would allow patients to track their results over time and better understand the impact of their behaviors and choices upon their test results. Such understanding is an important step in fostering patient independence and positive patient outcomes. Agencies may use their own self-administered testing equipment as a complement to a patient's self-administered testing equipment when assisting a patient in administering the test when there is reason to believe that the patient's self-administered testing equipment is inaccurate. In this situation, we would expect the HHA to assist the patient in obtaining accurate testing equipment for future use. Agencies may also use their own self-administered testing equipment for a short, defined period of time when the patient has not yet obtained his or her own testing equipment, such as in the days immediately following physician orders to obtain the testing equipment when a patient may not have the time and resources immediately available to complete the process. We would expect the HHA to use available resources to assist the patient in obtaining his or her own testing equipment as quickly as possible.

In addition, this section would provide that if the HHA chose to refer specimens for laboratory testing, the referral laboratory would have to be certified in accordance with the applicable requirements of part 493. The laboratory services standard is a federal requirement in accordance with the Clinical Laboratory Improvement Amendments of 1988 (CLIA). We are not proposing to alter the intent or meaning of this provision.

2. Organization and Administration of Services (Proposed § 484.105)

This proposed CoP on organization and administration of services would revise current regulations at § 484.14, ''Organization, services, and administration.'' As previously discussed, the current regulation at § 484.14(g), ''Coordination of patient services,'' would be relocated and revised under proposed § 484.60. In addition, the current regulations found at § 484.38, ''Qualifying to furnish outpatient physical therapy or speech pathology services,'' would be relocated to § 484.105. The proposed new condition would simplify the structure of the current requirements, and focus on both essential organizational structures and performance expectations for the administration of HHA operations. With the diffusion of home health organization and management structures (currently, there are 2,660 branches distributed among 1,301 parent HHAs nationwide), this proposed rule would help to ensure accountability by assisting agencies in setting performance expectations that we believe would lead to a higher level of quality for patients. The overall goal of the proposed condition is to produce a clear, accountable organization, management, and administration of a HHA's resources to attain and maintain the highest practicable functional capacity for each patient's medical, nursing, and rehabilitative needs, as indicated in the plan of care. Attaining and maintaining the highest practicable functional capacity for each patient is the primary goal of HHA services based on the premise that the role of the HHA is to assist each patient in overcoming any deficits that lead to his or her need for home health services. HHAs provide services, supplies, and education to patients, making every effort to encourage and support patient autonomy, self-care, self-management, and ultimately discharge from the HHA.

Under the current requirements found at § 484.14(b), we would expect the governing body to be able to assess the HHA's financial needs and to assume responsibility for effectively managing its financial resources. We would maintain the intent of this requirement, at proposed § 484.105(a), ''Governing body,'' and would expand the responsibilities of the governing body to assume full legal authority and responsibility for the agency's overall management and operation, the provision of all home health services, the review of the budget and operational plans, and the agency's quality assessment and performance improvement program, in addition to responsibility for the agency's fiscal operations, as retained from the current regulations.

Proposed § 484.105(b), ''Administrator,'' would describe the role of the administrator and provisions for when the administrator is not available. We propose that the administrator be appointed by the governing body, be responsible for all day to day operations of the HHA, and be responsible for ensuring that a skilled professional as described in § 484.75 is available during all operating hours. The current State Operations Manual (Pub 100–7, Appendix B, *http://cms.hhs.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap_b_hha.pdf*) describes the concept of being available during operating hours as being on the premises of the HHA or by reachable via telecommunications. HHA management would have discretion to structure the implementation of this concept to suit the organization's needs. In addition, the current State Operations Manual also describes the concept of ''operating hours'' as all hours that staff from the agency is providing services to patients. Because HHAs are already familiar with these concepts, we are not proposing to change our interpretations.

While we would expect the administrator to be available during all operating hours to take an active role in

the daily operations of the HHA, we recognize that there are times when the administrator cannot be available. We propose that, any time when the administrator is not available, a pre-designated person, who is authorized in writing by the administrator and governing body, would assume the same responsibilities and obligations as the administrator, including the responsibility to be available during all operating hours. The pre-designated person may be the same skilled professional described above. We note that, in addition to this requirement, we also propose personnel requirements for the administrator at § 484.115(a). The administrator, and the pre-designated person, would be required to meet these personnel requirements.

In addition to the overall management of the HHA by the governing body and the administrator, we propose a new clinical manager role at § 484.105(c). The clinical manager would be a qualified licensed physician or registered nurse, identified by the HHA, who is responsible for the oversight of all personnel and all patient care services provided by the HHA, whether directly or under arrangement, to meet patient care needs. The supervision of HHA personnel would include assigning personnel, developing personnel qualifications, and developing personnel policies. Oversight of the services provided to patients would include, but would not be limited to, assigning clinicians to patients; coordinating care provided to patients by the various patient care disciplines; coordinating referrals within the HHA; assuring that patient needs are continually assessed; and assuring that patient plans of care are developed, implemented, and updated. We believe that the clinical manager role is essential for managing the complex, interdisciplinary care of home health patients, and that the responsibilities included in this new standard are not currently fulfilled. Six of the 20 most frequently cited survey deficiencies center on the need for patient care coordination and implementation, including the most frequently cited deficiency related to ensuring that each patient has a written and updated plan of care. These frequent deficiency citations indicate that patient care is not being sufficiently planned, coordinated, and implemented to ensure the highest quality care for all HHA patients at all times. We believe that having a designated clinical manager will address this need while assuring that agency personnel standards are upheld.

In § 484.105(d), we propose a new standard, Parent-branch relationship. As discussed previously in the ''Definitions'' section of this preamble, we would change the definition of ''branch'' in § 484.2 to define a branch office as a location or site from which a HHA provides services within a portion of the total geographic area served by the parent agency. We would delete the portion of the definition referring to a branch location that is ''sufficiently close'' to the parent agency, because section 506(a)(1) of the Medicare, Medicaid and State Children's Health Insurance Program Benefits Improvement and Protection Act of 2000 (Pub. L. 106–554) (BIPA) mandated that neither time nor distance between a parent office of the HHA and a branch office shall be the sole determinant of a HHA's branch office status. However, both time and distance can still be considered as factors in conjunction with other considerations.

We believe that the focus should be on the ability of the parent HHA to demonstrate that it can monitor all services provided in its entire service area, furnished by any branch offices, to ensure compliance with the CoPs. The decision to approve a branch is based on the HHA's ability to assure that the quality and scope of items and services provided to all patients from the branch meets each patient's medical, nursing, and rehabilitative needs. Thus, we would expect that the lines of authority and professional and administrative control be clearly delineated in the HHA's organizational structure and in practice. The HHA parent should be aware of the staffing, patient census and any issues/matters affecting the operation of the branch. Furthermore, the administrator of the HHA must be able to maintain an ongoing liaison with the branch to ensure that staff is competent and able to provide appropriate, adequate, effective and efficient patient care so as to ensure that any clinical and/or other emergencies are immediately addressed and resolved. The HHA parent must be able to monitor branch activities (clinical and administrative) and the management of services, as well as personnel and administrative issues, including providing ongoing in-service training to ensure that all staff is competent to provide care and services. The HHA parent is responsible for any contracted arrangements with other individuals or organizations, even when the contracted services are used exclusively by the branch. We would also expect the HHA to be able to demonstrate its ability to ensure that patients being served by all offices consistently receive all necessary and appropriate care and services described in the plans of care. As part of the decision-making process, we will also consider an HHA's past compliance history and all relevant state issues and recommendations. These and other considerations in governing parent-branch relationships were previously included in a Survey and Certification memorandum (Requests for Home Health Agency Branch Office Approval and the Use of a Reciprocal Agreement, S&C–02–30, issued May 10, 2002), and will inform future CMS subregulatory guidance on this topic.

We provide guidance for approving a branch office in § 2182.4B of the State Operations Manual. In addition, we assign identification numbers to every existing branch of a parent HHA and subunit. The identification system is implemented nationally, and uniquely identifies every branch of every HHA certified to participate in the Medicare home health program. It also links the parent to the branch. The branch identification number is also required on the OASIS assessments. This allows a HHA access to outcome reports that help it differentiate and monitor the quality of care delivered down to the branch level. (We note that although this information is available to HHAs, information is not broken down by branch when generating Home Health Compare results that are available to the general public.) Through this method of monitoring how services are furnished by its branches, the parent HHA can strengthen the parent-branch relationship and further ensure the quality of care delivered to its patients. We would also add to our regulations the requirement that HHAs report their branch locations to the state survey agency at the time of a HHA's initial certification request, at each survey, and at the time any proposed additions or deletions were made. This proposed rule would eliminate the ''subunit'' designation. An existing subunit currently operates under a distinct Medicare provider number and would be considered to be a distinct HHA upon implementation of this final rule, with its own governing body and administrator that is not shared with another HHA. Depending on state-specific laws and regulations, this regulatory change may allow a subunit to apply to become a branch office of a parent HHA if the parent could provide ''. . . direct support and administrative control of the branch.''

In accordance with section 1861(m) of the Act, a HHA may provide its services directly and/or under arrangement with

another agency or organization. The agency providing services under arrangement may not have been denied Medicare enrollment; been terminated from Medicare, another Federal health care program, or Medicaid; had its Medicare or Medicaid billing privileges revoked; or been debarred from participating in any government program. Therefore, the current requirement at § 484.14(h) governing services under arrangement would be retained with a minor revision in the proposed standard at § 484.105(e), Services under arrangement. We propose to require that the primary HHA have a written agreement with another agency, with an organization, or with an individual, that it has contracted with to provide services to its patients, which stipulates that the primary HHA would maintain overall responsibility for all HHA care provided to a patient in accordance with the patient's plan of care, whether the care is provided directly or under arrangement. If the primary HHA chooses to furnish some services under arrangement, then it retains management, service oversight, and financial responsibility for all services that are provided to the patient by its contracted entities. All services provided by contracted entities would be authorized by the primary HHA, and furnished in a safe and effective manner by qualified personnel. In addition to this revision, we would correct a typographical error in the cross-reference citation for the United States Code.

We propose to move the current standard at § 484.14(a), ''Services furnished,'' to § 484.105(f)(1). According to section 1861(o) of the Act, for purposes of participation in the Medicare program, a HHA is defined as being ''primarily engaged in providing skilled nursing services and other therapeutic services,'' without reference to the services being provided on a part-time or intermittent basis as provided in the current regulation. Although certain payment-related requirements make reference to the intermittent nature of HHA services, the phrase ''part-time or intermittent'' is not used in the statutory definition of an HHA. In order to more closely align with the statutory definition, we propose to delete it from this standard. However, the use of the term ''part-time or intermittent'' would continue to exist under the coverage and eligibility requirements for home health services.

As stated in proposed § 484.105(f)(1), skilled nursing and one of the therapeutic services must be made available on a visiting basis in the patient's home. At least one service would be required to be provided directly by the HHA. This is a current requirement and would be retained. Other services could be offered under arrangement with another agency or organization. It should be noted that while HHAs may provide other services such as continuous nursing care either directly or under arrangement, those additional services might not be eligible for coverage under the Medicare program.

Additionally, we propose to retain the requirements of current § 484.12(c), ''Compliance with accepted professional standards and principles,'' at § 484.105(f)(2). We would continue to require that HHAs furnish all services in accordance with accepted professional standards of practice. We would also propose to require that all HHA services be provided in accordance with current clinical practice guidelines. We believe that this addition is necessary to ensure that HHA patients receive care that is based on clinical evidence, where available, and up-to-date medical practices.

Within this proposed CoP, we are moving current § 484.38, ''Qualifying to furnish outpatient physical therapy or speech pathology services,'' to § 484.105(g). We believe that this requirement would be more appropriately codified as a standard (now titled ''Outpatient physical therapy or speech-language pathology services'') following the ''Services furnished'' standard under this proposed CoP. We propose to make no other changes to this standard.

Finally, we propose to retain the ''Institutional planning'' standard currently located at § 484.14(i) and as required for HHAs under § 1861(z) of the Act. We would retain this standard at § 484.105(h) without any revisions.

3. Clinical Records (Proposed § 484.110)

In this section of the preamble we describe: (A) Changes to the conditions of participation related to clinical record requirements; and (B) the HHS policy priority to accelerate interoperable health information exchange including through the use of certified electronic health record technology.

(A) Changes to the conditions of participation related to clinical record requirements. This proposed section would retain, with some additional clarification, many of the long-standing clinical record requirements currently found at § 484.48. In this condition, we propose to retain only those process requirements which provide essential patient health and safety protection.

The primary requirement under the proposed clinical records CoP would be that a clinical record containing pertinent past and current relevant information would be maintained for every patient who was accepted by the HHA to receive home health services. We propose to add the requirement that the information contained in the clinical record would need to be accurate, adhere to current clinical record documentation standards of practice, and be available to the physician who is responsible for the home health plan of care and appropriate HHA staff. The information could be maintained electronically. The clinical record would be required to exhibit consistency between the diagnosed condition, the plan of care, and the actual care furnished to the patient. Consistency would be reflected in the appropriate link between patient assessment information and the services and treatments ordered and furnished in the plan of care. In light of the decentralized nature of HHAs (that is, patient care is not furnished in a single location), we believe that members of the interdisciplinary team must have access to patient information in order to provide quality services. Many HHAs maintain electronic records, and we recognize that this technological change in home health care industry can provide all members of the interdisciplinary team access to important patient care information on an ongoing basis.

Proposed § 484.110(a), ''Contents of clinical record,'' contains several elements that are part of the current clinical record requirement. We propose to retain the requirement that the record include clinical notes, plans of care, physician orders, and a discharge summary. To give HHAs flexibility in maintaining clinical records, we propose to no longer specifically require that the name of physician and drug, dietary, treatment, and activity orders be included in a dedicated part of the clinical record, since these items would already have been made part of the plan of care, and thus would already be included in the clinical record. We also propose to add requirements to this standard that reflect our outcome-oriented approach to patient care. Specifically, at proposed § 484.110(a), we would require that the clinical record include: (1) The patient's current comprehensive assessment, including all of the assessments from the most recent home health admission, clinical visit notes, and individualized plans of care; (2) all interventions, including medication administration, treatments,

services, and responses to those interventions, which would be dated and timed in accordance with the requirements of proposed § 484.110(b); (3) goals in the patient's plan of care and the progress toward achieving the goals; (4) contact information for the patient and representative (if any); (5) contact information for the primary care practitioner or other health care professional who will be responsible for providing care and services to the patient after discharge from the HHA; and (6) a discharge or transfer summary note that would be sent to the patient's primary care practitioner or other health care professional who will be responsible for providing care and services to the patient after discharge from the HHA within 7 calendar days, or, if the patient is discharged to a facility for further care, to the receiving facility within 2 calendar days of the patient's discharge or transfer. We believe that these timeframes are necessary to assure that providers assuming responsibility for the care of discharged patients have timely information about the patient's recent care, services, and medications. We request public comment regarding these timeframes. Specifically, we would like to know if these timeframes are adequate to assure a smooth transition of care. We would also like to know whether current HHA record systems are capable of producing a discharge summary in a shorter period of time, such as the same day that a patient is discharged.

We believe that these requirements are the minimum necessary for a meaningful clinical record, and that they would still provide the HHA with flexibility in maintaining the clinical record while ensuring that the record contains information necessary for providing high quality patient care. HHAs may choose to maintain additional information in the record which reflects activity pertinent to the patient and his or her care.

We propose to add a new standard at § 484.110(b) to require authentication of clinical records. We would require that all entries be legible, clear, complete, and appropriately authenticated, dated, and timed. Appropriate authentication refers to the process of identifying the person who has made an entry into the clinical record and that person's acknowledgement, by a signature and a title, or use of an electronic identifier, that he/she is responsible for the content, accuracy, and completeness of the entry. Authentication for every entry would be required to include a signature and a title, or a secured computer entry by a unique identifier, of a primary author who had reviewed and approved the entry. This provision would allow HHAs to establish clear policies about clinical record entries and corrections. It is preferred that the original clinician make any necessary corrections to his or her entries to ensure continuity and consistency within the clinical record. In cases where the original clinician is unable to correct his or her entry, we would expect to see documentation of communication with the original clinician regarding modifications to the original entry. We believe it is important to retain flexibility to accommodate the variation in types of documentation and decision making used throughout the industry, and the need to allow HHAs to innovate and improve documentation, including using electronic record formats, without unnecessary restrictions.

Under proposed § 484.110(c), we would revise the current requirements under § 484.48(a), ''Retention of records.'' With proposed § 484.110(c)(1), we would revise the provision regarding the timing of the 5-year clinical record retention period. We do not believe that the current provision, which predicates the beginning of the 5-year retention period on when the cost report is filed with the intermediary, ensures patient safety. Therefore, we have simplified the provision to now require that clinical records be retained for 5 years after the discharge of the patient, unless state law stipulates a longer period of time. In addition to these proposed clinical record retention requirements, HHAs would be expected to continue to comply with other Medicare or Medicaid record requirements for payment purposes.

We would continue to require, in § 484.110(c)(2), that HHA policies provide for retention of records even if the HHA discontinues operations. However, we also propose that the HHA would be required to notify the state agency as to where the agency's clinical records would be maintained. We also propose at § 484.110(d) to incorporate into this condition the requirement under current § 484.48(b), ''Protection of records,'' relative to the safeguarding of information. At proposed § 484.110(d), we would require that clinical records, their contents, and the information contained therein, be safeguarded against loss or unauthorized use. We believe that the requirement under current § 484.48(b), concerning the release of clinical record information, is best incorporated into the proposed standard at § 484.50(e), Right to confidentiality of clinical records, as noted earlier in this preamble.

Finally, under this clinical records condition, we would add a new standard at § 484.110(e), Retrieval of clinical records. We propose that a patient's clinical records (whether hard copy or electronic) be made readily available to a patient or appropriately authorized individuals or entities upon request. The provision of clinical records to those outside of the HHA would be required to be in compliance with the rules regarding personal health information set out at 45 CFR parts 160 and 164.

We note that 45 CFR 164.512 provides for certain ''disclosures required by law'' without the permission of the patient. We believe that this standard is necessary for two main reasons. First, we believe that the prompt retrieval of patient records is essential to assuring communication, continuity and quality of care within the HHA, as well as between the HHA and other health care entities furnishing care to the patient. Second, in order to enable state surveyors to effectively assess HHA compliance with these regulations, and to enable the quality improvement organizations to fulfill their role in the beneficiary complaint process, timely retrieval of clinical records is essential.

(B) HHS Policy Priority to Accelerate Interoperable Health Information Exchange, including Use of Certified Electronic Health Record Technology.

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. (cite: HHS August 2013 Statement, ''Principles and Strategies for Accelerating Health Information Exchange.'') 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 (HIT) 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 HIT and HIE services through Medicare and Medicaid payment policies, (2) adoption of common standards and certification requirements for interoperable HIT, (3) support for privacy and security of patient information across all HIE-focused initiatives, and (4) governance of health information networks. These initiatives are designed to improve care delivery and coordination across the entire care continuum and encourage HIE among all health care providers,

including professionals and hospitals eligible for the Medicare and Medicaid EHR Incentive Programs and those who are not eligible for the EHR Incentive Programs. To increase flexibility in the regulatory certification structure established by the Office of the National Coordinator for Health Information Technology (ONC) and expand HIT certification, ONC has proposed a voluntary 2015 Edition EHR Certification rule (*http://www.gpo.gov/fdsys/pkg/FR-2014-02-26/pdf/2014-03959.pdf*) to more easily accommodate HIT certification for technology used by other types of health care settings where individual or institutional health care providers are not typically eligible for incentive payments under the EHR Incentive Programs, such as home health agencies, and other long-term and post-acute care and behavioral health settings.

We believe that HIE and the use of certified EHRs by home health agencies (and other providers ineligible for the Medicare and Medicaid EHR Incentive programs) can effectively and efficiently help providers improve internal care delivery practices, support management of patient care across the continuum, and enable the reporting of electronically specified clinical quality measures (eCQMs). More information on the identification of EHR certification criteria and development of standards applicable to home health agencies can be found at the following locations:

- *http://healthit.gov/policy-researchers-implementers/standards-and-certification-regulations*
- *http://www.healthit.gov/facas/FACAS/health-it-policy-committee/hitpc-workgroups/certificationadoption*
- *http://wiki.siframework.org/LCC+LTPAC+Care+Transition+SWG*
- *http://wiki.siframework.org/Longitudinal+Coordination+of+Care*

In 2012, ONC sought public comment on whether it should focus any certification efforts towards the health IT used by health care providers that are ineligible to receive incentives under the EHR Incentive Programs. In the regulations establishing the 2014 Edition of health IT standards and EHR certification criteria (*http://www.gpo.gov/fdsys/pkg/FR-2012-09-04/pdf/2012-20982.pdf*), ONC concluded, ''. . . that it makes good policy sense to support interoperability and the secure electronic exchange of health information between all health care settings. We believe the adoption of EHR technology certified to a minimal amount of certification criteria adopted by the Secretary can support this goal. To this end, we encourage EHR technology developers to certify EHR Modules to the transitions of care certification criteria (§ 170.314(b)(1) and § 170.314(b)(2)) as well as any other certification criteria that may make it more effective and efficient for EPs, EHs, and CAHs to electronically exchange health information with health care providers in other health care settings. The adoption of EHR technology certified to these certification criteria can facilitate the secure electronic exchange of health information.'' ONC has also published, ''Certification Guidance for EHR Technology Developers Serving Health Care Providers Ineligible for Medicare and Medicaid EHR Incentive Payments'' (*http://www.healthit.gov/sites/default/files/generalcertexchangeguidance_final_9-9-13.pdf*).

In 2013, the Department of HHS requested information on how to accelerate interoperable health information exchange including with long-term and post-acute care providers. The public offered several recommendations for the use of EHR certification and the expansion of the ONC HIT Certification Program (See *http://www.healthit.gov/sites/default/files/acceleratinghieprinciples_strategy.pdf.* See page 5 for a summary of these recommendations). Among the suggested recommendations from the public was to make certified EHR technology available to long-term and post-acute providers (and other providers not eligible for the Medicare and Medicaid EHR Incentive Programs).

In the fall of 2013, ONC requested that the HIT Policy Committee (a Federal advisory committee established under the HITECH legislation and responsible for advising the National Coordinator for Health Information Technology on the development, harmonization, and recognition of standards, implementation specifications, and EHR certification criteria) to begin exploring the expansion of certification under the ONC HIT Certification Program, particularly focusing on EHR certification for the long-term and post-acute care and behavioral health care settings. The Certification/Adoption Workgroup of the HIT Policy Committee is expected to present its recommendations to the HIT Policy Committee in the spring of 2014. The full Health IT Policy Committee will make recommendations to the ONC in summer 2014.

As noted, the ONC publishes rules for health IT standards and EHR certification criteria. A key standard adopted in the 2014 Edition Final Rule was the HL7 Consolidated CDA (CCDA) standard. The CCDA is now the single standard permitted for certification and the representation of summary care records. This standard is used for the exchange of Summary Care Records at times of transition in care (for example, discharge) and making available clinical information to patients.

Activities have been undertaken to update the CCDA. The Standards and Interoperability Framework, Longitudinal Coordination of Care (S&I LCC WG) has worked to address gaps in the CCDA to better support the interoperable exchange of documents and content needed at times of transitions in care and referrals in care, and for the exchange of care plans, including the home health plan of care. The S&I LCC WG is a public/private collaboration. Members of this workgroup included representatives of the National Association of Home Care, Home Care Technology Association of America, the Visiting Nurse Service of New York, and many other clinicians, researchers, vendors, and government representatives. The updates to the CCDA were balloted by HL7 in the fall 2013, and comments have been reconciled. HL7 is expected to publish the CCDAr2 in spring 2014.

On February 26, 2014 ONC published the proposed rule for the 2015 Edition of Health IT standards and EHR certification criteria. The ONC 2015 Edition proposed rule proposes an updated version for the CCDA, the CCDA® Release 2 (CCDAr2). The CCDAr2 includes enhancements to more completely support interoperability for documents needed at times of transitions and referral in care and care plans, including the home health plan of care. The CCDAr2 includes new sections for: Goals; Health Concerns; Health Status Evaluation/Outcomes; Mental Status; Nutrition; Physical Findings of Skin; and many other entries.

We encourage home health providers to use, and their health IT vendors to develop, ONC-certified HIT/EHR technology to support interoperable health information exchange with physicians, hospitals, other LTPAC providers, and with their patients. We anticipate that the use of certified HIT/EHR technology will help improve quality and coordination of care, and reduce costs.

4. Personnel Qualifications (Proposed § 484.115)

Currently, provisions concerning the qualifications of HHA personnel are located at § 484.4. This section provides very specific credentialing requirements that all staff are required to meet. While we are retaining most of these current personnel qualification requirements,

we propose revisions to the organization of the ''Personnel qualifications'' CoP. Many other provider types cross-reference the HHA personnel requirements, and we are proposing conforming amendments accordingly.

Under our proposed reorganization of part 484, personnel qualifications would be located at § 484.115. Personnel qualifications would be set out as general qualification requirements (which would cover all personnel), and personnel qualifications when state licensing laws or state certification or registration requirements exist (which would cover the additional requirements to practice under and in accordance with state laws, and which would cover all personnel where applicable). The proposed personnel qualifications CoP is discussed in detail below.

This proposed standard would consist of all personnel qualifications found under current § 484.4, with the exception of those for public health nurses. Except as noted below, we propose to retain the current personnel qualifications for the following professions: Administrator, audiologist, home health aide, licensed practical nurse, occupational therapist, occupational therapy assistant, physical therapist, physical therapist assistant, physician, registered nurse, social work assistant, and social worker.

We propose to delete the current qualification category for public health nurses because public health nurses are RNs, and the qualifications for RN are already included in this section. We also propose to replace the term ''practical (vocational) nurse,'' currently found in § 484.4, with the more widely used and accepted term, ''licensed practical nurse.'' The proposed qualifications for a licensed practical nurse would be a person who has completed a practical nursing program, and who furnishes services under the supervision of a qualified registered nurse. Currently, the requirements for the supervision of licensed practical nurses, occupational therapy assistants and physical therapist assistants, and social work assistants are found under § 484.30, § 484.32, and § 484.34, respectively. We propose to retain these supervision requirements and relocate them under the applicable profession's qualifications and as described in this proposed standard.

We also propose to revise the current personnel qualifications for HHA administrators. Our intent with this provision is to give HHAs flexibility. Therefore, with this provision we would expand the qualifications by which an individual could meet the requirement for an administrator. Specifically, proposed § 484.115(a) would set forth the requirements that a HHA administrator would be required to be a licensed physician, or hold an undergraduate degree, or be a registered nurse. We also propose that an administrator would have at least 1 year of supervisory or administrative experience in home health care or a related health care program. The possession of an undergraduate degree would be a new option for establishing the qualifications of an administrator that does not exist in the current regulations. We believe that this new option will give HHAs additional flexibility in selecting an appropriate administrator. However, we do not believe it is necessary to specify which undergraduate degree would be necessary to qualify for this option. Rather, we propose that the HHA's governing body would specify which undergraduate degree an HHA administrator would have to possess. In the absence of state requirements, we are not proposing to add financial management training as a requirement for HHA administrators at this time since HHAs often employ or consult a chief financial officer and billing staff, and the provision may place an additional burden on current HHAs. We specifically ask for comments on this proposal.

At § 484.105(a), the governing body would be responsible for appointing a qualified administrator, subject to the proposed requirements at § 484.115(a). If the governing body believed additional qualifications were required for an administrator, it could include these in its hiring criteria.

At § 484.115(k) and (l), we propose to retain the current requirements for both social work assistants and social workers, respectively. Currently, a qualified social worker is an individual who has a master's degree in social work (MSW) from an accredited school of social work and who has 1 year of social work experience in a health care setting. A qualified social work assistant is currently a person who has a baccalaureate degree in social work, psychology, sociology, or other field related to social work, and who has at least 1 year of social work experience in a health care setting. A social work assistant is also considered to be qualified under the current home health CoPs if he or she has 2 years of appropriate experience as a social work assistant and has achieved a satisfactory grade on a proficiency examination conducted, approved, or sponsored by the U.S. Public Health Service. However, determinations of proficiency do not apply with respect to persons initially licensed by a state or seeking initial qualification as a social work assistant after December 31, 1977. We believe that these current personnel requirements adequately meet the needs of HHA patients. We propose to clarify the requirement for a social worker by amending the regulation to state that those who hold a doctoral degree in social work would also meet the qualification requirements.

Finally, we propose to revise the personnel qualifications for speech-language pathologists (SLP) in order to more closely align the regulatory requirements with those set forth in section 1861(ll) of the Act. We propose that a qualified SLP is an individual who has a master's or doctoral degree in speech-language pathology, and who is licensed as a speech-language pathologist by the State in which he or she furnishes such services. To the extent of our knowledge, all states license SLPs; therefore all SLPs would be covered by this option. We believe that deferring to the states to establish specific SLP requirements would allow all appropriate SLPs to provide services to beneficiaries. Should a state choose to not offer licensure at some point in the future, we propose a second, more specific, option for qualification. In that circumstance, we would require that a SLP has successfully completed 350 clock hours of supervised clinical practicum (or is in the process of accumulating supervised clinical experience); performed not less than nine months of supervised full-time speech-language pathology services after obtaining a master's or doctoral degree in speech-language pathology or a related field; and successfully completed a national examination in speech-language pathology approved by the Secretary. These specific requirements are set forth in the Act, and we believe that they are appropriate for inclusion in the regulations as well.

IV. Home Health Crosswalk (Cross Reference of Current to Proposed Requirements)

The table below shows the relationship between the current sections to the proposed.

Current CoPs	*Revised CoPs*
§ 484.1, Basis and scope	Revised at § 484.1.
§ 484.2, Definitions	Revised at § 484.2.
§ 484.4, Personnel qualifications	Revised at § 484.115.
Home health aide qualifications	Revised at § 484.80.
§ 484.10, Patient rights	**§ 484.50, Patient rights**.
484.10(a)	Revised at § 484.50(a).
484.10(b)	Revised at §§ 484.50(b), (c), and (e).
484.10(c)	Revised at § 484.50 (c).
§ 484.10(d)	Revised at § 484.50(c).
§ 484.10(e)	Revised at § 484.50(c).
§ 484.10(f)	Revised at § 484.50(c).
	New standard at § 484.50(d), Transfer and discharge.
	New standard at § 484.50(e), Investigation of complaints.
§ 484.11, Release of patient identifiable OASIS information	**§ 484.40, Release of patient identifiable outcome and assessment information set (OASIS) information**.
§ 484.12, Compliance with Federal, State, and local laws, disclosure and ownership information, and accepted professional standards and principles.	**§ 484.100, Compliance with Federal, State, and local laws and regulations related to the health and safety of patients**.
§ 484.12(a)	Revised at § 484.100 and § 484.100(b).
§ 484.12(b)	Redesignated at § 484.100(a).
§ 484.12(c)	Revised at § 484.60, § 484.70, and § 484.105(f).
§ 484.14, Organization, services, and administration	**§ 484.105, Organization and administration of services**.
§ 484.14(a)	Revised at § 484.105(f).
§ 484.14(b)	Revised at § 484.105(a).
§ 484.14(c)	Revised at § 484.105(b).
§ 484.14(d)	Revised at § 484.75(d), § 484.105(b), and § 484.105(c).
§ 484.14(e)	Revised at § 484.75(b) and § 484.115.
§ 484.14(f)	Revised at § 484.105(e).
§ 484.14(g)	Revised at § 484.60(d) and § 484.105(c).
§ 484.14(h)	Revised at § 484.105(e).
§ 484.14(i)	Revised at § 484.105(h).
§ 484.14(j)	Revised at § 484.100(c).
§ 484.16, Group of professional personnel	**Deleted, see § 484.65, Quality assessment and performance improvement (QAPI)**.
§ 484.18, Acceptance of patients, plan of care, and medical supervision.	**§ 484.60, Care planning, coordination of services, and quality of care**.
§ 484.18(a)	Revised at § 484.60(a).
§ 484.18(b)	Revised at § 484.60(c).
§ 484.18(c)	Revised at § 484.60(b).
§ 484.20, Reporting OASIS information	**§ 484.45, Reporting OASIS information**.
§ 484.30, Skilled nursing services	**§ 484.75, Skilled professional services**.
§ 484.32, Therapy services	**§ 484.75, Skilled professional services**.
§ 484.34, Medical social services	**§ 484.75, Skilled professional services**.
§ 484.36, Home health aide services	**§ 484.80, Home health aide services**.
§ 484.36(a)(1)	Revised at § 484.80(b).
§ 484.36(a)(2)(i)	Revised at § 484.80(f).
§ 484.36(a)(2)(ii)	Revised at § 484.80(e).
§ 484.36(a)(3)	Revised at § 484.80(b).
§ 484.36(b)(1)	Revised at § 484.80(c).
§ 484.36(b)(2)(i)	Revised at § 484.80(c).
§ 484.36(b)(2)(ii)	Revised at § 484.80(h).
§ 484.36(b)(2)(iii)	Revised at § 484.80(d).
§ 484.36(b)(3)(i)	Revised at § 484.80(c) and (d).
§ 484.36(b)(3)(ii)	Revised at § 484.80(c) and (d).
§ 484.36(b)(3)(iii)	Revised at § 484.80(c).
§ 484.36(b)(4)	Revised at § 484.80(c).
§ 484.36(b)(5)	Redesignated at § 484.80(c).
§ 484.36(b)(6)	Deleted.
§ 484.36(c)	Revised at § 484.80(g).
§ 484.36(d)	Revised at § 484.80(h).
§ 484.36(e)	Revised at § 484.80(i).
§ 484.38, Qualifying to furnish outpatient physical therapy or speech pathology services.	Revised at § 484.105(g).
§ 484.48, Clinical records	**§ 484.110, Clinical records**.
§ 484.48(a)	Revised at § 484.110(c).
§ 484.48(b)	Revised at § 484.110(d).
	New standard at § 484.110(a), Contents of clinical record.
	New standard at § 484.110(b), Authentication.
	New standard at § 484.110(e), Retrieval of clinical records.
§ 484.52, Evaluation of the agency's program	**Deleted, see § 484.65, Quality assessment and performance improvement and § 484.70, Infection prevention and control**.
§ 484.55, Comprehensive assessment of patients	**§ 484.55, Comprehensive assessment of patients**.

V. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the 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.

We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements (ICRs).

Assumptions and Estimates

We have made several assumptions and estimates in order to assess both the time that it would take for a HHA to comply with the new provisions as well as the costs associated with that compliance. We have detailed these assumptions and estimates in Table 1, and have used these assumptions as the basis for both the Collection of Information and the Regulatory Impact Analysis sections of this rule.

TABLE 1—ASSUMPTIONS AND ESTIMATES USED THROUGHOUT THE INFORMATION COLLECTION AND IMPACT ANALYSIS SECTIONS

Number of Medicare participating HHAs nationwide	11,930
Number of Medicare participating HHAs that are accredited	5,000
Number of HHA patients in Medicare participating HHAs nationwide	17,751,840
Number of HHA patients in Medicare participating, accredited HHAs	7,440,000
Number of Medicare beneficiaries in HHAs	3,489,201
Average number of new HHAs per year	549
Average number of new, non-accredited HHAs per year	65
Average number of patients per HHA per year	1,488
Hourly rate of registered nurse *	$63
Hourly rate of HHA office employee *	$26
Hourly rate of administrator *	$98
Hourly rate of home health aide *	$20
Hourly rate of clinical manager *	$85
Hourly rate of QAPI coordinator *	$63
Hourly rate of physician *	$180
Hourly rate of therapist (average of PT, OT, SLP) *	$144
Hourly rate of clinician (average of Nurse, Aide, Therapist) *	$76

* Estimate from the Bureau of Labor Statistics Occupational Outlook Handbook, 2014–2015 edition; includes 100 percent benefit and overhead package.
** Based on a registered nurse fulfilling this role.

Collection of Information Requirements—Discussion and Summary

A. ICRs Regarding Condition of Participation: Reporting OASIS Information (§ 484.45)

Proposed § 484.45 states that HHAs must electronically report all OASIS data in accordance with § 484.55. Specifically, an HHA would have to encode and electronically transmit each completed OASIS assessment to the state agency or the CMS OASIS contractor within 30 days of completing an assessment of a beneficiary. The burden associated with this requirement is the time and effort necessary to conduct the OASIS assessment on a beneficiary and encode and transmit the information to the State agency or the CMS OASIS contractor. While this requirement is subject to the PRA, the burden is currently approved under the following OMB control number, 0938–0760.

B. ICRs Regarding Condition of Participation: Patient Rights (§ 484.50)

Proposed § 484.50 would implement the patient rights provisions of section 1891(a)(1) of the Act, which are currently specified in § 484.10. The purpose is to recognize certain rights that home health patients are entitled to, and protect their rights. HHAs would be required to inform each patient of their rights. In proposed § 484.50, we would require HHAs to inform patients about the expected outcomes of treatment and the factors that could affect treatment. The HHAs are asked to devote efforts to improve patient's health literacy which lead to an increased comprehension of diagnosis and treatment for both patients and family. Increased comprehension allows patients to remain active and make the best possible decisions for their medical care. The requirements currently specified in § 484.10, that are retained in the proposed rule include:

- A HHA must provide the patient and representative with an oral and a written notice of the patient's rights in advance of furnishing care to the patient in a manner that the individual can understand. The HHA must also document that it has complied with the requirements of this section.
- A HHA must document the existence and resolution of complaints about the care furnished by the HHA that were made by the patient, representative, and family.
- A HHA must advise the patient in advance of the disciplines that will furnish care, the plan of care, expected outcomes, factors that could affect treatment, and any changes in the care to be furnished.
- A HHA must advise the patient of the HHA's policies and procedures regarding the disclosure of patient records.
- A HHA must advise the patient of his or her liability for payment.
- A HHA must advise the patient of the number, purpose, and hours of operation of the state home health hotline.

In addition to the retained requirements, we propose that HHAs

must also advise the patient of the following:

- The names, addresses, and telephone numbers of pertinent State and local consumer information, consumer protection, and advocacy agencies.
- The right to access auxiliary aids and language services, and how to access these services.

We foresee that HHAs will develop a standard notice of rights to fulfill the requirements contained in § 484.50(a). A copy of the signed notice would serve as documentation of compliance. We estimate that a home health agency will utilize an administrator to develop the patient rights form. All newly established HHAs would need to develop a notice of patient rights document. In order to speed up the process of becoming Medicare-approved, the majority of new HHAs are choosing to become accredited by a national accrediting organization for Medicare deeming purposes. The patient rights standards and patient notification requirements of the national accrediting organizations would meet or exceed those proposed in this rule; therefore this rule would not impose a burden upon those new HHAs that choose to obtain accreditation status for Medicare deeming purposes. We estimate that it would take 8 hours for each new non-accredited home health agency to develop the form. The total annual burden for new HHAs is 520 hours (8 hours per HHA x 65 HHAs). The estimated cost associated with this requirement is $784 per HHA and $50,960 for all new non-accredited HHAs, annually. In addition, we estimate that it would take each existing HHA 1 hour to update its existing patient rights form, for a one-time total of 11,930 hours and a cost of $1,169,140.

The burden associated with § 484.50(e) would be the time and effort necessary to document a patient complaint and its resolution. We estimate that, in a 1 year period, a HHA would need to document complaints involving about 5 percent (74) of its patients. We estimate that the documentation would require 5 minutes per investigation. Accredited HHAs are already required by their accrediting bodies to adhere to stringent patient rights violation investigation and record-keeping standards; therefore accredited HHAs would not be burdened by this new standard. The total annual burden per non-accredited HHA (6,930) would be 6 hours (74 investigations × 5 minutes per investigation/60).

We believe that the requirements of proposed standard (f), ''Accessibility,'' related to providing information to patients in a manner that can be understood would not impose a burden because HHAs are already required to comply with these requirements in accordance with Title VI of the Civil Rights Act of 1964, the Americans With Disabilities Act, and Section 504 of the Rehabilitation Act. HHAs should already be in compliance with these longstanding requirements.

C. ICRs Regarding Condition of Participation: Comprehensive Assessment of Patients (§ 484.55)

Proposed § 484.55 would require the HHA to conduct, document and update, within a defined timeframe, a patient-specific comprehensive assessment that identifies the patient's need for HHA care and services, and the patient's need for physical, psychosocial, emotional and spiritual care. While these requirements are subject to the PRA, the associated burden imposed by these requirements is considered to be usual and customary medical practice as defined in 5 CFR 1320.3(b)(2). All health care providers, regardless of their type of service, location, or other factors, routinely assess patients to determine their current status and care needs in keeping with the basic tenets of medical care as well as discipline-specific licensure requirements.

D. ICRs Regarding Condition of Participation: Care Planning, Coordination of Services, and Quality of Care (§ 484.60)

The proposed requirements in this section would reflect an interdisciplinary, coordinated approach to home health care delivery. Proposed § 484.60 would require that each patient's written plan of care specify the care and services necessary to meet the patient specific needs identified in the comprehensive assessment. Additionally, the written plan of care would be required to contain the measurable outcomes that the HHA anticipates will occur as a result of implementing and coordinating the plan of care. This new section incorporates several of the current requirements under § 484.18. Section 484.18 consists of longstanding requirements that implement statutory provisions found in sections 1835, 1814, and 1891(a) of the Act. While these requirements are subject to the PRA, the associated collection is currently approved under OMB control number 0938–0365.

Proposed § 484.60(a) would require that each patient's written plan of care be established and periodically reviewed by a doctor of medicine, osteopathy, or podiatry. While HHAs average 1,488 home health patient admissions per year, 292 of those are Medicare patients. Having a doctor of medicine, osteopathy, or podiatry establish and periodically review the HHA plan of care is also a requirement for Medicare payment; therefore HHAs would do this in the absence of this proposed requirement. Thus this requirement would not impose a burden for those 292 Medicare patients per HHA. The anticipated burden associated with this requirement involves a member of the office support staff who would facilitate interaction with the physician. We estimate that this would take 5 minutes per admission for a total estimated burden of 100 hours per HHA ([1196 non-Medicare admits per year × 5 minutes]/60 minutes per hour).

Proposed § 484.60(a)(4) and (b)(1) would require HHAs to conform and fulfill all medical orders issued in writing or telephone (and later authenticated) by a patient's physician or qualified medical professional. While this requirement is subject to the PRA, we believe that this is usual and customary medical practice and therefore does not add additional burden as specified in 5 CFR 1320.3(b)(2). Issuing orders for patient care is one of the most fundamental tasks performed by physicians. Likewise, documenting and adhering to physician orders is one of the most fundamental tasks performed by the physician and all other clinicians within a patient's health care team, including the nurses, therapists, and social workers that are involved in home health care.

Proposed § 484.60(c) would require an HHA to review, revise and document the plan on a timely basis. The burden associated with these requirements is the time and effort associated with reviewing, revising, and maintaining the plan of care. This requirement is currently approved under OMB control number 0938–0365. Proposed § 484.60(e) would require a HHA to develop a discharge summary for each patient upon his or her discharge. The standard would describe the necessary elements of the discharge summary, but would not require a specific form to be used. The current HHA requirements at § 484.48, Clinical records, already requires HHAs to develop and file a discharge summary for each discharged patient. Therefore, we believe that developing a discharge summary is a usual and customary HHA practice and does not add additional burden.

E. ICRs Regarding Condition of Participation: Quality Assessment and Performance Improvement (QAPI) (§ 484.65)

Proposed § 484.65 would require HHAs to develop, implement, maintain and evaluate an effective, data driven quality assessment and performance improvement program. Current requirements for HHAs do not provide for the operation of an internal quality assessment and performance improvement program, whereby the HHA examines its methods and practices of providing care, identifies the opportunities to improve its performance and then takes actions that result in higher quality of care for HHA patients. We have not prescribed the structures and methods for implementing this requirement and have focused the condition toward the expected results of the program. This provides flexibility to the HHA, as it is free to develop a creative program that meets the HHA's needs and reflects the scope of its services. This new provision would replace the current conditions at § 484.16, ''Group of professional personnel,'' and § 484.52, ''Evaluation of an agency's program.''

The first standard under § 484.65 requires that a HHA's quality assessment and performance improvement program must include, but not be limited to, the use of objective measures to demonstrate improved performance. The second standard requires the HHA to track its performance to assure that improvements are sustained over time. The third standard requires that the HHA must set priorities for performance improvement, consider prevalence and severity of identified problems, and give priority to improvement activities that affect clinical outcomes. Lastly, the fourth standard requires the HHA to participate in periodic, external quality improvement reporting requirements as may be specified by CMS.

We believe the writing of internal policies governing the HHA's approach to the development, implementation, maintenance, and evaluation of the quality assessment and performance improvement program, as described in § 484.65, will impose a new burden. We want HHAs to utilize maximum flexibility in their approach to quality assessment and performance improvement programs. Flexibility is provided to HHAs to ensure that each program reflects the scope of its services. We believe that this requirement provides a performance expectation that HHAs will set their own QAPI plan and goals and use the information to continuously strive to improve their performance over time. Given the variability across HHAs and the flexibility provided, we believe that the burden associated with writing the internal policies governing the approach to the development, implementation, and evaluation of the quality assessment and performance improvement program will reflect that diversity. We estimate that the burden associated with writing the internal policies would be an average of 4 hours annually per HHA, for an industry-wide total of 27,720 hours. (4 hours per HHA × 6,930 non-accredited HHAs), and an industry-wide cost of $1,746,360 (27,720 hours × $63/hour).

Although there are other QAPI requirements, they do not relate to record keeping and, therefore, are not relevant to this section.

F. ICRs Regarding Condition of Participation: Infection Prevention and Control (§ 484.70)

Proposed § 484.70 would require and HHA to maintain and document an infection control program with the goal of preventing and controlling infections and communicable diseases. Specifically, proposed § 484.70(b) would state that the HHA must maintain a coordinated agency-wide program for the surveillance, identification, prevention, control, and investigation of infectious and communicable diseases that is an integral part of the HHA's QAPI program. Proposed § 484.70(c) would also require that each HHA provide infection control education to staff, patients, and caregivers. We believe the associated burden for documenting the infection prevention and control program is exempt as stated in 5 CFR 1320.3(b)(2). Since health care-acquired infections have been a source of significant research, education, and training efforts by both the public and private health care sectors for more than a decade, maintaining documents and disclosing information pertaining to infection control is generally regarded as a usual and customary business practice in the HHA community.

G. ICRs Regarding Condition of Participation: Skilled Professional Services (§ 484.75)

We propose to consolidate current provisions governing skilled nursing services at § 484.30, therapy services at § 484.32, and medical social services at § 484.34, under one new condition, § 484.75. Rather than having separate CoPs for each discipline, we would, in a single CoP, broadly describe the expectations for all skilled professionals who participate in the interdisciplinary approach to home health care delivery. Proposed § 484.75 would require skilled professionals who provide services to HHA patients as employees or under arrangement to participate in all aspects of care. This includes, but is not limited to, participation in the on-going patient assessment process; development and maintenance of the interdisciplinary plan of care; patient, caregiver, and family counseling; patient and caregiver education; and communication with other health care providers. Proposed § 484.75 would also require skilled professionals to be actively involved in the HHA's QAPI program and participate in HHA in-service trainings. Furthermore, proposed § 484.75 would require skilled professional services to be supervised. Clinician involvement in patient care, quality improvement efforts, and continuing education are all commonly accepted as good medical practice and typically part of state licensure requirements. The supervision of clinician services is also standard medical practice to ensure that patient care is delivered in a safe and effective manner. In addition, the aforementioned requirements would in all likelihood exist in the absence of federal regulations, thereby exempting the associated burden as stated in 5 CFR 1320.3(b)(3).

H. ICRs Regarding Condition of Participation: Home Health Aide Services (§ 484.80)

This section governs the requirements for home health aide services. Many requirements in this section directly mirror the statutory requirements of sections 1891 and 1861 of the Act and include the following requirements: (1) The HHA must maintain sufficient documentation to demonstrate that training requirements are met; (2) The HHA's competency evaluation must address all required subjects; (3) The HHA must maintain documentation that demonstrates that requirements of competency evaluation are met; and (4) a registered nurse or appropriate skilled professional prepares written instructions for care to be provided by the home health aide.

In this rule we propose to retain, for the most part, the requirements at current § 484.36, but place them in a new condition of participation at § 484.80. We would also add the provisions from § 484.4 concerning the qualifications for home health aides. All home health aide services must be provided by individuals who meet the personnel requirements and training criteria as specified. A HHA is required to maintain documentation that each home health aide meets these

qualifications as specified in proposed § 484.80(a). The burden associated with these standards is the time required to document that each new aide meets the qualification requirements. We estimate that it will take 5 minutes per newly hired home health aide per year to document the information. We assume that the average home health agency would replace 30 percent of its home health aides in a given year, or roughly two home health aides a year based an average of six home health aide FTEs (Basic Statistics About Home Care Updated 2010, National Association for Home Care, *http://www.nahc.org/facts/10HC_Stats.pdf*). Based on an estimate of 5 minutes per newly hired aide and two newly hired aides per agency, per year, we estimate that there will be 1,988 annual burden hours ([5 minutes per aide × 2 aides per HHA]/60 minutes per hour × 11,930 HHAs) for the home health industry. We assume that an office employee ($26/hour) would perform this function at a cost of $4 per HHA per year. The total cost for all HHAs is $51,688 (1,988 hours × $26/hour).

Proposed § 484.80(b)(1) through (3) would discuss the content and duration of the home health aide classroom and supervised practical training. With respect to the recordkeeping requirements, proposed § 484.80(b)(4) states that an HHA would be required to maintain documentation that demonstrates that the requirements of this standard have been met. The burden associated with this requirement would be the time and effort necessary to document the information and maintain the documentation as part of the HHAs records. We estimate that it would take each of the 11,930 HHAs 5 minutes per newly hired aide per year to document that the requirements of this standard have been met. The estimated annual burden is 1,988 hours ([5 minutes per aide × 2 aides per HHA]/60 minutes per hour × 11,930 HHAs). The cost burden associated with this requirement is $51,688, based on an office employee completing the documentation ($26/hour × 1,988 hours).

Proposed § 484.80(c) contains the standard for competency evaluation. An individual could furnish home health services on behalf of an HHA only after that individual has successfully completed a competency evaluation program as described in this section. With respect to the recordkeeping requirements, proposed § 484.80(c)(5) states that an HHA would be required to maintain documentation that demonstrates that the requirements of this standard have been met. The burden associated with this requirement would be the time and effort necessary to document the information and maintain the documentation as part of the HHAs records. We estimate that it would take each of the 11,930 HHAs 5 minutes per newly hired aide per year to document that the requirements of this standard have been met. The estimated annual burden is 1,988 hours ([5 minutes per aide × 2 aides per HHA]/60 minutes per hour × 11,930 HHAs). The cost burden associated with this requirement is $51,688, based on an office worker completing the documentation ($26/hour × 1,988 hours).

Proposed § 484.80(d) states that a home health agency would be required to maintain documentation that all home health aides have received at least 12 hours of in-service training during each 12-month period. The burden associated with this requirement would be the time and effort necessary to document and maintain records of the required in-service training. We assume that it would require 5 minutes per aide to document the in-service training, and that these trainings would be conducted on a quarterly basis, for a total of 2 hours per HHA, annually, to meet this requirement ([5 minutes per aide per training × 4 trainings per year × 6 aides]/60 minutes per hour). The estimate total annual burden for this requirement is 23,860 hours (2 hours per HHA × 11,930 HHAs).

Proposed § 484.80(g) would state that written patient care instructions for a home health aide must be prepared by a registered nurse or other appropriate skilled professional who is responsible for the supervision of a home health aide. The burden associated with this requirement would be the time and effort necessary for a registered nurse or other skilled professional to draft written patient care instructions for a home health aide. Providing written patient care instructions is a usual and customary medical practice, and is therefore exempt from the PRA under 5 CFR 1320.3(b)(2). Home health aide licensure standards require aides to practice under the direction of a nurse or other qualified medical professional. Likewise, the scope of practice for nurses and other qualified medical professionals includes the preparation of patient care instructions.

This proposed rule at § 484.80(h) would also require HHAs to document the supervision of home health aides in accordance with specified timeframes. Supervising employees to ensure the safe and effective provision of patient care is standard business practice throughout the health care community. Likewise, documenting that this supervision has occurred for internal personnel, accreditation, and state and federal compliance purposes is standard practice and thereby exempt from the PRA under 5 CFR 1320.3(b)(2).

I. ICRs Regarding Condition of Participation: Compliance With Federal, State, and Local Laws and Regulations Related to the Health and Safety of Patients (§ 484.100)

Provisions concerning compliance with federal state, and local laws are currently located at § 484.12, ''Compliance with Federal, State and local laws, disclosure of ownership information and accepted professional standards and principles.'' We propose to retain most of the provisions contained in this condition with minor changes, which are discussed below. Under the proposed reorganization scheme, discussed above, this condition would be set forth at § 484.100.

As stated in proposed § 484.100(a), the HHA would be required to disclose to the state survey agency at the time of the HHA's initial request for certification the name and address of all persons with an ownership or control interest in the HHA, the name and address of all officers, directors, agents, and managers of the HHA, as well as the name and address of the corporation or association responsible for the management of the HHA and the chief executive and chairman of that corporation or association. This requirement directly implements section 1891 of the Act. This provision expands upon a similar requirement currently contained in § 405.1221(b). It would impose a minimal burden of adding the necessary additional information to the current disclosure used by HHAs as required by current § 484.12(b), which further reference the requirements of 42 CFR part 420, subpart C related to Medicare Program Integrity requirements. We estimate that modifying the current disclosure would require 5 minutes per HHA, for a total of 994 hours for the HHA industry as a whole on a one-time basis ([5 minutes per modification x 11,930 existing agencies]/60 minutes per hour). Additionally, we estimate that it would require new HHAs 1 hour to develop a disclosure statement, for a total of 549 annual hours industry wide each year (1 hour per new HHA x 549 new HHAs).

J. ICRs Regarding Condition of Participation: Organization and Administration of Services (§ 484.105)

This proposed section would set forth the organization and administration of services provided by a HHA. It would

state that the HHA must organize, manage, and administer its resources to attain and maintain the highest practicable functional capacity for each patient regarding medical, nursing, and rehabilitative needs as indicated by the plan of care. The revised organization and administration of services condition would simplify the structure of the current requirements, and provide flexibility to the HHA by reducing the current focus on organizational structures and focusing on new performance expectations for the administration of the HHA as an organizational entity. Although there are reporting and documentation requirements associated with the proposed requirements, these activities are standard business practice and would not impose a burden on HHAs. For example, proposed § 484.105(d)(1) would state that the parent HHA is responsible for reporting all branch locations of the HHA to the state survey agency at the time of the HHA's request for initial certification, at each survey, and at the time the parent proposes to add or delete a branch. Similarly, proposed § 484.105(e)(2) would state that an HHA must have a written agreement with another agency, with an organization, or with an individual when that entity or individual furnishes services under arrangement to the HHA's patients. We believe the burden associated with the aforementioned actions is exempt from the PRA under 5 CFR 1320.3(b)(2).

Paragraph (h) of this section, Institutional planning, would impose a minimal burden of the time required by new HHAs to develop the initial plan and by existing HHAs to review and revise the existing plan. We estimate the burden for developing a new plan at 1½ hours (90 minutes) and the burden for reviewing and revising an existing plan at 30 minutes. Accredited HHAs are required by their accrediting bodies to engage in institutional planning efforts that exceed these proposed minimum federal requirements; therefore this requirement would not impose a burden upon accredited agencies. In addition, the vast majority of new HHAs are entering the Medicare program via accreditation from a national accrediting body; therefore this provision would not be imposing a burden upon new agencies as well. The estimated annual burden for existing HHAs is 3,465 hours ([6,930 existing non-accredited HHAs x 30 minutes]/60 minutes per hour). The estimated annual burden for anticipated new HHAs is 98 hours (1.5 hours per HHA x 65 new HHAs).

K. ICRs Regarding Condition of Participation: Clinical Records (§ 484.110)

This section would set forth the requirements that clinical records contain pertinent past and current findings, and are maintained for every patient who is accepted by the HHA for home health services. A clinical record containing pertinent past and current findings would be maintained for every patient receiving home health services. All entries in the clinical record would be authenticated, dated and timed, which is usual and customary clinical practice and does not impose a burden. Clinical records would be retained for 5 years after the month the cost report for the records is filed with the intermediary. HHAs would be required to have written procedures that govern the use and removal of records, and the conditions for release of information. This section contains longstanding provisions that are specifically required in section 1861(o) of the Act, and are necessary to preserve the patient's privacy and the quality of care. While these requirements are subject to the PRA, we believe the associated burden is exempt as stated in 5 CFR 1320.3(b)(2). The aforementioned documentation and record retention requirements are considered usual and customary business practices and impose no additional burden.

At § 484.110(a)(5) we propose to require a HHA to send a copy of a patient's discharge summary to the patient's primary care practitioner or other health care professional who will be responsible for providing care and services to the patient after discharge from the HHA, or the facility, if the patient leaves HHA care to enter a facility for further treatment. We estimate that a HHA would spend 5 minutes per patient sending the discharge summary to the patient's next source of health care services, for a total of 124 hours per average HHA annually ([5 minutes per patient x 1,488 patients]/60 minutes per hour) at a cost of $3,224 for an office employee to send the required documentation ($26 per hour x 124 hours). Complying with this provision would require 1,479,320 hours (124 hours per HHA x 11,930 HHAs) and $38,462,320 ($3,224 per HHA x 11,930 HHAs) for all HHAs, annually.

Furthermore, a home health agency must make clinical records, whether in hard copy or electronic form, readily available on request by an appropriately authorized individual or entity. The burden associated with this requirement is the time and effort required to disclose a clinical record to an appropriate authority. While this requirement is subject to the PRA, we believe the associated burden is exempt as stated in 5 CFR 1320.3(b)(2). Making clinical records available to the appropriate authority is part of the survey and certification process, and imposes no additional burden as a usual and customary business practice.

L. ICRs Regarding Personnel Qualifications (§ 484.115)

In § 484.115, we defer to state certification or state licensure requirements in cases where personnel requirements are not statutory or do not relate to a specific payment provision. As defined in 5 CFR 1320.3(b)(2), these requirements are usual and customary business practices. As defined in 5 CFR 1320.3(b)(3), a state requirement would exist even in the absence of the federal requirement. The associated burden is thereby exempt.

TABLE 2—BURDEN AND COST ESTIMATES ASSOCIATED WITH INFORMATION COLLECTION REQUIREMENTS

Regulation section	OMB Control No.	Respondents	Responses	Burden per response (in hours)	Total annual burden (in hours)	Hourly labor cost of reporting ($)	Total cost of reporting ($)	Total costs ($)
§ 484.50(a)* ..	0938—New ...	65	65	8	*520	98	50,960	50,960
§ 484.50(a)* ..	0938—New ...	11,930	11,930	1	*11,930	98	1,169,140	1,169,140
§ 484.50(e)	0938—New ...	6,930	512,820	0.083	42,735	63	2,692,305	2,692,305
§ 484.60(a)	.....	11,930	14,268,280	0.083	1,189,023	26	36,914,598	36,914,598
§ 484.65(e)* ..	0938—New ...	6,930	6,930	4	*27,720	63	1,746,360	1,746,360
§ 484.80(a)	0938—New ...	11,930	23,860	0.083	1,988	26	51,688	51,688
§ 484.80(b)	0938—New ...	11,930	23,860	0.083	1,988	26	51,688	51,688
§ 484.80(c)	0938—New ...	11,930	23,860	0.083	1,988	26	51,688	51,688
§ 484.80(d)	0938—New ...	11,930	286,320	0.083	23,860	26	620,360	620,360
§ 484.100(a) ..	0938—New ...	11,930	11,930	0.083	994	98	97,412	97,412

TABLE 2—BURDEN AND COST ESTIMATES ASSOCIATED WITH INFORMATION COLLECTION REQUIREMENTS—Continued

Regulation section	OMB Control No.	Respondents	Responses	Burden per response (in hours)	Total annual burden (in hours)	Hourly labor cost of reporting ($)	Total cost of reporting ($)	Total costs ($)
§ 484.100(a) *	0938—New ...	549	549	1	* 549	98	53,802	53,802
§ 484.105(h) ..	.....	6,930	6,930	0.5	3,465	98	339,570	339,570
§ 484.105(h) ..	.....	65	65	1.5	98	98	9,604	9,604
§ 484.110(a) ..	0938—New ...	11,930	17,751,840	0.083	1,479,320	26	38,462,320	38,462,320
Total	.....	19,474	32,929,239	.....	2,786,178	.....	82,311,495	82,311,495

* Denotes a one-time information collection requirement.

There are no capital/maintenance costs associated with the information collection requirements contained in this rule; therefore, we have removed the associated column from Table 2. In addition, the column for the total costs is also represents the total cost of reporting; therefore, we have removed the total cost of reporting column from Table 2 as well.

If you comment on these information collection and recordkeeping requirements, please do either of the following:

1. Submit your comments electronically as specified in the ADDRESSES section of this proposed rule; or

2. Submit your comments to the Office of Information and Regulatory Affairs, Office of Management and Budget,

Attention: CMS Desk Officer, CMS–3819–P

Fax: (202) 395–6974; or

Email: *OIRA_submission@omb.eop.gov*

VI. Regulatory Impact Analysis

A. Introduction

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999) and the Congressional Review Act (5 U.S.C. 804(2).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year).

This rule is a proposed revision of the Medicare and Medicaid CoPs for HHAs. The CoPs are the basic health and safety requirements that an HHA must meet in order to receive payment from the Medicare and Medicaid programs. This proposed rule would incorporate advances and current medical practices in caring for home health patients while removing unnecessary process and procedure requirements contained in the current CoPs. This is a major rule because the overall economic impact for all of the proposed new CoPs is estimated to be $148 million in year 1 and $142 million in year 2 and thereafter.

B. Statement of Need

As the single largest payer for health care services in the United States, the Federal Government assumes a critical responsibility for the delivery and quality of care furnished under its programs. Historically, we have adopted a quality assurance approach that has been directed toward identifying health care providers that furnish poor quality care or fail to meet minimum federal standards, but this problem-focused approach has inherent limits. Ensuring quality through the enforcement of prescriptive health and safety standards, rather than improving the quality of care for all patients, has resulted in our expending much of our resources on dealing with marginal providers, rather than on stimulating broad-based improvements in the quality of care delivered to all patients.

This proposed rule would adopt a new approach that focuses on the care delivered to patients by home health agencies while allowing HHAs greater flexibility and eliminating unnecessary procedural requirements. As a result, we are proposing to revise the HHA requirements to focus on a patient-centered, data-driven, outcome-oriented process that promotes high quality patient care at all times for all patients. We have developed a proposed set of fundamental requirements for HHA services that would encompass patient rights, comprehensive patient assessment, and patient care planning and coordination by an interdisciplinary team. Overarching these requirements would be a QAPI program that would build on the philosophy that a provider's own quality management system is key to improved patient care performance.

These proposed regulations contain two critical improvements that would support and extend our focus on patient-centered, outcome-oriented surveys. First, the proposed regulations are designed to enable surveyors to look at outcomes of care, because the regulations would specify that each individual receive the care which his or her assessed needs demonstrate is necessary, rather than focusing simply on the services and processes that must be in place. Second, the addition of a strong QAPI requirement would not only stimulate the HHA to continuously monitor its performance and find opportunities for improvement, it would also afford the surveyor the ability to assess how effectively the provider was pursuing a continuous quality improvement agenda. All of the changes would be directed toward improving patient-centered outcomes of care. We believe that the overall approach of the proposed CoPs would increase performance expectations for HHAs, in terms of achieving needed and desired outcomes for patients and increasing patient satisfaction with services provided.

C. Summary of Impacts

Section V of this rule, Collection of Information Requirements, provides a detailed analysis of the burden hours and associated costs for all burdens related to the collection of information by HHAs that would be required by this proposed rule. That section, in tandem with this regulatory impact analysis section, present a full account of the burdens that would be imposed by this rule. Because the burdens have already been assessed in the Collection of Information Requirements section, we

will not recount them in this RIA section. In addition to analyzing the burden hours and associated costs for all burdens related to these proposed requirements, we have also assessed the potential savings associated with our proposal to remove certain outdated, burdensome requirements that exist in the current HHA CoPs. All estimates presented in this RIA section are based on the assumptions presented in Table 1, located at the beginning of the Section V of this rule, Collection of Information Requirements.

TABLE 3—SUMMARY OF ESTIMATED BURDEN FOR ALL PROPOSED COPS

CoP	Total time (hours)	Total cost in year 1	Annual cost in year 2 and thereafter
Burden and Cost Estimates Associated with Information Collection Requirements	2,786,178	$82,311,495	$79,291,233
Patient rights	2,349,960	144,074,520	144,074,520
QAPI	561,330	26,403,300	22,993,740
Infection prevention and control	540,540	34,054,020	34,054,020
Removal of 60 day summary requirement	−887,592	−16,864,248	−16,864,248
Removal of Group of professional personnel requirement	−192,868	−19,422,040	−19,422,04012
Removal of Evaluation of the agency's program	−1,359,953	−102,305,699	−102,305,699
Total	3,797,595	148,251,348	141,821,526

D. Detailed Economic Analysis

1. Burden Assessment

Reporting OASIS Information (Proposed § 484.45)

We propose only one change to this current CoP at § 484.45(c)(3). In this standard we propose to replace the requirement that an HHA have a direct telephone connection to transmit the OASIS data with a requirement at § 484.45(c) that an HHA transmit data using electronic communications software that complies with the Federal Information Processing Standard (FIPS 140–2, issued May 25, 2001) from the HHA or the HHA contractor to the CMS collection site. The FIPS 140–2 applies to all Federal agencies that use cryptographic-based security systems to protect sensitive information in computer and telecommunication systems (including voice systems) as defined in Section 5131 of the Information Technology Management Reform Act of 1996, Public Law 104–106, including CMS. Therefore, this proposed requirement does not impose a new burden upon HHAs.

Patient Rights (Proposed § 484.50)

The proposed rule would require that an agency would have to provide a patient and a patient's representative (if any) with a written notice of rights. Communicating with patients and representatives, including the provision of a written notice of rights, is a standard practice in the health care industry and would impose no additional costs. Similar requirements already exist for many other health care provider types, including hospice providers, long term care facilities, ambulatory surgery centers, and end-stage renal disease facilities.

Verbal notification of rights in a language and manner that the individual understands, however, may create a new burden for some HHAs. The national accrediting organizations already require their accredited HHAs to orally apprise their patients of their rights in situations where patients cannot read or understand the written notice. We assume, for purposes of this analysis only, that accredited HHAs are providing oral notification to the 25 percent of their patients that cannot read or understand the written notice. Based on this assumption, 1,860,000 patients are already orally notified of their rights each year; therefore, we are excluding these patients from this analysis. For the remaining 75 percent of patients receiving care from an accredited HHA, we estimate that it would take approximately five minutes per patient to describe the content of the notice of rights and obtain the patient's signature confirming that he or she has received a copy of the notice. We assume that patients would be informed of their rights by a registered nurse at a cost of $5 per patient (5 minutes × $63/hour). The total number of hours per accredited HHA would be 93 hours (1,116 patients × 5 minutes per patient/60 minutes), at a cost of $5,580 (1,116 patients × $5 per patient).

For non-accredited HHAs, the requirement to provide this verbal notice would be a new requirement for all 1,488 patients served in an average HHA each year. The total cost of this provision per non-accredited HHA would be $7,440 (1,488 patients × $5 per patient). The total number of hours per non-accredited HHA would be 124 hours (1,488 patients × 5 minutes per patient/60 minutes). The total cost for all HHAs would be $79,459,200 ([$7,440 per non-accredited × 6,930 HHAs] + [$5,580 per accredited HHA × 5,000 HHAs]). The total number of hours for all HHAs would be 1,324,320 hours ([124 hours per non-accredited HHA × 6,930 HHAs] + [93 hours per non-accredited HHA × 5,000 HHAs]).

We note that the requirement to communicate with patients in a language and manner that the patient understands is not a new expectation for Medicare-approved HHAs, as they are already required to be in compliance with the current civil rights requirements and guidance (see 42 CFR 489.10(b)). Specifically, HHAs are already required to comply with the requirements of Title VI of the Civil Rights Act of 1954, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and ''other pertinent requirements of the Office of Civil Rights of HHS.'' HHS guidance, issued in 2003, further explains the expected role of translators in communications with patients (''Guidance to Federal Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons,'' August 8, 2003, 68 FR 47311). As such, the proposed requirement to communicate with patients in a language and manner that the patient understands would not impose a new burden on HHAs.

Proposed § 484.50(e) would require that all patient/family complaints be investigated. We estimate that, in a one year period, a HHA would need to investigate complaints involving about 5 percent (74) of its patients, and that each investigation would take 2 hours to complete. The total annual burden per HHA would be 148 hours (74 investigations × 2 hour per investigation). All national accrediting organizations already require their

accredited HHAs to document, investigate, and resolve patient complaints; therefore all 5,000 accredited HHAs would not be burdened by this proposed requirement. The total annual burden hours for the industry would be 1,025,640 (148 hours per HHA × 6,930 non-accredited HHAs). The total annual cost for the QAPI coordinator to complete all investigations would be $9,324 per HHA ($63/hour × 148 hours), and $64,615,320 for all non-accredited HHAs ($46/hour × 1,025,640 hours).

TABLE 4—PATIENT RIGHTS

Standard	Time per HHA (hours)	Total time (hours)	Cost per HHA	Total cost
Providing notice of rights (annual, non-accredited/accredited HHAs)	124/93	1,324,320	$7,440/5,580	$79,459,200
Investigations (annual, non-accredited HHAs)	148	1,025,640	9,324	64,615,320
Total (annual, non-accredited/accredited)	272/93	2,349,960	16,764/5,580	144,074,520

Comprehensive Assessment of Patients (Proposed § 484.55)

We propose to retain the requirements of current § 484.55, with a reorganization of several sections related to the content of the comprehensive assessment and the addition of several broad focus areas. We believe that the new focus areas (for example, cognitive status and patient goals) are standard practice and would not impose an additional burden. In addition, we propose a minor change to allow for the completion of an OASIS update upon the physician-ordered resumption of care date. Allowing for a physician to order the resumption of care date increases HHA flexibility; therefore there is no new burden associated with this retention.

Care Planning, Coordination of Services, and Quality of Care (Proposed § 484.60)

The current regulations at § 484.12(c), ''Compliance with accepted professional standards and principles''; § 484.14(g), ''Coordination of patient services''; and § 484.18 ''Acceptance of patients, plan of care, and medical supervision,'' would be reorganized and revised at proposed § 484.60.

The change in § 484.18, ''Acceptance of patients, plan of care, and medical supervision,'' would require HHAs to provide each patient with a written copy of the plan of care, including any additions or revisions. The plan of care would include all orders, would specify the care and services necessary to meet the patient-specific needs and the measurable outcomes that the HHA anticipates would occur as a result of implementing and coordinating the plan of care with the patient and physician, and would include all patient and caregiver education and training specific to the patient's needs. The intent of the current standard at § 484.12(c) would be retained under this proposed CoP with the requirement that services be furnished in accordance with accepted standards of practice. No burden is associated with this part of the proposed CoP, as these requirements constitute current industry practices regarding plans of care.

Proposed § 484.60(a), ''Plan of care,'' would codify current industry standards of practice through the revision of current § 484.18(a), ''Plan of care,'' including references to the identification of patient-specific needs and measurable outcomes that are already currently required under current § 484.55, ''Comprehensive assessment of patients.'' Therefore, this proposed requirement would not present a new burden.

Proposed § 484.60(b), ''Conformance with physician orders,'' would retain the provision of the current regulation at 42 CFR 484.18(c) that allows HHAs to administer influenza and pneumococcal vaccinations without specific physician orders, provided that certain requirements are adhered to. As an allowance of flexibility, rather than an imposition of a specific requirement, we believe that this provision would not impose a burden upon HHAs.

This proposed standard also retains many of the current requirements regarding verbal orders with the exception of the proposed requirement at § 484.60(b)(5), ''Conformance with physician orders,'' which would require the physician to countersign and date all verbal orders. Although this requirement is not in the current regulations, this and similar physician order practices are consistent with current standards of practice and with many state laws. Therefore, we expect no new burden with this proposal.

Proposed § 484.60(c), ''Review and revision of the plan of care,'' would incorporate some current requirements. Although there has been some revision to current § 484.18(b), ''Periodic review of plan of care,'' to include mention of measurable outcomes for patients, the intent of this proposed requirement already exists at § 484.55, ''Comprehensive assessment of patients.'' Section 484.55 requires an HHA to demonstrate patient progress toward the achievement of desired outcomes. Therefore, the current standard remains essentially intact in this proposed rule and the new standard would not constitute any new burden.

Proposed § 484.60(d), ''Coordination of care,'' would revise current § 484.14(g), ''Coordination of patient services,'' and some elements of current § 484.18(a), ''Plan of care.'' The intent of the current standards remains intact, and these revisions do not generate new burden.

Quality Assessment and Performance Improvement (QAPI) (Proposed § 484.65)

The quality assessment and performance improvement (QAPI) requirement replaces the current quality-related requirements of § 484.16, ''Group of professional personnel,'' and § 484.52, ''Evaluation of the agency's program.'' Quality assessment is already part of standard HHA practice through annual evaluations of an agency's total program using both administrative reviews and a quarterly review of a sample of clinical records. Furthermore, HHAs are already familiar with the basic concept of measuring quality on both a patient and aggregate level. This rule would further refine current HHA quality efforts and bring HHA quality programs in line with their counterparts in a variety of other settings, such as hospitals and hospices. Likewise, this rule would bring non-accredited HHA quality practices in line with those of their accredited counterparts. The national accrediting organizations have spent a decade or more enhancing, expanding, and refining their quality-related standards, and those standards far exceed the current Medicare regulations. Indeed, the current quality-related standards established by the accrediting organizations would, we believe, even exceed those that we propose to require in this rule. Since

accredited HHAs would already have QAPI programs that meet the requirements of this rule by virtue of meeting the already existing accreditation standards, we are not including accredited HHAs in our analysis of the impact of this requirement. This rule would provide a basic outline of what QAPI is and how we expect it to function in the HHA environment. Each HHA would be free to decide how to implement the QAPI requirement in a manner that reflects its own unique needs and goals.

For purposes of this impact analysis we have described the impact in three general phases that we believe an average HHA will go through. These phases are based on our experience in implementing the QAPI requirements in hospices, another home-based provider type with a similar operating structure and patient population. While we have outlined these phases below, we stress that an HHA would not be required to approach QAPI in this manner. The QAPI requirement would not stipulate that an HHA must collect data for a specific domain; use specific quality measures, policies and procedures, or forms; submit QAPI data to an outside body; or conduct a specified number of performance improvement projects. An HHA may choose to implement a data-driven, comprehensive QAPI program that meets the requirements of this rule in any way that meets its individual needs. These phases described below simply provide a framework for assessing the potential impact of the QAPI requirement upon an average non-accredited HHA.

In phase one, we believe that an HHA would:

○ Identify quality domains and measurements that reflect its organizational complexity; involve all HHA services; affect patient outcomes, patient safety, and quality of care; focus on high risk, high volume, or problem-prone areas; and track adverse patient events;

○ Develop and revise policies and procedures to ensure that data is consistently collected, documented, retrieved, and analyzed in an accurate manner; and

○ Educate HHA employees and contractors about the QAPI requirement, philosophy, policies, and procedures.

In phase two, we believe that a HHA would:

○ Enter data into patient clinical records during patient assessments;

○ Aggregate data by collecting the same pieces of data from patient clinical records and other sources (for example, human resource records);

○ Analyze the data that is aggregated through charts, graphs, and various other methods to identify patterns, anomalies, areas of concern, etc. that may be useful in targeting areas for improvement; and

○ Develop, implement, and evaluate major and minor performance improvement projects based on a thorough analysis of the data collected.

In phase three, we believe that a HHA would:

○ Identify new domains and measures that may replace or be in addition to the domains and measures already being monitored by the HHA;

○ Develop and/or revise policies and procedures to accommodate the new domains and measures; and

○ Educate HHA employees and contractors on the new domains and measures, as well as the policies and procedures for them.

In addition to these three phases, an HHA would likely allocate resources to an individual responsible for the general overall coordination of its QAPI program. For simplicity, we refer to this individual as the QAPI coordinator; however, a HHA is not required to use this title. For purposes of this analysis only, we assume that a HHA would choose a QAPI coordinator who has a clinical background, such as a nurse.

Based on these three phases, we have anticipated the impact of the QAPI requirement on a HHA's resources. In phase one, we anticipate that an HHA would use 9 hours to identify quality domains and measures. HHA quality domains and measures are readily available. Indeed, HHAs already collect data for a wide variety of domains and measures each year as part of the OASIS patient assessment data collection tool, and this data is already used to calculate quality measures as presented in OBQI, OBQM, and PBQI reports and the home health compare Web site. These sources provide a robust starting point for HHAs in the quality measurement efforts. We expect that these hours would be distributed among the three members of the HHA's QAPI committee. While we do not require an HHA to have a QAPI committee, we believe that most HHAs would choose to do so to ensure a variety of perspectives are represented in the QAPI decision-making process. We believe that the QAPI committee would include the QAPI coordinator, the HHA administrator, and a clinical manager. We estimate that the QAPI committee would meet three times per year for 1 hour each meeting to identify appropriate quality domains and measures. We estimate that, in total, the QAPI committee would need 9 hours annually to identify appropriate quality domains and measures (3 staff hours per meeting × 3 meetings per year). The total annual cost for an average HHA to identify the domains and measures is $738 ($189 per QAPI coordinator + $294 per administrator + $255 per clinical manager). The total cost for all HHAs is $5,114,340 ($738 per HHA × 6,930 non-accredited HHAs).

In addition to selecting measures and developing policies and procedures for QAPI activities, we anticipate that HHAs would train appropriate staff in data collection for any new data elements necessary to calculate quality measures, as well as the overall QAPI philosophy and efforts within the agency. For purposes of this analysis, we assume HHAs would train all clinical staff in the basic concept of QAPI, the agency's implementation of this requirement, and any agency-specific policies and procedures. We estimate that an HHA would spend 1 hour per staff member to provide this training, as many staff are already familiar with data collection and its role in quality measurement and improvement through the OASIS, OBQI, and PBQI instruments. For purposes of our analysis we are including patient care clinicians because they are the staff that are most likely to be performing data collection. In 2009, Medicare-certified HHAs had 242,020 clinician FTEs, for an average of 24 clinical FTEs per HHA. The cost per HHA is $1,824 × (1 hour per clinical staff member × 24 clinical staff members × $76 per hour per clinical staff member). The total hour for non-accredited HHAs is 166,320 (24 hours per average HHA × 6,930 non-accredited HHAs) and the total cost is $12,640,320 (166,320 hours × $76/hour).

Phase two is related to gathering, entering, and analyzing data for quality assessment and performance improvement purposes. Thoroughly assessing a patient and collecting patient data in a standardized manner is already standard practice due to the OASIS regulations. The presence of the OASIS data set and quality reporting measures has been in place for several years and the concepts of each are fully integrated into standard HHA practices. Therefore, we do not believe that it would be a burden for HHAs to incorporate new data gathered for dual patient care planning and QAPI purposes into their current systems and processes.

We believe that any additional burden would arise from the act of entering, aggregating, and analyzing other types of available data that HHAs already collect for other purposes (for example, staffing productivity, staff vacancy rates,

timeliness of delivery of services). We estimate that, in order to ensure that the volume of gathered data was manageable, a HHA would have to gather its data once a month. A HHA could choose to gather data on a more or less frequent basis to suit its needs and circumstances. Some HHAs may choose to gather all patient-level data, but we believe that most HHAs would choose to gather data from a sample of clinical records. Likewise, some HHAs could choose to gather data from a wide variety of administrative files, while others may choose to select only a few administrative data sources. There are many combinations that a HHA may choose to use when it comes to gathering data, and no single approach is considered preferable to another. Given this variability, it is difficult to estimate how long an average HHA may spend gathering and organizing data. For purposes of this analysis only, we assume that an average HHA would use 4 hours per month to gather data, for a total of 48 hours a year. We believe that an office employee would perform the data aggregation and organization at a cost of $1,248 (4 hours × 12 months × $26/hour) per HHA. The total cost is $8,648,640 ($1,248 per HHA × 6,930 HHAs). Following data gathering and organization, a HHA would have to analyze the data to identify trends, patterns, anomalies, areas of strength and concern. We believe that this data analysis would be done by the QAPI committee described previously. In order to identify trends and patterns, the committee would need to examine several months of data at the same time. Therefore, we assume that the committee would meet once every quarter to examine the data and make decisions based on the analysis. Meeting to discuss quality measure data is standard practice in the HHA industry. HHAs are well versed in quality measure reports due to the OBQI and new PBQI reports produced by CMS and the quality measure reports available to the public on the Home Health Compare Web site. Since HHAs already meet to discuss and analyze quality measure results, we do not believe that this requirement would impose a new burden.

Performance improvement projects follow all of the data entry, gathering, organization, and analysis. A HHA would have to conduct projects to improve its performance in areas where a weakness was identified. Performance improvement projects would have to reflect the HHA's scope, complexity, and past performance. They would also have to be data-driven, and affect patient outcomes, patient safety, and quality of care. Although this rule would more clearly describe a performance improvement project, its basis, and its purpose, it is based on the same concept as the current requirement at § 484.52, ''Evaluation of the agency's program,'' which requires that results of the evaluation are reported and acted upon by those responsible for the operation of the agency. Since a HHA already takes action to ensure that its program is appropriate, adequate, effective, and efficient, and since providing safe and effective care at all times for all patients is the essential charge of all health care providers, we believe that conducting both major and minor performance improvement projects is already a standard of practice within the HHA industry. Therefore, there would be no additional burden associated with this provision. Although we do not believe that the requirement to conduct performance improvement projects will require additional time and resources, we do believe that the required focus of such projects, and their data-driven nature, will help HHAs improve the efficiency and effectiveness that they achieve in these projects. We believe that such improved project efficiency and effectiveness may result in improved patient outcomes, avoidance of future adverse events, more appropriate resource allocation, and a wide variety of other beneficial outcomes, based on the projects selected by each HHA.

Phase three of the QAPI process builds upon the QAPI program that a HHA already has in place. We estimate that a HHA would use 3 hours a year to identify new domains and quality measures, and we believe that the QAPI committee would perform this task, at a total cost of $246 (1 hour × $63/hour for QAPI coordinator + 1 hour × $98/hour for administrator + 1 hour × $85/hour rate for clinical manager). The total annual cost for non-accredited HHAs in updating domain and measures is $1,704,780 ($246 per HHA × 6,930 HHAs) in year 2 and thereafter.

TABLE 5—QUALITY ASSESSMENT AND PERFORMANCE IMPROVEMENT

Standard	Time per HHA (hours)	Total time (hours)	Cost per HHA	Total cost
Identify domains and measures (1st year)	9	62,370	$738	$5,114,340
Train staff (1st year and on-going)	24	166,320	1,824	12,640,320
Aggregate data (1st year and on-going)	48	332,640	1,248	8,648,640
Update domains and measures (on-going)	3	20,790	246	1,704,780
Total 1st year	81	561,330	3,810	26,403,300
Total yearly on-going	75	519,750	3,318	22,993,740

Infection Prevention and Control (Proposed § 484.70)

There is no specific current requirement addressing infection control in the current HHA CoPs. However, current § 484.12(c), ''Compliance with accepted professional standards and principles,'' requires a HHA and its staff to comply with accepted professional standards and principles that apply to professionals furnishing services in an HHA. Given this broad requirement, we believe that HHA personnel are already using well-documented infection control practices and well-accepted professional standards and principles in their patient care practices. This proposed regulation would reinforce positive infection control practices and would address the serious nature, as well as the potential hazards, of infectious and communicable diseases in the home health environment. This rule would also bring non-accredited HHA quality practices in line with those of their accredited counterparts. The national accrediting organizations have spent a decade or more developing and refining their infection prevention and control standards in the absence of specific Medicare regulations. Indeed, the current infection prevention and control standards established by the accrediting organizations would, we believe, even

exceed those that we propose to require in this rule.

Specifically, the regulation would require HHAs to have an organized, agency-wide program for the surveillance, identification, prevention, control, and investigation of infectious and communicable diseases that is an integral part of the HHA's quality assessment and performance improvement (QAPI) program. The agency's program would be required to include the following:

- The use of accepted standards of practice, including standard precautions, to prevent the transmission of infections and communicable diseases;
- A method for identifying infectious and communicable disease problems;
- A plan for the appropriate actions that are expected to result in improvement and disease prevention; and
- Education to staff, patients, and caregivers about infection prevention and control issued and practices.

We believe that developing this organized program would require HHA resources, and estimate that an HHA would use 1.5 hours of staff time each week, or 78 hours per year (1.5 hours × 52 weeks), to develop and maintain the infection prevention and control program. At a cost of $63 per hour for a nurse to provide program leadership, the cost would be $4,914 per HHA (78 hours × $63/hour).

While we cannot quantify the benefits of having an organized program for the prevention and control of infections, we believe that such a program would produce benefits for HHAs and their patients. For example, such a program may improve the manner in which HHAs identify to HHA staff those patients who are infected or colonized with antibiotic resistant bacteria so that staff may take additional precautions in order to protect themselves during interactions with patients, thereby reducing the amount of sick leave used by HHA staff, thus increasing staff productivity. We do not have adequate data from which to create accurate estimates of the potential benefits of this proposed requirement, but we believe that they are substantial.

TABLE 6—INFECTION PREVENTION AND CONTROL

Standard	Time per HHA (hours)	Total time (hours)	Cost per HHA	Total cost
Develop and maintain program	78	540,540	$4,914	$34,054,020
Total	78	540,540	4,914	34,054,020

Skilled Professional Services (Proposed § 484.75)

We would consolidate current provisions located at § 484.30, ''Skilled nursing services''; § 484.32, ''Therapy services''; and § 484.34, ''Medical social services,'' into this new requirement. We would add a requirement that skilled professionals participate in the QAPI program. Involvement in patient care and patient care-related activities is a professional responsibility, and therefore we believe involvement in the agency's QAPI program would impose little or no additional burden. We would also add a requirement, somewhat similar to the requirement at § 484.14(d), regarding the supervision of nursing assistants, therapy assistants, and medical social service assistants. We would require that all nursing services be provided under the supervision of a registered nurse; all rehabilitative therapy assistant services be provided under the supervision of a physical therapist or occupational therapist; and all medical social services be provided under the supervision of a social worker. These supervision requirements codify current HHA supervision practices, and therefore would not impose a new burden upon HHAs.

Home Health Aide Services (Proposed § 484.80)

Home health aide services are an integral part of home health care, and the proposed CoP retains many of the current longstanding requirements. However, in an effort to make the current requirements for home health aides more consistent throughout, improve overall clarity, and reflect current standards of practice more accurately, we have reorganized and revised the requirements in this proposed CoP. The burdens associated with this section are described in the Collection of Information section of this rule. Therefore, we are not repeating those burdens in this section. Other proposed changes, such as requiring HHAs to supervise aides when performing skills for which the aides have not passed a competency evaluation or requiring aides to report changes in a patient's condition to a registered nurse or other appropriate skilled professional, constitute standard practice within the HHA industry. Therefore, no new burdens would be imposed by these proposed changes.

Compliance With Federal, State, and Local Laws and Regulations Related to Health and Safety of Patients (Proposed § 484.100)

The current regulations at § 484.12(a), ''Compliance with Federal, State, and local laws and regulations''; § 484.12(b), ''Disclosure of ownership and management information''; and § 484.14(j), ''Laboratory services,'' have been reorganized with only minor clarifying revisions to the language of each standard. The current condition statement would also be modified slightly for clarification purposes. However, the current regulation regarding compliance with all applicable laws and regulations related to patient health and safety, state licensing of HHAs, and laboratory services, essentially would remain intact under this proposed rule. The burden associated with this provision would be the disclosure of certain information, which was discussed in the Collection of Information section of this rule, and there are no other burdens associated with this provision.

Organization and Administration of Services (Proposed § 484.105)

Several of the requirements currently found at § 484.14, ''Organization, services, and administration,'' have been reorganized and revised under this proposed condition. As previously discussed in the preamble to this proposed rule, the current standard at § 484.14(f), ''Personnel under hourly or per visit contracts,'' would be deleted. Additionally, as we have already discussed above in this section, the standards currently found at § 484.14(e), ''Personnel policies,'' § 484.14(g), ''Coordination of patient services,'' and § 484.14(j), ''Laboratory services,'' would be reorganized with minor revisions under proposed § 484.60(d), ''Coordination of care,'' § 484.100(c),

''Laboratory services,'' and § 484.105(c), ''Clinical manager,'' respectively.

In order to facilitate compliance with § 484.60(d) and to ensure that each patient's care is coordinated, we propose to combine, revise, and elaborate on current § 484.14(d) and (e) at proposed § 484.105(c), ''Clinical manager.'' This standard would require a qualified physician or registered nurse to provide oversight of all patient care services and HHA personnel. Oversight would include making patient and personnel assignments; coordinating patient care; coordinating referrals; assuring the development, implementation, and updates of the individualized plan of care; and developing personnel qualifications. The clinical manager role in the regulations would be a further refinement of the current ''Supervising physician or registered nurse'' role found in regulation at § 418.14(d) and in statute at 1861(o)(2) of the Act; therefore the general duties described above are already required of home health agencies. The complex, multi-disciplinary nature of home health care necessitates both personnel supervision and patient care coordination to ensure the effective delivery of patient care and positive patient outcomes. The clinical manager position would not constitute any new functions within an HHA; rather, it provides a more structured approach for patient care coordination and personnel supervision tasks. Since the various patient care coordination functions already in existence would be consolidated under the clinical manager position and would thus be a realignment of current resource allocations, we do not believe that this requirement would pose a new burden.

Clinical Records (Proposed § 484.110)

The current regulation at § 484.48, ''Clinical records,'' would be revised, and reorganized under this proposed CoP. We believe that the majority of the revisions to the current clinical record requirement reflect contemporary professional standards already in place in the home health industry. Therefore, no additional burden would be imposed. In addition, the proposed requirements would allow HHAs to maintain and send a patient's clinical record in electronic form. This flexibility may result in a reduction in burden for many HHAs with systems of electronic record keeping already in place.

Personnel Qualifications (Proposed § 484.115)

We would reorganize the personnel qualification requirements currently found at § 484.4, ''Personnel qualifications,'' in a new CoP dedicated to personnel qualification standards. Within this new condition we propose to use the term ''licensed practical nurse'' instead of the current term of ''practical (vocational) nurse'' since the former is more commonly used and accepted. We also propose that the possession of any undergraduate degree would be sufficient for an administrator. In addition, we propose to expand the qualifications for social workers to include those individuals who possess either a master's (M.S.W.) or a doctor's degree (D.S.W.) in social work. Furthermore, we propose to defer to state licensure requirements as the basis for determining the qualifications of SLPs. This expansion of the qualifications for administrators, social workers, and SLPs could provide an agency more flexibility in hiring these professions if it chose, and could provide a potential reduction in burden, though we are not able to quantify what this reduction might be at this time. These changes would create no new burden for HHAs.

2. Deleted Requirements

We propose to delete three requirements of the current HHA regulations in their entirety. First, we would delete § 484.14(g), removing the requirement that an HHA must send a written summary report for each patient to the attending physician every 60 days. This requirement currently imposes a burden of 3 minutes per patient, and 887,592 hours, annually, for all HHAs at a cost of $16,864,248, as indicated by the currently-approved PRA package (OMB control number 0938–0365). Therefore, removing this requirement would save HHAs $16,864,248 each year. We would encourage agencies to assist the patient in seeking physician follow-up during each certification period.

Second, we would delete § 484.16, ''Group of professional personnel,'' because the QAPI requirements would address the same goals as are currently required of the group of professional personnel. This requirement currently imposes a documentation burden of 10 minutes per HHA, and 1,988 hours, annually, for all HHAs at a cost of $37,772, as indicated by the currently-approved PRA package (OMB control number 0938–0365).

In addition to the burden related to documentation, we believe that eliminating this requirement would also alleviate the burden of holding meetings with the group of professional personnel for the sole purpose of complying with this regulatory requirement. The regulation requires that the group must consist of at least one physician, one registered nurse, and representation from other professional disciplines, with at least one member who is not employed by or an owner of the HHA. Since the regulations at § 484.14(a) require HHAs to provide skilled nursing services as well as the services of at least one other discipline, not including physician services, we know that the group of professional personnel would be required to have at least three members. For purposes of this analysis, we assume that the group of professional personnel would include a physician ($180), a registered nurse ($63/hour), a therapist ($144), and a home health aide ($20). The regulation also requires that the group of professional personnel must meet ''frequently.'' For purposes of this analysis, we assume that the frequency requirement would be met by holding quarterly meetings of the group. Furthermore, we assume that most quarterly meetings would require 1 hour of each member's time, for a total of 4 labor hours per meeting, or 16 labor hours per year per HHA. We estimate the cost associated with this requirement to be $407 per meeting, or $1,628 per HHA per year ($407 per meeting × 4 meetings per year), for a total of 190,880 hours (16 hours per HHA × 11,930 HHAs) at cost of $19,422,040 ($1,628 per HHA × 11,930 HHAs) per year. Therefore we estimate that the total reduction of burden would be 192,868 hours (190,880 hours + 1,988 hours) and $19,459,812 ($19,422,040 + $37,772).

Third, we would delete § 484.52, ''Evaluation of the agency's program,'' because the prescriptive quarterly review of clinical records is outdated and unnecessary. This requirement currently imposes a documentation burden of 11,863 hours, annually, for all HHAs at a cost of $304,199, as indicated by the currently-approved PRA package (OMB control number 0938–0365).

In addition to the documentation burden imposed by this requirement, we believe that there is a burden associated with the time necessary to complete the quarterly clinical record reviews. The regulation requires that appropriate health professionals, representing at least the scope of the program, review a sample of both active and closed clinical records to determine whether established policies are followed in furnishing services directly or under arrangement. There is a continuing review of clinical records for each 60-day period that a patient receives home health services to determine adequacy of the plan of care and appropriateness

of continuation of care. Each professional may review the records separately, at different times. For purposes of this analysis, we assume that a HHA would review a 5 percent sample of its clinical records, or an average of 75 clinical records per year per facility. Furthermore, for purposes of this analysis, we assume that a registered nurse ($63/hour), a therapist ($144/hour), and a home health aide ($20/hour) reviews each clinical record, and that each review would require 30 minutes per discipline, for a total of 90 minutes per record review. We estimate that each HHA uses 113 hours per year to meet this requirement, for a total of 1,348,090 hours for all HHAs. The total cost per record review is $114, or $8,550 per HHA per year, for a total of $102,001,500 for all HHAs. Therefore, we believe that removing this requirement would alleviate a total burden of 1,359,953 hours and $102,305,699.

3. Impact on Patient Care

Although the positive effects of these proposed changes cannot be quantified, we note that the proposed changes are focused on improving the delivery of care to each and every patient. For example, the proposed QAPI standard would encourage HHAs to use their own internally-generated data to proactively identify patient care inefficiencies, contradictions, lapses, and other issues in the care delivery system so that HHAs can rapidly implement performance improvement projects designed to remedy the issue(s) at hand. Proactively identifying care issues and implementing projects to correct those issues would ultimately lead to more effective and efficient patient care and improved patient outcomes. However, as previously indicated, we cannot quantify the impact on patients.

E. Alternatives Considered

The primary alternative considered for this rule was to not propose any changes to the health home conditions of participation and instead remain with the current regulations. However, in order to continuously improve care that is provided to all patients in the home health setting, CMS has chosen to propose the updates to the current regulations. If CMS made the decision not to propose these changes, there would be a savings of $142 million, annually, that would not be incurred by home health agencies because they would not be required to change current practices. However, as stated in the impact section of this rule, there is the potential for significant benefits, ranging from improved patient outcomes to increased staff productivity, which may be realized by HHAs as a result of improved practices and a higher quality patient care.

F. Accounting Statement

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars_a004_a-4*), we have prepared an accounting statement in Table 7 showing the classification of the transfers and costs associated with the provisions of this proposed rule for CY 2014.

TABLE 7—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED NET COSTS FROM FY 2015 TO FY 2019

[in millions]

Category	Estimates	Units		
		Year dollar	Discount rate (%)	Period covered
Costs:				
Annualized Monetized ($million/year)	138	2014	7	2015–2019
	138	2014	3	2015–2019

Although the benefits of these proposed changes cannot be quantified, we note that the proposed changes are focused on improving the delivery of care to each and every patient. An increased focus on identifying and proactively addressing risk factors for emergency department visits and hospital re-admissions has the potential to reduce both, leading to improved patient health and decreased payer expenditures. Likewise, requiring HHAs to educate and teach patients the necessary self-care skills to facilitate a timely discharge may lead to more and better patient engagement in managing chronic health conditions such as diabetes, ultimately leading to improved patient health and reduced payer expenditures. However, as previously indicated, we cannot quantify the impact on patients.

G. Regulatory Flexibility Act (RFA)

The RFA requires agencies to analyze options for regulatory relief of small businesses, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Individuals and states are not included in the definition of a small entity. For the purposes of the RFA, most HHAs are considered to be small entities, either by virtue of their nonprofit status or government status, or by having revenues less than $14 million in any 1 year (for details, see the Small Business Administration's (SBA) Web site at *http://www.sba.gov/sites/default/files/files/size_table_07222013.pdf* (refer to the 620000 series). There are 11,930 Medicare-certified HHAs with average annual patient census of 1,488 patients per HHA. An average Medicare-participating HHA in 2010 had annual revenues (all payment sources) of $6.55 million. Therefore, the vast majority of these Medicare-certified HHAs would be considered small entities under the SBA's NAICS.

As its measure of significant economic impact on a substantial number of small entities, HHS uses a change in revenue of more than 3 to 5 percent. We do not believe that this threshold will be reached by the requirements in this proposed rule because the cost of this rule on a per-HHA basis is minimal (approximately a $20,500 net increase in burden per non-accredited HHA in the first year, and a small net savings of approximately $100 for accredited HHAs in the first year). Therefore, we certify that this rule would not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 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 fewer than 100 beds. We believe that this rule would not have a significant impact on the operations of a substantial number of small rural hospitals because there are few HHAs in those facilities.

H. Unfunded Mandates Reform Act (UMRA)

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2014, that threshold is approximately $141 million. It includes no mandates on state, local, or tribal governments. The estimates presented in this section of the proposed rule exceed this threshold and, as a result, we have provided a detailed assessment of the anticipated costs and benefits in RIA section as well as other parts of the preamble

I. Federalism

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 requirement costs on state and local governments, preempts state law, or otherwise has Federalism implications. This rule has no Federalism implications.

J. Congressional Review Act

This proposed regulation is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 et seq.) and has been transmitted to the Congress and the Comptroller General for review.

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 409

Health facilities, Medicare.

42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 418

Health facilities, Hospice care, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 440

Grant programs—health, Medicaid.

42 CFR Part 484

Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 485

Grant programs—health, Health facilities, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 488

Administrative practice and procedure, Health facilities, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR Chapter IV as set forth below:

PART 409—HOSPITAL INSURANCE BENEFITS

■ 1. The authority citation for part 409 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

■ 2. The authority citation for part 410 continues to read as follows:

Authority: Secs. 1102, 1834, 1871, 1881, and 1893 of the Social Security Act (42 U.S.C. 1302. 1395m, 1395hh, and 1395ddd).

PART 418—HOSPICE CARE

■ 3. The authority citation for part 418 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

PART 440—SERVICES: GENERAL PROVISIONS

■ 4. The authority citation for part 440 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

■ 5. In the table below, for each section and paragraph indicated in the first two columns, remove the reference indicated in the third column and add the reference indicated in the fourth column:

Section	Paragraphs	Remove	Add
§ 409.43	(a)	§ 484.18(a)	§ 484.60(a).
§ 409.43	(c)(1)(i)(C)	42 CFR 484.4	42 CFR 484.115.
§ 409.43	(d)	§ 484.4	§ 484.115.
§ 409.44	(b)(1) introductory text and (c)(2)(ii)	§ 484.4	§ 484.115.
§ 409.45	(c)(4)	§ 484.4	§ 484.115.
§ 409.46	(b)	§ 484.36(d)	§ 484.80(h).
§ 409.47	(b)	§ 484.14(h)	§ 484.105(e).
§ 410.62	(a) introductory text	§ 484.4	§ 484.115.
§ 418.76	(f)(1)	§ 484.36(a) and § 484.36(b)	§ 484.80.
§ 418.76	(f)(2)	§ 484.36(a)	§ 484.80(a).
§ 440.110	(a)(2) and (b)(2)	§ 484.4	§ 484.115 of this chapter.

PART 484—HOME HEALTH SERVICES

■ 6. The authority citation for part 484 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395(hh)) unless otherwise indicated.

■ 7. Part 484 is amended by revising subparts A through C to read as follows:

Subpart A—General Provisions

Sec.

484.1 Basis and scope.

484.2 Definitions.

Subpart B—Patient Care

484.40 Condition of participation: Release of patient identifiable outcome and assessment information set (OASIS) information.

484.45 Condition of participation: Reporting OASIS information.

484.50 Condition of participation: Patient rights.

484.55 Condition of participation: Comprehensive assessment of patients.

484.60 Condition of participation: Care planning, coordination of services, and quality of care.

484.65 Condition of participation: Quality assessment and performance improvement (QAPI).

484.70 Condition of participation: Infection prevention and control.

484.75 Condition of participation: Skilled professional services.
484.80 Condition of participation: Home health aide services.

Subpart C—Organizational Environment

484.100 Condition of participation: Compliance with Federal, State, and local laws and regulations related to health and safety of patients.
484.105 Condition of participation: Organization and administration of services.
484.110 Condition of participation: Clinical records.
484.115 Condition of participation: Personnel qualifications.

Subpart A—General Provisions

§ 484.1 Basis and scope.

(a) *Basis.* This part is based on:

(1) Sections 1861(o) and 1891 of the Act, which establish the conditions that an HHA must meet in order to participate in the Medicare program and which, along with the additional requirements set forth in this part, are considered necessary to ensure the health and safety of patients; and

(2) Section 1861(z), which specifies the institutional planning standards that HHAs must meet.

(b) *Scope.* The provisions of this part serve as the basis for survey activities for the purpose of determining whether an agency meets the requirements for participation in the Medicare program.

§ 484.2 Definitions.

As used in subparts A, B, and C, of this part—

Branch office means an approved location or site from which a home health agency provides services within a portion of the total geographic area served by the parent agency. The parent home health agency must provide supervision and administrative control of any branch office. It is unnecessary for the branch office to independently meet the conditions of participation as a home health agency.

Clinical note means a notation of a contact with a patient that is written, timed, and dated, and which describes signs and symptoms, treatment, drugs administered and the patient's reaction or response, and any changes in physical or emotional condition during a given period of time.

In advance means that HHA staff must complete the task prior to performing any hands-on care or any patient education.

Parent home health agency means the agency that provides direct support and administrative control of a branch.

Primary home health agency means the HHA which accepts the initial referral of a patient, and which provides services directly to the patient or via another health care provider under arrangements (as applicable).

Proprietary agency means a private, for-profit agency.

Public agency means an agency operated by a state or local government.

Quality indicator means a specific, valid, and reliable measure of access, care outcomes, or satisfaction, or a measure of a process of care.

Representative means the patient's legal guardian or other person who participates in making decisions related to the patient's care or well-being, including but not limited to, a person chosen by the patient, a family member, or an advocate for the patient. The patient determines the role of the representative, to the extent possible.

Subdivision means a component of a multi-function health agency, such as the home care department of a hospital or the nursing division of a health department, which independently meets the conditions of participation for HHAs. A subdivision that has branch offices is considered a parent agency.

Summary report means the compilation of the pertinent factors of a patient's clinical notes that is submitted to the patient's physician.

Supervised practical training means training in a practicum laboratory or other setting in which the trainee demonstrates knowledge while providing covered services to an individual under the direct supervision of either a registered nurse or a licensed practical nurse who is under the supervision of a registered nurse.

Verbal Order means a physician order that is spoken to appropriate personnel and later put in writing for the purposes of documenting as well as establishing or revising the patient's plan of care.

Subpart B—Patient Care

§ 484.40 Condition of participation: Release of patient identifiable outcome and assessment information set (OASIS) information.

The HHA and agent acting on behalf of the HHA in accordance with a written contract must ensure the confidentiality of all patient identifiable information contained in the clinical record, including OASIS data, and may not release patient identifiable OASIS information to the public.

§ 484.45 Condition of participation: Reporting OASIS information.

HHAs must electronically report all OASIS data collected in accordance with § 484.55.

(a) *Standard: Encoding and transmitting OASIS data.* An HHA must encode and electronically transmit each completed OASIS assessment to the CMS system, regarding each beneficiary with respect to which information is required to be transmitted (as determined by the Secretary), within 30 days of completing the assessment of the beneficiary.

(b) *Standard: Accuracy of encoded OASIS data.* The encoded OASIS data must accurately reflect the patient's status at the time of assessment.

(c) *Standard: Transmittal of OASIS data.* An HHA must—

(1) For all completed assessments, transmit OASIS data in a format that meets the requirements of paragraph (d) of this section.

(2) Successfully transmit test data to the state agency or CMS OASIS contractor.

(3) Transmit data using electronic communications software that complies with the Federal Information Processing Standard (FIPS 140–2, issued May 25, 2001) from the HHA or the HHA contractor to the CMS collection site.

(4) Transmit data that includes the CMS-assigned branch identification number, as applicable.

(d) *Standard: Data format.* The HHA must encode and transmit data using the software available from CMS or software that conforms to CMS standard electronic record layout, edit specifications, and data dictionary, and that includes the required OASIS data set.

§ 484.50 Condition of participation: Patient rights.

The patient and representative (if any), have the right to be informed of the patient's rights in a language and manner the individual understands. The HHA must protect and promote the exercise of these rights.

(a) *Standard: Notice of rights.* The HHA must—

(1) Provide the patient and the patient's representative (if any), the following information during the initial evaluation visit, in advance of furnishing care to the patient:

(i) Written notice of the patient's rights and responsibilities under this rule. Written notice must be understandable to persons who have limited English proficiency and accessible to individuals with disabilities; and

(ii) Verbal notice of the patient's rights and responsibilities in the individual's primary or preferred language and in a manner the individual understands, free of charge, with the use of a competent interpreter if necessary.

(2) Provide contact information for the HHA administrator, including the administrator's name, business address,

and business phone number in order to receive complaints or questions.

(3) Provide the OASIS privacy notice to all patients for whom the OASIS data is collected.

(4) Obtain the patient's or representative's signature confirming that he or she has received a copy of the notice of rights and responsibilities.

(b) *Standard: Exercise of rights.* (1) If a patient has been adjudged incompetent under state law by a court of proper jurisdiction, the rights of the patient may be exercised by the person appointed by the state court to act on the patient's behalf.

(2) If a state court has not adjudged a patient incompetent, the patient's representative may exercise the patient's rights.

(3) If a patient has been adjudged to lack legal capacity under state law by a court of proper jurisdiction, the patient may exercise his or her rights to the extent allowed by court order.

(c) *Standard: Rights of the patient.* The patient has the right to—

(1) Have his or her property and person treated with respect;

(2) Be free from verbal, mental, sexual, and physical abuse, including injuries of unknown source, neglect and misappropriation of property;

(3) Make complaints to the HHA regarding treatment or care that is (or fails to be) furnished, and the lack of respect for property and/or person by anyone who is furnishing services on behalf of the HHA;

(4) Participate in, be informed about, and consent or refuse care in advance of and during treatment, where appropriate, with respect to—

(i) Completion of the comprehensive assessment;

(ii) The care to be furnished, based on the comprehensive assessment;

(iii) Establishing and revising the plan of care, including receiving a copy of it;

(iv) The disciplines that will furnish the care;

(v) The frequency of visits;

(vi) Expected outcomes of care, including patient-identified goals, and anticipated risks and benefits;

(vii) Any factors that could impact treatment effectiveness; and

(viii) Any changes in the care to be furnished.

(5) Receive all services outlined in the plan of care.

(6) Have a confidential clinical record. Access to or release of patient information and clinical records is permitted in accordance with 45 CFR parts 160 and 164.

(7) Be advised of—

(i) The extent to which payment for HHA services may be expected from Medicare, Medicaid, or any other Federally-funded or Federal aid program known to the HHA,

(ii) The charges for services that may not be covered by Medicare, Medicaid, or any other Federally-funded or Federal aid program known to the HHA,

(iii) The charges the individual may have to pay before care is initiated; and

(iv) Any changes in the information provided in accordance with paragraph (c)(7) of this section when they occur. The HHA must advise the patient and representative (if any), of these changes as soon as possible, in advance of the next home health visit. The HHA must comply with the patient notice requirements at 42 CFR 411.408(d)(2) and (f).

(8) Receive proper written notice, in advance of a specific service being furnished, if the HHA believes that the service may be non-covered care; or in advance of the HHA reducing or terminating on-going care. The HHA must also comply with the requirements of 42 CFR 405.1200 through 405.1204.

(9) Be advised of the state toll free home health telephone hot line, its contact information, its hours of operation, and that its purpose is to receive complaints or questions about local HHAs.

(10) Be advised of the names, addresses, and telephone numbers of pertinent, Federally-funded and State-funded, State and local consumer information, consumer protection, and advocacy agencies.

(11) Be free from any discrimination or reprisal for exercising his or her rights or for voicing grievances to the HHA or an outside entity.

(12) Be informed of the right to access auxiliary aids and language services as described in paragraph (f) of this section, and how to access these services.

(d) *Standard: Transfer and discharge.* The patient and representative (if any), have a right to be informed of the HHA's policies for admission, transfer, and discharge in advance of care being furnished. The HHA may only transfer or discharge the patient from the HHA if:

(1) The transfer or discharge is necessary for the patient's welfare because the HHA and the physician who is responsible for the home health plan of care agree that the HHA can no longer meet the patient's needs, based on the patient's acuity. The HHA must ensure a safe and appropriate transfer to other care entities when the needs of the patient exceed the HHA's capabilities;

(2) The patient or payer will no longer pay for the services provided by the HHA;

(3) The transfer or discharge is appropriate because the patient's health and safety have improved or stabilized sufficiently, and the HHA and the physician who is responsible for the home health plan of care agree that the patient no longer needs the HHA's services;

(4) The patient refuses services, or elects to be transferred or discharged;

(5) The HHA determines, under a policy set by the HHA for the purpose of addressing discharge for cause that meets the requirements of paragraphs (d)(5)(i) through (iii) of this section, that the patient's (or other persons in the patient's home) behavior is disruptive, abusive, or uncooperative to the extent that delivery of care to the patient or the ability of the HHA to operate effectively is seriously impaired. The HHA must do the following before it discharges a patient for cause:

(i) Advise the patient, representative (if any), the physician who is responsible for the home health plan of care, and the patient's primary care practitioner or other health care professional who will be responsible for providing care and services to the patient after discharge from the HHA (if any) that a discharge for cause is being considered;

(ii) Make efforts to resolve the problem(s) presented by the patient's behavior, the behavior of other persons in the patient's home, or situation;

(iii) Provide the patient and representative (if any), with contact information for other agencies or providers who may be able to provide care; and

(iv) Document the problem(s) and efforts made to resolve the problem(s), and enter this documentation into its clinical records;

(6) The patient dies; or

(7) The HHA ceases to operate.

(e) *Standard: Investigation of complaints.* (1) The HHA must—

(i) Investigate complaints made by a patient, the patient's representative (if any), and the patient's caregivers and family regarding the following:

(A) Treatment or care that is (or fails to be) furnished, is furnished inconsistently, or is furnished inappropriately; and

(B) Mistreatment, neglect, or verbal, mental, sexual, and physical abuse, including injuries of unknown source, and/or misappropriation of patient property by anyone furnishing services on behalf of the HHA.

(ii) Document both the existence of the complaint and the resolution of the complaint; and

(iii) Take action to prevent further potential violations while the complaint is being investigated.

(2) Any HHA staff (whether employed directly or under arrangements) in the normal course of providing services to patients, who identifies, notices, or recognizes incidences or circumstances of mistreatment, neglect, verbal, mental, sexual, and/or physical abuse, including injuries of unknown source, or misappropriation of patient property, must report these findings immediately to the HHA and other appropriate authorities.

(f) *Standard: Accessibility.* Information must be provided to patients in plain language and in a manner that is accessible and timely to—

(1) Persons with disabilities, including accessible Web sites and the provision of auxiliary aids and services at no cost to the individual in accordance with the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.

(2) Persons with limited English proficiency through the provision of language services at no cost to the individual, including oral interpretation and written translations.

§ 484.55 Condition of participation: Comprehensive assessment of patients.

Each patient must receive, and an HHA must provide, a patient-specific, comprehensive assessment. For Medicare beneficiaries, the HHA must verify the patient's eligibility for the Medicare home health benefit including homebound status, both at the time of the initial assessment visit and at the time of the comprehensive assessment.

(a) *Standard: Initial assessment visit.* (1) A registered nurse must conduct an initial assessment visit to determine the immediate care and support needs of the patient; and, for Medicare patients, to determine eligibility for the Medicare home health benefit, including homebound status. The initial assessment visit must be held either within 48 hours of referral, or within 48 hours of the patient's return home, or on the physician-ordered start of care date.

(2) When rehabilitation therapy service (speech language pathology, physical therapy, or occupational therapy) is the only service ordered by the physician who is responsible for the home health plan of care, and if the need for that service establishes program eligibility, the initial assessment visit may be made by the appropriate rehabilitation skilled professional.

(b) *Standard: Completion of the comprehensive assessment.* (1) The comprehensive assessment must be completed in a timely manner, consistent with the patient's immediate needs, but no later than 5 calendar days after the start of care.

(2) Except as provided in paragraph (b)(3) of this section, a registered nurse must complete the comprehensive assessment and for Medicare patients, determine eligibility for the Medicare home health benefit, including homebound status.

(3) When physical therapy, speech-language pathology, or occupational therapy is the only service ordered by the physician, a physical therapist, speech-language pathologist or occupational therapist may complete the comprehensive assessment, and for Medicare patients, determine eligibility for the Medicare home health benefit, including homebound status. The occupational therapist may complete the comprehensive assessment if the need for occupational therapy establishes program eligibility.

(c) *Standard: Content of the comprehensive assessment.* The comprehensive assessment must accurately reflect the patient's status, and must include, at a minimum, the following information:

(1) The patient's current health, psychosocial, functional, and cognitive status;

(2) The patient's strengths, goals, and care preferences, including information that may be used to demonstrate the patient's progress toward achievement of the goals identified by the patient and the measurable outcomes identified by the HHA;

(3) The patient's continuing need for home care;

(4) The patient's medical, nursing, rehabilitative, social, and discharge planning needs;

(5) A review of all medications the patient is currently using in order to identify any potential adverse effects and drug reactions, including ineffective drug therapy, significant side effects, significant drug interactions, duplicate drug therapy, and noncompliance with drug therapy.

(6) The patient's primary caregiver(s), if any, and other available supports;

(7) The patient's representative (if any);

(8) Incorporation of the current version of the Outcome and Assessment Information Set (OASIS) items, using the language and groupings of the OASIS items, as specified by the Secretary. The OASIS data items determined by the Secretary must include: Clinical record items, demographics and patient history, living arrangements, supportive assistance, sensory status, integumentary status, respiratory status, elimination status, neuro/emotional/behavioral status, activities of daily living, medications, equipment management, emergent care, and data items collected at inpatient facility admission or discharge only.

(d) *Standard: Update of the comprehensive assessment.* The comprehensive assessment must be updated and revised (including the administration of the OASIS) as frequently as the patient's condition warrants due to a major decline or improvement in the patient's health status, but not less frequently than—

(1) The last five days of every 60 days beginning with the start-of-care date, unless there is a—

(i) Beneficiary elected transfer;

(ii) Significant change in condition; or

(iii) Discharge and return to the same HHA during the 60-day episode.

(2) Within 48 hours of the patient's return to the home from a hospital admission of 24 hours or more for any reason other than diagnostic tests, or on physician-ordered resumption date;

(3) At discharge.

§ 484.60 Condition of participation: Care planning, coordination of services, and quality of care.

Patients are accepted for treatment on the reasonable expectation that an HHA can meet the patient's medical, nursing, rehabilitative, and social needs in his or her place of residence. Each patient must receive an individualized written plan of care, including any revisions or additions. The individualized plan of care must specify the care and services necessary to meet the patient-specific needs as identified in the comprehensive assessment, including identification of the responsible discipline(s), and the measurable outcomes that the HHA anticipates will occur as a result of implementing and coordinating the plan of care. The individualized plan of care must also specify the patient and caregiver education and training that the HHA will provide, specific to the patient's care needs. Services must be furnished in accordance with accepted standards of practice.

(a) *Standard: Plan of care.* (1) Each patient must receive the home health services that are written in an individualized plan of care that identifies patient-specific measurable outcomes and goals, and which is established, periodically reviewed, and signed by a doctor of medicine, osteopathy, or podiatry acting within the scope of his or her state license, certification, or registration. If a physician refers a patient under a plan

of care that cannot be completed until after an evaluation visit, the physician is consulted to approve additions or modifications to the original plan.

(2) The individualized plan of care must include the following:

(i) All pertinent diagnoses;

(ii) The patient's mental, psychosocial, and cognitive status;

(iii) The types of services, supplies, and equipment required;

(iv) The frequency and duration of visits to be made;

(v) Prognosis;

(vi) Rehabilitation potential;

(vii) Functional limitations;

(viii) Activities permitted;

(ix) Nutritional requirements;

(x) All medications and treatments;

(xi) Safety measures to protect against injury;

(xii) Patient and caregiver education and training to facilitate timely discharge;

(xiii) Patient-specific interventions and education; measurable outcomes and goals identified by the HHA and the patient;

(xiv) Information related to any advanced directives; and

(xv) Any additional items the HHA or physician may choose to include.

(3) If HHA services are initiated following the patient's discharge from a hospital, the individualized plan of care must include a description of the patient's risk for emergency department visits and hospital re-admission (low, medium, high) and all necessary interventions to address the underlying risk factors.

(4) All patient care orders, including verbal orders, must be recorded in the plan of care.

(b) *Standard: Conformance with physician orders.* (1) Drugs, services, and treatments are administered only as ordered by the physician who is responsible for the home health plan of care.

(2) Influenza and pneumococcal vaccines may be administered per agency policy developed in consultation with a physician, and after an assessment of the patient to determine for contraindications.

(3) Verbal orders must be accepted only by personnel authorized to do so by applicable state laws and regulations and by the HHA's internal policies.

(4) When services are provided on the basis of a physician's verbal orders, a registered nurse, or other qualified practitioner responsible for furnishing or supervising the ordered services, in accordance with state law and the HHA's policies, must document the orders in the patient's clinical record, and sign, date, and time the orders. Verbal orders must be authenticated and dated by the physician in accordance with applicable state laws and regulations, as well as the HHA's internal policies.

(c) *Standard: Review and revision of the plan of care.* (1) The individualized plan of care must be reviewed and revised by the physician who is responsible for the home health plan of care and the HHA as frequently as the patient's condition or needs require, but no less frequently than once every 60 days, beginning with the start of care date. The HHA must promptly alert the physician who is responsible for the HHA plan of care to any changes in the patient's condition or needs that suggest that outcomes are not being achieved and/or that the plan of care should be altered.

(2) A revised plan of care must reflect current information from the patient's updated comprehensive assessment, and contain information concerning the patient's progress toward the measurable outcomes and goals identified by the HHA and patient in the plan of care.

(3) Revisions to the plan of care must be communicated as follows:

(i) Any revision to the plan of care due to a change in patient health status must be communicated to the patient, representative (if any), caregiver, and the physician who is responsible for the HHA plan of care.

(ii) Any revisions related to plans for the patient's discharge must be communicated to the patient, representative, caregiver, the physician who is responsible for the HHA plan of care, and the patient's primary care practitioner or other health care professional who will be responsible for providing care and services to the patient after discharge from the HHA (if any).

(d) *Standard: Coordination of care.* (1) The HHA must integrate services, whether services are provided directly or under arrangement, to assure the identification of patient needs and factors that could affect patient safety and treatment effectiveness, the coordination of care provided by all disciplines, and communication with the physician.

(2) The HHA coordinates care delivery to meet the patient's needs, and involves the patient, representative (if any), and caregiver(s), as appropriate, in the coordination of care activities.

(3) The HHA must ensure that each patient, and his or her caregiver(s) where applicable, receive ongoing education and training provided by the HHA, as appropriate, regarding the care and services identified in the plan of care. The HHA must provide training, as necessary, to ensure a timely discharge.

(e) *Standard: Discharge or transfer summary.* The discharge or transfer summary must include—

(1) A summary of the patient's stay, including the reason for referral to the HHA, the patient's clinical, mental, psychosocial, cognitive, and functional condition at the time of the start of services by the HHA, all services provided by the HHA, the start and end date of care by the HHA, the patient's clinical, mental, psychosocial, cognitive, and functional condition at the time of discharge from the HHA, an updated reconciled list of medications at the time of discharge or transfer, and any recommendations for ongoing care (for example, outpatient physical therapy);

(2) The patient's current plan of care, including the latest physician orders; and

(3) Any other documentation that will assist in post-discharge or transfer continuity of care, or that is requested by the health care practitioner who will be responsible for providing care and services to the patient after discharge from the HHA or receiving facility.

§ 484.65 Condition of participation: Quality assessment and performance improvement (QAPI).

The HHA must develop, implement, evaluate, and maintain an effective, ongoing, HHA-wide, data-driven QAPI program. The HHA's governing body must ensure that the program reflects the complexity of its organization and services; involves all HHA services (including those services provided under contract or arrangement); focuses on indicators related to improved outcomes, including hospital admissions and re-admissions; and takes actions that address the HHA's performance across the spectrum of care, including the prevention and reduction of medical errors. The HHA must maintain documentary evidence of its QAPI program and be able to demonstrate its operation to CMS.

(a) *Standard: Program scope.* (1) The program must at least be capable of showing measurable improvement in indicators for which there is evidence that improvement in those indicators will improve health outcomes, patient safety, and quality of care.

(2) The HHA must measure, analyze, and track quality indicators, including adverse patient events, and other aspects of performance that enable the HHA to assess processes of care, HHA services, and operations.

(b) *Standard: Program data.* (1) The program must utilize quality indicator

data, including measures derived from OASIS, where applicable, and other relevant data, in the design of its program.

(2) The HHA must use the data collected to—

(i) Monitor the effectiveness and safety of services and quality of care; and

(ii) Identify opportunities for improvement.

(3) The frequency and detail of the data collection must be approved by the HHA's governing body.

(c) *Standard: Program activities.*

(1) The HHA's performance improvement activities must—

(i) Focus on high risk, high volume, or problem-prone areas;

(ii) Consider incidence, prevalence, and severity of problems in those areas; and

(iii) Lead to an immediate correction of any identified problem that directly or potentially threaten the health and safety of patients.

(2) Performance improvement activities must track adverse patient events, analyze their causes, and implement preventive actions.

(3) The HHA must take actions aimed at performance improvement, and, after implementing those actions, the HHA must measure its success and track performance to ensure that improvements are sustained.

(d) *Standard: Performance improvement projects.* (1) The number and scope of distinct improvement projects conducted annually must reflect the scope, complexity, and past performance of the HHA's services and operations.

(2) The HHA must document the quality improvement projects undertaken, the reasons for conducting these projects, and the measurable progress achieved on these projects.

(e) *Standard: Executive responsibilities.* The HHA's governing body is responsible for ensuring the following:

(1) That an ongoing program for quality improvement and patient safety is defined, implemented, and maintained;

(2) That the HHA-wide quality assessment and performance improvement efforts address priorities for improved quality of care and patient safety, and that all improvement actions are evaluated for effectiveness;

(3) That clear expectations for patient safety are established, implemented, and maintained; and

(4) That any findings of fraud or waste are appropriately addressed.

§ 484.70 Condition of participation: Infection prevention and control.

The HHA must maintain and document an infection control program which has as its goal the prevention and control of infections and communicable diseases.

(a) *Standard: Prevention.* The HHA must follow accepted standards of practice, including the use of standard precautions, to prevent the transmission of infections and communicable diseases.

(b) *Standard: Control.* The HHA must maintain a coordinated agency-wide program for the surveillance, identification, prevention, control, and investigation of infectious and communicable diseases that is an integral part of the HHA's quality assessment and performance improvement (QAPI) program. The infection control program must include:

(1) A method for identifying infectious and communicable disease problems; and

(2) A plan for the appropriate actions that are expected to result in improvement and disease prevention.

(c) *Standard: Education.* The HHA must provide infection control education to staff, patients, and caregiver(s).

§ 484.75 Condition of participation: Skilled professional services.

Skilled professional services include skilled nursing services, physical therapy, speech-language pathology services, and occupational therapy, as specified in § 409.44 of this chapter, and physician and medical social work services as specified in § 409.45 of this chapter. Skilled professionals who provide services to HHA patients directly or under arrangement must participate in the coordination of care.

(a) *Standard: Provision of services by skilled professionals.* Skilled professional services are authorized, delivered, and supervised only by health care professionals who meet the appropriate qualifications specified under § 484.115 and who practice according to the HHA's policies and procedures.

(b) *Standard: Responsibilities of skilled professionals.* Skilled professionals must assume responsibility for, but not be restricted to, the following:

(1) Ongoing interdisciplinary assessment of the patient;

(2) Development and evaluation of the plan of care in partnership with the patient, representative (if any), and caregiver(s);

(3) Providing services that are ordered by the physician as indicated in the plan of care;

(4) Patient, caregiver, and family counseling;

(5) Patient and caregiver education;

(6) Preparing clinical notes;

(7) Communication with the physician who is responsible for the home health plan of care and other health care practitioners (as appropriate) related to the current plan of care;

(8) Participation in the HHA's QAPI program; and

(9) Participation in HHA-sponsored in-service training.

(c) *Supervision of skilled professional assistants.* (1) Nursing services are provided under the supervision of a registered nurse that meets the requirements of § 484.115(j).

(2) Rehabilitative therapy services are provided under the supervision of an occupational therapist or physical therapist that meets the requirements of § 484.115(e) or (g), respectively.

(3) Medical social services are provided under the supervision of a social worker that meets the requirements of § 484.115(l).

§ 484.80 Condition of participation: Home health aide services.

All home health aide services must be provided by individuals who meet the personnel requirements specified in paragraph (a) of this section.

(a) *Standard: Home health aide qualifications.* (1) A qualified home health aide is a person who has successfully completed:

(i) A training and competency evaluation program as specified in paragraphs (b) and (c), respectively, of this section; or

(ii) A competency evaluation program that meets the requirements of paragraph (c) of this section; or

(iii) A nurse aide training and competency evaluation program approved by the state as meeting the requirements of §§ 483.151 through 483.154 of this chapter, and is currently listed in good standing on the state nurse aide registry; or

(iv) The requirements of a state licensure program that meets the provisions of paragraphs (b) and (c) of this section.

(2) A home health aide or nurse aide is not considered to have completed a program, as specified in paragraph (a)(1) of this section, if, since the individual's most recent completion of the program(s), there has been a continuous period of 24 consecutive months during which none of the services furnished by the individual as described in § 409.40 of this chapter were for compensation. If there has been a 24-month lapse in furnishing services for compensation, the individual must complete another

program, as specified in paragraph (a)(1) of this section, before providing services.

(b) *Standard: Content and duration of home health aide classroom and supervised practical training.* (1) Home health aide training must include classroom and supervised practical training in a practicum laboratory or other setting in which the trainee demonstrates knowledge while providing services to an individual under the direct supervision of a registered nurse, or a licensed practical nurse who is under the supervision of a registered nurse. Classroom and supervised practical training must total at least 75 hours.

(2) A minimum of 16 hours of classroom training must precede a minimum of 16 hours of supervised practical training as part of the 75 hours.

(3) A home health aide training program must address each of the following subject areas:

(i) Communication skills, including the ability to read, write, and verbally report clinical information to patients, representatives, and caregivers, as well as to other HHA staff.

(ii) Observation, reporting, and documentation of patient status and the care or service furnished.

(iii) Reading and recording temperature, pulse, and respiration.

(iv) Basic infection prevention and control procedures.

(v) Basic elements of body functioning and changes in body function that must be reported to an aide's supervisor.

(vi) Maintenance of a clean, safe, and healthy environment.

(vii) Recognizing emergencies and the knowledge of instituting emergency procedures and their application.

(viii) The physical, emotional, and developmental needs of and ways to work with the populations served by the HHA, including the need for respect for the patient, his or her privacy, and his or her property.

(ix) Appropriate and safe techniques in performing personal hygiene and grooming tasks that include—

(A) Bed bath;

(B) Sponge, tub, and shower bath;

(C) Hair shampooing in sink, tub, and bed;

(D) Nail and skin care;

(E) Oral hygiene;

(F) Toileting and elimination;

(x) Safe transfer techniques and ambulation;

(xi) Normal range of motion and positioning;

(xii) Adequate nutrition and fluid intake;

(xiii) Recognizing and reporting changes in skin condition, including pressure ulcers; and

(xiv) Any other task that the HHA may choose to have an aide perform as permitted under state law.

(xv) The HHA is responsible for training home health aides, as needed, for skills not covered in the basic checklist, as described in paragraph (b)(3)(ix) of this section.

(4) The HHA must maintain documentation that demonstrates that the requirements of this standard have been met.

(c) *Standard: Competency evaluation.* An individual may furnish home health services on behalf of an HHA only after that individual has successfully completed a competency evaluation program as described in this section.

(1) The competency evaluation must address each of the subjects listed in paragraph (b)(3) of this section. Subject areas specified under paragraphs (b)(3)(i), (iii), (ix), (x), and (xi) of this section must be evaluated by observing an aide's performance of the task with a patient. The remaining subject areas may be evaluated through written examination, oral examination, or after observation of a home health aide with a patient.

(2) A home health aide competency evaluation program may be offered by any organization, except as specified in paragraph (f) of this section.

(3) The competency evaluation must be performed by a registered nurse in consultation with other skilled professionals, as appropriate.

(4) A home health aide is not considered competent in any task for which he or she is evaluated as unsatisfactory. An aide must not perform that task without direct supervision by a registered nurse until after he or she has received training in the task for which he or she was evaluated as ''unsatisfactory,'' and has successfully completed a subsequent evaluation. A home health aide is not considered to have successfully passed a competency evaluation if the aide has an ''unsatisfactory'' rating in more than one of the required areas.

(5) The HHA must maintain documentation which demonstrates that the requirements of this standard have been met.

(d) *Standard: In-service training.* A home health aide must receive at least l2 hours of in-service training during each 12-month period. In-service training may occur while an aide is furnishing care to a patient.

(1) In-service training may be offered by any organization and must be supervised by a registered nurse.

(2) The HHA must maintain documentation that demonstrates the requirements of this standard have been met.

(e) *Standard: Qualifications for instructors conducting classroom and supervised practical training.* Classroom and supervised practical training must be performed by a registered nurse who possesses a minimum of 2 years nursing experience, at least 1 year of which must be in home health care, or by other individuals under the general supervision of the registered nurse.

(f) *Standard: Eligible training and competency evaluation organizations.* A home health aide training program and competency evaluation program may be offered by any organization except by an HHA that, within the previous 2 years:

(1) Was out of compliance with the requirements of paragraphs (b), (c), (d), or (e) of this section; or

(2) Permitted an individual who does not meet the definition of a ''qualified home health aide'' as specified in paragraph (a) of this section to furnish home health aide services (with the exception of licensed health professionals and volunteers); or

(3) Was subjected to an extended (or partially extended) survey as a result of having been found to have furnished substandard care (or for other reasons as determined by CMS or the State); or

(4) Was assessed a civil monetary penalty of $5,000 or more as an intermediate sanction; or

(5) Was found to have compliance deficiencies that endangered the health and safety of the HHA's patients, and had temporary management appointed to oversee the management of the HHA; or

(6) Had all or part of its Medicare payments suspended; or

(7) Was found under any federal or state law to have:

(i) Had its participation in the Medicare program terminated; or

(ii) Been assessed a penalty of $5,000 or more for deficiencies in federal or state standards for HHAs; or

(iii) Been subjected to a suspension of Medicare payments to which it otherwise would have been entitled; or

(iv) Operated under temporary management that was appointed to oversee the operation of the HHA and to ensure the health and safety of the HHA's patients; or

(v) Been closed, or had its patients transferred by the state; or

(vi) Been excluded from participating in federal health care programs or debarred from participating in any government program.

(g) *Standard: Home health aide assignments and duties.* (1) Home health aides are assigned to a specific patient by a registered nurse or other

appropriate skilled professional. Written patient care instructions for a home health aide must be prepared by a registered nurse or other appropriate skilled professional (that is, physical therapist, speech-language pathologist, or occupational therapist) who is responsible for the supervision of a home health aide as specified under paragraph (h) of this section.

(2) A home health aide provides services that are:

(i) Ordered by the physician;

(ii) Included in the plan of care;

(iii) Permitted to be performed under state law; and

(iv) Consistent with the home health aide training.

(3) The duties of a home health aide include:

(i) The provision of hands-on personal care;

(ii) The performance of simple procedures as an extension of therapy or nursing services;

(iii) Assistance in ambulation or exercises; and

(iv) Assistance in administering medications ordinarily self-administered.

(4) Home health aides must be members of the interdisciplinary team, must report changes in the patient's condition to a registered nurse or other appropriate skilled professional, and must complete appropriate records in compliance with the HHA's policies and procedures.

(h) *Standard: Supervision of home health aides.* (1)(i) If home health aide services are provided to a patient who is receiving skilled nursing, physical or occupational therapy, or speech-language pathology services, a registered nurse or other appropriate skilled professional described in paragraph (g) of this section must make an onsite visit to the patient's home no less frequently than every 14 days. The home health aide does not have to be present during this visit.

(ii) If a potential deficiency in aide services is noted by the supervising registered nurse or other appropriate skilled professional, then the supervising individual must make an on-site visit to the location where the patient is receiving care in order to observe and assess the aide while he or she is performing care.

(iii) A registered nurse or other appropriate skilled professional must make an annual on-site visit to the location where a patient is receiving care in order to observe and assess each aide while he or she is performing care.

(2) If home health aide services are provided to a patient who is not receiving skilled nursing care, physical or occupational therapy, or speech-language pathology services, the registered nurse must make an on-site visit to the location where the patient is receiving care no less frequently than every 60 days in order to observe and assess each aide while he or she is performing care.

(3) If a deficiency in aide services is verified by the registered nurse or other appropriate skilled professional during an on-site visit, then the agency must conduct, and the home health aide must complete a competency evaluation in accordance with paragraph (c) of this section.

(4) Home health aide supervision must ensure that aides furnish care in a safe and effective manner, including, but not limited to, the following elements:

(i) Following the patient's plan of care for completion of tasks assigned to a home health aide by the registered nurse or other appropriate skilled professional;

(ii) Maintaining an open communication process with the patient, representative (if any), caregivers, and family;

(iii) Demonstrating competency with assigned tasks;

(iv) Complying with infection prevention and control policies and procedures;

(v) Reporting changes in the patient's condition; and

(vi) Honoring patient rights.

(5) If the home health agency chooses to provide home health aide services under arrangements, as defined in section 1861(w)(1) of the Act, the HHA's responsibilities also include, but are not limited to:

(i) Ensuring the overall quality of care provided by an aide;

(ii) Supervising aide services as described in paragraphs (h)(1) and (2) of this section; and

(iii) Ensuring that home health aides who provide services under arrangement have met the training or competency evaluation requirements, or both, of this part.

(i) *Standard: Individuals furnishing Medicaid personal care aide-only services under a Medicaid personal care benefit.* An individual may furnish personal care services, as defined in § 440.167 of this chapter, on behalf of an HHA. Before the individual may furnish personal care services, the individual must meet all qualification standards established by the state. The individual only needs to demonstrate competency in the services the individual is required to furnish.

Subpart C—Organizational Environment

§ 484.100 Condition of participation: Compliance with Federal, State, and local laws and regulations related to the health and safety of patients.

The HHA and its staff must operate and furnish services in compliance with all applicable federal, state, and local laws and regulations related to the health and safety of patients. If state or local law provides licensing of HHAs, the HHA must be licensed.

(a) *Standard: Disclosure of ownership and management information.* The HHA must comply with the requirements of part 420, subpart C, of this chapter. The HHA also must disclose the following information to the state survey agency at the time of the HHA's initial request for certification, for each survey, and at the time of any change in ownership or management:

(1) The names and addresses of all persons with an ownership or controlling interest in the HHA as defined in §§ 420.201, 420.202, and 420.206 of this chapter.

(2) The name and address of each person who is an officer, a director, an agent, or a managing employee of the HHA as defined in §§ 420.201, 420.202, and 420.206 of this chapter.

(3) The name and business address of the corporation, association, or other company that is responsible for the management of the HHA, and the names and addresses of the chief executive officer and the chairperson of the board of directors of that corporation, association, or other company responsible for the management of the HHA.

(b) *Standard: Licensing.* The HHA, its branches, and all persons furnishing services to patients must be licensed, certified, or registered, as applicable, in accordance with the state licensing authority as meeting those requirements.

(c) *Standard: Laboratory services.* (1) If the HHA engages in laboratory testing outside of the context of assisting an individual in self-administering a test with an appliance that has been cleared for that purpose by the Food and Drug Administration, the testing must be in compliance with all applicable requirements of part 493 of this chapter. The HHA may not substitute its equipment for a patient's equipment when assisting with self-administered tests.

(2) If the HHA refers specimens for laboratory testing, the referral laboratory must be certified in the appropriate specialties and subspecialties of services

in accordance with the applicable requirements of part 493 of this chapter.

§ 484.105 Condition of participation: Organization and administration of services.

The HHA must organize, manage, and administer its resources to attain and maintain the highest practicable functional capacity, including overcoming those deficits that led to the patient's need for home health services, for each patient's medical, nursing, and rehabilitative needs as indicated by the plan of care. The HHA must assure that administrative and supervisory functions are not delegated to another agency or organization, and all services not furnished directly are monitored and controlled. The HHA must set forth, in writing, its organizational structure, including lines of authority, and services furnished.

(a) *Standard: Governing body.* A governing body (or designated persons so functioning) must assume full legal authority and responsibility for the agency's overall management and operation, the provision of all home health services, fiscal operations, review of the agency's budget and its operational plans, and its quality assessment and performance improvement program.

(b) *Standard: Administrator.* (1) The administrator must:

(i) Be appointed by the governing body;

(ii) Be responsible for all day-to-day operations of the HHA;

(iii) Ensure that a skilled professional as described in § 484.75 is available during all operating hours.

(2) When the administrator is not available, a pre-designated person, who is authorized in writing by the administrator and the governing body, assumes the same responsibilities and obligations as the administrator. The pre-designated person may be the skilled professional as described in paragraph (b)(1)(iii) of this section.

(3) The administrator or pre-designated individual is available during all operating hours.

(c) *Clinical manager.* A qualified licensed physician or registered nurse must provide oversight of all patient care services and personnel. Oversight must include the following—

(1) Making patient and personnel assignments;

(2) Coordinating patient care;

(3) Coordinating referrals;

(4) Assuring that patient needs are continually assessed;

(5) Assuring the development, implementation, and updates of the individualized plan of care; and

(6) Assuring the development of personnel qualifications and policies.

(d) *Standard: Parent-branch relationship.* (1) The parent HHA is responsible for reporting all branch locations of the HHA to the state survey agency at the time of the HHA's request for initial certification, at each survey, and at the time the parent proposes to add or delete a branch.

(2) The parent HHA provides direct support and administrative control of its branches.

(e) *Standard: Services under arrangement.* (1) The HHA must ensure that all services furnished under arrangement provided by other entities or individuals meet the requirements of this part and the requirements of section 1861(w) of the Act (42 U.S.C. 1395x (w)).

(2) An HHA must have a written agreement with another agency, with an organization, or with an individual when that entity or individual furnishes services under arrangement to the HHA's patients. The HHA must maintain overall responsibility for the services provided under arrangement, as well as the manner in which they are furnished. The agency, organization, or individual providing services under arrangement may not have been:

(i) Denied Medicare or Medicaid enrollment;

(ii) Been excluded or terminated from any Federal health care program or Medicaid;

(iii) Had its Medicare or Medicaid billing privileges revoked; or

(iv) Been debarred from participating in any government program.

(3) The primary HHA is responsible for patient care, and must conduct and provide, either directly or under arrangements, all services rendered to patients.

(f) *Standard: Services furnished.* (1) Skilled nursing services and at least one other therapeutic service (physical therapy, speech-language pathology, or occupational therapy; medical social services; or home health aide services) are made available on a visiting basis, in a place of residence used as a patient's home. An HHA must provide at least one of the services described in this subsection directly, but may provide the second service and additional services under arrangement with another agency or organization.

(2) All HHA services must be provided in accordance with current clinical practice guidelines and accepted professional standards of practice.

(g) *Standard: Outpatient physical therapy or speech-language pathology services.* An HHA that furnishes outpatient physical therapy or speech-language pathology services must meet all of the applicable conditions of this part and the additional health and safety requirements set forth in §§ 485.711, 485.713, 485.715, 485.719, 485.723, and 485.727 of this chapter to implement section 1861(p) of the Act.

(h) *Standard: Institutional planning.* The HHA, under the direction of the governing body, prepares an overall plan and a budget that includes an annual operating budget and capital expenditure plan.

(1) *Annual operating budget.* There is an annual operating budget that includes all anticipated income and expenses related to items that would, under generally accepted accounting principles, be considered income and expense items. However, it is not required that there be prepared, in connection with any budget, an item by item identification of the components of each type of anticipated income or expense.

(2) *Capital expenditure plan.* (i) There is a capital expenditure plan for at least a 3-year period, including the operating budget year. The plan includes and identifies in detail the anticipated sources of financing for, and the objectives of, each anticipated expenditure of more than $600,000 for items that would under generally accepted accounting principles, be considered capital items. In determining if a single capital expenditure exceeds $600,000, the cost of studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition, improvement, modernization, expansion, or replacement of land, plant, building, and equipment are included. Expenditures directly or indirectly related to capital expenditures, such as grading, paving, broker commissions, taxes assessed during the construction period, and costs involved in demolishing or razing structures on land are also included. Transactions that are separated in time, but are components of an overall plan or patient care objective, are viewed in their entirety without regard to their timing. Other costs related to capital expenditures include title fees, permit and license fees, broker commissions, architect, legal, accounting, and appraisal fees; interest, finance, or carrying charges on bonds, notes and other costs incurred for borrowing funds.

(ii) If the anticipated source of financing is, in any part, the anticipated payment from title V (Maternal and Child Health Services Block Grant) or title XVIII (Medicare) or title XIX

(Medicaid) of the Social Security Act, the plan specifies the following:

(A) Whether the proposed capital expenditure is required to conform, or is likely to be required to conform, to current standards, criteria, or plans developed in accordance with the Public Health Service Act or the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963.

(B) Whether a capital expenditure proposal has been submitted to the designated planning agency for approval in accordance with section 1122 of the Act (42 U.S.C. 1320a–1) and implementing regulations.

(C) Whether the designated planning agency has approved or disapproved the proposed capital expenditure if it was presented to that agency.

(3) *Preparation of plan and budget.* The overall plan and budget is prepared under the direction of the governing body of the HHA by a committee consisting of representatives of the governing body, the administrative staff, and the medical staff (if any) of the HHA.

(4) *Annual review of plan and budget.* The overall plan and budget is reviewed and updated at least annually by the committee referred to in paragraph (i)(3) of this section under the direction of the governing body of the HHA.

§ 484.110 Condition of participation: Clinical records.

The HHA must maintain a clinical record containing past and current information for every patient accepted by the HHA and receiving home health services. Information contained in the clinical record must be accurate, adhere to current clinical record documentation standards of practice, and be available to the physician who is responsible for the home health plan of care, and appropriate HHA staff. This information may be maintained electronically.

(a) *Standard: Contents of clinical record.* The record must include:

(1) The patient's current comprehensive assessment, including all of the assessments from the most recent home health admission, clinical notes, plans of care, and physician orders;

(2) All interventions, including medication administration, treatments, and services, and responses to those interventions;

(3) Goals in the patient's plans of care and the patient's progress toward achieving them;

(4) Contact information for the patient and the patient's representative (if any);

(5) Contact information for the primary care practitioner or other health care professional who will be responsible for providing care and services to the patient after discharge from the HHA; and

(6) A completed discharge or transfer summary, as required by § 484.60(e), that is sent to the primary care practitioner or other health care professional who will be responsible for providing care and services to the patient after discharge from the HHA (if any) within 7 calendar days of the patient's discharge; or, if the patient's care will be immediately continued in a health care facility, a discharge or transfer summary is sent to the facility within 2 calendar days of the patient's discharge or transfer.

(b) *Standard: Authentication.* All entries must be legible, clear, complete, and appropriately authenticated, dated, and timed. Authentication must include a signature and a title (occupation), or a secured computer entry by a unique identifier, of a primary author who has reviewed and approved the entry.

(c) *Standard: Retention of records.* (1) Clinical records must be retained for 5 years after the discharge of the patient, unless state law stipulates a longer period of time.

(2) The HHA's policies must provide for retention of clinical records even if it discontinues operation. When an HHA discontinues operation, it must inform the state agency where clinical records will be maintained.

(d) *Standard: Protection of records.* The clinical record, its contents, and the information contained therein must be safeguarded against loss or unauthorized use. The HHA must be in compliance with the rules regarding personal health information set out at 45 CFR parts 160 and 164.

(e) *Standard: Retrieval of clinical records.* A patient's clinical record (whether hard copy or electronic form) must be made available to a patient and appropriately authorized individuals or entities upon request.

§ 484.115 Condition of participation: Personnel qualifications.

HHA staff are required to meet the following standards:

(a) *Standard: Administrator, home health agency.* A person who:

(1) Is a licensed physician, a registered nurse, or holds an undergraduate degree; and

(2) Has experience in health service administration, with at least one year of supervisory or administrative experience in home health care or a related health care program.

(b) *Standard: Audiologist.* A person who:

(1) Meets the education and experience requirements for a Certificate of Clinical Competence in audiology granted by the American Speech-Language-Hearing Association; or

(2) Meets the educational requirements for certification and is in the process of accumulating the supervised experience required for certification.

(c) *Standard: Home health aide.* A person who meets the qualifications for home health aides specified in section 1891(a)(3) of the Act and implemented at § 484.80.

(d) *Standard: Licensed practical nurse.* A person who has completed a practical nursing program, is licensed in the state where practicing, and who furnishes services under the supervision of a qualified registered nurse.

(e) *Standard: Occupational therapist.* A person who—

(1)(i) Is licensed or otherwise regulated, if applicable, as an occupational therapist by the state in which practicing, unless licensure does not apply;

(ii) Graduated after successful completion of an occupational therapist education program accredited by the Accreditation Council for Occupational Therapy Education (ACOTE) of the American Occupational Therapy Association, Inc. (AOTA), or successor organizations of ACOTE; and

(iii) Is eligible to take, or has successfully completed the entry-level certification examination for occupational therapists developed and administered by the National Board for Certification in Occupational Therapy, Inc. (NBCOT).

(2) On or before December 31, 2009—

(i) Is licensed or otherwise regulated, if applicable, as an occupational therapist by the state in which practicing; or

(ii) When licensure or other regulation does not apply—

(A) Graduated after successful completion of an occupational therapist education program accredited by the accreditation Council for Occupational Therapy Education (ACOTE) of the American Occupational Therapy Association, Inc. (AOTA) or successor organizations of ACOTE; and

(B) Is eligible to take, or has successfully completed the entry-level certification examination for occupational therapists developed and administered by the National Board for Certification in Occupational Therapy, Inc., (NBCOT).

(3) On or before January 1, 2008—

(i) Graduated after successful completion of an occupational therapy program accredited jointly by the Committee on Allied Health Education and Accreditation of the American

Medical Association and the American Occupational Therapy Association; or

(ii) Is eligible for the National Registration Examination of the American Occupational Therapy Association or the National Board for Certification in Occupational Therapy.

(4) On or before December 31, 1977—

(i) Had 2 years of appropriate experience as an occupational therapist; and

(ii) Had achieved a satisfactory grade on an occupational therapist proficiency examination conducted, approved, or sponsored by the U.S. Public Health Service.

(5) If educated outside the United States, must meet both of the following:

(i) Graduated after successful completion of an occupational therapist education program accredited as substantially equivalent to occupational therapist assistant entry level education in the United States by one of the following:

(A) The Accreditation Council for Occupational Therapy Education (ACOTE).

(B) Successor organizations of ACOTE.

(C) The World Federation of Occupational Therapists.

(D) A credentialing body approved by the American Occupational Therapy Association.

(E) Successfully completed the entry level certification examination for occupational therapists developed and administered by the National Board for Certification in Occupational Therapy, Inc. (NBCOT).

(ii) On or before December 31, 2009, is licensed or otherwise regulated, if applicable, as an occupational therapist by the state in which practicing.

(f) *Standard: Occupational therapy assistant.* A person who—

(1) Meets all of the following:

(i) Is licensed or otherwise regulated, if applicable, as an occupational therapy assistant by the state in which practicing, unless licensure does apply.

(ii) Graduated after successful completion of an occupational therapy assistant education program accredited by the Accreditation Council for Occupational Therapy Education, (ACOTE) of the American Occupational Therapy Association, Inc. (AOTA) or its successor organizations.

(iii) Is eligible to take or successfully completed the entry-level certification examination for occupational therapy assistants developed and administered by the National Board for Certification in Occupational Therapy, Inc. (NBCOT).

(2) On or before December 31, 2009—

(i) Is licensed or otherwise regulated as an occupational therapy assistant, if applicable, by the state in which practicing; or any qualifications defined by the state in which practicing, unless licensure does not apply; or

(ii) Must meet both of the following:

(A) Completed certification requirements to practice as an occupational therapy assistant established by a credentialing organization approved by the American Occupational Therapy Association.

(B) After January 1, 2010, meets the requirements in paragraph (b)(6)(i) of this section.

(3) After December 31, 1977 and on or before December 31, 2007—

(i) Completed certification requirements to practice as an occupational therapy assistant established by a credentialing organization approved by the American Occupational Therapy Association; or

(ii) Completed the requirements to practice as an occupational therapy assistant applicable in the state in which practicing.

(4) On or before December 31, 1977—

(i) Had 2 years of appropriate experience as an occupational therapy assistant; and

(ii) Had achieved a satisfactory grade on an occupational therapy assistant proficiency examination conducted, approved, or sponsored by the U.S. Public Health Service.

(5) If educated outside the United States, on or after January 1, 2008—

(i) Graduated after successful completion of an occupational therapy assistant education program that is accredited as substantially equivalent to occupational therapist assistant entry level education in the United States by—

(A) The Accreditation Council for Occupational Therapy Education (ACOTE).

(B) Its successor organizations.

(C) The World Federation of Occupational Therapists.

(D) By a credentialing body approved by the American Occupational Therapy Association; and

(E) Successfully completed the entry level certification examination for occupational therapy assistants developed and administered by the National Board for Certification in Occupational Therapy, Inc. (NBCOT).

(ii) [Reserved]

(g) *Standard: Physical therapist.* A person who is licensed, if applicable, by the state in which practicing, unless licensure does not apply and meets one of the following requirements:

(1) Graduated after successful completion of a physical therapist education program approved by one of the following:

(i) The Commission on Accreditation in Physical Therapy Education (CAPTE).

(ii) Successor organizations of CAPTE.

(iii) An education program outside the United States determined to be substantially equivalent to physical therapist entry level education in the United States by a credentials evaluation organization approved by the American Physical Therapy Association or an organization identified in 8 CFR 212.15(e) as it relates to physical therapists.

(iv) Passed an examination for physical therapists approved by the state in which physical therapy services are provided.

(2) On or before December 31, 2009—

(i) Graduated after successful completion of a physical therapy curriculum approved by the Commission on Accreditation in Physical Therapy Education (CAPTE); or

(ii) Meets both of the following:

(A) Graduated after successful completion of an education program determined to be substantially equivalent to physical therapist entry level education in the United States by a credentials evaluation organization approved by the American Physical Therapy Association or identified in 8 CFR 212.15(e) as it relates to physical therapists.

(B) Passed an examination for physical therapists approved by the state in which physical therapy services are provided.

(3) Before January 1, 2008—

(i) Graduated from a physical therapy curriculum approved by one of the following:

(A) The American Physical Therapy Association.

(B) The Committee on Allied Health Education and Accreditation of the American Medical Association.

(C) The Council on Medical Education of the American Medical Association and the American Physical Therapy Association.

(ii) [Reserved]

(4) On or before December 31, 1977 was licensed or qualified as a physical therapist and meets both of the following:

(i) Has 2 years of appropriate experience as a physical therapist.

(ii) Has achieved a satisfactory grade on a proficiency examination conducted, approved, or sponsored by the U.S. Public Health Service.

(5) Before January 1, 1966—

(i) Was admitted to membership by the American Physical Therapy Association;

(ii) Was admitted to registration by the American Registry of Physical Therapists; and

(iii) Graduated from a physical therapy curriculum in a 4-year college or university approved by a state department of education.

(6) Before January 1, 1966 was licensed or registered, and before January 1, 1970, had 15 years of fulltime experience in the treatment of illness or injury through the practice of physical therapy in which services were rendered under the order and direction of attending and referring doctors of medicine or osteopathy.

(7) If trained outside the United States before January 1, 2008, meets the following requirements:

(i) Was graduated since 1928 from a physical therapy curriculum approved in the country in which the curriculum was located and in which there is a member organization of the World Confederation for Physical Therapy.

(ii) Meets the requirements for membership in a member organization of the World Confederation for Physical Therapy.

(h) *Standard: Physical therapist assistant.* A person who is licensed, registered or certified as a physical therapist assistant, if applicable, by the state in which practicing, unless licensure does not apply and meets one of the following requirements:

(1) Graduated from a physical therapist assistant curriculum approved by the Commission on Accreditation in Physical Therapy Education of the American Physical Therapy Association; or if educated outside the United States or trained in the United States military, graduated from an education program determined to be substantially equivalent to physical therapist assistant entry level education in the United States by a credentials evaluation organization approved by the American Physical Therapy Association or identified at 8 CFR 212.15(e); or

(2) Passed a national examination for physical therapist assistants on or before December 31, 2009, and meets one of the following:

(i) Is licensed, or otherwise regulated in the state in which practicing.

(ii) In states where licensure or other regulations do not apply, graduated before December 31, 2009, from a 2-year college-level program approved by the American Physical Therapy Association and after January 1, 2010, meets the requirements of paragraph (b)(8) of this section.

(iii) Before January 1, 2008, where licensure or other regulation does not apply, graduated from a 2-year college level program approved by the American Physical Therapy Association.

(iv) On or before December 31, 1977, was licensed or qualified as a physical therapist assistant and has achieved a satisfactory grade on a proficiency examination conducted, approved, or sponsored by the U.S. Public Health Service.

(i) *Standard: Physician.* A person who meets the qualifications and conditions specified in section 1861(r) of the Act and implemented at § 410.20(b) of this chapter.

(j) *Standard: Registered nurse.* A graduate of an approved school of professional nursing who is licensed in the state where practicing.

(k) *Standard: Social work assistant.* A person who provides services under the supervision of a qualified social worker and:

(1) Has a baccalaureate degree in social work, psychology, sociology, or other field related to social work, and has had at least 1 year of social work experience in a health care setting; or

(2) Has 2 years of appropriate experience as a social work assistant, and has achieved a satisfactory grade on a proficiency examination conducted, approved, or sponsored by the U.S. Public Health Service, except that the determinations of proficiency do not apply with respect to persons initially licensed by a state or seeking initial qualification as a social work assistant after December 31, 1977.

(l) *Standard: Social worker.* A person who has a master's or doctoral degree from a school of social work accredited by the Council on Social Work Education, and has 1 year of social work experience in a health care setting.

(m) *Standard: Speech-language pathologist.* A person who has a master's or doctoral degree in speech-language pathology, and who meets either of the following requirements:

(1) Is licensed as a speech-language pathologist by the state in which the individual furnishes such services; or

(2) In the case of an individual who furnishes services in a state which does not license speech-language pathologists:

(i) Has successfully completed 350 clock hours of supervised clinical practicum (or is in the process of accumulating supervised clinical experience);

(ii) Performed not less than 9 months of supervised full-time speech-language pathology services after obtaining a master's or doctoral degree in speech-language pathology or a related field; and

(iii) Successfully completed a national examination in speech-language pathology approved by the Secretary.

PART 485—CONDITIONS OF PARTICIPATION: SPECIALIZED PROVIDERS

■ 8. The authority citation for part 485 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395(hh)).

PART 488—SURVEY, CERTIFICATION, AND ENFORCEMENT PROCEDURES

■ 9. The authority citation for part 488 continues to read as follows:

Authority: Secs. 1102, 1128I and 1871 of the Social Security Act, unless otherwise noted (42 U.S.C. 1302, 1320a–7j, and 1395hh); Pub. L. 110–149, 121 Stat. 1819.

■ 10. In the table below, for each section and paragraph indicated in the first two columns, remove the reference indicated in the third column and add the reference indicated in the fourth column:

Section	Paragraphs	Remove	Add
§ 485.58	Introductory text	484.4	484.115.
§ 485.70	(c) and (e)	§ 484.4	§ 484.115.
§ 488.805	Definition of "temporary management"	§§ 484.4 and 484.14(c)	§§ 484.105(b) and 484.115.

Dated: June 17, 2014.

Marilyn Tavenner,

Administrator, Centers for Medicare & Medicaid Services.

Dated: July 11, 2014.

Sylvia M. Burwell,

Secretary.

[FR Doc. 2014–23895 Filed 10–6–14; 4:15 pm]

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