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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0595; Directorate Identifier 2012–NM–055–AD; Amendment 39–17262; AD 2012–23–06]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 777 airplanes. This AD was prompted by reports of failure of wire support clamps in the forward section of the aft pressure bulkhead. This AD requires a detailed inspection of the clamps on the power feeder cable of the auxiliary power unit (APU) to determine if certain clamps are installed, and related investigative and corrective actions if necessary. We are issuing this AD to prevent failure of the clamp, which could result in wire chafing and potential arcing and consequent fire in section 48 (a flammable fluid leakage zone) or heat damage to the APU power feeder cable, insulation blankets, or pressure bulkhead.

DATES: This AD is effective December 31, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of December 31, 2012.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Georgios Roussos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: (425) 917–6482; fax: (425) 917–6590; email: *georgios.roussos@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM published in the **Federal Register** on June 12, 2012 (77 FR 34876). That NPRM proposed to require a detailed inspection of the clamps on the power feeder cable of the APU to determine if certain clamps are installed, and related investigative and corrective actions if necessary.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal and the FAA's response to each comment. American Airlines and United Airlines stated they will incorporate the requirements of the NPRM (77 FR 34876, June 12, 2012).

Request To Remove Paragraph (h) of the NPRM (77 FR 34876, June 12, 2012)

Boeing requested that paragraph (h) of the NPRM (77 FR 34876, June 12, 2012), ''Exception to the Service Bulletin,'' be removed from the NPRM. Boeing stated that paragraph (h) of the NPRM requires repair of the APU power feeder, insulation blankets, and clamps, if no primer discoloration or structural damage is found. Boeing stated that paragraph (h) of the NPRM is redundant to steps 3.B.6.f.(2) of the Accomplishment Instructions of Boeing Alert Service Bulletin 777–24A0119, dated November 11, 2011, which accomplishes the replacement and repair of all damaged components found during the progressive detailed inspection outlined in that service bulletin.

We disagree with Boeing's request to remove paragraph (h) of this AD. Step 3.B.6.f.(2) of the Accomplishment Instructions of Boeing Alert Service Bulletin 777–24A0119, dated November 11, 2011, is part of the requirements of step 3.B.6.b. of that service bulletin, which states, ''If visual indications of heat damage are found, do steps 6.c through 6.f.'' However, if no primer discoloration or structural deterioration is detected after doing the inspection specified in 3.B.6.a. of that service bulletin, the service information does not specify which step to accomplish next, which is repairing the APU power feeder cable and insulation blanket, and replacing the existing clamps. We have not changed this final rule in this regard.

Request To Clarify the ''Differences Between the Proposed AD and the Service Information'' Section of the NPRM (77 FR 34876, June 12, 2012)

FedEx requested clarification regarding the statement in the ''Differences Between the Proposed AD and the Service Information'' section of the NPRM (77 FR 34876, June 12, 2012), and the statement in Boeing Alert Service Bulletin 777–24A0119, dated November 11, 2011, to contact Boeing for repair instructions. FedEx stated that, in the ''Differences Between the Proposed AD and the Service Information'' section, the repairs will be addressed in one of the following ways: In accordance with a method approved by the FAA, or using data that meets the certification basis of the airplane, and

has been approved by Boeing Commercial Airplanes Organization Designation Authorization (ODA). FedEx stated that it would like to know if any repair design by the airline will require an alternative method of compliance (AMOC), and whether Boeing will provide repair methods in a revised service bulletin, or if the airline will have to provide Boeing with information on the damage and request a repair. FedEx stated that standard repair methods, if listed in the service information, would expedite the repair, especially if the repair would need to be ''bought off'' by an airline certified structures inspector.

We agree to clarify the intent of the ''Differences Between the Proposed AD and the Service Information'' section in the NPRM (77 FR 34876, June 12, 2012). Any deviation from the Accomplishment Instructions of Boeing Alert Service Bulletin 777–24A0119, dated November 11, 2011, requires an AMOC approval. Also, as stated in paragraph (i) of this AD, where that service bulletin specifies to contact Boeing for the repair, the repair must be done in accordance with the procedures specified in paragraph (j) of this AD, which is the ''Alternative Methods of Compliance (AMOCs)'' paragraph of this AD. The AMOC requests, whether the structural repair design is developed by the airline or by Boeing engineering, could either be approved by the Manager of the Seattle Aircraft Certification Office, or by the Boeing ODA that has been authorized by the Manager, Seattle ACO, to approve AMOC requests specifically for this AD. We understand FedEx's concern on the potential delays due to the absence of standard structural repair methods in Boeing Alert Service Bulletin 777–24A0119, dated November 11, 2011; however, we have not received any information from the manufacturer on whether that service bulletin will be revised. We have not changed this final rule in this regard.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

We estimate that this AD affects 164 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection and Clamp Replacement	8 work-hours × $85 per hour = $680	$500	$1,180	$193,520

We estimate the following costs to do any necessary repairs that would be required based on the results of the inspection. We have no way of determining the number of aircraft that might need this repair:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Inspection and Repair of the Pressure Bulkhead	48 work-hours × $85 per hour = $4,080	$0	$4,080

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–23–06 The Boeing Company: Amendment 39–17262; Docket No. FAA–2012–0595; Directorate Identifier 2012–NM–055–AD.

(a) Effective Date

This AD is effective December 31, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 777–200, –200LR, –300, –300ER, and 777F series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 777–24A0119, dated November 11, 2011.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 2421; AC Generator-Alternator.

(e) Unsafe Condition

This AD was prompted by reports of failure of wire support clamps in the forward section of the aft pressure bulkhead. We are issuing this AD to prevent failure of the clamp, which could result in wire chafing and potential arcing and consequent fire in section 48 (a flammable fluid leakage zone) or heat damage to the auxiliary power unit (APU) power feeder cable, insulation blankets, or pressure bulkhead.

(f) Compliance

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

(g) Detailed Inspection of the Clamps

Within 48 months after the effective date of this AD: Do a detailed inspection of the clamps on the APU power feeder cable to determine if TA027063 clamps are installed, and all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–24A0119, dated November 11, 2011, except as required by paragraphs (h) and (i) of this AD. Do all related investigative and corrective actions before further flight.

(h) Exception to the Service Information

If during any inspection of the fuselage structure required by paragraph (g) of this AD, no primer discoloration or structural deterioration is found, before further flight, repair the APU power feeder cable and insulation blanket and replace the existing clamps, in accordance with steps 3.B.7, 3.B.8, and 3.B.9 of the Accomplishment Instructions of Boeing Alert Service Bulletin 777–24A0119, dated November 11, 2011.

(i) Repair Approval

Where Boeing Alert Service Bulletin 777–24A0119, dated November 11, 2011, specifies to do the repair in accordance with the instruction from Boeing, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/ certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any structural repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. For a structural repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(k) Related Information

For more information about this AD, contact Georgios Roussos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: (425) 917–6482; fax: (425) 917–6590; email: *georgios.roussos@faa.gov.*

(l) Material Incorporated by Reference

(1) The Director of the **Federal Register** approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Boeing Alert Service Bulletin 777–24A0119, dated November 11, 2011.

(ii) Reserved.

(3) For Boeing service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.*

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

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on November 8, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–27908 Filed 11–23–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0591; Directorate Identifier 2012–NM–015–AD; Amendment 39–17264; AD 2012–23–08]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) for certain The Boeing Company Model 737–600, –700, –700C, –800, and –900 series airplanes. That AD currently requires replacing the drain tube assemblies and support clamps on the aft fairing of the engine struts. This new AD requires replacing the drain tube assembly of the left and right engine strut aft fairings with a new one, which includes an integral support clamp made of nickel alloy 625. This AD also adds airplanes to the applicability. This AD was prompted by a report of a broken drain tube assembly on the left engine strut at the clamp support location under the aft fairing compartment, inside the heat shield cavity of the aft fairing. There have also been reports of tube wear at this clamp location on additional airplanes. We are issuing this AD to prevent failure of the drain tube assemblies and clamps on the aft fairings of the engine struts. Such failure could allow leaked flammable fluids in the drain systems to discharge onto the heat shields of the aft fairings of the engine struts, which could result in an undetected and uncontrollable fire.

DATES: This AD is effective December 31, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of December 31, 2012.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT:

Ansel James, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6497; fax: 425–917–6590; email: *ansel.james@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2008–08–24, Amendment 39–15478 (73 FR 21242, April 21, 2008). That AD applies to the specified products. The NPRM published in the **Federal Register** on June 12, 2012 (77 FR 34879). That NPRM proposed to require replacing the drain tube assembly of the left and right engine strut aft fairings with a new one which includes an integral support clamp made of nickel alloy 625. That NPRM also proposed to add airplanes to the applicability.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal (77 FR 34879, June 12, 2012) and the FAA's response to each comment.

Support for the NPRM (77 FR 34879, June 12, 2012)

United Airlines supports the 60-month compliance time specified in the NPRM (77 FR 34879, June 12, 2012).

Clarification of Effect of Winglet Installation

Aviation Partners Boeing stated that accomplishing the supplemental type certificate (STC) ST00830SE does not affect the actions specified in the NPRM (77 FR 34879, June 12, 2012).

We concur. We have added new paragraph (c)(2) to this AD, which states that STC ST00830SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/408E012E008616A7862578880060456C?OpenDocument&Highlight=st00830se*) does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST00830SE is installed, a ''change in product'' alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17 section 39.17 of the Federal Aviation Regulations. For all other AMOC requests, the operator must request approval for an AMOC in accordance with the procedures specified in paragraph (h) of this AD.

Request To Extend Compliance Time

American Airlines (AAL) requested that the compliance time specified in paragraph (g) of the NPRM (77 FR 34879, June 12, 2012) be extended from 60 to 72 months. AAL stated that the routine maintenance schedule does not allow for accomplishment of the replacements during the proposed compliance time. AAL stated that the compliance time could be extended for all airplanes without jeopardizing aviation safety.

We disagree with the request to change the compliance time. In developing an appropriate compliance time for this AD, we considered not only the safety implications, but the manufacturer's recommendations, the availability of required parts, and the practical aspect of accomplishing the actions within an interval of time that corresponds to typical scheduled maintenance for affected operators. Under the provisions of paragraph (h) of the final rule, however, we may consider requests for adjustments to the compliance time if data are submitted to substantiate that such adjustments would provide an acceptable level of safety. No change has been made to this AD in this regard.

Request To Revise Paragraph (f) of the NPRM (77 FR 34879, June 12, 2012) To Include Terminating Action

AAL requested that we revise paragraph (f) of the NPRM (77 FR 34879, June 12, 2012) to state that accomplishment of Boeing Special Attention Service Bulletin 737–54–1043, Revision 2, dated November 4, 2011, constitutes a terminating action for the specified unsafe condition and that no further action is required.

We disagree with the request to revise paragraph (f) of the NPRM (77 FR 34879, June 12, 2012). The action required by paragraph (g) of this AD, which is specified in the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–54–1043, Revision 2, dated November 4, 2011, is the only action required by this AD. If operators have previously accomplished the actions specified in Boeing Special Attention Service Bulletin 737–54–1043, Revision 2, dated November 4, 2011, they are in compliance with the AD, as specified in paragraph (f) of this AD. No change has been made to this AD in this regard.

Request To Clarify Conflicting AMOC Statements

Alaska Airlines (ASA) requested clarification regarding conflicting AMOC statements. ASA stated that paragraph (h)(3) of the NPRM (77 FR 34879, June 12, 2012) does not allow AMOCs approved for AD 2008–08–24, Amendment 39–15478 (73 FR 21242, April 21, 2008), to be used for the actions proposed in the NPRM. However, ASA pointed out that Boeing Special Attention Service Bulletin 737–54–1043, Revision 2, dated November 4, 2011, states that it is an approved AMOC for paragraphs (f) and (h) of AD 2008–08–24. ASA also requested credit for actions done previously using Boeing Special Attention Service Bulletin 737–54–1043, Revision 2, dated November 4, 2011.

We agree to clarify. Paragraph 1.F., ''Approval,'' of Boeing Special Attention Service Bulletin 737–54–1043, Revision 2, dated November 4, 2011, states that the actions specified in that service bulletin are approved as an AMOC for paragraphs (f) and (h) of AD 2008–08–24, Amendment 39–15478 (73 FR 21242, April 21, 2008). That AMOC approval allows operators to use Boeing Special Attention Service Bulletin 737–54–1043, Revision 2, dated November 4, 2011, to comply with AD 2008–08–24. However, on the effective date of this AD, AD 2008–08–24 will be superseded (i.e., will no longer exist), and the fact that Boeing Special Attention Service Bulletin 737–54–1043, Revision 2, dated November 4, 2011, refers to AD 2008–08–24 will be moot. This AD requires the accomplishment of the actions of that service bulletin as the primary means of compliance with this AD, and not as an AMOC.

The intent of paragraph (h)(3) of this AD is to prevent the use of any AMOC for AD 2008–08–24, Amendment 39–15478 (73 FR 21242, April 21, 2008), as an AMOC for this new AD. This new AD requires accomplishment of Boeing Special Attention Service Bulletin 737–54–1043, Revision 2, dated November 4, 2011. No credit is given for Boeing Special Attention Service Bulletin 737–54–1043, Revision 1, dated October 19,

2009; or Boeing Special Attention Service Bulletin 737–54–1043, dated May 2, 2007; because additional work is necessary for airplanes on which Boeing Special Attention Service Bulletin 737–54–1043, Revision 1, dated October 19, 2009; or Boeing Special Attention Service Bulletin 737–54–1043, dated May 2, 2007; was accomplished. No change has been made to this AD in this regard.

Conclusion

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

• Are consistent with the intent that was proposed in the NPRM (77 FR 34879, June 12, 2012) for correcting the unsafe condition; and

• Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 34879, June 12, 2012).

Costs of Compliance

We estimate that this AD affects 1,098 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replacement	14 work-hours × $85 per hour = $1,190	$12,326	$13,516	$14,840,568

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2008–08–24, Amendment 39–15478 (73 FR 21242, April 21, 2008), and adding the following new AD:

2012–23–08 The Boeing Company: Amendment 39–17264; Docket No. FAA–2012–0591; Directorate Identifier 2012–NM–015–AD.

(a) Effective Date

This airworthiness directive (AD) is effective December 31, 2012.

(b) Affected ADs

This AD supersedes AD 2008–08–24, Amendment 39–15478 (73 FR 21242, April 21, 2008).

(c) Applicability

(1) This AD applies to The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes, certificated in any category, as identified in Boeing Special Attention Service Bulletin 737–54–1043, Revision 2, dated November 4, 2011.

(2) Supplemental Type Certificate (STC) ST00830SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/408E012E008616A7862578880060456C?OpenDocument&Highlight=st00830se*) does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST00830SE is installed, a ''change in product'' alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17. For all other AMOC requests, the operator must request approval for an AMOC in accordance with the procedures specified in paragraph (h) of this AD.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 54, Nacelles/pylons.

(e) Unsafe Condition

This AD was prompted by a report of a broken drain tube assembly on the aft fairing of the left engine strut at the clamp support location under the aft fairing compartment, inside the heat shield cavity of the aft fairing. There have also been reports of tube wear at the clamp location on additional airplanes. We are issuing this AD to prevent failure of the drain tube assemblies and clamps on the aft fairings of the engine struts. Such failure could allow leaked flammable fluids in the drain systems to discharge onto the heat shields of the aft fairings of the engine struts, which could result in an undetected and uncontrollable fire.

(f) Compliance

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

(g) Replacement

Within 60 months after the effective date of this AD, replace the drain tube assemblies and support clamps on the aft fairing of the struts of engines 1 and 2 with new drain tube assemblies and clamps, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–54–1043, Revision 2, dated November 4, 2011.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be emailed to: *9–ANM–Seattle–ACO–AMOC–Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/ certificate holding district office.

(3) AMOCs approved previously in accordance with AD 2008–08–24, Amendment 39–15478 (73 FR 21242, April 21, 2008), are not approved as AMOCs with this AD.

(i) Related Information

For more information about this AD, contact Ansel James, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6497; fax: 425–917–6590; email: *ansel.james@faa.gov.*

(j) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Boeing Special Attention Service Bulletin 737–54–1043, Revision 2, dated November 4, 2011.

(ii) Reserved.

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.*

(4) You may view this service information at FAA, Transport Airplane

Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–28029 Filed 11–23–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0339; Directorate Identifier 2011–SW–051–AD; Amendment 39–17259; AD 2012–23–03]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Eurocopter France (Eurocopter) Model SA.315B Alouette III, SE.3160 Alouette III, SA.316B Alouette III, SA.316C Alouette III, SA.319B Alouette III, SA 3180–ALOUETTE ASTAZOU, SA 318B–ALOUETTE ASTAZOU, and SA 318 C–ALOUETTE ASTAZOU helicopters. This AD requires inspecting the cage of the free-wheel assembly for the correct alignment of the roller drive pocket recesses and replacing the free-wheel cage with an airworthy free-wheel cage if a defect exists. This AD was prompted by incorrect positioning of the roller drive pocket recesses on the tail rotor drive shaft free-wheel cage, which caused a pilot to experience a heavy jerk in the yaw control during in-flight autorotation training. The requirements of this AD are intended to prevent a loss of tail rotor drive and subsequent loss of control of the helicopter.

DATES: This AD is effective December 31, 2012.

The Director of the Federal Register approved the incorporation by reference of certain documents listed in this AD as of December 31, 2012.

ADDRESSES: For service information identified in this AD, contact American Eurocopter Corporation, 2701 N. Forum Drive, Grand Prairie, TX 75052, telephone (972) 641–0000 or (800) 232–0323, fax (972) 641–3775, or at *http://www.eurocopter.com/techpub.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

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

FOR FURTHER INFORMATION CONTACT: Rao Edupuganti, Aerospace Engineer, FAA, Rotorcraft Directorate, Regulations and Policy Group, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5110, email *rao.edupuganti@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On March 29, 2012, at 77 FR 18967, the **Federal Register** published our notice of proposed rulemaking (NPRM), which proposed to amend 14 CFR part 39 to include an AD that would apply to Eurocopter Model SA.315B Alouette III, SE.3160 Alouette III, SA.316B Alouette III, SA.316C Alouette III, SA.319B Alouette III, SA 3180–ALOUETTE ASTAZOU, SA 318B–ALOUETTE ASTAZOU, and SA 318C–ALOUETTE ASTAZOU helicopters. That NPRM proposed to require inspecting the cage of the free-wheel assembly for the correct alignment of the roller drive pocket recesses and replacing the free-wheel cage with an airworthy free-wheel cage if a defect exists. The proposed requirements were intended to prevent a loss of tail rotor drive and subsequent loss of control of the helicopter.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD No. 2011–0143, dated July 26, 2011 (AD 2011–0143), to correct an unsafe condition for Eurocopter helicopters. EASA advises that during in-flight autorotation training, a pilot experienced a heavy jerk in the yaw control at the time of resynchronization. The free-wheel assembly of the helicopter had been replaced shortly before this flight. Internal inspection of the free-wheel assembly revealed incorrect positioning of the roller drive pocket recesses on the free-wheel cage. The subsequent off-

setting restricts the travel of the roller on its ramp and can cause, under high torque conditions, free-wheel slippage.

This condition, if not corrected, could result in a temporary loss of rotor drive, jeopardizing flight safety, especially in phases of flight close to the ground.

Comments

We gave the public the opportunity to participate in developing this AD, but we did not receive any comments on the NPRM (77 FR 18967, March 29, 2012).

FAA's Determination

These helicopters have been approved by the aviation authority of France and are approved for operation in the United States. Pursuant to our bilateral agreement with France, EASA, its technical representative, has notified us of the unsafe condition described in the EASA AD. We are issuing this AD because we evaluated all information provided by the EASA and determined the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs and that air safety and the public interest require adopting the AD requirements as proposed.

Differences Between This AD and the EASA AD

The EASA AD requires compliance within 110 flight hours or 5 months, whichever occurs first. This AD does not impose a calendar time requirement.

Related Service Information

Eurocopter has issued Alert Service Bulletin (ASB) No. Alouette-65.149, Revision 0, dated March 23, 2011, for model 3130, 313B, 3180, 318B, 318C, 3160, 316B, 316C, 319C and 319B helicopters; and ASB No. SA315–65.48, Revision 0, dated March 23, 2011, for model 315B helicopters, which specify removing and disassembling the free-wheel assembly to check the free-wheel cage for correct positioning. EASA classified these ASBs as mandatory and issued AD 2011–0143 to ensure the continued airworthiness of these helicopters.

Costs of Compliance

We estimate that this AD will affect 63 helicopters of U.S. Registry and that operators may incur the following costs to comply with this AD.

- Inspecting the free-wheel cage assembly will require 8 work-hours at an average labor rate of $85 per hour, and required parts will cost $13, for a total cost per helicopter of $693, and a total cost to the U.S. operator fleet of $43,659.
- Modifying any affected free-wheel cage assembly will require 8 work hours and required parts will cost $1,986, for a total cost per helicopter of $2,666.

Authority for this Rulemaking

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

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

Regulatory Findings

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

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

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

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

(3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–23–03 Eurocopter France Helicopters: Amendment 39–17259; Docket No. FAA–2012–0339; Directorate Identifier 2011–SW–051–AD.

(a) Applicability

This AD applies to Model SA.315B Alouette III, SE.3160 Alouette III, SA.316B Alouette III, SA.316C Alouette III, SA.319B Alouette III, SA 3180–ALOUETTE ASTAZOU, SA 318B–ALOUETTE ASTAZOU, and SA 318 C–ALOUETTE ASTAZOU helicopters with a free-wheel cage, part number (P/N) 3130S60–10–003 installed, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as incorrect positioning of the roller drive pocket recesses on the cage of the tail-rotor driveshaft free-wheel assembly. This condition could result in loss of tail rotor drive and subsequent loss of control of the helicopter.

(c) Effective Date

This AD becomes effective December 31, 2012.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

Within 110 hours time-in-service:

(1) Remove the free-wheel assembly and pull out the free-wheel driven head.

(2) Inspect the free-wheel cage for correct alignment of the roller drive pocket recesses in accordance with Figure 2 of Eurocopter Alert Service Bulletin (ASB) No. SA315–65.48, Revision 0, or Eurocopter ASB No. ALOUETTE–65.149, Revision 0, both dated March 23, 2011, as appropriate for your model helicopter.

(3) If the right edge of the tab is in line with the right edge of the pocket recess, before further flight, replace the free-wheel cage with an airworthy free-wheel cage.

(4) Do not install an affected free-wheel assembly on any helicopter, unless the cage has passed inspection in accordance with paragraph (e)(2) through (e)(3) of this AD.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Rao Edupuganti, Aerospace Engineer, FAA, Rotorcraft Directorate, Regulations and Policy Group, 2601 Meacham Blvd., Fort Worth, Texas

76137, telephone (817) 222–5110, email *rao.edupuganti@faa.gov*.

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office, before operating any aircraft complying with this AD through an AMOC.

(g) Additional Information

The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2011–0143, dated July 26, 2011.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 6700: Tail Rotor Drive System.

(i) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the following service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Eurocopter Alert Service Bulletin (ASB) No. SA315–65.48, Revision 0, dated March 23, 2011.

(ii) Eurocopter ASB No. ALOUETTE–65–149, Revision 0, dated March 23, 2011.

(3) For Eurocopter service information identified in this AD, contact American Eurocopter Corporation, 2701 N. Forum Drive, Grand Prairie, TX 75052, telephone (972) 641–0000 or (800) 232–0323, fax (972) 641–3775, or at *http://www.eurocopter.com/techpub*.

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

(5) You may also view this service information at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Fort Worth, Texas, on November 5, 2012.

Kim Smith,

Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2012–28033 Filed 11–23–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0794; Directorate Identifier 2009–NM–035–AD; Amendment 39–17239; AD 2012–22–03]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes. This AD was prompted by reports of cracks in the main entry door number 1 upper main sill outer chord, along the bend radius of the chord on several airplanes. This AD requires a general visual inspection to identify any existing structural repair manual (SRM) repairs of the upper main sill outer chord of the left and right side main entry door number 1, repetitive detailed inspections for cracks in the upper main sill of the door(s); and related investigative and corrective actions, if necessary. This AD also requires repetitive inspections for airplanes on which a certain repair is done, and corrective actions if necessary, and reduces certain compliance times. We are issuing this AD to detect and correct cracks in the main entry door number 1 upper main sill outer chord, along the bend radius of the chord, which could result in loss of structural integrity of the airplane.

DATES: This AD is effective December 31, 2012.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of December 31, 2012.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: (425) 917–6437; fax: (425) 917–6590; email: *ivan.li@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a supplemental notice of proposed rulemaking (SNPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to the specified products. That supplemental NPRM published in the **Federal Register** on December 29, 2011 (76 FR 81879). The original NPRM (74 FR 49351, September 28, 2009) proposed to require a general visual inspection to identify any existing SRM repairs of the upper main sill outer chord of the left and right side main entry door number 1, as applicable; repetitive detailed inspections for cracks in the upper main sill of the door(s); and related investigative and corrective actions, if necessary. The original NPRM also proposed to require repetitive inspections for airplanes on which a certain repair is done, and corrective actions if necessary The supplemental NPRM proposed to revise the original NPRM by reducing certain compliance times.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal (76 FR 81879, December 29, 2011) and the FAA's response to each comment.

Request To Repair Crack by Using SRM

Boeing requested that we revise paragraph (k) of the supplemental NPRM (76 FR 81879, December 29, 2011) to allow, for repair of any crack found during any inspection specified

in paragraph (g) or (h) of the supplemental NPRM, using ''the FAA approved Boeing 747–400 SRM 53–10–15, Fig 201 Repair 1-''MED #1 Upper Main Sill web'' or a method approved in accordance with the procedures specified in paragraph (s) of this AD.'' Boeing explained that the Boeing 747–400 SRM provides an FAA-approved repair, and that allowing its use for repairs would reduce the resource requirements of providing alternative method of compliance (AMOC) approvals.

We agree to include the SRM reference requested by Boeing for Model 747–400 series airplanes. We have revised paragraph (k) of this final rule accordingly.

Request To Revise Inspection Compliance

Boeing requested that we revise paragraph (l) of the supplemental NPRM (76 FR 81879, December 29, 2011) to explain that the specified inspection is repeated only until the outer chord repair is installed (as specified in Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010). Boeing explained that paragraphs (g) and (h) of the supplemental NPRM allow termination of repetitive inspections if that repair has been accomplished. Boeing reasoned that paragraph (l) of the supplemental NPRM implies that inspections are ongoing.

We agree with the commenter's request for the reasons stated by Boeing. We have revised paragraph (l) of this final rule accordingly.

Request To Include Certain Paragraphs as Acceptable for Repair Requirements of AD 2010–01–01, Amendment 39–16157 (75 FR 1533, January 12, 2010)

All Nippon Airways (ANA) requested that we revise paragraph (o) of the supplemental NPRM (76 FR 81879, December 29, 2011) to reference paragraphs (j) and (k) of the supplemental NPRM as acceptable for compliance with AD 2010–01–01, Amendment 39–16157 (75 FR 1533, January 12, 2010). ANA explained that, otherwise, operators would have to obtain an AMOC for the requirements of AD 2010–01–01 when they repair the subject area per paragraph (j) or (k) of the supplemental NPRM.

We agree that accomplishment of the repairs required by paragraphs (j) and (k) of this AD are acceptable for compliance with the repair requirements of paragraph (h) of AD 2010–01–01, Amendment 39–16157 (75 FR 1533, January 12, 2010). In addition, we have determined that accomplishment of the repairs required by paragraphs (j) and (k) of this AD are acceptable for compliance with paragraph (l) of AD 2009–18–07, Amendment 39–16003 (74 FR 43629, August 27, 2009). We have revised paragraph (o) of this final rule accordingly.

Explanation of Additional Changes Made to This AD

We have revised the heading and wording for paragraph (r) of this AD to provide appropriate credit for previous accomplishment of certain actions. This change does not affect the intent of that paragraph.

We have re-identified Note 1 to paragraph (o) of the supplemental NPRM (76 FR 81879, December 29, 2011) as paragraph (o)(2) in this final rule.

Conclusion

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

- Are consistent with the intent that was proposed in the supplemental NPRM (76 FR 81879, December 29, 2011) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the supplemental NPRM (76 FR 81879, December 29, 2011).

We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

We estimate that this AD affects 165 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Work hours	Parts cost	Cost per product	Number of U.S.-registered airplanes	Cost on U.S. operators
Inspection (Groups 1, 3, 5–6 airplanes).	6 work-hours × $85 per hour = $510.	$0	$510 per inspection cycle	86	$43,860 per inspection cycle.
Inspection (Groups 2, 4, 7 airplanes).	3 work-hours × $85 per hour = $255.	$0	$255 per inspection cycle	79	$20,145 per inspection cycle.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–22–03 The Boeing Company: Amendment 39–17239; Docket No. FAA–2009–0794; Directorate Identifier 2009–NM–035–AD.

(a) Effective Date

This AD is effective December 31, 2012.

(b) Affected ADs

AD 2009–18–07, Amendment 39–16003 (74 FR 43629, August 27, 2009); and AD 2010–01–01, Amendment 39–16157 (75 FR 1533, January 12, 2010); affect this AD.

(c) Applicability

This AD applies to all The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes, certificated in any category.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports of cracks in the main entry door number 1 upper main sill outer chord, along the bend radius of the chord on several airplanes. We are issuing this AD to detect and correct such cracks, which could result in loss of structural integrity of the airplane.

(f) Compliance

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

(g) Inspection for Groups 1 Through 4 Airplanes

For Groups 1 through 4 airplanes, as identified in Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010: At the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010, except as provided by paragraphs (p) and (q) of this AD, do a one-time general visual inspection to identify any existing structural repair manual (SRM) repairs of the upper main sill outer chord of the left and right main entry door 1, as applicable. Remove any existing SRM outer chord repair that is found, before further flight, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010. In addition, after doing the one-time general visual inspection to identify any existing SRM repairs of the upper main sill outer chord of the left and right main entry door 1, before further flight, do a detailed inspection for cracks of the main upper sill outer chord, web, and frame attachment angles (or clips) of the left and right main entry door 1, as applicable. Do all actions in accordance with Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010. If no crack and no existing SRM outer chord repair is found during any inspection required by this paragraph, at the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010, except as provided by paragraphs (p) and (q) of this AD, repeat thereafter the detailed inspection for cracks, at intervals specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010, until the outer chord repair specified in Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010, is installed.

(h) Inspection for Groups 5 Through 7 Airplanes

For Groups 5 through 7 airplanes, as identified in Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010: At the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010, except as provided by paragraphs (p) and (q) of this AD, do a detailed inspection for cracks of the main upper sill outer chord, web, and frame attachment angles (or clips) of the left and right main entry door 1, as applicable, in accordance with Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010. If no crack is found during any inspection required by this paragraph, at the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010, except as provided by paragraphs (p) and (q) of this AD, repeat thereafter the detailed inspection for cracks, at intervals specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010, until the outer chord repair specified in Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010, is installed.

(i) Repair for Groups 1 Through 4 Airplanes

For Groups 1 through 4 airplanes, as identified in Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010: If an existing SRM outer chord repair is found and removed during the inspection required by paragraph (g) of this AD, before further flight, install a new outer chord repair in accordance with Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010.

(j) Repair of Outer Chord Crack or Cracked Frame Attachment Angles (or Clips)

If any outer chord crack or cracked frame attachment angles (or clips) are found during any inspection required by paragraph (g) or (h) of this AD, before further flight, repair, in accordance with Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010.

(k) Repair of Upper Main Sill Web Crack

If any upper main sill web crack is found during any inspection required by paragraph (g) or (h) of this AD, before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (s) of this AD. For Boeing Model 747–400 series airplanes only, the repair may also be done in accordance with Figure 201, of Repair 1, ''Main Entry Door Number 1 Upper Main Sill Web Crack Repair from STA 440 to STA 480,'' of Subject 53–10–15, ''Fuselage Door Surround Structure-Section 41,'' of Chapter 53, ''Fuselage,'' of Boeing 747–400 Structural Repair Manual, Revision 83, dated June 20, 2012.

(l) Inspection

If any upper main sill web or frame attachment angles (or clips) have been repaired as specified in PART 3—REPAIR of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010, and the outer chord repair specified in PART 3—REPAIR of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010, has not been installed, at the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010, except as provided by paragraphs (p) and (q) of this AD, do a detailed inspection for cracks as specified in paragraph (g) or (h) of this AD, as applicable, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010. Repeat the inspections in paragraph (g) or (h) of this AD, as applicable, thereafter at intervals specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010, until the outer chord repair specified in Part 3 of the Accomplishment Instructions of Boeing Alert

Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010, is installed.

(m) Post-Repair Inspection

For airplanes having the outer chord repair installed as specified in PART 3—REPAIR of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010: At the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010, except as provided by paragraphs (p) and (q) of this AD, do a detailed inspection for cracks of the left and right main entry door 1 upper sill, as applicable, with the outer chord repair installed, in accordance with PART 5—AFTER-REPAIR INSPECTION of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010. Repeat the inspection for cracks thereafter at the applicable intervals specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010.

(n) Repair of Any Crack Found From Post-Repair Inspection

Repair any crack found during any inspection required by paragraph (m) of this AD, before further flight, using a method approved in accordance with the procedures specified in paragraph (s) of this AD.

(o) Credit for Inspections Required by AD 2009–18–07, Amendment 39–16003 (74 FR 43629, August 27, 2009), or AD 2010–01–01, Amendment 39–16157 (75 FR 1533, January 12, 2010), and AMOC for the Repairs Required by Those ADs

(1) Accomplishing the main entry door 1 cutout detailed inspection required by AD 2009–18–07, Amendment 39–16003 (74 FR 43629, August 27, 2009); or AD 2010–01–01, Amendment 39–16157 (75 FR 1533, January 12, 2010); as applicable; before the effective date of this AD is acceptable for compliance with the detailed inspection requirements of paragraphs (g), (h), (l), and (m) of this AD only. The one-time general visual inspection of paragraph (g) of this AD is still required. For the repaired area only, accomplishment of the applicable repair required by paragraphs (j) and (k) of this AD is acceptable for compliance with paragraph (l) of AD 2009–18–07, and paragraph (h) of AD 2010–01–01.

(2) For all applicable airplanes that have accumulated 22,000 total flight cycles or more as of October 1, 2009 (the effective date of AD 2009–18–07, Amendment 39–16003 (74 FR 43629, August 27, 2009)), AD 2009–18–07 requires accomplishing the main entry door 1 cutout detailed inspection in accordance with Boeing Alert Service Bulletin 747–53A2349, Revision 3, dated October 2, 2008 (which is incorporated by reference in AD 2009–18–07). For all applicable airplanes (except Model 747–400 series airplanes modified to the Model 747–400 large cargo freighter (LCF) configuration) that have accumulated 22,000 total flight cycles or more as of February 16, 2010 (the effective date of AD 2010–01–01, Amendment 39–16157 (75 FR 1533, January 12, 2010)), AD 2010–01–01 requires accomplishing the main entry door 1 cutout detailed inspection in accordance with Boeing Alert Service Bulletin 747–53A2500, Revision 1, dated September 25, 2008 (which is incorporated by reference in AD 2010–01–01). For Model 747–400 series airplanes modified to the Model 747–400 LCF configuration and having accumulated 15,000 total flight cycles or more as of February 16, 2010 (the effective date of AD 2010–01–01), AD 2010–01–01 requires accomplishing the inspections in accordance with Boeing Alert Service Bulletin 747–53A2500, Revision 1, dated September 25, 2008 (which is incorporated by reference in AD 2010–01–01).

(p) Exception to the Service Information

Where paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010, specifies a compliance time ''after the original issue date of this service bulletin,'' or ''after the date on Revision 1 of this service bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(q) Exception to Compliance Time

Where paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010, specifies a compliance time of ''within'' a specified ''total flight-cycles,'' this AD requires compliance ''before the accumulation'' of the specified total flight cycles.

(r) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraphs (g), (h), (i), (j), (k), (l), (m), and (n) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Service Bulletin 747–53A2785, dated February 12, 2009, which is not incorporated by reference in this AD.

(s) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov*.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane and the approval must specifically refer to this AD.

(t) Related Information

(1) For more information about this AD, contact Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 917–6437; fax (425) 917–6590; email: *ivan.li@faa.gov*.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com*

(u) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the following service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise.

(i) Boeing Alert Service Bulletin 747–53A2785, Revision 1, dated July 15, 2010.

(ii) Figure 201, of Repair 1, ''Main Entry Door Number 1 Upper Main Sill Web Crack Repair from STA 440 to STA 480,'' of Subject 53–10–15, ''Fuselage Door Surround Structure-Section 41,'' of Chapter 53, ''Fuselage,'' of Boeing 747–400 Structural Repair Manual, Revision 83, dated June 20, 2012.

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com*

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

(5) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Renton, Washington, on October 19, 2012.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–26666 Filed 11–23–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0640; Directorate Identifier 2011–NM–203–AD; Amendment 39–17256; AD 2012–22–18]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Airbus Model A330–243, –243F, –341, –342, and –343 airplanes equipped with Rolls-Royce Trent 700 engines. This AD was prompted by reports of extensive damage to engine air intake cowls as a result of acoustic panel collapse. This AD requires repetitive inspections of the three inner acoustic panels of both engine air intake cowls to detect disbonding, and corrective actions if necessary. We are issuing this AD to detect and correct disbonding, which could result in detachment of the engine air intake cowl from the engine leading to ingestion of parts, which could cause failure of the engine, and possible injury to persons on the ground.

DATES: This AD becomes effective December 31, 2012.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of December 31, 2012.

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

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

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on June 21, 2012 (77 FR 37344). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> Two operators of A330 aeroplanes fitted with Rolls-Royce Trent 700 engines reported finding extensive damage to engine air intake cowls as a result of acoustic panel collapse, most probably caused by panel disbonding.
>
> This condition, if not detected and corrected, could lead to the detachment of the engine air intake cowl from the engine, possibly resulting in ingestion of parts by, and consequence damage to, the engine, or injury to persons on the ground.
>
> For the reasons described above, this [European Aviation Safety Agency (EASA)] AD requires repetitive special detailed inspections (tap tests) of the 3 inner acoustic panels of both engine air intake cowls to detect any disbonding and, depending on findings, applicable corrective actions.

The unsafe condition is detachment of the engine air intake cowl from the engine, which could result in ingestion of parts causing failure of the engine, and possible injury to persons on the ground. Corrective actions include repair or replacement of the affected engine air intake cowl. You may obtain further information by examining the MCAI in the AD docket.

Comments

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

Request To Change Unsafe Condition Statement

Airbus stated that the MCAI does not refer to reduced controllability of the airplane as a potential consequence, but to injury to persons on the ground.

We infer that the commenter requests that we modify the unsafe condition statement specified in the NPRM (77 FR 37344, June 21, 2012). We agree to change the unsafe condition statement in the AD to remove the reference to reduced airplane controllability. We have changed the AD accordingly.

Request To Delete References to Airbus Service Information Appendices

US Airways requested that we delete references to Appendices 01 and 02 of Airbus Mandatory Service Bulletin A330–71–3024, Revision 01, dated September 27, 2011, in paragraph (h) and in other locations of the NPRM (77 FR 37344, June 21, 2012). US Airways stated that Appendix 01 of Airbus Mandatory Service Bulletin A330–71–3024, Revision 01, dated September 27, 2011, is simply a form that reports inspection results to Airbus, and it does not recommend mandating an administrative action that is related to the safety aspect of inspecting the inlet cowl. US Airways stated that accomplishing this reporting task is burdensome and does not improve the safety aspects of the inlet cowl inspection. US Airways stated that Appendix 02 of Airbus Mandatory Service Bulletin A330–71–3024, Revision 01, dated September 27, 2011, is simply a Gantt chart outlining potential man hours and aircraft downtime needed to complete the inspection.

We agree to clarify the AD. There are no references to Appendix 01 and/or Appendix 02 of Airbus Mandatory Service Bulletin A330–71–3024, Revision 01, dated September 27, 2011, in paragraph (h) or any other regulatory section of the AD. However, we have revised the references to this service information in paragraphs (g), (h), (l), and (m) of this AD to exclude Appendices 01 through 03, because the information provided in those appendices is not necessary to accomplish the requirements of this AD. We consider Appendix 03 of Airbus Mandatory Service Bulletin A330–71–3024, Revision 01, dated September 27, 2011, unnecessary to accomplish the requirements of this AD, because it is a Gantt chart outlining elapsed time assumptions for the actions described in that service information.

Request To Delete References to Rolls-Royce Service Information Appendix

US Airways requested that we state in the NPRM (77 FR 37344, June 21, 2012) that Appendix 1 of Rolls-Royce Non-Modification Service Bulletin RB.211–71–AG419, Revision 1, dated May 10, 2011, does not need to be accomplished. US Airways stated that Appendix 1 of Rolls-Royce Non-Modification Service Bulletin RB.211–71–AG419, Revision 1, dated May 10, 2011, noted that accomplishing of this service information should be marked on the engine air inlet cowl label plate and that Rolls-Royce and/or Bombardier should be notified of the inspection results. US Airways stated that it, and most other operators/carriers in the world, use an electronic database to issue, track, and record mandatory inspections on their airplanes, and, consequently, there is no need to mandate marking the inspection service information reference on the inlet cowl label plate. US Airways also stated that notification of a Rolls-Royce or Bombardier representative is burdensome and does not improve the safety aspects of the inlet cowl inspection.

We partially agree. We do not agree to remove the reference to Appendix 1 of Rolls-Royce Non-Modification Service Bulletin RB.211–71–AG419, Revision 1, dated May 10, 2011, because Item 1 of Appendix 1 specifies that

accomplishment of this service information should be marked on the engine air inlet cowl label plate using metal stamp, vibro etch, or electro etch on the engine air intake cowl modification plate. Not all operators use an electronic data base to track inspections. In case of the airplane transfer to another operator, this marking will ensure the evidence of the accomplishment of required actions. We agree that Items 2 and 3 of Appendix 1 of Rolls-Royce Non-Modification Service Bulletin RB.211–71–AG419, Revision 1, dated May 10, 2011, which specify reporting, are not necessary. We have added new paragraph (j) to this AD to specify that the reporting specified in Rolls-Royce Non-Modification Service Bulletin RB.211–71–AG419, Revision 1, including Appendix 1, dated May 10, 2011, is not required by this AD, and have re-identified subsequent paragraphs accordingly. We have also revised paragraph (i) of this AD to include the paragraph (j) exclusion.

Request To Specify Revised Service Information

US Airways requested that we revise paragraph (i) of the NPRM (77 FR 37344, June 21, 2012) to specify Rolls-Royce Non-Modification Service Bulletin RB.211–71–AG419, Revision 1, including Appendix 1, dated May 10, 2011, as the correct service information.

We agree to revise the reference to Rolls-Royce Non-Modification Service Bulletin RB.211–71–AG419, Revision 1, including Appendix 1, dated May 10, 2011, to correctly identify that document as Revision 1. We have changed paragraphs (i)(1), (i)(1)(i), (i)(1)(ii), (i)(1)(iii), (i)(2), and (l)(1)(ii) (paragraph (k)(1)(ii) of the NPRM (77 FR 37344, June 21, 2012)), of the AD to correctly reference Rolls-Royce Non-Modification Service Bulletin RB.211–71–AG419, Revision 1, including Appendix 1, dated May 10, 2011.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (77 FR 37344, June 21, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 37344, June 21, 2012).

Costs of Compliance

We estimate that this AD will affect 22 products of U.S. registry. We also estimate that it will take about 20 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $37,400, or $1,700 per product.

In addition, we estimate that any necessary follow-on actions would take up to 34 work-hours, for a cost of $2,890 per product. We have received no definitive data that would enable us to provide parts cost estimates for the on-condition actions specified in this AD. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (77 FR 37344, June 21, 2012), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–22–18 Airbus: Amendment 39–17256. Docket No. FAA–2012–0640; Directorate Identifier 2011–NM–203–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective December 31, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Model A330–243, -243F, -341, -342, and -343 airplanes; certificated in any category; all manufacturer serial numbers; equipped with Rolls-Royce Trent 700 engines.

(d) Subject

Air Transport Association (ATA) of America Code 71, Powerplant.

(e) Reason

This AD was prompted by reports of extensive damage to engine air intake cowls as a result of acoustic panel collapse. We are issuing this AD to detect and correct disbonding, which could result in detachment of the engine air intake cowl

from the engine leading to ingestion of parts, which could cause failure of the engine, and possible injury to persons on the ground.

(f) Compliance

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

(g) Repetitive Detailed Inspection

At the applicable compliance time specified in paragraph (g)(1) or (g)(2) of this AD: Do a tap test inspection of the three inner acoustic panels of each engine air intake cowl for disbonding, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–71–3024, Revision 01, excluding Appendices 01 through 03, dated September 27, 2011. Repeat the inspection thereafter at intervals not to exceed 24 months, except as required by paragraphs (h) and (i) of this AD.

(1) For an engine air intake cowl that has accumulated less than 5,000 total flight cycles or less than 20,000 total flight hours, whichever occurs first, since its first installation on an airplane as of the effective date of this AD: Within 24 months after the engine air intake cowl has accumulated 5,000 total flight cycles or 20,000 total flight hours, whichever occurs first, since its first installation on an airplane.

(2) For an engine air intake cowl that has accumulated 5,000 or more total flight cycles or 20,000 or more total flight hours, whichever occurs first, since its first installation on an airplane as of the effective date of this AD: Within 24 months after the effective date of this AD.

(h) Inspection of Replaced Engine Air Intake Cowl

For airplanes on which an engine air intake cowl is replaced after the effective date of this AD, at the applicable compliance time specified in paragraph (h)(1) or (h)(2) of this AD: Do a tap test inspection for disbonding of the three inner acoustic panels of the affected engine air intake cowl for disbonding, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–71–3024, Revision 01, excluding Appendices 01 through 03, dated September 27, 2011. Repeat the inspection thereafter at intervals not to exceed 24 months.

(1) Within 24 months after the engine air intake cowl accumulates 5,000 total flight cycles or 20,000 total flight hours, whichever occurs first, since its first installation on any airplane, except as required by paragraph (h)(2) of this AD.

(2) Before installation, if an engine air intake cowl has accumulated 5,000 or more total flight cycles or 20,000 or more total flight hours, whichever occurs first, since its first installation on any airplane, and which has not been inspected in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–71–3024, Revision 01, excluding Appendices 01 through 03, dated September 27, 2011, within the preceding 24 months.

(i) Corrective Actions

(1) If any disbonding is found during any inspection required by this AD, and the findings are within the permitted allowable damage limits (ADLs) specified in Rolls-Royce Non-Modification Service Bulletin RB.211–71–AG419, Revision 1, including Appendix 1, dated May 10, 2011, except as specified in paragraph (j) of this AD: Do the actions specified in paragraph (i)(1)(i), (i)(1)(ii), or (i)(1)(iii) of this AD.

(i) Repeat the tap test inspection required by paragraph (g) of this AD at the applicable inspection interval specified in Rolls-Royce Non-Modification Service Bulletin RB.211–71–AG419, Revision 1, including Appendix 1, dated May 10, 2011, except as specified in paragraph (j) of this AD, until the actions required by paragraph (i)(1)(ii) or (i)(1)(iii) of this AD are accomplished.

(ii) Repair the affected engine air intake cowl before further flight, in accordance with the Accomplishment Instructions of Rolls-Royce Non-Modification Service Bulletin RB.211–71–AG419, Revision 1, including Appendix 1, dated May 10, 2011, except as specified in paragraph (j) of this AD. Repeat the inspection specified in paragraph (g) of this AD thereafter at the applicable compliance time specified in paragraph (g) of this AD.

(iii) Replace the affected engine air intake cowl before further flight, in accordance with the Accomplishment Instructions of Rolls-Royce Non-Modification Service Bulletin RB.211–71–AG419, Revision 1, including Appendix 1, dated May 10, 2011, except as specified in paragraph (j) of this AD. Repeat the inspection specified in paragraph (g) of this AD thereafter at the applicable compliance time specified in paragraph (g) of this AD.

(2) If any disbonding is found during any inspection required by this AD, and the findings are not within the permitted ADLs specified in Rolls-Royce Non-Modification Service Bulletin RB.211–71–AG419, Revision 1, including Appendix 1, dated May 10, 2011, except as specified in paragraph (j) of this AD: Before further flight, replace the affected engine air intake cowl, in accordance with the Accomplishment Instructions of Rolls-Royce Non-Modification Service Bulletin RB.211–71–AG419, Revision 1, including Appendix 1, dated May 10, 2011, except as specified in paragraph (j) of this AD. Repeat the inspection specified in paragraph (g) of this AD thereafter at the applicable compliance time specified in paragraph (g) of this AD.

(j) No Reporting Requirement

Although Rolls-Royce Non-Modification Service Bulletin RB.211–71–AG419, Revision 1, including Appendix 1, dated May 10, 2011, specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(l) Related Information

(1) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2011–0173, dated September 13, 2011, and the service information specified in paragraphs (l)(1)(i) and (l)(1)(ii) of this AD, for related information.

(i) Airbus Mandatory Service Bulletin A330–71–3024, Revision 01, excluding Appendices 01 through 03, dated September 27, 2011.

(ii) Rolls-Royce Non-Modification Service Bulletin RB.211–71–AG419, Revision 1, including Appendix 1, dated May 10, 2011.

(2) For Airbus service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.330-A3A40@airbus.com;* Internet *http://www.airbus.com.* For Rolls-Royce service information identified in this AD, contact Rolls-Royce plc, P.O. Box 31, Derby, DE24 8BJ, England; telephone 011 44 1332 242424; fax 011 44 1332 249936; Internet *https://www.aeromanager.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(m) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Airbus Mandatory Service Bulletin A330–71–3024, Revision 01, excluding Appendices 01 through 03, dated September 27, 2011.

(ii) Rolls-Royce Non-Modification Service Bulletin RB.211–71–AG419, Revision 1, including Appendix 1, dated May 10, 2011.

(3) For Airbus service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.* For Rolls-Royce service information identified in this AD, contact Rolls-Royce plc, P.O. Box 31, Derby, DE24 8BJ, England; telephone 011 44 1332 242424; fax 011 44 1332 249936; Internet *https://www.aeromanager.com.*

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

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on October 31, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–28422 Filed 11–23–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0676; Directorate Identifier 2011–NM–182–AD; Amendment 39–17266; AD 2012–23–10]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Airbus Model A318, A319, A320, and A321 series airplanes. This AD was prompted by reports of the escape slide of the raft inflation system not deploying when activated due to the rotation of the cable guide in a direction which resulted in jamming of the inflation control cable. This AD requires modifying the affected slide rafts. We are issuing this AD to prevent non-deployment of the inflation system of the escape slide raft, which could result in delayed evacuation from the airplane during an emergency, and consequent injury to the passengers.

DATES: This AD becomes effective December 31, 2012.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of December 31, 2012.

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

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1405; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on July 2, 2012 (77 FR 39186). That NPRM proposed to correct an unsafe condition for the specified products. The Mandatory Continuing Airworthiness Information (MCAI) states:

> Two occurrences on Airbus A320 aeroplanes have been reported where the escape slide raft inflation system did not deploy when activated, due to the rotation of the cable guide in a direction which resulted in jamming of the inflation control cable. Additionally, there has been one reported case where the system did not deploy properly due to a cracked inflation hose fitting.
>
> Investigation conducted by the slide raft manufacturer showed that the hose fitting could be subject to a bending moment if improperly packed. Subsequently, the hose fitting could separate from the reservoir and the inflation of the slide raft may be impaired.
>
> This condition, if not corrected, could delay the evacuation from the aeroplane in case of emergency, possibly resulting in injury to the occupants.
>
> For the reasons described above, this [European Aviation Safety Agency (EASA)] AD requires modification of the affected slide rafts or [optional] replacement thereof with modified units.
>
> * * * * *

The modification includes installing a cable guide adaptor, an anti-rotation bracket, and a new hose assembly. You may obtain further information by examining the MCAI in the AD.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received. United Airlines (UAL) supports the compliance time of 36 months after the effective date of this AD.

Request To Clarify Concurrent Requirements

UAL requested we highlight that Air Cruisers Service Bulletin S.B.A320 004–25–85 has a concurrent requirement to accomplish Air Cruisers Service Bulletin S.B.A320 004–25–56. UAL stated that it would like to receive a confirmation that Air Cruisers Service Bulletin S.B.A320 004–25–56 must also be accomplished to comply with the proposed AD (77 FR 39186, July 2, 2012).

We agree with UAL's comment. For the optional replacement in paragraph (h) of this final rule, we have clarified that the concurrent requirement specified in paragraph 1.B. of Air Cruisers Service Bulletin S.B. A320 004–25–85, Revision 2, dated January 3, 2012, is necessary. We have revised paragraphs (h), (j)(1), and (j)(2) in this final rule accordingly.

Request To Remove the Parts Installation Limitation in Paragraph (j)(1) of the Proposed AD (77 FR 39186, July 2, 2012)

UAL requested that the parts installation limitation in paragraph (j)(1) of the proposed AD (77 FR 39186, July 2, 2012) be removed. UAL stated that the proposed requirement will remove the operator's flexibility to replace a post-AD part number with a pre-AD part number prior to the AD limit. UAL stated that, after the proposed AD effective date, it agrees that any new slide-rafts released by the home shop should have the AD requirements incorporated to prevent unit on-wing installation beyond the AD limit, but not on the ones currently installed on-wing. UAL stated that it believes the intent of the proposed AD is to eliminate pre-AD part numbers after 36 months of the effective date.

We disagree with UAL's request to remove paragraph (j)(1) of this final rule. Paragraph (j)(1) of this final rule only applies to those airplanes that have accomplished the modification or replacement. The intent of this AD is to prevent installation of the unsafe escape slide rafts after accomplishing the required modification or replacement. Operators have a compliance time of within 36 months after the effective date of this AD to do the modification required by paragraph (g) of this AD, or the alternative action specified in paragraph (h) of this AD. We have not changed the AD in this regard.

Request To Incorporate New Service Information

Airbus requested that we revise the proposed AD (77 FR 39186, July 2, 2012) to incorporate Air Cruisers Service Bulletin S.B.A320 004–25–85, Revision 1, dated September 30, 2011, and Revision 2, dated January 3, 2012; and to refer to EASA AD 2011–0160R1, dated March 15, 2012; into the proposed AD.

We agree with Airbus' request to reference the latest service information. We have revised this AD to reference Air Cruisers Service Bulletin S.B.A320 004–25–85, Revision 2, dated January 3, 2012, for the actions specified in paragraphs (h) and (j) of this AD. Air Cruisers Service Bulletin S.B.A320 004–25–85, Revision 2, dated January 3, 2012, clarifies certain actions and figures. We have also added new paragraph (k) of this AD to provide credit for actions done using Air Cruisers Service Bulletin S.B.A320 004–25–85, dated November 30, 2010; or Air Cruisers Service Bulletin S.B.A320 004–25–85, Revision 1, dated September 30, 2011; before the effective date of this AD. In addition, we have revised paragraph (m) of this AD to reference EASA AD 2011–0160R1, dated March 15, 2012, which clarifies the parts installation limitations specified in that EASA AD.

Conclusion

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

- Are consistent with the intent that was proposed in NPRM (77 FR 39186, July 2, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 39186, July 2, 2012).

Costs of Compliance

We estimate that this AD will affect 745 products of U.S. registry. We also estimate that it will take about 19 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $341 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $1,457,220, or $1,956 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (77 FR 39186, July 2, 2012), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–23–10 Airbus: Amendment 39–17266. Docket No. FAA–2012–0676; Directorate Identifier 2011–NM–182–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective December 31, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus Model A318–111, –112, –121, and –122 airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–111, –211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes; certificated in any category; all manufacturer serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 25: Equipment/Furnishings.

(e) Reason

This AD was prompted by reports of the escape slide of the raft inflation system not deploying when activated due to the rotation of the cable guide in a direction which

resulted in jamming of the inflation control table. We are issuing this AD to prevent non-deployment of the inflation system of the escape slide raft, which could result in delayed evacuation from the airplane during an emergency, and consequent injury to the passengers.

(f) Compliance

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

(g) Modification

Except as provided by paragraph (i) of this AD, within 36 months after the effective date of this AD: Modify the escape slide rafts that have a part number (P/N) specified in table 1 to paragraph (g) of this AD, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–25–1723, dated December 17, 2010 (for Model A319, A320, and A321 series airplanes); or Airbus Service Bulletin A320–25–1724, dated December 17, 2010 (for Model A318 series airplanes).

TABLE 1 TO PARAGRAPH (g) OF THIS AD—ESCAPE SLIDE RAFT

Air Cruisers and Aerazur escape slide rafts part number if fitted with a reservoir and valve assembly P/N D18309–105 or P/N D18309–205
D30664–105
D30664–107
D30664–109
D30664–305
D30664–307
D30664–309
D30664–311
D30665–105
D30665–107
D30665–109
D30665–305
D30665–307
D30665–309
D30665–311

(h) Replacement in Accordance With Air Cruisers Service Bulletin

Replacement of all affected escape slide rafts on any affected airplane with slide rafts that have been modified in accordance with the Accomplishment Instructions of Air Cruisers Service Bulletin S.B.A320 004–25–85, Revision 2, dated January 3, 2012, is acceptable for compliance with the requirements of paragraph (g) of this AD, provided that prior to or concurrently with accomplishing the modification, the installation of the cable guide assembly is done in accordance with the Accomplishment Instructions of Air Cruisers Service Bulletin S.B.A320 004–25–56, dated November 12, 1999.

(i) Airplanes Not Affected by Paragraph (g) of This AD

Airplanes on which Airbus modification 151459 or modification 151502 has been embodied in production, and on which no escape slide raft replacements have been made since first flight, are not affected by the requirement specified in paragraph (g) of this AD.

(j) Parts Installation Limitations

(1) For airplanes other than those identified in paragraph (i) of this AD: After accomplishment of the modification required by paragraph (g) of this AD or after accomplishment of the alternative modification specified in paragraph (h) of this AD, no person may install, on any airplane, an escape slide raft specified in table 1 to paragraph (g) of this AD, unless it has been modified in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–25–1723, dated December 17, 2010 (for Model A319, A320, and A321 series airplanes); Airbus Service Bulletin A320–25–1724, dated December 17, 2010 (for Model A318 series airplanes); or Air Cruisers Service Bulletin S.B.A320 004–25–85, Revision 2, dated January 3, 2012 (for Model A318, A319, A320, and A321 series airplanes), including the installation of the cable guide assembly in accordance with the Accomplishment Instructions of Air Cruisers Service Bulletin S.B.A320 004–25–56, dated, November 12, 1999.

(2) For airplanes identified in paragraph (i) of this AD: As the effective date of this AD, no person may install, on any airplane, an escape slide raft specified in table 1 to paragraph (g) of this AD, unless it has been modified in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–25–1723, dated December 17, 2010 (for Model A319, A320, and A321 series airplanes); Airbus Service Bulletin A320–25–1724, dated December 17, 2010 (for Model A318 series airplanes); or Air Cruisers Service Bulletin S.B.A320 004–25–85, Revision 2, dated January 3, 2012 (for Model A318, A319, A320, and A321 series airplanes), including the installation of the cable guide assembly in accordance with the Accomplishment Instructions of Air Cruisers Service Bulletin S.B.A320 004–25–56, dated, November 12, 1999.

(k) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraphs (h) and (j) of this AD, if those actions were performed before the effective date of this AD using Air Cruisers Service Bulletin S.B.A320 004–25–85, dated November 30, 2010; or Air Cruisers Service Bulletin S.B.A320 004–25–85, Revision 1, dated September 30, 2011; which are not incorporated by reference in this AD.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1405; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

(m) Related Information

(1) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2011–0160R1, dated March 15, 2012, and the service information specified in paragraphs (m)(1)(i) through (m)(1)(iv) of this AD, for related information.

(i) Airbus Service Bulletin A320–25–1723, dated December 17, 2010.

(ii) Airbus Service Bulletin A320–25–1724, dated December 17, 2010.

(iii) Air Cruisers Service Bulletin S.B.A320 004–25–85, Revision 2, dated January 3, 2012.

(iv) Air Cruisers Service Bulletin S.B.A320 004–25–56, dated, November 12, 1999.

(2) For Air Cruisers service information identified in this AD, contact Zodiac Services Americas, Cage Code 567V9, 4900 St. Joe Boulevard, Building 200, Suite 400, College Park, Georgia 30337; telephone 678–228–8153; fax 404–599–0041; email *techpubs@zodiac.com;* Internet *http://www.zodiacaerospace.com.*

(n) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Airbus Service Bulletin A320–25–1723, dated December 17, 2010.

(ii) Airbus Service Bulletin A320–25–1724, dated December 17, 2010.

(iii) Air Cruisers Service Bulletin S.B.A320 004–25–85, Revision 2, dated January 3, 2012.

(iv) Air Cruisers Service Bulletin S.B.A320 004–25–56, dated, November 12, 1999.

(3) For Airbus service information identified in this AD, contact Airbus, Airworthiness Office—EAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* For Air Cruisers service information identified in this AD, contact Zodiac Services Americas, Cage Code 567V9, 4900 St. Joe Boulevard, Building 200, Suite 400, College Park, Georgia 30337; telephone 678–228–8153; fax 404–599–0041; email

techpubs@zodiac.com; Internet *http://www.zodiacaerospace.com.*

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

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on November 13, 2012.

John P. Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–28181 Filed 11–23–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–0930]

RIN 1625–AA09

Drawbridge Operation Regulation; Shark River (South Channel), Avon Township, NJ

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing the existing drawbridge operation regulation that governs the opening of the S35 Bridge, mile 0.9, across Shark River (South Channel) at Avon Township, NJ. The existing regulation contains a drawbridge operation schedule for the S35 Bridge. However, the existing bridge was modified in 2006 from a movable bridge to a fixed bridge. Since the bridge is no longer a movable bridge, the regulation controlling the opening and closing of the bridge is no longer necessary.

DATES: This rule is effective November 26, 2012.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket USCG–2012–0930 and are available by going to *http://www.regulations.gov,* inserting USCG–2012–0930 in the ''Keyword'' box, and then clicking ''Search.'' This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Jim Rousseau, Bridge Management Specialist, Fifth Coast Guard District; telephone 757–398–6557, email *James.L.Rousseau2@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking
§ Section Symbol
U.S.C. United States Code

A. Regulatory History and Information

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the S35 bridge that once required draw operations as outlined in 33 CFR 117.751 was modified from a movable bridge to a fixed bridge. As such, the bridge no longer opens for the passage of vessels. Therefore, the regulation is no longer applicable and should be removed from publication. It is unnecessary to publish an NPRM because this regulatory action does not purport to place any restrictions on mariners but rather removes a restriction that has no further use or value.

Under 5 U.S.C. 553(d)(1), a rule that relieves a restriction is not required to provide the 30 day notice period before its effective date. Since the purpose of this rule is to remove the S35 Bridge operation requirements under 33 CFR 117.751, the Coast Guard is removing a regulatory restriction currently imposed on the public. As such, the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register**. The bridge has been a fixed bridge for 6 years and this rule merely requires an administrative change to the **Federal Register**, in order to omit a regulatory requirement that is no longer applicable or necessary. The modification has already taken place and the removal of the regulation will not affect mariners currently operating on this waterway.

B. Basis and Purpose

On June 25, 1999, a Coast Guard Bridge Permit (1–99–5) was issued to the New Jersey Department of Transportation (NJDOT) to replace the existing bascule bridge, which carries S35 over Shark River (South Channel) at Avon Township NJ, with a new fixed bridge. NJDOT completed construction for a new fixed bridge in June 2006. The elimination of this drawbridge necessitates the removal of the drawbridge operation regulation, in 33 CFR 117.751 that contains an operating schedule pertaining to the former drawbridge.

C. Discussion of the Final Rule

The Coast Guard is changing the regulation in 33 CFR part 117 without publishing an NPRM. The change removes the regulation governing a movable bridge that was modified to a fixed bridge. Specifically, this rule will remove the section of 33 CFR 117.751 that refers to the S35 Bridge at mile 0.9, from the Code of Federal Regulations since it governs a bridge that is no longer able to be opened.

D. Regulatory Planning and Review

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

1. Regulatory Analysis

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13653, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. We reached this conclusion based on the fact that a special operating regulation exists for movable bridges and as this bridge has been modified to a fixed bridge, the regulation is unnecessary.

2. Impact on Small Entities

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

entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. 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 final rule would affect the following entities, some of which might be small entities: None. Due to the fact that the bridge has been a fixed bridge for 6 years, this final rule will not have a significant economic impact on a substantial number of small entities.

3. 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.).

4. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt 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.

5. 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.

6. 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 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.

7. Taking of Private Property

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

8. 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.

9. Protection of Children

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

10. Indian Tribal Governments

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

11. Energy Effects

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

12. Technical Standards

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

13. 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 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 the introductory text and paragraph (a) of § 117.751 to read as follows:

§ 117.751 Shark River (South Channel).

The draws of the S71 Bridge, mile 0.8, and the Railroad Bridge, mile 0.9, both at Avon, operate as follows:

(a) The bridges operate as one unit. The owners shall provide signal systems so connected that the operator of either bridge may simultaneously notify the operator of the other bridge. The operator of the first bridge to be passed shall be responsible for observing the approach vessels, for receiving and acknowledging signals, and for coordinating the opening of the other draw.

* * * * *

Dated: October 25, 2012.

Steven H. Ratti,

Rear Admiral, United States Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 2012–28127 Filed 11–23–12; 8:45 am]

BILLING CODE 9110–04–P

LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 386

[Docket No. 2012–8 CRB Satellite COLA]

Cost of Living Adjustment to Satellite Carrier Compulsory License Royalty Rates

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Royalty Judges announce a cost of living adjustment (''COLA'') of 2.2% in the royalty rates paid by satellite carriers under the satellite carrier compulsory license of the Copyright Act. The COLA is based on the change in the Consumer Price Index from October 2011 to October 2012.

DATES: *Effective Date:* January 1, 2013.

Applicability Dates: These rates are applicable for the period January 1, 2013, through December 31, 2013.

FOR FURTHER INFORMATION CONTACT: LaKeshia Keys, Program Specialist. Telephone: (202) 707–7658. Email: *crb@loc.gov.*

SUPPLEMENTARY INFORMATION: The satellite carrier compulsory license establishes a statutory copyright licensing scheme for the retransmission of distant television programming by satellite carriers. 17 U.S.C. 119. Congress created the license in 1988 and has reauthorized the license for additional five-year periods, most recently with the passage of the Satellite Television Extension and Localism Act of 2010, (''STELA''), Public Law 111–175.

The Copyright Royalty Judges adopted as final the rates for the section 119 compulsory license for the period 2010–2014 after publication in the **Federal Register** of the rates, as proposed by Copyright Owners and Satellite Carriers,[1] yielded no objections. *See* 75 FR 53198 (August 31, 2010). Section 119(c)(2) requires the Judges annually to adjust these rates ''to reflect any changes occurring in the cost of living adjustment (for all consumers and for all items) [''CPI–U''] published * * * at least 25 days before January 1.'' *Id.* Today's notice fulfills this obligation.

The change in the cost of living as determined by the CPI–U during the period from the most recent index published before December 1, 2011, to the most recent index published before December 1, 2012, is 2.2%.[2] Rounding to the nearest cent, the royalty rates for the secondary transmission of broadcast stations by satellite carriers for private home viewing and viewing in commercial establishments are 27 cents and 54 cents per subscriber per month, respectively.

List of Subjects in 37 CFR Part 386

Copyright, Satellite, Television.

Final Regulations

For the reasons set forth in the preamble, part 386 of title 37 of the Code of Federal Regulations is amended as follows:

PART 386—ADJUSTMENT OF ROYALTY FEES FOR SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS

■ 1. The authority citation for part 386 continues to read as follows:

Authority: 17 U.S.C. 119(c), 801(b)(1).

■ 2. Section 386.2 is amended by revising paragraphs (b)(1)(iv) and (b)(2)(iv) as follows:

§ 386.2 Royalty fee for secondary transmission by satellite carriers.

* * * * *

(b)(1) * * *

(iv) 2013: 27 cents per subscriber per month;

* * * * *

(2) * * *

(iv) 2013: 54 cents per subscriber per month;

* * * * *

Dated: November 19, 2012.

Suzanne M. Barnett,

Chief Copyright Royalty Judge.

[FR Doc. 2012–28507 Filed 11–23–12; 8:45 am]

BILLING CODE 1410–72–P

[1] Program Suppliers and Joint Sports Claimants comprised the Copyright Owners, while DIRECTV, Inc., DISH Network, LLC and National Programming Service, LLC, comprised the Satellite Carriers.

[2] The most recent CPI–U figures are published in November of each year and use the period 1982–1984 to establish a reference base of 100. The index for October 2011 was 226.421, while the figure for October 2012 was 231.414.

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 9

RIN 2900–AO30

Servicemembers' Group Life Insurance—Stillborn Child Coverage

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This final rule amends the Department of Veterans Affairs (VA) Servicemembers' Group Life Insurance (SGLI) regulations in order to provide that, if a stillborn child is otherwise eligible to be insured by the SGLI coverage of more than one servicemember under SGLI dependent child coverage, the child would be insured by the coverage of the child's SGLI-insured biological mother. This final rule will provide consistency in payment determinations involving SGLI stillborn child coverage.

DATES: *Effective Date:* This final rule is effective December 26, 2012.

Applicability Date: This final rule will apply to claims for SGLI proceeds filed on or after December 26, 2012.

FOR FURTHER INFORMATION CONTACT: Monica Keitt, Attorney-Advisor, Department of Veterans Affairs Regional Office and Insurance Center (310/290B), P.O. Box 8079, Philadelphia, Pennsylvania 19101, (215) 842–2000, Ext. 2905. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: On January 31, 2012, VA published in the **Federal Register** (77 FR 4734) a proposed rule to provide that, if a stillborn child is insured by the SGLI coverage of more than one servicemember, the SGLI proceeds would be paid to the child's SGLI-insured mother. We provided a 60-day public-comment period, which ended on April 2, 2012, and received comments from five individuals.

Section 1967(a)(4)(B) of title 38, United States Code, prohibits an insurable dependent who is a child from being insured at any time under the SGLI coverage of more than one member, i.e., more than one SGLI-insured parent. If a child is otherwise eligible to be insured by the coverage of more than one member, under section 1967(a)(4)(B) the child is insured by the coverage of the member whose eligibility for SGLI occurred first, ''except that if that member does not have legal custody of the child, the child shall be insured by the coverage of the member who has legal custody of the child.'' Congress, however, did not indicate whether this provision is applicable to a stillborn child. VA therefore proposed to fill the gap left by Congress subjecting the coverage of a stillborn child to the limitation that an insurable dependent who is a child may not be insured at any time by the insurance coverage of more than one member. We further proposed that a stillborn child of two SGLI-covered parents will always be insured under the mother's coverage because state laws do not address legal custody of a stillborn.

Two commenters wrote in support of the proposed rule. Three of the commenters raised issues regarding the proposed rule.

One commenter stated that the rule does not take into account a case in which a stillborn child's parents are the same sex and urged flexibility in the rule so as not to prejudice homosexual couples. The premise of this comment, that a stillborn child could have parents of the same sex, is mistaken. VA has

defined the term ''member's stillborn child'' in 38 CFR 9.1(k)(1) to mean ''a member's natural child'' who meets other criteria not relevant to this discussion. The term ''natural child'' refers to a biological child. *Black's Law Dictionary* 272 (9th ed. 2009); *see Luke* v. *Bowen,* 868 F.2d 974, 978 (8th Cir. 1989). As a result, this rule is applicable only if both biological parents of the stillborn child are SGLI-insured. There can be only two biological parents of a child: The mother who provided the ovum that was fertilized and the father who provided the semen that fertilized the ovum. *Black's Law Dictionary* 1222 (defining ''biological parent'' as woman who provides egg or man who provides sperm to form zygote that becomes embryo). Thus, there cannot be two biological parents of the same sex. We make no change based on this comment.

Other commenters inquired about a case in which a stillborn child is born to a surrogate for a SGLI-insured. As explained above, in accordance with 38 U.S.C. 1967, this rule is only applicable if the stillborn's biological parents are both insured under SGLI. Generally, there are two types of surrogacy: (1) A surrogate is inseminated with sperm which fertilizes her own ovum, resulting in a child who is biologically related to her; and (2) a surrogate is impregnated with an embryo that is not the product of her ovum, resulting in a child who is not biologically related to her. If a surrogate is the biological mother of a stillborn and if both the surrogate and the stillborn's biological father are SGLI-insureds, the SGLI proceeds would be payable to the surrogate under this rule. Again, this outcome would be consistent with one reason provided for the proposed rule, i.e., the stillborn child was exclusively in the surrogate's physical custody. 77 FR 4734. If however a surrogate is not the biological mother of the stillborn and if both of the stillborn's biological parents are SGLI-insureds, the SGLI proceeds would be payable to the stillborn's biological mother under this rule. To ensure the clarity of the rule in this regard, we are changing the reference to ''the child's insured mother'' to read ''the child's insured biological mother.''

One commenter stated that, generally with regard to life insurance, if an insured mother dies prior to the stillborn or seconds after giving birth to a stillborn, the proceeds would become part of the mother's estate and that, if she dies intestate, the proceeds would pass in accordance with intestacy laws. This situation is covered by 38 U.S.C. 1970(i), which directs that, if a member dies before payment can be made on account of the member's insurable dependent's death, the SGLI proceeds payable on account of the insurable dependent's death are payable to the person or persons entitled to the proceeds payable on account of the member's death. Therefore, if an insured mother gave birth to a stillborn and died before payment on account of the stillborn child could be made to her, the SGLI proceeds payable on account of the stillborn would be payable to the person or persons entitled to the proceeds payable on account of the mother's death. Only if the mother had no designated beneficiary, surviving spouse, child, or parent would the proceeds be paid to the executor or administrator of the insured mother's estate. 38 U.S.C. 1970(a).

One commenter also noted that the rule might eliminate the opportunity for notifying the stillborn child's father about the stillbirth in some circumstances. This comment is beyond the scope of the rulemaking, which is intended to explain which member's SGLI would insure a stillborn who is otherwise eligible to be insured by the SGLI coverage of more than one member.

This commenter also stated that the rule would impose on the mother additional burdens associated with insurance coverage on the birth of a stillborn child. The commenter referenced paperwork to be filled out to initiate a claim and other fees, deductibles, or administrative requirements, all of which would have to be borne by the birth mother, regardless of her preferences or the family's preferences regarding insurance coverage. As explained in the preamble to the proposed rule, 77 FR 4734, this amendment will obviate the need to establish paternity following the birth of a stillborn child, which we believe would impose far more onerous burdens than completing a claim to recover the SGLI proceeds. Further, there are no fees, deductibles, or other administrative requirements necessary to file a claim for SGLI family coverage that would impose a burden on the mother of the stillborn child. We also believe that this rule will have the beneficial effect of providing clear, definite guidance to members and their families as to how SGLI family coverage will be paid in the event of a stillbirth. We therefore make no change based upon this comment.

Another commenter stated that the rule ignores the fact that the stillborn child's parents may choose that the father of the child receive payment of SGLI proceeds instead of the mother. In such circumstances, the stillborn's mother can simply give the proceeds to the stillborn's father. We therefore do not believe this rule needs to be amended to address this situation.

A commenter disagreed with VA's assessment that the rule does not require a cost-benefit analysis. The commenter stated that, as required by Executive Orders 12866 and 13563, before promulgating the rule, VA should complete a cost-benefit analysis of the rule regarding its effect on same sex couples who use a surrogate. The commenter's premise is mistaken. In the notice of proposed rulemaking, VA did not state that a cost-benefit analysis was not required. In fact, VA's analysis of the proposed rule is publicly available on the VA Web site at *http://www.va.gov/ORPM/VA_Regulations_Published_From_Fiscal_Year_FY_2004.asp.* Rather VA stated that ''VA has examined the economic, interagency, legal, and policy implications of this proposed rule and has determined it not to be a significant regulatory action under Executive Order 12866.'' 77 FR 4735. We therefore make no change based on this comment.

Based on the rationale set forth in the proposed rule and upon consideration of the public comments submitted, we adopt the provisions of the proposed rule as a final rule, with the changes noted above.

We are also making one non-substantive change to the regulations governing the birth of a stillborn child. We are substituting the word ''biological'' for the word ''natural'' in the definition of ''member's stillborn child'' in § 9.1(k)(1). We are not altering the substantive content of the definition by making this change but rather are substituting a more current term for an outdated one.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This rule would have no such effect on State, local, and tribal governments or on the private sector.

Paperwork Reduction Act

This final rule contains no provision constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and

benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action,'' which requires review by the Office of Management and Budget (OMB), as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

VA has examined the economic, interagency, legal, and policy implications of this final rule and has determined that it is not a significant regulatory action under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. This final rule will directly affect only individuals and will not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The catalog of Federal Domestic Assistance Program number and the title for this regulation is 64.103, Life Insurance for Veterans.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, approved this document on November 20, 2012, for publication.

List of Subjects in 38 CFR Part 9

Life insurance, Military personnel, Veterans.

Dated: November 20, 2012.

Robert C. McFetridge,

Director of Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs is amending 38 CFR part 9 as follows:

PART 9—SERVICEMEMBERS' GROUP LIFE INSURANCE AND VETERANS' GROUP LIFE INSURANCE

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

Authority: 38 U.S.C. 501, 1965–1980A, unless otherwise noted.

§ 9.1 [Amended]

■ 2. Amend § 9.1(k)(1) by removing ''natural'' and adding, in its place, ''biological''.

■ 3. Amend § 9.5 by adding paragraph (f) and revising the authority citation at the end of the section to read as follows:

§ 9.5 Payment of proceeds.

* * * * *

(f) If a stillborn child is otherwise eligible to be insured by the Servicemembers' Group Life Insurance coverage of more than one member, the child shall be insured by the coverage of the child's insured biological mother.

(Authority: 38 U.S.C. 501(a), 1965(10), 1967(a)(4)(B))

[FR Doc. 2012–28611 Filed 11–23–12; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0734; FRL–9753–4]

Withdrawal of Approval of Air Quality Implementation Plans and Findings of Failure To Submit Required Plans; California; San Joaquin Valley; 1-Hour and 8-Hour Ozone Extreme Area Plan Elements

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is withdrawing its March 8, 2010 final action approving State Implementation Plan (SIP) revisions submitted by California to provide for attainment of the 1-hour ozone National Ambient Air Quality Standards (NAAQS) in the San Joaquin Valley extreme ozone nonattainment area. In addition, EPA is withdrawing its March 1, 2012 determination that the California SIP satisfies the requirement regarding offsetting emissions growth caused by growth in vehicle miles traveled (VMT) under the Clean Air Act (CAA) for the 1997 8-hour ozone NAAQS in the San Joaquin Valley. Finally, EPA is finding that California has failed to submit required SIP revisions to provide for attainment of the 1-hour ozone NAAQS and to address the VMT emissions offset requirement for the 1997 8-hour ozone NAAQS in the San Joaquin Valley. Under the CAA, these findings of failure to submit trigger the 18-month time clock for mandatory imposition of sanctions and the two-year time clock for EPA to promulgate federal implementation plans.

DATES: The rule is effective November 26, 2012.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2012–0734 for this action. The index to the docket is available electronically at *www.regulations.gov* and in hard copy at EPA Region 9, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some may be publicly available only at the hard copy location (e.g., copyrighted material) and some may not be publicly available at either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Frances Wicher, Air Planning Office (AIR–2), (415) 972–3957, *wicher.frances@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we'', ''us'' and ''our'' refer to EPA.

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I. San Joaquin Valley 2004 1-Hour Ozone Plan

A. Withdrawal of EPA's Approval of the 2004 1-Hour Ozone Plan

EPA is withdrawing its March 8, 2010 final action approving SIP revisions submitted by California under the CAA to provide for attainment of the 1-hour ozone national ambient air quality standards (NAAQS) in the San Joaquin Valley (SJV) extreme ozone nonattainment area (2004 1-Hour Ozone Plan) (75 FR 10420). The effect of this action is to entirely withdraw the 2004 1-Hour Ozone Plan from the applicable California SIP. We proposed this action on September 19, 2012 (77 FR 58078) and provided a 30-day period for the public to submit comments. We received no comments.

EPA is taking this action in response to a decision of the U.S. Court of Appeals for the Ninth Circuit in *Sierra Club et. al* v. *EPA,* 671 F.3d 955 (9th Cir. 2012) (*Sierra Club*). For further background on this court decision and EPA's rationale for today's action, please see our proposed rule at 77 FR 58078.

B. Finding of Failure To Submit a SIP To Provide for Attainment of the 1-Hour Ozone Standards in the SJV Extreme 1-Hour Ozone Nonattainment Area

Following our proposed rule to withdraw our March 8, 2010 approval of the 2004 1-Hour Ozone Plan into the SIP, California submitted a letter stating its intention to withdraw its submission of this plan to EPA, effective immediately upon EPA's final withdrawal of the March 8, 2010 approval. See letter dated October 15, 2012, from James N. Goldstene, Executive Officer, California Air Resources Board, to Jared Blumenfeld, Regional Administrator, EPA Region 9. As a consequence of EPA's final withdrawal of our approval of the 2004 1-Hour Ozone Plan and California's simultaneous withdrawal of the 2004 1-Hour Ozone Plan from EPA, the State is now in default of its obligation to submit a SIP to provide for attainment of the 1-hour ozone NAAQS in the SJV extreme ozone nonattainment area.[1] Therefore, simultaneously with this withdrawal of approval, EPA is finding that California has failed to submit an extreme area plan to provide for attainment of the 1-hour ozone NAAQS in the SJV nonattainment area.

As explained in our proposed rule (77 FR at 58079–80), the plan elements under subparts 1 and 2 of part D, title I of the CAA that California is required to submit for the 1-hour ozone NAAQS for the SJV are as follows: (1) A rate of progress (ROP) demonstration meeting the requirements of CAA sections 172(c)(2) and 182(c)(2); (2) ROP contingency measures meeting the requirements of CAA sections 172(c)(9) and 182(c)(9); (3) an attainment demonstration meeting the requirements of CAA sections 182(c)(2)(A) and 172(a)(2); (4) attainment contingency measures meeting the requirements of CAA sections 172(c)(9); (5) a reasonably available control measures (RACM) demonstration meeting the requirements of CAA section 172(c)(1); (6) provisions satisfying the requirements for clean fuels/clean technologies for boilers in CAA 182(e)(3); and (7) provisions satisfying the vehicle miles traveled (VMT) provisions of CAA section 182(d)(1)(A). See 40 CFR 51.905(a)(1) and 51.900(f); see also 75 FR 10420, 10436–37.

This finding of failure to submit is not subject to the notice-and-comment requirements of the Administrative Procedure Act (APA), 5 U.S.C. 553(b). EPA believes that because of the limited time provided by the CAA to make findings of failure to submit, Congress did not intend such findings to be subject to notice-and-comment rulemaking. However, to the extent such findings are subject to notice-and-comment rulemaking, we invoke the good cause exception pursuant to APA section 553(b)(3)(B). Notice and comment are unnecessary because no EPA judgment is involved in making a non-substantive finding of failure to submit SIPs required by the CAA. Furthermore, notice and comment would be contrary to the public interest because it would divert EPA resources from the critical substantive review of complete SIPs. *See* 58 FR 51270, 51272, note 7 (October 1, 1993); 59 FR 39832, 39853 (August 4, 1994).

II. VMT Emissions Offset Requirement for 1997 8-Hour Ozone Standards

A. Withdrawal of EPA's Determination That the 2007 8-Hour Ozone Plan Satisfies the VMT Emissions Offset Requirement in CAA Section 182(d)(1)(A)

EPA is withdrawing its March 1, 2012 determination that California's SIP to provide for attainment of the 1997 8-hour ozone NAAQS[2] in the SJV extreme ozone nonattainment area (2007 8-Hour Ozone Plan) satisfies the requirement regarding emissions growth caused by growth in vehicle miles traveled in CAA section 182(d)(1)(A) for the 1997 8-hour ozone NAAQS. Section 182(d)(1)(A) of the Act requires, in relevant part, that each state containing a ''severe'' or ''extreme'' ozone nonattainment area submit a SIP revision that identifies and adopts specific enforceable transportation control strategies and measures to offset any growth in emissions from growth in vehicle miles traveled or numbers of vehicle trips in the area (VMT emissions offset requirement).[3] We proposed this action on September 19, 2012 (77 FR 58078) and provided a 30-day period for the public to submit comments. We received no comments.

EPA is taking this action in response to a decision of the U.S. Court of Appeals for the Ninth Circuit in *Association of Irritated Residents* v. *EPA,* 632 F.3d 584 (9th Cir. 2011), reprinted as amended on January 27, 2012, 686 F.3d 668, further amended February 13, 2012 (*AIR*). For further background on this court decision and EPA's rationale for today's action, please see our proposed rule at 77 FR 58078.

This withdrawal of approval is limited to our determination that the 2007 8-Hour Ozone Plan satisfies the VMT emissions offset requirement in CAA section 182(d)(1)(A) for the 1997 8-hour ozone NAAQS. All other determinations in our March 1, 2012 final rule approving the 2007 8-Hour Ozone Plan at 77 FR 12652 remain unchanged and in effect.

[1] California was obligated to submit SIP revisions to address the requirement in CAA section 182(d)(1)(A) regarding offsetting emissions growth caused by growth in VMT for the 1-hour ozone standard in SJV no later than May 31, 2002, and additional SIP revisions meeting the CAA's extreme area requirements for the 1-hour ozone standard in SJV no later than November 15, 2004. See 66 FR 56476, 56481 (November 8, 2001) (final rule finding that SJV failed to attain 1-hour ozone NAAQS by applicable attainment date and reclassifying SJV from ''serious'' to ''severe'' nonattainment, effective December 10, 2001) and 69 FR 20550 (April 16, 2004) (final rule reclassifying SJV from ''severe'' to ''extreme'' nonattainment for 1-hour ozone NAAQS, effective May 17, 2004).

[2] All references in this preamble to the 8-hour NAAQS are to the 0.08 parts per million standards established in 1997 at 40 CFR 50.10(b).

[3] CAA section 182(d)(1)(A) also requires states to adopt transportation control strategies and measures as necessary to demonstrate attainment and reasonable further progress. These requirements of section 182(d)(1)(A) are not at issue in this action.

B. Finding of Failure To Submit a SIP Meeting the CAA Section 182(d)(1)(A) VMT Emissions Offset Requirement for the SJV 8-Hour Ozone Nonattainment Area

EPA's determination that the 2007 8-Hour Ozone Plan satisfies the VMT emissions offset requirement for the 1997 8-hour ozone NAAQS was made in the absence of any specific demonstration submitted by the State for this purpose and was based on EPA's evaluation of emissions inventory data submitted as part of the 2007 8-Hour Ozone Plan. See 76 FR 57846, 57863 (September 16, 2011) and 77 FR 12652, 12666 and 12670 (March 1, 2012). Thus, as a consequence of our withdrawal of our determination that the 2007 8-Hour Ozone Plan satisfies the VMT emissions offset requirement in CAA section 182(d)(1)(A), California is now in default of its obligation to submit a SIP revision meeting this CAA requirement for the 1997 8-hour ozone NAAQS in the SJV extreme ozone nonattainment area.[4] Therefore, simultaneously with this withdrawal of approval, EPA is finding that California has failed to submit a required SIP revision to meet the VMT emissions offset requirement in CAA section 182(d)(1)(A) for the 1997 8-hour ozone NAAQS in the SJV extreme ozone nonattainment area.

This finding of failure to submit is not subject to the notice-and-comment requirements of the APA. EPA believes that because of the limited time provided by the CAA to make findings of failure to submit, Congress did not intend such findings to be subject to notice-and-comment rulemaking. However, to the extent such findings are subject to notice-and-comment rulemaking, we invoke the good cause exception pursuant to APA section 553(b)(3)(B). Notice and comment are unnecessary because no EPA judgment is involved in making a non-substantive finding of failure to submit SIPs required by the CAA. Furthermore, notice and comment would be contrary to the public interest because it would divert EPA resources from the critical substantive review of complete SIPs.

[4] Consistent with CAA section 182(d)(1)(A) and EPA's implementation regulations for the 1997 8-hour ozone NAAQS at 40 CFR part 51, subpart X, we interpret the 2-year timeframe for submission of the VMT emissions offset SIP for the 1997 8-hour ozone NAAQS to run from the effective date of EPA's reclassification of SJV from ''serious'' to ''extreme'' nonattainment for this standard. Accordingly, California was obligated to submit a VMT emissions offset SIP for the 1997 8-hour ozone NAAQS for the SJV area no later than June 4, 2012. See 75 FR 24409 (May 5, 2010) (final rule reclassifying SJV from ''serious'' to ''extreme'' nonattainment for 1997 8-hour ozone NAAQS, effective June 4, 2010).

See 58 FR 51270, 51272, note 7 (October 1, 1993); 59 FR 39832, 39853 (August 4, 1994).

III. Final Actions

A. Withdrawals of Approvals

EPA is withdrawing its March 8, 2010 final action approving the 2004 1-Hour Ozone Plan, which California submitted to provide for attainment of the 1-hour ozone NAAQS in the SJV extreme ozone nonattainment area (75 FR 10420, March 8, 2010).

In addition, EPA is withdrawing its March 1, 2012 determination that the 2007 8-Hour Ozone Plan, which California submitted to provide for attainment of the 1997 8-hour ozone NAAQS in the SJV, satisfies the VMT emissions offset requirement in CAA section 182(d)(1)(A) for the 1997 8-hour ozone NAAQS in the SJV extreme ozone nonattainment area (77 FR 12652 at 12670, March 1, 2012).

B. Findings of Failure To Submit Required SIP Revisions

As a consequence of EPA's final withdrawal of our previous approval of the 2004 1-Hour Ozone Plan and California's simultaneous withdrawal of its submission of the 2004 1-Hour Ozone Plan, EPA is finding that California has failed to submit a required SIP revision to provide for attainment of the 1-hour ozone NAAQS in the SJV extreme ozone nonattainment area.

In addition, as a consequence of EPA's withdrawal of our determination that the 2007 8-Hour Ozone Plan satisfies the VMT emissions offset requirement in CAA section 182(d)(1)(A) for the 1997 8-hour ozone NAAQS, EPA is finding that California has failed to submit a required SIP revision that identifies and adopts transportation control strategies and measures to offset any growth in emissions from growth in VMT or the numbers of vehicle trips as required by CAA section 182(d)(1)(A) for the 1997 8-hour ozone NAAQS in the SJV extreme ozone nonattainment area.

Under CAA section 179(a), a finding of failure to submit a plan or plan element required by part D of title I of the Act triggers sanction clocks under CAA section 179(b). These clocks run from the effective date of EPA's finding. The first sanction, the offset sanction in CAA section 179(b)(2), will apply in the SJV extreme ozone nonattainment area 18 months from November 26, 2012. The second sanction, highway funding sanctions in CAA section 179(b)(1), will apply in the area six months after the offset sanction is imposed, in accordance with 40 CFR 52.31. The State can end these sanction clocks or lift any imposed sanctions by making complete SIP submittals addressing the CAA's extreme area requirements for the 1-hour ozone NAAQS and the VMT emissions offset requirement for the 1997 8-hour ozone NAAQS in the SJV area.

In addition to these sanctions, CAA section 110(c)(1) provides that EPA must promulgate a federal implementation plan addressing the CAA's extreme area requirements for the 1-hour ozone NAAQS and the VMT emissions offset requirement for the 1997 8-hour ozone NAAQS in the SJV area, no later than two years after November 26, 2012, unless the State submits and EPA approves SIP revisions addressing these requirements before that date.

C. Effective Date Under the Administrative Procedure Act

These actions will be effective on November 26, 2012. Under APA section 553(d)(3), an agency rulemaking may take effect before 30 days after the date of publication in the **Federal Register** if an agency has good cause to specify an earlier effective date. Today's actions to withdraw EPA's previous approval of the 2004 1-Hour Ozone Plan and to withdraw EPA's previous determination that the 2007 8-Hour Ozone Plan satisfies the VMT emissions offset requirement in CAA section 182(d)(1)(A) for the 1997 8-hour ozone NAAQS are being taken in response to the Ninth Circuit's decisions in the *Sierra Club* and *AIR* decisions, as discussed above and in our proposed rule. The purpose of a delayed effective date is to ensure that regulated entities have advance notice of obligations with which they must comply. Because today's withdrawal actions do not place a burden on any entity, a delayed compliance date is unnecessary. Moreover, because the court has ruled that these prior determinations were inconsistent with the CAA, it is in the public interest for the effective date of our actions withdrawing these approvals to become effective immediately. These reasons support an effective date prior to 30 days after the date of publication of these withdrawals of approval.

In addition, EPA's finding that California has failed to submit an extreme area plan to provide for attainment of the 1-hour ozone NAAQS in the SJV is a necessary consequence of EPA's withdrawal of approval of the 2004 1-Hour Ozone Plan and California's simultaneous withdrawal of this plan from EPA. Similarly, EPA's

finding that California has failed to submit a VMT emissions offset SIP under CAA section 182(d)(1)(A) for the 1997 8-hour ozone NAAQS for the SJV is a necessary consequence of EPA's withdrawal of its determination that the 2007 8-Hour Ozone Plan satisfies this requirement. These findings of failure to submit concern required CAA submittals that are overdue. We previously cautioned California and the public that we would make such findings and that these findings would be effective upon publication in the **Federal Register**. See 77 FR 58078 at 58079, 58080. Finally, these findings of failure to submit simply start clocks that will not result in sanctions against the State for 18 months and that the State may turn off by making complete SIP submittals. These reasons support an effective date prior to 30 days after the date of publication of these findings.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to review under it.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

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.

This action to withdraw previous EPA approvals and determinations and to make findings of failure to submit under the CAA will not have a significant impact on a substantial number of small entities because this action does not create any new requirements. This action relates to the existing requirements in the CAA that states submit SIPs to provide for attainment and to meet other applicable CAA requirements in each of their 1-hour ozone nonattainment areas and to submit transportation control strategies and measures to offset emissions growth from growth in VMT or the numbers of vehicle trips in each of their severe and extreme 8-hour ozone nonattainment areas. Therefore, because this action does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

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

EPA has determined that this action to withdraw previous EPA approvals and determinations and to make findings of failure to submit under the CAA does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This action relates to the existing requirements in the CAA that states submit SIPs to provide for attainment and to meet other applicable CAA requirements in each of their 1-hour ozone nonattainment areas and to submit transportation control strategies and measures to offset emissions growth from growth in VMT or the numbers of vehicle trips in each of their severe and extreme 8-hour ozone nonattainment areas. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the State, 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 VMT emissions offset requirement in CAA section 182(d)(1)(A)). This action will not modify this relationship. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175, Coordination With Indian Tribal Governments

This final action does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this final 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 Executive Order 13045 because it is withdrawing previous EPA approvals and determinations and making findings that California has failed to submit a SIP that meets the requirements of CAA the SJV extreme ozone nonattainment area. The findings of failure to submit establish a 24-month deadline for EPA to promulgate a FIP to address the outstanding SIP requirements unless, prior to that time, California submits, and EPA approves, the required SIPs.

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

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

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

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

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

EPA has determined that this final action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not directly affect the level of protection provided to human health or the environment. This notice is withdrawing previous EPA approvals and determinations and making findings that California has failed to submit SIPs that meet certain requirements of CAA for the SJV extreme ozone nonattainment area.

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 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). This rule is effective on November 26, 2012.

L. Petitions for Judicial Review

Under CAA section 307(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 25, 2013. Filing a petition for reconsideration by the Administrator of this final action does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

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

Dated: November 9, 2012.

Jared Blumenfeld,

EPA Regional Administrator, Region 9.

For the reasons discussed in the preamble, EPA amends 40 CFR part 52 to read as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart F—California

■ 2. Section 52.220 is amended by:

■ a. Removing and reserving paragraphs (c)(317)(i)(B) and (c)(339)(i)(B);

■ b. Removing paragraph (c)(339)(ii)(C); and

■ c. Removing and reserving paragraphs (c)(369) and (c)(370) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(317) * * *

(i) * * *

(B) [Reserved]

* * * * *

(339) * * *

(i) * * *

(B) [Reserved]

* * * * *

(369) [Reserved]

(370) [Reserved]

* * * * *

[FR Doc. 2012–28217 Filed 11–23–12; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 77, No. 227
Monday, November 26, 2012

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 531

RIN 3206–AM51

General Schedule Locality Pay Areas

AGENCY: U.S. Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: On behalf of the President's Pay Agent, the Office of Personnel Management is issuing proposed regulations to tie the metropolitan area portion of locality pay area boundaries to the geographic scope of Metropolitan Statistical Area and Combined Statistical Area definitions that are contained in the attachments to Office of Management and Budget Bulletin 10–02 of December 1, 2009.

DATES: We must receive comments on or before January 10, 2013.

ADDRESSES: You may submit comments, identified by ''RIN 3206–AM51,'' by any of the following methods:

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

Email: pay-leave-policy@opm.gov. Include ''RIN 3206–AM51'' in the subject line of the message.

Fax: (202) 606–4264.

Mail, Hand Deliver/Courier comments: Jerome D. Mikowicz, Deputy Associate Director for Pay and Leave, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415–8200.

FOR FURTHER INFORMATION CONTACT: Allan Hearne, (202) 606–2838; FAX: (202) 606–4264; email: *pay-leave-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: Section 5304 of title 5, United States Code, authorizes locality pay for General Schedule (GS) employees with duty stations in the United States and its territories and possessions.

Section 5304(f) of title 5, United States Code, authorizes the President's Pay Agent (the Secretary of Labor, the Director of the Office of Management and Budget (OMB), and the Director of the Office of Personnel Management (OPM)) to determine locality pay areas. The boundaries of locality pay areas must be based on appropriate factors, which may include local labor market patterns, commuting patterns, and the practices of other employers. The Pay Agent must give thorough consideration to the views and recommendations of the Federal Salary Council, a body composed of experts in the fields of labor relations and pay policy and representatives of Federal employee organizations. The President appoints the members of the Council, which submits annual recommendations to the Pay Agent about the locality pay program. The establishment or modification of pay area boundaries must conform with the notice and comment provisions of the Administrative Procedure Act (5 U.S.C. 553).

Based on recommendations of the Federal Salary Council, we have used Core Based Statistical Areas (CBSA) designated by the Office of Management and Budget (OMB) as the basis for locality pay areas since locality pay began in 1994. Under current regulations, locality pay areas change automatically the January following any changes in applicable CBSA definitions made by OMB.

OMB typically makes substantial changes in the definitions of CBSAs after each census. When OMB redefined CBSAs in 2003, we temporarily delinked locality pay area boundaries from the revised definitions to allow the Federal Salary Council and the Pay Agent time to review the new definitions to determine if the new definitions were suitable for use in the locality pay program. Based on the Council's recommendations in 2003, the Pay Agent later approved using the new CBSA—Metropolitan Statistical Areas (MSA) and Combined Statistical Area (CSA)—definitions for defining locality pay areas.

OMB plans to once again update CBSA definitions in 2013, and the Federal Salary Council has recommended that we again temporarily delink locality pay area definitions from the new MSA and CSA definitions to provide time for review. Therefore, the Pay Agent is proposing amending 5 CFR part 531 to link locality pay areas to existing MSAs and CSAs as defined in OMB Bulletin 10–02 of December 1, 2009. Under the proposed rule, pay areas would not change to conform to new CBSA definitions unless the Pay Agent decides later to adopt the new definitions. The Pay Agent will make its determination after receiving and considering the recommendations of the Federal Salary Council.

The Pay Agent will publish for comment any proposed changes in locality pay areas based on the new definitions, if they are adopted. Under this proposed rule, locality pay areas will not change automatically when OMB changes metropolitan area definitions in 2013.

Impact and Implementation

The proposed rule will have no effect on existing locality pay area definitions but will prevent any changes that would otherwise occur when OMB updates MSA and CSA definitions in 2013.

Executive Order 13563 and Executive Order 12866

The Office of Management and Budget has reviewed this rule in accordance with E.O. 13563 and E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 531

Government employees, Law enforcement officers, Wages.

Office of Personnel Management.

John Berry,

Director.

Accordingly, OPM is proposing to amend 5 CFR part 531 as follows:

PART 531—PAY UNDER THE GENERAL SCHEDULE

1. The authority citation for part 531 continues to read as follows:

Authority: 5 U.S.C. 5115, 5307, and 5338; sec. 4 of Pub. L. 103–89, 107 Stat. 981; and E.O. 12748, 56 FR 4521, 3 CFR, 1991 Comp., p. 316; Subpart B also issued under 5 U.S.C. 5303(g), 5305, 5333, 5334(a) and (b), and 7701(b)(2); Subpart D also issued under 5 U.S.C. 5335 and 7701(b)(2); Subpart E also issued under 5 U.S.C. 5336; Subpart F also issued under 5 U.S.C. 5304, 5305, and

5941(a), E.O. 12883, 58 FR 63281, 3 CFR, 1993 Comp., p. 682 and E.O. 13106, 63 FR 68151, 3 CFR, 1998 Comp., p. 224.

Subpart F—Locality-Based Comparability Payments

2. In § 531.602, the definitions of CSA and MSA are revised to read as follows:

§ 531.602 Definitions.

* * * * *

CSA means the geographic scope of a Combined Statistical Area as defined by the Office of Management and Budget (OMB) in OMB Bulletin 10–02, December 1, 2009.

* * * * *

MSA means the geographic scope of a Metropolitan Statistical Area as defined by OMB in OMB Bulletin 10–02, December 1, 2009.

* * * * *

3. In § 531.609, paragraph (d) is revised to read as follows:

§ 531.609 Adjusting or terminating locality rates.

* * * * *

(d) In the event of a change in the geographic coverage of a locality pay area, the effective date of any change in an employee's entitlement to a locality rate of pay under this subpart is the first day of the first pay period beginning on or after the effective date indicated in the applicable final rule published in the **Federal Register**.

* * * * *

[FR Doc. 2012–28555 Filed 11–23–12; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1214; Directorate Identifier 2011–SW–071–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Eurocopter France Model EC 155B, EC155B1, SA–366G1, SA–365N, SA–365N1, AS–365N2, and AS 365 N3 helicopters, which would require modifying the fuel tank draining system. This proposed AD is prompted by a closed fuel tank drain that, in the event of a fuel leak, could result in fuel accumulating in an area containing electrical equipment. The proposed actions are intended to prevent accumulation of fuel in an area with electrical equipment or other ignition source, which may lead to a fire.

DATES: We must receive comments on this proposed AD by January 25, 2013.

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

- Federal eRulemaking Docket: Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- Fax: 202–493–2251.
- Mail: Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- Hand Delivery: Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

For service information identified in this proposed AD, contact American Eurocopter Corporation, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.eurocopter.com/techpub.* You may review a copy of the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Chinh Vuong, Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *chinh.vuong@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD No. 2011–0190, dated September 30, 2011 (AD No. 2011–0190), to correct an unsafe condition for the Eurocopter France EC 155, SA 366, SA 365, and AS 365 model helicopters, except those with certain modifications. EASA reports that the fuel tank drains were closed with plugs during production to maintain buoyancy during emergency landings in water. EASA states that this closing of the fuel tank drains with plugs ''disregards compliance with an airworthiness certification requirement'' and, in the event of a fuel leak in flight, creates ''the risk of fuel accumulation and/or migration'' to an adjacent area that may contain electrical equipment ''susceptible of constituting a source of ignition.'' EASA states that this condition, if not corrected, could result in ignition of fuel vapors, ''resulting in a fire and consequent damage to the helicopter, or injury to its occupants.'' As a result, EASA required modification of the fuel tank compartments' draining system.

FAA's Determination

These helicopters have been approved by the aviation authority of France and are approved for operation in the United States. Pursuant to our bilateral agreement with France, EASA, its technical representative, has notified us of the unsafe condition described in its AD. We are proposing this AD because we evaluated all known relevant information and determined that an

unsafe condition is likely to exist or develop on other products of these same type designs.

Related Service Information

Eurocopter issued Alert Service Bulletin (ASB) No. EC155–53A031 for its B and B1 model helicopters, ASB No. AS366–53.11 for its G1 model helicopters, and ASB No. AS365–53.00.50 for its N, N1, N2 and N3 model helicopters. The ASBs were all dated May 3, 2011, and were all followed with Revision 1 dated September 21, 2011.

For helicopters not equipped with emergency buoyancy fixed parts, the ASBs describe procedures to modify the fuel tank draining system by removing drain plugs in the fuel tanks, to make draining possible. For helicopters equipped with emergency buoyancy fixed parts, the ASBs contain additional procedures to seal one drain plug per fuel tank compartment and to install new drain points and self-sealing drain valves in specified fuel tanks. EASA AD No. 2011–0190 classifies these ASBs as mandatory to ensure the airworthiness of these helicopters.

Proposed AD Requirements

This proposed AD would require compliance with certain sections within paragraph 3.B.2 of the manufacturer's service bulletins. Helicopters equipped with emergency buoyancy fixed parts would be required to comply within six months, and helicopters not equipped with emergency buoyancy fixed parts would be required to comply within 110 hours time-in-service.

Costs of Compliance

We estimate that this proposed AD would affect 46 helicopters of U.S. Registry and that labor costs average $85 per work-hour. Based on these estimates, we would expect the following costs:

Sealing drain plugs, and installing new drain points and self-sealing drain valves at other locations on helicopters equipped with emergency buoyancy fixed parts would require 16 work-hours. Parts would cost $11,154 for a total cost of $12,514 per helicopter. For helicopters equipped with emergency buoyancy fixed parts and a sixth fuel tank, this work would instead require 17 work-hours for a total cost of $12,599 per helicopter.

Removing drain plugs on helicopters not equipped with emergency buoyancy fixed parts would require one work-hour and no parts for a total cost of $85 per helicopter. For helicopters not equipped with emergency buoyancy fixed parts but equipped with a sixth fuel tank, this work would instead require two work-hours for a total cost of $170 per helicopter.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify this proposed regulation:

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

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

3. Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and

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

We prepared an economic evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Eurocopter France: Docket No. FAA–2012–1214; Directorate Identifier 2011–SW–071–AD.

(a) Applicability

This AD applies to Eurocopter France Model EC 155B, EC155B1, and SA–366G1 helicopters, except those with modification 365A084485.00, or modifications 0753C98 and 0745C96; and Model SA–365N, SA–365N1, AS–365N2, and AS 365 N3 helicopters, except those with modifications 0753C98, 0745C96, and (if a sixth fuel tank is installed) 365A081003.00, or modification 365A081003.00 and (if a sixth fuel tank is installed) 365A084485.00.

(b) Unsafe Condition

This AD defines the unsafe condition as a closed fuel tank drain that, in the event of a fuel leak, could result in fuel accumulating in an area containing electrical equipment or other ignition source. This condition could result in a fire in the helicopter.

(c) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(d) Required Actions

(1) Within 110 hours time-in-service (TIS):

(i) For helicopters without an emergency buoyancy system, remove the fuel tank drain plugs listed in the Accomplishment Instructions, paragraph 3.B.2.b., of Eurocopter Alert Service Bulletin (ASB) No. EC155–53A031, Revision 1, dated September 21, 2011 (ASB 155); ASB No. AS365–53.00.50, Revision 1, dated September 21, 2011 (ASB 365), or ASB No. AS366–53.11, Revision 1, dated September 21, 2011 (ASB 366), as appropriate for your model helicopter.

(ii) For the Model SA–365N, SA–365N1, AS–365N2, and AS 365 N3 helicopters, if there is an optional sixth fuel tank installed, install a self-sealing drain valve in accordance with paragraph 3.B.2.c. of the ASB.

(2) Within six months:

(i) For helicopters with an emergency buoyancy system, modify the fuel tank drain system in accordance with the Accomplishment Instructions, paragraphs 3.B.2.a.1. through 3.B.2.a.3, of the ASB appropriate for your model helicopter.

(ii) For the Model SA–365N, SA–365N1, AS–365N2, AS 365 N3 helicopters, if there is an optional sixth fuel tank installed, install a self-sealing drain valve in accordance with paragraph 3.B.2.c. of the ASB.

(e) Alternative Methods of Compliance (AMOC)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Chinh Vuong, Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *chinh.vuong@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

(f) Additional Information

The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2011–0190, dated September 30, 2011.

(g) Subject

Joint Aircraft Service Component (JASC) Code: 2810, fuel storage.

Issued in Fort Worth, Texas, on November 8, 2012.

Lance T. Gant,

Acting Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2012–28435 Filed 11–23–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2012–1241; Notice No. 25–12–15–SC]

Special Conditions: Embraer S.A., Model EMB–550 Airplane; Design Roll Maneuver for Electronic Flight Controls

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Embraer S.A. Model EMB–550 airplane. This airplane will have a novel or unusual design feature(s) associated with the design roll maneuver for electronic flight controls, specifically an electronic flight control system that provides control of the aircraft through pilot inputs to the flight computer. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Send your comments on or before January 10, 2013.

ADDRESSES: Send comments identified by docket number [FAA–2012–1241] using any of the following methods:

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

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

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

FOR FURTHER INFORMATION CONTACT: Todd Martin, FAA, Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98057–3356; telephone 425–227–1178; facsimile 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Background

On May 14, 2009, Embraer S.A. applied for a type certificate for their new Model EMB–550 airplane. The Model EMB–550 airplane is the first of a new family of jet airplanes designed for corporate flight, fractional, charter, and private owner operations. The aircraft has a conventional configuration with low wing and T-tail empennage. The primary structure is metal with composite empennage and control surfaces. The Model EMB–550 airplane is designed for 8 passengers, with a maximum of 12 passengers. It is equipped with two Honeywell HTF7500–E medium bypass ratio turbofan engines mounted on aft fuselage pylons. Each engine produces approximately 6,540 pounds of thrust for normal takeoff. The primary flight controls consist of hydraulically powered fly-by-wire elevators, ailerons, and rudder, controlled by the pilot or copilot sidestick.

The flight control system for the Model EMB–550 airplane does not have a direct mechanical link or a linear gain between the airplane flight control surface and the pilot's cockpit control device, which is not accounted for in Title 14, Code of Federal Regulations (14 CFR) 25.349(a). Instead, a flight control computer commands the airplane flight control surfaces, based on input received from the cockpit control device. The pilot input is modified by the flight control computer before the command is given to the flight control surface.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Embraer S.A. must show that the Model EMB–550 airplane meets the applicable provisions of part 25, as amended by Amendments 25–1 through 25–127 thereto.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model EMB–500 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they

are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Model EMB–550 airplane must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36 and the FAA must issue a finding of regulatory adequacy under § 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

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

Novel or Unusual Design Features

The Model EMB–550 airplane will incorporate the following novel or unusual design features: The Model EMB–550 airplane is equipped with an electronic flight control system that provides control of the aircraft through pilot inputs to the flight computer. Current part 25 airworthiness regulations account for ''control laws'' where aileron deflection is proportional to control stick deflection. They do not address any nonlinearities, i.e., situations where output does not change in the same proportion as input, or other effects on aileron actuation that may be caused by electronic flight controls.

Discussion

These special conditions differ from current regulatory requirements in that they require that the roll maneuver result from defined movements of the cockpit roll control as opposed to defined aileron deflections. Also, these special conditions require an additional load condition at design maneuvering speed (V_A), in which the cockpit roll control is returned to neutral following the initial roll input.

These special conditions differ from similar special conditions previously issued on this topic. These special conditions are limited to the roll axis only, whereas other special conditions also included pitch and yaw axes. Special conditions are no longer needed for the yaw axis because 14 CFR 25.351 was revised at Amendment 25–91 to take into account effects of an electronic flight control system. No special conditions are needed for the pitch axis because the method that Embraer S.A. proposed for the pitch maneuver takes into account effects of an electronic flight control system. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these special conditions are applicable to the Model EMB–550 airplane. Should Embraer S.A. apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model EMB–550 of airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Embraer S.A. Model EMB–550 airplanes.

1. Design Roll Maneuver for Electronic Flight Controls.

In lieu of compliance to 14 CFR 25.349(a), the Embraer S.A. Model EMB–550 airplane must comply with the following.

The following conditions, speeds, and cockpit roll control motions (except as the motions may be limited by pilot effort) must be considered in combination with an airplane load factor of zero and of two-thirds of the positive maneuvering factor used in design. In determining the resulting control surface deflections, the torsional flexibility of the wing must be considered in accordance with 14 CFR 25.301(b).

(a) Conditions corresponding to steady rolling velocities must be investigated. In addition, conditions corresponding to maximum angular acceleration must be investigated for airplanes with engines or other weight concentrations outboard of the fuselage. For the angular acceleration conditions, zero rolling velocity may be assumed in the absence of a rational time history investigation of the maneuver.

(b) At V_A, sudden movement of the cockpit roll control up to the limit is assumed. The position of the cockpit roll control must be maintained until a steady roll rate is achieved and then must be returned suddenly to the neutral position.

(c) At V_C, the cockpit roll control must be moved suddenly and maintained so as to achieve a roll rate not less than that obtained in paragraph (b).

(d) At V_D, the cockpit roll control must be moved suddenly and maintained so as to achieve a roll rate not less than one third of that obtained in paragraph (b).

Issued in Renton, Washington, on November 16, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–28386 Filed 11–23–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 3

[Docket No. PTO–P–2012–0047]

Notice of Roundtable on Proposed Requirements for Recordation of Real-Party-in-Interest Information Throughout Application Pendency and Patent Term

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The United States Patent and Trademark Office (USPTO) is considering promulgating regulations that would require greater public transparency concerning the ownership of patent applications and patents by requiring the provision of real-party-in-interest information during patent prosecution and at certain times post-issuance. As part of this initiative, the USPTO is conducting a roundtable to obtain public input from organizations and individuals on how the USPTO could change its rules of practice to collect and provide such ownership information and make it publicly available. The USPTO plans to invite a number of roundtable participants from among patent user groups, practitioners, industry, independent inventor organizations, academia, and government. The roundtable also is open for any member of the public to provide input.

DATES: The roundtable will be held on Friday, January 11, 2013, beginning at 8:30 a.m. and ending at 12:00 p.m. EDT.

The deadline for receipt of requests to participate in the roundtable is Friday, December 21, 2012.

The deadline for receipt of written comments is Friday, January 25, 2013.

ADDRESSES: The roundtable will be held at the USPTO, in the Madison Auditorium on the concourse level of the Madison Building, which is located at 600 Dulany Street, Alexandria, Virginia 22314.

Requests to participate at the roundtable are required and must be submitted by electronic mail to *saurabh.vishnubhakat@uspto.gov.* Requests to participate at the roundtable should indicate the following information: (1) The name of the person desiring to participate and his or her contact information (telephone number and electronic mail address); and (2) the organization(s) he or she represents.

Written comments may be submitted by either of the following methods:

- *Electronic Mail: saurabh.vishnubhakat@uspto.gov mailto:SMEpatenting@uspto.gov.*
- *Postal Mail:* Saurabh Vishnubhakat, Expert Advisor, Office of Chief Economist, United States Patent and Trademark Office, Mail Stop External Affairs, P.O. Box 1450, Alexandria, VA 22313–1450.

Although written comments may be submitted by postal mail, the USPTO prefers to receive written comments via electronic mail.

The written comments and list of the roundtable participants and their associations will be available for public inspection at the Office of Chief Economist, located in the Madison Building East, Second Floor, 600 Dulany Street, Alexandria, Virginia 22314, and will be available via the USPTO Web site (address: *http://www.uspto.gov*). Because written comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the written comments.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Saurabh Vishnubhakat by electronic mail at *saurabh.vishnubhakat@uspto.gov* or by telephone at (571) 272–6900.

SUPPLEMENTARY INFORMATION: The USPTO is considering means for collecting and disseminating information about the real-party(ies)-in-interest for patent applications and issued patents. It is increasingly clear that the completeness of the patent record, including the ownership of patent applications and patents, plays an essential role in the efficient functioning of innovation markets. Since intangible assets now make up over fifty percent of the value of business outputs of U.S. industry, intellectual property rights are one key mechanism by which such intangibles can be exchanged, providing profits for innovators and moving technologies to their most efficient uses in the economy.

To avoid business and legal risk, the clearing of intellectual property rights is often undertaken by manufacturers or distributors prior to production and marketing. In such cases, the clearance of intellectual property rights is often made more difficult and time-consuming, legally risky, and expensive because current ownership information on patent applications and issued patents is not available. An incomplete ownership record thus presents a significant barrier to competition and market efficiency. Markets operate most efficiently when buyers and sellers can find one another. Yet in our current system, fragmented ownership in the patent rights covering complex products leads to potential buyers facing difficulty finding sellers, and to potential innovators not understanding the nature of the marketplace they are considering entering.

To address the need for accurate ownership information for pending patent applications and issued patents, the USPTO is interested in providing more complete patent ownership information to the public, in accordance with the Office's duty under 35 U.S.C. 2(a)(2) of ''disseminating to the public information with respect to patents.''

A more complete ownership record would produce a number of benefits. The public would have a more comprehensive understanding of what patent rights being issued by the United States are being held and maintained by various entities. The financial markets would have more complete information about the valuable assets being generated and held by companies. Inventors and manufacturers would better understand the competitive environment in which they are operating, allowing them to better allocate their own research and development resources, and more efficiently obtain licenses and accurately value patent portfolios and patent estates that they may seek to acquire.

Beyond providing these public benefits, accurate and up-to-date ownership information is needed to facilitate examination of patents by the USPTO, particularly in light of certain new provisions of the America Invents Act, Public Law 112–29 (Sept. 16, 2011) (''AIA''), that will become effective in March 2013. Courts have previously recognized that the USPTO has the authority to promulgate regulations that ''shall govern the conduct of proceedings in the Office.'' *Star Fruits S.N.C.* v. *U.S.,* 393 F.3d 1277, 1282 (Fed. Cir. 2005) (quoting 35 U.S.C. 2(b)(2)); *see also Cooper Techs. Co.* v. *Dudas,* 536 F.3d 1330, 1335 (Fed. Cir. 2008) (''To comply with section 2(b)(2)(A), a Patent Office rule must be 'procedural'—i.e., it must 'govern the conduct of proceedings in the Office.' ''). Pursuant to this authority, the Office may require the submission of information that is reasonably necessary to proper examination or treatment of the matter at hand, provided that such requests are not arbitrary or capricious. *See Star Fruits,* 393 F.3d at 1283–84.

Furthermore, the USPTO seeks real-party-in-interest information in part to ensure that a ''power of attorney'' is current in each case. The USPTO has a strong interest in ensuring that current representatives in any proceeding before the USPTO are authorized by the current owner. *See Lacavera* v. *Dudas,* 441 F.3d 1380, 1383 (Fed. Cir. 2006) (''[T]he PTO has broad authority to govern the conduct of proceedings before it and to govern the recognition and conduct of attorneys.'').

Moreover, for patent proceedings before the Office, it is important for the USPTO to know the real party(ies) in interest in order to avoid potential conflicts of interest for judges and examiners alike. For example, ''in the case of the Board, a conflict would typically arise when an official has an investment in a company with a direct interest in a Board proceeding. Such conflicts can only be avoided if the parties promptly provide information necessary to identify potential conflicts.'' *See* Rules of Practice for Trials Before the Patent Trial and Appeal Board and Judicial Review of Patent Trial and Appeal Board Decisions, 77 FR 48612, 48617 (Aug. 14, 2012). Like administrative patent judges at the Board, ''[p]atent examiners are quasi-judicial officials.'' *Western Elec. Co., Inc.* v. *Piezo Tech., Inc.,* 860 F.2d 428, 431 (Fed. Cir. 1988) (citing *Butterworth* v. *United States ex rel. Hoe,* 112 U.S. 50, 67 (1884)). Accordingly, a clear identification of the real-party-in-interest is important to ensure that officials are able to recuse themselves in view of any conflict-of-interest apparent from the disclosure. In addition, ''[t]he identity of a real party in interest might also affect the credibility of evidence

presented in a proceeding.'' 77 FR at 48617.

Additionally, changes made by the America Invents Act to the categories of what constitutes prior art increase the need to have accurate and up-to-date ownership information about patent applications and issued patents in order to make determinations of novelty. *See* 35 U.S.C. 102(b). In particular, section 102(b)(2)(C) exempts as prior art those patent applications or issued patents that name different inventors where ''the subject matter disclosed and the claimed invention, *not later than the effective filing date* of the claimed invention, *were owned by the same person* or subject to an obligation of assignment to the same person'' (emphasis added). Because ownership of an earlier-filed patent application or issued patent may prevent its use as prior art against a later-filed patent application, patentability may depend not just on the content of the prior art patent application or issued patent, but also on who owns it.

Further, new section 102(b)(2)(C) differs from the previous statutory provision on which it was based, 35 U.S.C. 103(c)(1) (2011). While section 103(c)(1) (2011) concerned an exception to obviousness rather than an exception to what constitutes prior art, it otherwise recited virtually identical language to that of the current section 102(b)(2)(C) except that section 103(c)(1) stated that patentability was not precluded where ''the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person.'' Under the earlier section 103(c)(1), whether earlier subject matter was prior art was established at the time when the claimed invention in the later-filed application was ''made,'' by considering whether the earlier subject matter was owned by the same entity that owned (or had a right to own) the claimed invention that was just made. In contrast, under new section 102(b)(2)(C), there may be an opportunity—in the period before the filing of the second application—for ownership to change in a way that affects whether the earlier patent or patent application is prior art for purposes of section 102(b). As a result, tracking ownership information for patent applications and issued patents is directly relevant to questions of novelty during prosecution and to mechanisms for challenging patents post-issuance.

In the prosecution context, the new section 102(b)(2)(C) presents the possibility that a greater amount of prior art might be subject to this exemption than under previous section 103(c)(1), which, in turn, could render the current method of handling the possibility of common ownership—the examiner presenting an initial rejection, and the applicant rebutting the rejection with proof of ownership, *see* MPEP section 706.02(1)(2)—inefficient in a manner that would undermine the principles of compact prosecution. *See id.* at section 706 (''The goal of examination is to clearly articulate any rejection early in the prosecution process so that the applicant has the opportunity to provide evidence of patentability and otherwise reply completely at the earliest opportunity.'').

In addition, the availability of new types of third-party proceedings that may be filed with the USPTO has created a need for the Office to collect and publish timely ownership information. Previously, many ''proceedings in the Office'' were initiated by patent applicants or applicants-turned-patentees. In the relatively recent past, third parties have become able to initiate *ex parte* reexamination proceedings (1981) as well as *inter partes* reexamination proceedings (1999). Such third party-initiated reexamination proceedings often arose out of disputes between the patentees and third-party requestors. Now, under the AIA, parties with no ownership interest in the patent, *i.e.,* third parties, are entitled to request initiation of certain post-grant proceedings before the Office, including *inter partes* review under 35 U.S.C. 311 and post-grant review under 35 U.S.C. 321. Because of certain statutory deadlines imposing short time frames for action (*e.g.,* nine months after patent grant, *see* 35 U.S.C. 321(c)), it may often be impractical or impossible for third parties to discover ownership information through other means, such as through disputes arising between patentees and third parties. Accordingly, whether to initiate such proceedings is a decision that third parties will often have to make based primarily on the USPTO record, making it important for that record to contain ownership information that is as accurate and complete as possible.

In particular, both *inter partes* reexamination and post-grant review proceedings contemplate that challenges may be predicated on prior art under 35 U.S.C. 102(b)(2)(C). *See* 35 U.S.C. 311(b) and 321(b) (allowing for use of prior art under, *inter alia,* section 102(b)(2)(C) in *inter partes* and post-grant review proceedings, respectively). But third parties will not necessarily be able to ascertain what is properly considered prior art under section 102(b)(2)(C) without access to accurate ownership information for patent applications and issued patents (including a record of whether and how ownership has changed). In part for this reason, the Office plans not only to collect such ownership information, but also to make it publicly available concurrently with the publication of patent applications or issued patents.

In addition, for patents that enter any kind of post-grant review proceedings, the Office requiring the submission of updated ownership information for that patent (or a confirmation that the ownership information has not changed) would facilitate reexamination for the reasons discussed previously in this notice. Furthermore, it would allow the Office to verify that a *bona fide* third party is making the request for *inter partes* review or post-grant review, as required by 35 U.S.C. 311(a) and 321(a), respectively; to verify that the petitioner applying for review of a covered business method patent is a real-party-in-interest or privy to an entity that has been sued or charged with infringement of that patent, as required by 37 CFR 42.302(a); and to verify that a *bona fide* patent owner is making the request for supplemental examination, as required by 35 U.S.C. 257(a).

Moreover, because the USPTO will be collecting and publishing this information, it also has an interest in ensuring that such public information remains as accurate and up-to-date as possible. This is consistent with several statutory provisions directing the Office to disseminate information to the public as well as those directing the Office to provide access to information through electronic means. *See* 35 U.S.C. 2(a)(2) (creating a duty of ''disseminating to the public information with respect to patents''); section 10(a)(4) (providing for publication of information, including ''annual indexes of * * * patentees''); section 10(b) (providing that the ''Director may exchange * * * for publications desirable for the use of the [Office]''); and section 41(i) (creating a duty to provide access to information electronically).

The USPTO published a Request for Comments on November 23, 2011, regarding whether regulations should be promulgated for the collection of assignment and real-party-in-interest information for both applications and patents. *See* Request for Comments on Eliciting More Complete Patent Assignment Information, 76 FR 72372 (Nov. 23, 2011). Responses to this request for comments were more favorable towards the proposal than unfavorable. *See http://www.uspto.gov/*

patents/law/comments/patent_assignment_information.jsp.

The USPTO is now planning to conduct a roundtable at its Alexandria, Virginia, campus to discuss with the patent and innovation community whether—and, if so, how—the USPTO should require submission of real-party-in-interest information throughout the pendency of an application and the enforceable life of a patent. To focus the discussion, the USPTO provides the following description of what information it envisions collecting, and how such information will be collected and published:

Information To Be Collected

The USPTO proposes to collect ''real-party-in-interest'' (''RPI'') information on patent applications and patents in order to facilitate examination before the Office and for the other reasons and benefits discussed above. The USPTO believes that these interests can be met through the collection of RPI information where RPI is defined in at least two different ways, described in more detail below. It is important to note that the Office would consider whatever definition is adopted for this purpose as not necessarily coinciding with how the term real-party-in-interest may be used elsewhere in the Office, or with the term ''ownership'' as that term is used in Title 35 and in the Office's implementing regulations. The Office welcomes comments on the definitions proposed here for RPI, as well as the suitability of other definitions or standards.

Alternative Definition 1: ''Broad'' RPI

Under the first alternative definition, RPI would correspond to those entities having the legal right to enforce the patent, *i.e.,* those parties that would be necessary and sufficient to bring a legal infringement action. *See Vaupel Textilmaschinen KG* v. *Meccanica Euro Italia SPA,* 944 F.2d 870, 875–76 (Fed. Cir. 1991); 35 U.S.C. 154(a)(1). As discussed above, this information is directly relevant to identifying conflicts of interest that might arise in examination contexts. Moreover, it is consistent with the need to make prior art determinations under 35 U.S.C. 102(b)(2)(C) because it identifies all parties that might have a claim to ownership of the patent application or issued patent. This definition would likely require disclosure of exclusive licensees in certain cases. This RPI information would be useful both to the Office and to the public by providing a clear idea of all the entities that have an interest in the patent application or issued patent as well as, for patents, a clear idea of the entity(ies) in possession of the legal right to exclude. *See* 35 U.S.C. 154.

Alternative Definition 2: ''Limited'' RPI

Under the second alternative definition, the interested parties needing to be disclosed would be limited to the legal title holder(s) and ''ultimate parent entity(ies)'' of the patent application or issued patent. The term ''ultimate parent entity'' would be based on the definition (along with the accompanying examples) set forth in 16 CFR 801.1(a)(3), which defines it as ''an entity which is not controlled by any other entity.'' The rationale behind defining RPI in this manner is to limit the entities that need to be identified based on the assumption that although not every interested entity would be listed, information about these other parties (if needed) could, in most cases, be deduced or obtained from the information provided. For example, information provided about the ultimate parent entity would be likely to alert the examiner to a conflict of interest not otherwise disclosed in many cases, even if the actual conflict concerned a subsidiary entity that did not itself need to be disclosed. Focusing information collection on the ultimate parent entity could also facilitate searches for patent applications and issued patents having common ownership, which could be of benefit to the Office and public alike. Moreover, this narrower definition of RPI would have the benefit of potentially reducing administrative costs in collecting and updating RPI information. Exclusive licensee information would likely not need to be provided, and following section 801.1, the United States or foreign states would not need to be reported as ultimate parent entities (though they may still be legal title holders). Although the Office considers the definition in section 801.1 as a model, the Office welcomes any suggestions on how to modify the definition to be more suitable for use before the USPTO, and on whether the direct adoption of a well-established definition would itself be beneficial.

Timing of RPI Information Collection

For purposes of facilitating examination and the ability of third parties to appropriately seek to challenge patents post-issuance, the USPTO aims to provide RPI information for patent applications and issued patents that is as up-to-date and accurate as possible. To this end, the USPTO envisions collecting such information at the time that an application is initially filed for internal examination purposes (though this information will be treated as confidential in accordance with the provisions of 35 U.S.C. 122); requiring applicants to notify the Office about any changes in RPI information during prosecution; and verifying on at least two occasions that the information on file is correct: immediately prior to 18-month publication (though patent applications would only be published in accordance with 35 U.S.C. 122), and prior to issuance. For issued patents, the Office will likewise require the information on file to be verified or updated when maintenance fees are paid and if the patent becomes involved in any post-issuance proceedings before the Office.

The Office plans to collect RPI information from applicants in the application data sheet (for example, Application Data Sheet, PTO/SB/14) instead of, or in addition to, the current ''Assignee'' information. Intervening updates would be submitted to the Office through the submission of an additional ''change form.'' An applicant would have a duty to update the RPI information within a reasonable time period of any change. *See* 37 CFR 1.56. The Office envisions that a reasonable period of time would be within three months of any reportable change, similar to the presumptive period of time in which applicants are expected to reply to any notice or action by the Office in the context of patent term adjustments under 37 CFR 1.704(b). The pre-18-month publication verification would likely necessitate the submission of a new form. For issuance, the Office envisions this process as simply including a statement that the applicant or owner ''certifies that the RPI information on file at the USPTO is accurate and unchanged.'' Any unreported changes at this time could be fixed by filling out the aforementioned change form and, as appropriate, any fees or explanation why such change had not been reported earlier. The USPTO welcomes feedback about how long a presumptive reasonable time period would be and about mechanisms for excusing late updates in appropriate circumstances. *See, e.g.,* 37 CFR 1.137 (providing for revival of lapsed patents or patent applications where delay was unavoidable or unintentional).

After patent issuance, the USPTO intends to have RPI information verified at the time of maintenance fee payments using a procedure similar to that outlined for issuance of a patent (the inclusion of a statement verifying that the USPTO information is accurate, or the submission of a change form if not). The Office likewise plans to collect such

information any time that an issued patent is involved in a proceeding before the Office post-issuance, including: reissue applications under 35 U.S.C. 251, supplemental examinations under 35 U.S.C. 257, reexaminations under 35 U.S.C. 302, *inter partes* reviews under 35 U.S.C. 311, post-grant reviews under 35 U.S.C. 321, and the transitional program for covered business method patents under 37 CFR part 42, subpart D.

In sum, the Office envisions collecting or verifying RPI information as follows:

Submission of application	Applicant provides RPI information as part of the original application data sheet.
Through pendency of prosecution.	Applicant is responsible for ensuring that any changes in RPI information are submitted to the Office within a reasonable period of time.
Prior to 18-month publication date.	Applicant submits a form verifying that RPI information on file is accurate. Changes may be submitted in a supplemental form with an explanation for why the submission is timely. Note that information may be collected for all applications, though applications will only be published in accordance with 35 U.S.C. 122.
Upon issuance	Applicant's payment is accompanied by a form statement that RPI information on file is accurate. Changes may be submitted in a supplemental form with an explanation for why the submission is timely.
Upon payment of maintenance fees.	Patentee's payment is accompanied by a form statement that RPI information on file is accurate, or is accompanied by changes in a supplemental form.
Involvement in any post-grant proceedings.	Patentee is required to verify that RPI information on file is accurate, or to submit changes in a supplemental form.

The Office envisions this process applying to new applications filed after the date of any final rules coming into effect and after 35 U.S.C. 102(b)(2)(C) becomes effective on March 16, 2013. For pending applications where there has already been submission of an application data sheet, applicants would be required to submit RPI information at the next event described above (prior to 18-month publication or prior to issuance, or in conjunction with any continuing applications), and would then be responsible for updating any changes thereafter, through patent issuance. For issued patents, RPI information would be required in conjunction with the payment of the next maintenance fee, and with any subsequent maintenance fee payments thereafter—or instead, verification that the RPI information on file is unchanged.

Provision of RPI Information to the Public

While the USPTO would be able to use the information collected immediately for examination purposes, RPI information would be made available to the public in accordance with 35 U.S.C. 122, with RPI information being published in conjunction with the publication of a patent application or issued patent. The Office anticipates providing information about the current RPI as well as a history of any RPI changes in an accessible electronic format, such as on Public PAIR, in conjunction with a patent application or issued patent.

Details About the Roundtable

The number of participants in the roundtable is limited to ensure that all who are speaking will have a meaningful chance to do so. The USPTO plans to invite a number of participants from patent user, practitioner, industry, and independent inventor organizations, as well as academia, industry, and government to provide input. The USPTO also plans to have a few at-large participants based upon requests received in response to this notice to ensure that the USPTO is receiving a balanced array of views on possible requirements for patent ownership recordation.

The roundtable is open to the public, but participation in the roundtable is by request, as the number of participants in the roundtable is limited. While members of the public who wish to participate in the roundtable must do so by request, members of the public who wish solely to observe need not submit a request to attend. Any member of the public, however, may submit written comments for consideration by the USPTO on issues raised at the roundtable or on any issue pertaining to patent ownership recordation. Persons submitting written comments should note that the USPTO does not plan to provide a ''comment and response'' analysis of such comments, as this notice is not a notice of proposed rulemaking.

The USPTO plans to make the roundtable available via Web cast. Web cast information will be available on the USPTO's Internet Web site before the roundtable. The written comments and list of the roundtable participants and their associations will also be posted on the USPTO's Internet Web site.

Dated: November 9, 2012.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2012–28333 Filed 11–23–12; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AO31

Eligibility of Disabled Veterans and Members of the Armed Forces With Severe Burn Injuries for Financial Assistance in the Purchase of an Automobile or Other Conveyance and Adaptive Equipment; Correction

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule; correction.

SUMMARY: In a document published in the **Federal Register** on November 5, 2012 (77 FR 66419), the Department of Veterans Affairs amended its adjudication regulations regarding a certificate of eligibility for financial assistance in the purchase of an automobile or other conveyance and adaptive equipment. The document contained several grammatical errors in the preamble and regulatory text. This document corrects the errors and does not make any substantive change to the content of the proposed rule.

FOR FURTHER INFORMATION CONTACT: Nancy Copeland, Consultant, Regulations Staff (211D), Compensation Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave. NW., Washington, DC 20420, (202) 461–9487. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: VA published a proposed rule on November 5, 2012, implementing section 803 of Public Law 111–275, the Veterans' Benefits Act of 2010, that amended subsection 3901(1)(A) of title 38, United States Code (U.S.C.), by reformatting the statute and adding ''severe burn injury (as determined pursuant to regulations prescribed by the Secretary)'' as one of the disabilities that VA will consider

when making a determination of eligibility for financial assistance in the purchase of an automobile or other conveyance and adaptive equipment. Pursuant to the authority granted to the Secretary in 38 U.S.C. 501(a) and 3901(1)(A)(iv), VA proposes to amend 38 CFR 3.808 to define the term ''severe burn injury.'' In the proposed amendment to 38 CFR 3.808, we redesignated current paragraph (b)(4) as (b)(5) and added a new paragraph (b)(4) to define ''severe burn injury,'' as one of the conditions that determines entitlement for a certificate of eligibility for financial assistance in the purchase of an automobile or other conveyance and adaptive equipment. We found that newly proposed paragraph (b)(4) contained grammatical errors. This document corrects those grammatical errors.

List of Subjects in 38 CFR part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

Dated: November 19, 2012.

Robert C. McFetridge,

Director, Office of Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

For the reasons set out in the preamble, VA proposes to correct 38 CFR part 3 as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Revise § 3.808, paragraph (b)(4) to read as follows:

§ 3.808 Automobiles or other conveyances and adaptive equipment; certification.

* * * * *

(b) * * *

(4) Severe burn injury: Deep partial thickness or full thickness burns resulting in scar formation that cause contractures and limit motion of one or more extremities or the trunk and preclude effective operation of an automobile.

* * * * *

[FR Doc. 2012–28437 Filed 11–23–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 160 and 164

[Docket No. USCG–2010–0048]

RIN 1625–AB46

Lifesaving Equipment: Production Testing and Harmonization With International Standards

AGENCY: Coast Guard, DHS.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend the interim rule addressing lifesaving equipment to harmonize Coast Guard regulations concerning release mechanisms for lifeboats and rescue boats with recently adopted international standards affecting design, performance, and testing for such lifesaving equipment, and to clarify the requirements concerning grooved drums in launching appliance winches. The Coast Guard seeks comments on this proposal.

DATES: Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before January 25, 2013 or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG–2010–0048 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

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

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

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

Viewing incorporation by reference material: You may inspect the material proposed for incorporation by reference at U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001 between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–372–1385. Copies of the material are available as indicated in the ''Incorporation by Reference'' section of this preamble.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Mr. George Grills, Commercial Regulations and Standards Directorate, Office of Design and Engineering Standards, Lifesaving and Fire Safety Division (CG–ENG–4), Coast Guard; telephone 202–372–1385, email *George.G.Grills@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

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I. Public Participation and Request for Comments

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

A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2010–0048), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of

these means. The Coast Guard recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that the Coast Guard can contact you if it has questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and insert ''USCG- 2010–0048'' in the ''Search'' box. Click ''Search.'' Click on ''Submit a Comment'' in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½; by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments and material received during the comment period and may change this proposed rule based on your comments.

B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* and insert ''USCG–2010–0048'' in the ''Search'' box. Click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Coast Guard has an agreement with the Department of Transportation to use the Docket Management Facility.

C. Privacy Act

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

D. Public Meeting

The Coast Guard does not plan to hold a public meeting. You may submit a request for one to the docket using one of the methods specified under **ADDRESSES**. In your request, explain why you believe a public meeting would be beneficial. If the Coast Guard determines that one would aid this rulemaking, the Coast Guard will hold one at a time and place announced by a later notice in the **Federal Register**.

II. Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR **Federal Register**
IMO International Maritime Organization
LSA Life-saving Appliance
MISLE Marine Information for Safety and Law Enforcement database
MSC Maritime Safety Committee of the International Maritime Organization
NPRM Notice of Proposed Rulemaking
SNPRM Supplemental Notice of Proposed Rulemaking
SOLAS International Convention for Safety of Life at Sea, 1974, as amended
§ Section symbol
USCG United States Coast Guard

III. Regulatory History

On October 11, 2011, the Coast Guard published an interim rule titled, ''Lifesaving Equipment: Production Testing and Harmonization With International Standards'' (interim rule) in the **Federal Register**. See 76 FR 62962. As part of that interim rule, which became effective on November 10, 2011, the Coast Guard issued new subparts of 46 CFR part 160, including subpart 160.115 addressing launching appliance winches, and subpart 160.133 addressing release mechanisms for lifeboats and rescue boats, which are approved to the requirements of the International Convention for Safety of Life at Sea, 1974, as amended (SOLAS).

The Coast Guard issued an interim rule because in May 2011, the International Maritime Organization's (IMO) Maritime Safety Committee (MSC) amended its international standards regarding release mechanisms. See 76 FR 62962.

Additionally in the interim rule, the Coast Guard announced plans to publish in a future **Federal Register** document proposed changes to Coast Guard regulations to implement the IMO amendments regarding performance requirements for lifeboat and rescue boat release mechanisms that the Coast Guard determines appropriate for purposes of harmonization and consistency with international standards, and to finalize the interim rule at the same time the Coast Guard issues any final rule for those proposed changes. 76 FR 62962.

The Coast Guard is issuing this supplemental notice of proposed rulemaking (SNPRM) to address amendments to international standards affecting the design and performance of release mechanisms that were adopted by the IMO, and that will enter into force on January 1, 2013. The IMO amendments to the international standards affect 46 CFR part 160, subpart 160.133. The interim rule removed longstanding separate subparts for release mechanisms (46 CFR 160.033) and lifeboats (46 CFR 160.035) approved strictly for domestic service. 76 FR 62975. Therefore, this SNPRM potentially affects any U.S.-flagged vessel required to carry a lifeboat after the finalization of this proposed rule.

IV. Background

As discussed in the ''Basis and Purpose'' section of the interim rule, the Coast Guard is charged with ensuring that lifesaving equipment used on vessels subject to inspection by the United States meets specific design, construction, and performance standards, including those found in SOLAS, Chapter III, ''Life-saving appliances and arrangements.'' See 46 U.S.C. 3306; 76 FR 62963. The Coast Guard carries out this charge through the approval of lifesaving equipment per 46 CFR part 2, subpart 2.75. The approval process includes pre-approving lifesaving equipment designs, overseeing prototype construction, witnessing prototype testing, and monitoring production of the equipment for use on U.S. vessels. See 46 CFR part 159. At each phase of the approval process, the Coast Guard sets specific standards to which lifesaving equipment must be built and tested.

The Coast Guard's specific standards for release mechanisms are found in 46 CFR part 160, subpart 160.133 (Release Mechanisms for Lifeboats and Rescue Boats (SOLAS)). Subpart 160.133 implements current SOLAS requirements for lifeboat release mechanisms by incorporating by reference the IMO standards referenced by Chapter III of SOLAS. The primary IMO standards referenced by Chapter III of SOLAS are the ''International Life-saving Appliance Code,'' IMO Resolution MSC.48(66), as amended (hereinafter ''IMO LSA Code''), and the ''Revised recommendation on testing of life-saving appliances,'' IMO Resolution MSC.81(70), as amended (hereinafter ''Revised recommendation on testing''). The IMO updates these standards by adopting MSC Resolutions promulgating amendments to these standards.

Subpart 160.133 incorporates by reference the latest published version of the IMO LSA Code and the Revised recommendation on testing. Sections 160.133–5(c)(2) and (c)(3) incorporate by reference the parts of IMO's publication ''Life-saving Appliances, 2010 Edition'' that include the IMO LSA Code and the Revised recommendation

on testing. The ''Life-saving Appliances, 2010 Edition'' includes all amendments to the IMO LSA Code and Revised recommendation on testing adopted through 2010. These amendments are discussed in the NPRM published in the **Federal Register** on August 31, 2010, titled ''Lifesaving Equipment: Production Testing and Harmonization with International Standards.'' See 75 FR 53458.

On May 20, 2011, IMO adopted two new MSC Resolutions further amending the IMO LSA Code and the Revised recommendation on testing: IMO Resolution MSC.320(89), ''Adoption of amendments to the International Life-saving Appliance (LSA) Code,'' and IMO Resolution MSC.321(89), ''Adoption of amendments to the Revised Recommendation on Testing of Life-saving Appliances (Resolution MSC.81(70)), as amended.''

Resolution MSC.320(89) amends the IMO LSA Code and enters into force on January 1, 2013. This Resolution amends the design and performance requirements for release mechanisms by requiring—

- The hook portion to be ''stable'' such that when the hook is in the closed and reset position and under load from the lifeboat, no forces are transmitted back to the release handle;
- specific components within the system to be made of corrosion-resistant materials without the need for galvanizing;
- that, for moveable hook designs that are not of the ''load over center'' type (i.e., that are designed to rotate when a load is applied to the hook face), the moveable hook component is kept fully closed by the hook locking parts so that it is capable of holding its safe working load under any operational conditions until the hook locking part is deliberately caused to open by means of the operating mechanism;
- that if a hydrostatic interlock or similar device is provided to indicate that the lifeboat or rescue boat is waterborne, it automatically resets upon lifting the boat from the water;
- multiple actions to perform on-load release, including the deliberate destruction of a ''break glass'' or similar arrangement;
- operational capability of up to 100 percent of the release hook's design load under conditions of trim of up to 10 degrees and a list of up to 20 degrees either way;
- release mechanisms of the hook tail and cam type to remain closed and hold their design load through rotation of the cam of up to 45 degrees in either direction, or 45 degrees in one direction if restricted by design, from its locked position; and
- operating links and cables to be waterproof and not have exposed or unprotected areas.

Resolution MSC.321(89) amends the Revised recommendation on testing and enters into force on January 1, 2013. This Resolution specifies revisions to the prototype testing of release mechanisms supporting the amendments to the IMO LSA Code. The revisions to the testing include:

- a demonstration that the moveable hook component, when disconnected from the operating mechanism, remains closed while under a load equivalent to the B-weight of a lifeboat (see ''Full load'' definition in 46 CFR part 160, subpart 160.135–3) at a speed of 5 knots.
- a demonstration that a lifeboat release mechanism loaded at 100 percent of the design load of the release hook will successfully release under load 50 consecutive times, as well as simultaneously in the case of twin-fall systems;
- a demonstration that the moveable hook component, when disconnected from the operating mechanism, remains closed when tested 10 times with a cyclical loading from no load to 110 percent of the design load, or 1 percent to 110 percent of design load for load over center designs, at 10 seconds per cycle;
- a demonstration that the actuating force under the design load of the release mechanism is between 100 N and 300 N (22.5 lbf and 67.5 lbf); and
- prototype testing of a second unit, repeating the actuation force test before undergoing a tensile test at six times the design safe working load.

The Coast Guard proposes to revise subpart 160.133 to incorporate by reference IMO Resolutions MSC.320(89) and MSC.321(89). Beyond the obligations to adopt the changes to the IMO LSA Code and Revised recommendation on testing as a signatory to the SOLAS convention, the Coast Guard desires to incorporate by reference the amendments in IMO Resolutions MSC.320(89) and MSC.321(89) because they provide a higher standard of safety and performance than that of the existing requirements incorporated by reference in § 160.133–5. Further, for manufacturers, harmonization with current international standards will facilitate marketing of their products internationally.

The United States actively participated in the negotiations that led to the development of these IMO standards. The Coast Guard considers these IMO standards to represent the best available standards for the design and performance of release mechanisms and to be appropriate for lifeboats and rescue boats subject to inspection by the United States. In order to facilitate international commerce with other contracting governments to SOLAS that follow IMO standards, and to achieve the benefits of the increased safety of adhering to these IMO standards, the Coast Guard has, pursuant to *46 U.S.C. 3306* and *46 CFR 159.005–7(c),* deemed compliance by U.S.-flagged ships with the IMO standards as compliance with Coast Guard domestic regulations.

The effect of this proposed change would be that all davit-launched lifeboats for Coast Guard approval under subpart 160.135, and SOLAS rescue boats and fast rescue boats for Coast Guard approval under subpart 160.156 (other than those fitted with automatic release hooks under approval series 160.170), would be required to have a release mechanism approved under this revised subpart 160.133. See § 160.135–7(b)(17) (''Each release mechanism must be identified at the application for approval of the prototype lifeboat and must be approved under 46 CFR part 160, subpart 160.133'') and 160.156–7(b)(18) (''Each release mechanism fitted to a rescue boat, including a fast rescue boat, must be identified at the application for approval of the prototype rescue boat and must be approved under subparts 160.133 or 160.170 of this part.''). Davit-launched lifeboats and SOLAS rescue boats and fast rescue boats already installed prior to the implementation of this SNPRM will not be affected.

Beyond the new IMO Resolutions discussed above, the Coast Guard is also proposing amendments to § 160.115 to clarify the winch drum design requirements, and editorial amendments to correct non-substantive errors in 46 CFR part 160, subparts 160.133, 160.135, and 160.156.

V. Discussion of Proposed Rule

Revision to 46 CFR Part 160, Subpart 160.115

The Coast Guard proposes to replace 46 CFR 160.115–7(b)(5)(i) with text that requires winch drums to either be grooved or otherwise designed to wind the falls evenly on and off each drum. The Coast Guard is proposing to make this change because winch drum designs are increasingly being shown to be effective at winding the falls on and off the drum without grooves, (i.e., winch drums with a smooth drum design instead of the traditional grooved drum design). The proposed change in § 160.115–7(b)(5)(i) does not modify the

standard of design or performance for winch drums. Rather, the proposed change is intended to clarify the current regulation text which requires drums to be grooved ''unless otherwise approved by the Commandant.'' The primary standard by which the Coast Guard evaluates the design and performance of launching appliances, IMO LSA Code Chapter VI, ''Launching and embarkation appliances'' (referenced in § 160.115–7(a)(1)), does not require drums to be grooved, but requires the falls to wind evenly on and off the drum(s).

For many years, the Coast Guard has approved winches with smooth drums under approval series 160.115 as providing equivalent performance to grooved drums. However, there remains some confusion on the interpretation of existing § 160.115–7(b)(5)(i) with respect to the approval of winches without grooved drums. The Coast Guard believes this proposed change would reduce confusion about the Coast Guard's criteria for acceptance of non-grooved drums in launching appliance winches by providing manufacturers with clearer language regarding the intended design performance.

The Coast Guard proposes to add a new paragraph (4) to § 160.115–13(d), which would support the proposed revision to 46 CFR 160.115–7(b)(5)(i) by ensuring that any non-grooved drum design is still shown at the prototype testing phase to be as effective at evenly winding the falls on and off the drum surface as a grooved drum.

Revisions to 46 CFR Part 160, Subpart 160.133

The Coast Guard proposes to amend the title of subpart 160.133 by removing ''(SOLAS).'' As stated in the interim rule published on October 11, 2011, the Coast Guard removed the standard for domestic release mechanisms under 46 CFR 160.033 and created one standard for release mechanisms under 160.133. Therefore the use of ''SOLAS'' in the title is unnecessary and may be misleading when installing release mechanisms approved under subpart 160.133 in lifeboats serving U.S. vessels only on domestic routes. Changing the title would make it consistent with other subparts affected by the interim rule. The Coast Guard also proposes changing the title of subpart 160.135, which will be discussed in the section below titled, ''*Revisions to 46 CFR part 160, subpart 160.135, and subpart 160.156.*''

The Coast Guard proposes to correct the misspelling of ''life-saving'' in the title of the ''Revised recommendation on testing of life-saving appliances'' in § 160.133–5(c)(3) which was incorrectly spelled as ''live-saving''.

The Coast Guard proposes to revise § 160.133–5(c) to incorporate by reference IMO Resolutions MSC.320(89) and MSC.321(89) in new paragraphs (c)(6) and (c)(7), respectively. Because of the incorporation by reference of these Resolutions in § 160.133–5(c), references to the IMO LSA Code in §§ 160.133–3, 160.133–7(a)(1), 160.133–7(b)(8), and 160.133–7(b)(9) would be revised with ''as amended by Resolution MSC.320(89),'' and references to the Revised recommendation on testing in §§ 160.133–7(a)(2) and 160.133–13(d)(2) would be revised with ''as amended by IMO Resolution MSC.321(89).'' Revising these incorporations by reference would affect the provisions in §§ 160.133–7 and 160.133–13, which refer to the Revised recommendation on testing, as discussed in part IV above.

Because IMO Resolution MSC.320(89) requires ''all components of the hook unit, release handle unit, control cables or mechanical operating links and the fixed structural connections in a lifeboat [to] be of material corrosion resistant in the marine environment without the need for coatings or galvanizing,'' the current ASTM standard for structural carbon steel incorporated by reference in § 160.133–5 is a conflicting standard. This standard would no longer be appropriate because these steels require coatings or galvanizing to be corrosion resistant. Therefore, the Coast Guard proposes to remove § 160.133–5(b)(1), incorporating by reference ASTM A 36/A 36M–08, ''Standard Specification for Carbon Structural Steel,'' and to remove the accompanying standard for galvanizing in § 160.133–5(b)(5), incorporating by reference ASTM A 653/A 653M–08, ''Standard Specification for Steel Sheet, Zinc-Coated (Galvanized) or Zinc-Iron Alloy-Coated (Galvannealed) by the Hot-Dip Process.'' Because § 160.133–5 already contains three standards for stainless steel that meet the non-galvanized, corrosion-resistant material requirement of IMO Resolution MSC.320(89), the Coast Guard further proposes to retain and renumber § 160.133–5(b)(2), (3), and (4), incorporating by reference the three ASTM stainless-steel standards. The Coast Guard seeks public comment on other corrosion-resistant material standards for possible incorporation by reference in § 160.133–5(b).

The Coast Guard proposes to amend § 160.133–7(b)(3) to remove reference to ASTM A36 and ASTM A653, as these standards would no longer apply as described above. As proposed, the references to the ASTM standards would be replaced with language requiring each major structural component of each release mechanism to be constructed of corrosion-resistant steel that meets the standards for type 302 stainless steel in ASTM A 276, ASTM A 313, or ASTM A 314 (incorporated by reference, see § 160.133–5 of this subpart). The proposed language would also permit other corrosion-resistant materials to be used if accepted by the Commandant as having equivalent or superior corrosion-resistant characteristics without the need for coatings or galvanizing.

The Coast Guard proposes to remove § 160.133–7(b)(15), which requires each release mechanism to have mechanical protection against accidental or premature release that can only be engaged when the release mechanism is properly and completely reset. The Coast Guard recognized that the requirements in this paragraph were already addressed in the existing IMO LSA Code (incorporated by reference in § 160.133–5(c)(2)), paragraph 4.4.7.6.4, related to lifeboat fittings, and are not affected by IMO Resolution MSC.320(89) that amends the IMO LSA Code. Therefore, removing existing § 160.133–7(b)(15) would eliminate a redundancy with the incorporation by reference of the IMO LSA Code.

The Coast Guard proposes to remove § 160.133–13(d)(2)(iii), which contains a stipulation regarding galvanizing, because galvanizing is no longer an acceptable form of metal treatment for corrosion resistance under IMO Resolution MSC.320(89) and its removal is consistent with the proposed removal of ASTM A 653 in §§ 160.133–5 and 160.133–7 discussed above. The Coast Guard would re-number paragraphs consistent with the removal of these items. The Coast Guard proposes to remove the last two sentences in paragraph (e) of § 160.133–15, consistent with the proposed removal of ASTM A 653.

The Coast Guard proposes to amend § 160.133–15(e) by removing the last two sentences, which require each approved release mechanism to be constructed with non-corrosion-resistant steel that meets the coating mass and bend tests requirement specified under ASTM A 653 after galvanizing or other anti-corrosion treatment has been applied. This amendment is consistent with the changes to § 160.133–5, § 160.133–7 and § 160.133–13 discussed above as related to the use of galvanized steel.

Revisions to 46 CFR Part 160, Subpart 160.135, and Subpart 160.156

The Coast Guard proposes to amend the title of § 160.135 by removing

''(SOLAS).'' As stated in the interim rule published on October 11, 2011, the Coast Guard removed the standard for lifeboats for merchant vessels under 46 CFR 160.035 and created one standard for lifeboats under 160.135. Therefore the use of ''SOLAS'' in the title is unnecessary and may be misleading when installing lifeboats approved under § 160.135 on U.S. vessels only on domestic routes. Regardless of domestic or international service, U.S. vessels must carry lifeboats approved under approval series 160.135. See 46 CFR 199.201 and 199.261. Changing the title to subpart 160.135 will make it consistent with the title of other subparts affected by the interim rule. The Coast Guard does not propose to remove ''SOLAS'' from the title of 46 CFR 160.156 for rescue boats and fast rescue boats because the Coast Guard retained the domestic, locally approved rescue boat standard in 46 CFR 160.056.

The Coast Guard proposes to amend § 160.135–15(e)(2) and § 160.156–15(e)(2) to include the reference to the Revised recommendation on testing part 2, paragraph 5.3 and to remove the redundant statement, ''At a minimum, each [lifeboat/rescue boat] must be operated for 2 hours during which all [lifeboat/rescue boat] systems must be exercised.'' Under existing § 160.135–15(e)(2) and § 160.156–15(e)(2), the Coast Guard expected all of the production tests of IMO Revised recommendation on testing part 2, paragraph 5.3, as applicable to the type of boat, to be performed on all approved lifeboats and rescue boats. By amending § 160.135–15(e)(2) and § 160.156–15(e)(2), the Coast Guard will make this requirement clear. The requirement to operate each production lifeboat and rescue boat for 2 hours is already included in the IMO Revised recommendation on testing part 2 (incorporated by reference in § 160.135–5 and § 160.156–5), paragraph 5.3, and thus the Coast Guard proposes removal of this sentence from § 160.135–15(e)(2) and § 160.156–15(e)(2). Because of the existing incorporation by reference of the Revised recommendation on testing in § 160.135–15 and § 160.156–15, these sections would be added as approved incorporations by reference in § 160.135–5(d)(4) and § 160.156–5(d)(4), respectively.

The Coast Guard also proposes to amend § 160.135–15(d), which sets forth independent laboratory responsibilities, by amending the reference to paragraph (e)(2) so that it references all of paragraph (e). This amendment would correct a typographical error; § 160.135–15(d) was intended to have the same language as 46 CFR part 160, subpart 160.156–15(d), which correctly references paragraph (e) in its entirety. Without this correction, it may be misinterpreted that the independent laboratory does not have responsibility for witnessing the lifeboat in-process tests and inspections outlined in § 160.135–15(e)(1).

The Coast Guard proposes to amend § 160.135–15(e)(1)(iv) to correct the typographical error referencing § 160.135–13(c)(2)(i)(B), which does not exist, and replace it with the correct reference, which is § 160.135–11(c)(2)(i)(B).

Additionally, the Coast Guard proposes to correct typographical errors in § 160.156–7(b)(13), § 156–9(b)(22)(iv), and § 156–9(d)(2) by replacing the word ''lifeboat'' with the correct term, ''rescue boat,'' because § 160.156 applies to rescue boats only. The Coast Guard also proposes to amend § 160.156–15(e)(1) by removing the phrase ''In accordance with the interval prescribed in paragraph (d)(1) of this section.'' Part of the Coast Guard's original intent when drafting this rule was consistency of language throughout the affected subparts where possible. This phrase does not appear in any other subpart affected by the interim rule and inadvertently remained in 160.156–15(e)(1) when the interim rule was published. Removal of this phrase will also eliminate the typographical error in § 160.156–15(e)(1) by removing reference to § 160.156–15(d)(1), which does not exist.

Finally, the Coast Guard proposes to remove the cite to 49 CFR 1.46 in the authorities section of part 160 and part 164 because that authority applies to the Department of Transportation, under which the Coast Guard no longer operates. The Coast Guard currently operates under the authority of the Department of Homeland Security.

Proposed Impacts to Certificates of Approval

If these proposed changes to incorporate by reference IMO Resolutions MSC.320(89) and MSC.321(89) are finalized, any manufacturer of SOLAS release mechanisms who wants to continue to manufacture such release mechanisms under a Certificate of Approval issued under existing subpart 160.133 would have to provide the Coast Guard with an application for pre-approval review in accordance with § 160.133–23 (Procedure for approval of design, material, or construction change). The application would have to indicate how the existing release mechanism, or a new or revised design, meets the requirements of proposed § 160.133–7 incorporating by reference the amendments to the IMO LSA Code from IMO Resolution MSC.320(89). If the information submitted in accordance with § 160.133–23, for changes to existing designs, or § 160.133–9, for new designs, is satisfactory to the Commandant, the manufacturer would be permitted to proceed with fabrication of the prototype release mechanism and the approval inspections and tests required under proposed § 160.133–13 incorporating by reference the amendments to the Revised recommendation on testing from IMO Resolution MSC.321(89). The Coast Guard would document compliance with Resolutions MSC.320(89) and MSC.321(89) by means of amended Certificates of Approval under subpart 160.133.

Similarly, if these proposed changes are finalized, any manufacturer of davit-launched lifeboats and those manufacturers of SOLAS rescue boats or fast rescue boats with installed release mechanisms approved under existing subpart 160.133 who want to continue manufacturing such boats under a Certificate of Approval issued under subpart 160.135 or 160.156, respectively, would have to provide the Coast Guard with an application for pre-approval review in accordance with § 160.135–23 or § 160.156–23 (Procedure for approval of design, material, or construction change). This application would have to indicate the proposed installation of a release mechanism meeting the requirements of the proposed § 160.133–7 incorporating by reference the amendments to the IMO LSA Code from IMO Resolution MSC.320(89). If the information submitted in accordance with § 160.135–23 or § 160.156–23 is satisfactory to the Commandant, the manufacturer would be permitted to proceed with fabrication of the prototype lifeboat or rescue boat, and would be notified of the extent of any prototype testing needed for reissuance of the Certificate of Approval under 160.135 or 160.156. The Coast Guard would document compliance with Resolutions MSC.320(89) and MSC.321(89) by means of amended Certificates of Approval under subparts 160.135 and 160.156 indicating installation of a release mechanism demonstrated to meet Resolutions MSC.320(89) and MSC.321(89).

VI. Incorporation by Reference

Material proposed for incorporation by reference appears in proposed 46 CFR 160.133–5(c)(6) and (c)(7). You may inspect this material at U.S. Coast Guard Headquarters where indicated under

ADDRESSES. Copies of the material are available from the sources listed in paragraph (A) of that section.

Before publishing a final rule, the Coast Guard will submit this material to the Director of the Federal Register for approval of the incorporation by reference.

VII. Regulatory Analyses

The Coast Guard developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below the Coast Guard summarizes its analyses based on 14 of these statutes or executive orders.

A. Regulatory Planning and Review

Executive Orders 12866 (''Regulatory Planning and Review'') and 13563 (''Improving Regulation and Regulatory Review'') direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This SNPRM has not been designated a ''significant regulatory action'' under section 3(f) of Executive Order 12866. Accordingly, the SNPRM has not been reviewed by the Office of Management and Budget. A draft regulatory assessment follows:

The proposed rule would amend the existing regulations for release mechanisms for lifeboats and rescue boats in order to harmonize Coast Guard regulatory requirements with the international standards established by the IMO. The proposed rule specifically requires U.S. standards regarding design, construction, performance, and testing of release mechanisms to be harmonized to the IMO's standards. This harmonization is required—

- For the U.S. to comply with its treaty obligations as a contracting government to SOLAS by harmonizing Coast Guard requirements for release mechanisms for lifeboats and rescue boats with the international standards established by the IMO LSA Code; and
- To clarify requirements and remove inconsistencies between the requirements for SOLAS compliance and the sections of 46 CFR regulating release mechanisms on lifeboats and rescue boats.

In addition, the proposed rule would add wording to 46 CFR 160.115–7(b)(5)(i) that would clarify the Coast Guard's acceptance of non-grooved winch drums as an alternative to grooved drums on launching appliance winches. Currently that section states, ''A winch must have grooved drums unless otherwise approved by the Commandant.'' The section would be reworded to state, ''Winch drums must either be grooved or otherwise designed to wind the falls evenly on and off each drum.'' As such, this change clarifies requirements by specifying criteria used by the Coast Guard in historic approvals directly in the regulations, thereby reducing paperwork and regulatory uncertainty. The proposed change in § 160.115–7(b)(5)(i) would not modify the standard of design, performance, or testing for winch drums. Approval requests for non-grooved winch drums are a component of the application process for all winch drums (grooved and non-grooved), along with many other lifesaving appliances (i.e., davits, lifeboats, etc.), that must be approved by the Coast Guard. The Coast Guard estimates that any time saved associated with this clarification to the winch drum approvals would be minimal. In addition, there are already manufacturers of non-grooved or smooth winch drums. For these reasons, there are no cost implications for industry from the rewording of § 160.115–7(b)(5)(i). The purpose of the modification of the wording in § 160.115–7(b)(5)(i) is to clarify the Coast Guard's criteria for acceptance of non-grooved or smooth winch drums as an alternative to grooved drums.

Table 1 provides a summary of the proposed rule's applicability, affected population, costs, and benefits. Each of these factors is discussed in greater depth in the sections following the table.

TABLE 1—SUMMARY OF THE IMPACTS OF THE PROPOSED RULE

Category	*Summary*
Applicability	U.S. manufacturers of release mechanisms for lifeboats and rescue boats, U.S. manufacturers of non-grooved or smooth winch drums, and U.S.-flagged vessels required by the Coast Guard to carry lifeboats and rescue boats.
Affected Population	One U.S. manufacturer of release mechanisms, five U.S. manufacturers of non-grooved or smooth winch drums, 102 non-SOLAS-certified vessels, 289 SOLAS-certified vessels.
Costs	None.
Quantified Benefits	None.
Qualitative Benefits	Benefits Associated with Harmonizing Standards: • Fulfilling U.S. treaty obligations to the IMO; • USCG and vessel owners and operators would face less uncertainty and more efficient USCG inspections; • Manufacturers and users of non-grooved or smooth winch drums will face less uncertainty regarding the Coast Guard criteria for approval of non-grooved or smooth winch drums.

Affected Population and Cost Impacts

The proposed rule would potentially affect three groups. The first consists of U.S. manufacturers of release mechanisms, the second consists of vessels that are required to be equipped with lifeboats or rescue boats, and the third consists of U.S. manufacturers of non-grooved or smooth winch drums.

There is currently only one U.S. manufacturer of release mechanisms for lifeboats and rescue boats.[1] This manufacturer is, however, in the process of phasing out production of the release mechanisms manufactured from galvanized steel or its equivalent (as required under current regulations)[2]

[1] Manufacturers of release mechanisms are currently required to test their mechanisms and file the results with the Coast Guard. Coast Guard records indicate that there is only one U.S.-based manufacturer of these mechanisms.

[2] The Coast Guard regulation currently in place does not require the use of galvanized steel, per se, but permits a regulatory equivalent to galvanized steel that does not necessarily have to be manufactured of galvanized steel. The current § 160.133–7(b)(3), the section of the regulation dealing with the ''design, construction, and performance of release mechanisms'' describes the regulatory equivalent as follows: ''Each major structural component of each release mechanism must be constructed of steel. Other materials may be used if accepted by the Commandant as

Continued

before January 1, 2013. This manufacturer, which is also the only known manufacturer of galvanized steel mechanisms for lifeboats and rescue boats in the U.S., will be manufacturing only stainless-steel release mechanisms, manufactured from corrosion-resistant materials and without the need for galvanizing (or its equivalent), [3] and complying with the latest IMO requirements, before that date. The manufacturer is planning this phase-out because it expects the market for galvanized steel mechanisms approved to the current requirements to disappear.[4] Because the manufacturer's phase-out will occur independently of whether the proposed rule is implemented, the manufacturer would experience no additional cost impact due to this proposed rule. If the proposed rule is implemented, the manufacturer, by the time of the proposed rule's implementation, will have already incurred the cost of the switchover from the galvanized steel mechanisms to those manufactured with corrosion-resistant material without the need for galvanizing. The decision will have been made based on expected changes in market conditions and will also be in compliance with the new IMO requirements.

There are a total of five potential manufacturers of non-grooved or smooth winch drums.[5] As stated previously, the proposed regulation would not modify production, design, or testing standards associated with these winch drums, nor would it change reporting and recordkeeping requirements surrounding their sale or use. Therefore, the Coast Guard does not expect there would be any cost or collection of information implications to U.S. manufacturers.

Based on data from the Coast Guard's Marine Information for Safety and Law Enforcement (MISLE) database, the Coast Guard estimates the total number of vessels affected by the proposed rule to be 391, of which 289 [6] are SOLAS certified (hereinafter referred to as SOLAS vessels), and 102 are non-SOLAS. [7] This proposed rule would require these vessels to comply with new IMO requirements and use release mechanisms made from corrosion-resistant materials without the need for galvanizing (or regulatory equivalent), instead of a galvanized steel release mechanism (or regulatory equivalent) for any future replacements of on-load release mechanisms installed in existing life or rescue boats. Release mechanisms currently in place would not need to be replaced except in two limited circumstances. These are:

(1) Accidents that result in the damage of the mechanisms themselves or accidents that damage lifeboats and rescue boats seriously enough to require replacement.[8] A search was conducted of the MISLE database system for such accidents from 2003 through 2011. Based on accidents found during this period, six release mechanisms were estimated to need replacement on SOLAS vessels and six on non-SOLAS vessels. This yields an average of less than one release mechanism needing replacement per annum. In all of these accidents, there was only one accident that resulted in injuries, and these injuries were slight.[9]

(2) Release mechanisms may need to be replaced due to their deterioration from normal wear and tear. However, both private sector and Coast Guard subject matter experts have stated that the lifespans of both galvanized and stainless-steel mechanisms generally exceed the lifespan of the lifeboats and rescue boats on which they are carried. Therefore, the Coast Guard does not expect any replacements resulting from deterioration or normal wear and tear.[10]

Lifeboats and rescue boats installed on or after the implementation of the final rule by in-scope vessel owners and operators would need to meet the requirements in IMO resolutions MSC.320(89) and MSC.321(89) in order to obtain SOLAS certification. Therefore, the proposed rule would not have any additional cost impact to this class of vessels. The non-SOLAS vessels would have to upgrade to the non-galvanized, corrosion-resistant mechanisms compliant with the new requirements whenever they need to replace any mechanisms in the future for either of the reasons cited above, or for newly constructed lifeboats and rescue boats.

If release mechanisms meeting both the current and the new requirements were available, the Coast Guard assumes vessel owners and operators would purchase the less-expensive of the two, those meeting the current requirements. Release mechanisms approved to the current requirements (such as those made of galvanized steel) were found to be $1,500 less-expensive, per unit, than those meeting the new requirements (corrosion-resistant mechanisms).[11] As stated above, however, the one supplier of galvanized steel on-load release mechanisms is expected to stop manufacturing them before the proposed rule would take effect on January 1, 2013. Foreign entities that have manufactured these mechanisms have also, based on our research, discontinued manufacturing them.[12] Therefore, the galvanized steel

equivalent or superior. Sheet steel and plate must be low-carbon, commercial quality, either corrosion resistant or galvanized as per ASTM A 653 (incorporated by reference, see § 160.133–5 of this subpart), coating designation G115. Structural steel plates and shapes must be carbon steel as per ASTM A 36 (incorporated by reference, see § 160.133–5 of this subpart). All steel products, except corrosion-resistant steel, must be galvanized to provide high-quality zinc coatings suitable for the intended service life in a marine environment. Each fabricated part must be galvanized after fabrication. Corrosion-resistant steel must be a type 302 stainless steel per ASTM A 276, ASTM A 313 or ASTM A 314 (incorporated by reference, see § 160.133–5 of this subpart) or another corrosion-resistant stainless steel of equal or superior corrosion-resistant characteristics''. In this regulatory analysis, the term ''galvanized steel release mechanisms'' will also refer to those that may not necessarily be manufactured of galvanized steel but are the equivalent thereof as defined above.

[3] The proposed regulation does not require only the use of stainless steel, per se, but also permits a regulatory equivalent to such a stainless steel mechanism that does not necessarily have to be manufactured of stainless steel. § 167.133–7(b)(3), the section of the regulation dealing with the ''design, construction, and performance of release mechanisms'', states: ''Each major structural component of each release mechanism must be constructed of steel. Corrosion-resistant steel must be a type 302 stainless steel per ASTM A 276, ASTM A 313 or ASTM A 314 (incorporated by reference, see § 160.133–5 of this subpart). Other corrosion-resistant materials may be used if accepted by the Commandant as having equivalent or superior corrosion-resistant characteristics.'' In this regulatory analysis, the term ''stainless steel'' release mechanisms will also refer to those that may not necessarily be manufactured of stainless steel but are the equivalent thereof as defined in the proposed regulation.

[4] Information provided to the Coast Guard by telephone, June 2012.

[5] Estimated based on data provided by manufacturers of winch drums to the U.S. Coast Guard for the required approval of their winch drums. This data was found in the U.S. Coast Guard's Maritime Information Exchange database under the equipment approved for § 160.115 (winch drums). In this database the Coast Guard does not break out approvals given for winch drums by grooved and non-grooved or smooth construction. The data is for all winch drums. Hence, it is a maximum potential number of manufacturers of all winch drum (both grooved and non-grooved) manufacturers.

[6] Data source: Marine Information for Safety and Law Enforcement (MISLE) system.

[7] Id.

[8] New lifeboats and rescue boats are equipped with new release mechanisms as standard equipment. This was the consensus of the Coast Guard and private sector subject matter experts.

[9] The four were sent to the hospital for examinations but all four went back to work the same day.

[10] It should be noted that depreciation and normal wear and tear do not include accidents.

[11] This same cost differential was obtained from two separate and independent industry sources. One source, as of March 2012, is producing both the stainless steel and galvanized steel mechanisms while the second is not currently producing both mechanisms, but cited a price difference that existed when it produced both.

[12] Based on telephone discussions with numerous distributors and manufacturers of release mechanisms in the U.S.

mechanisms (or their equivalent) will no longer be available for purchase. Only the non-galvanized, corrosion-resistant mechanisms that are in compliance with the IMO requirements will be available. The single U.S. manufacturer is phasing out the galvanized steel mechanisms irrespective of whether the proposed rule is enacted. The single U.S. manufacturer is planning this phase-out because it no longer sees a future market for the galvanized steel mechanisms.[13] As a result, consumers will be able to purchase only the corrosion-resistant mechanisms.

Benefits

The proposed rule would amend the existing regulations for release mechanisms for lifeboats and rescue boats in order to harmonize Coast Guard regulatory requirements with the international standards established by the IMO. The harmonization specifically requires U.S. standards regarding design, construction, performance, and testing of release mechanisms to be harmonized to the IMO's standards.

Benefits from the harmonization of the Coast Guard regulatory requirements to the IMO standards include the following:

(1) Fulfilling U.S. treaty obligations to the IMO;

(2) The Coast Guard and vessel owners and operators would face less uncertainty and more efficient Coast Guard inspections during vessel inspections because only one type of release mechanism would have to be inspected as opposed to two.

(3) The inclusion of performance criteria for approval of non-grooved or smooth winch drums to the language contained in § 160.115–7(b)(5)(i), and the addition of proposed new § 160.155–13(d)(4), reduces any uncertainty to U.S.-based manufacturers and users of such winch drums. If the proposed regulation is finalized, it will be clear that such products, when approved by the Coast Guard, will be equivalent to grooved winch drums in terms of performance.

B. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard has considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of fewer than 50,000.

There are three industries that may potentially face a direct cost resulting from the proposed rule. The first industry consists of the single U.S. manufacturer of release mechanisms. The second industry consists of the five manufacturers of winch drums. The third industry consists of owners and operators of vessels equipped with in-scope lifeboats and rescue boats. Based on data from the Coast Guard's Marine Information for Safety and Law Enforcement (MISLE) database, the Coast Guard estimates the total number of vessels affected by the proposed rule to be 391, of which 289[14] are SOLAS certified and 102 are non-SOLAS.[15] The Coast Guard has determined that a significant number of small entities in these three industries will not be substantially impacted and the explanation for this determination appears in the paragraphs that follow.

With respect to the single U.S. manufacturer of release mechanisms, the Coast Guard does not expect that there would be any cost impact because, as stated previously, prior to January 1, 2013, the only U.S. manufacturer of the galvanized steel mechanisms is planning to discontinue manufacturing them.[16] Based on our research (as of March 2012), there are no manufacturers of galvanized steel release mechanisms (or their equivalent) outside of the U.S. Therefore, the galvanized steel mechanisms (or their equivalent) will no longer be available for purchase. Only the non-galvanized, corrosion-resistant mechanisms that are in compliance with the IMO requirements will be available. The single U.S. manufacturer is phasing out the galvanized steel mechanisms irrespective of whether the proposed rule is enacted. The single U.S. manufacturer is planning this phase-out because it no longer sees a future market for the galvanized steel mechanisms.[17]

With respect to the five U.S. manufacturers of winch drums, as stated previously, the proposed regulation will not modify the requirements regarding production, design, or testing standards for non-grooved and smooth winch drums. The proposed regulation will also not impose further reporting burdens on manufacturers. This is because there is no specific application, per se, regarding non-grooved and smooth drums that must be sent to the Coast Guard and processed by the Coast Guard. Approval requests for non-grooved winch drums are a component of the application process for all winch drums (grooved and non-grooved), along with many other lifesaving appliances (i.e., davits, lifeboats, etc.), that must be approved by the Coast Guard.

With respect to the in-scope owners and operators of vessels, the marginal additional cost stemming from the requirements to fulfill the proposed rule are expected to be minimal. This is because, as stated previously, regardless of whether or not the proposed rule is implemented (i.e., independent thereof), prior to the implementation of the proposed rule the cheaper galvanized steel release mechanisms will no longer be available in the market place. The single U.S. manufacturer will no longer be manufacturing galvanized steel release mechanisms. Thus vessel owners will only be able to purchase stainless steel release mechanisms.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES.** In your comment, explain why you think it qualifies and how and to what degree this proposed rule would economically affect it.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Mr. George Grills, Commercial Regulations and Standards Directorate, Office of Design and Engineering Standards, Lifesaving and Fire Safety Division (CG–ENG–4), Coast Guard; telephone 202–372–13851385, or email *George.G.Grills@uscg.mil.* The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees

[13] Information supplied by U.S. manufacturer.

[14] Data source: Marine Information for Safety and Law Enforcement (MISLE) system.

[15] Id.

[16] Based on telephone conversation with the manufacturer held in June 2012.

[17] Information supplied by U.S. manufacturer.

who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

D. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) nor would it adjust an existing collection of information.

E. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power among the various levels of government. The Coast Guard has analyzed this proposed rule under that order and has determined that it does not have implications for federalism. A summary of our analysis follows.

The U.S. Supreme Court has long recognized the field preemptive impact of the Federal regulatory regime for inspected vessels. *See, e.g., Kelly* v. *Washington ex rel Foss,* 302 U.S. 1 (1937) and the consolidated cases of *United States* v. *Locke and Intertanko* v. *Locke,* 529 U.S. 89, 113–116 (2000). Therefore, the Coast Guard's view is that regulations issued under the authority of 46 U.S.C. 3306 in the areas of design, construction, alteration, repair, operation, superstructures, hulls, fittings, equipment, appliances, propulsion machinery, auxiliary machinery, boilers, unfired pressure vessels, piping, electric installations, accommodations for passengers and crew, sailing school instructors, sailing school students, lifesaving equipment and its use, firefighting equipment, its use and precautionary measures to guard against fire, inspections and tests related to these areas, and the use of vessel stores and other supplies of a dangerous nature have preemptive effect over State regulation in these fields, regardless of whether the Coast Guard has issued regulations on the subject, and regardless of the existence of conflict between the state and Coast Guard regulation.

While it is well settled that states may not regulate in categories in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, as these categories are within a field foreclosed from regulation by the states (see *U.S. v. Locke,* above), the Coast Guard recognizes the key role State and local governments may have in making regulatory determinations. Additionally, Sections 4 and 6 of Executive Order 13132 require that for any rules with preemptive effect, the Coast Guard will provide elected officials of affected state and local governments and their representative national organizations the notice and opportunity for appropriate participation in any rulemaking proceedings, and to consult with such officials early in the rulemaking process. Therefore, the Coast Guard invites affected State and local governments and their representative national organizations to indicate their desire for participation and consultation in this rulemaking process by submitting comments to the docket using one of the methods specified under **ADDRESSES.** In accordance with Executive Order 13132, the Coast Guard will provide a federalism impact statement to document (1) the extent of the Coast Guard's consultation with State and local officials that submit comments to this proposed rule, (2) a summary of the nature of any concerns raised by State or local governments and the Coast Guard's position thereon, and (3) a statement of the extent to which the concerns of State and local officials have been met.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any 1 year. Although this proposed rule would not result in such an expenditure, the Coast Guard does discuss the effects of this rule elsewhere in the preamble.

G. Taking of Private Property

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

H. Civil Justice Reform

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

I. Protection of Children

The Coast Guard has analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Indian Tribal Governments

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

K. Energy Effects

The Coast Guard has analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Coast Guard has determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

L. Technical Standards

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

This proposed rule uses technical standards other than voluntary consensus standards:

- International Life-Saving Appliance Code, (IMO Resolution MSC.48(66)), as amended by IMO Resolution MSC.320(89);
- IMO Resolution MSC.81(70), Revised recommendation on testing of

life-saving appliances, as amended by IMO Resolution MSC.321(89).

The proposed sections that reference these standards and the locations where these standards are available are listed in 46 CFR 160.133–5. They are used because we did not find voluntary consensus standards that are applicable to this rule. If you are aware of voluntary consensus standards that might apply, please identify them by sending a comment to the docket using one of the methods under **ADDRESSES**. In your comment, please explain why you think the standards might apply.

If you disagree with our analysis of the voluntary consensus standards listed above or are aware of voluntary consensus standards that might apply but are not listed, please send a comment to the docket using one of the methods under **ADDRESSES**. In your comment, please explain why you disagree with the Coast Guard's analysis and/or identify voluntary consensus standards not listed that might apply.

M. Coast Guard Authorization Act Sec. 608 (46 U.S.C. 2118(a))

Section 608 of the Coast Guard Authorization Act of 2010 (Pub. L. 111–281) adds new section 2118 to 46 U.S.C. Subtitle II (Vessels and Seamen), Chapter 21 (General). New section 2118(a) sets forth requirements for standards established for approved equipment required on vessels subject to 46 U.S.C. Subtitle II (Vessels and Seamen), Part B (Inspection and Regulation of Vessels). Those standards must be ''(1) based on performance using the best available technology that is economically achievable; and (2) operationally practical.'' See 46 U.S.C. 2118(a). This proposed rule addresses lifesaving equipment for Coast Guard approval that is required on vessels subject to 46 U.S.C. Subtitle II, Part B, and the Coast Guard has ensured that this proposed rule would satisfy the requirements of 46 U.S.C. 2118(a), as necessary.

N. Environment

The Coast Guard has analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under the ''Public Participation and Request for Comments''' section of this preamble. This proposed rule involves regulations that are editorial, regulations concerning equipping of vessels, and regulations concerning vessel operation safety standards. This proposed rule is categorically excluded under Section 2.B.2, Figure 2–1, paragraphs (34)(a) and (d) of the Instruction and under paragraph 6(a) of the ''Appendix to National Environmental Policy Act: Coast Guard Procedures for Categorical Exclusions, Notice of Final Agency Policy'' (67 FR 48243, July 23, 2002). The Coast Guard seeks any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects

46 CFR Part 160

Marine safety, Incorporation by reference, Reporting and recordkeeping requirements.

46 CFR Part 164

Fire prevention, Marine safety, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 46 CFR parts 160 and 164 as follows:

PART 160—LIFESAVING EQUIPMENT

1. The authority citation for part 160 is revised to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703 and 4302; E.O. 12234; 45 FR 58801; 3 CFR, 1980 Comp., p. 277; and Department of Homeland Security Delegation No. 0170.1.

Subpart 160.115—Launching Appliances—Winches

2. In § 160.115–7, revise paragraph (b)(5)(i) to read as follows:

§ 160.115–7 Design, construction, and performance of winches.

* * * * *

(b) * * *

(5) * * *

(i) Winch drums must either be grooved or otherwise designed to wind the falls evenly on and off each drum.

* * * * *

3. In § 160.115–13, add new paragraph (d)(4) to read as follows:

§ 160.115–13 Approval instructions and tests for prototype winches.

* * * * *

(d) * * *

(4) *Winch drum.* Each winch designed without grooved drums must demonstrate during prototype testing that the falls wind evenly on and off each drum.

* * * * *

Subpart 160.133 [Amended]

4. Amend the title to Subpart 160.133 by removing the word ''(SOLAS)''.

Subpart 160.133—Release Mechanisms for Lifeboats and Rescue Boats

§ 160.133–3 [Amended]

5. In § 160.133–3, in the introductory text, after the words ''IMO LSA Code'', add the words '', as amended by Resolution MSC.320(89)''.

6. Amend § 160.133–5 as follows:

a. Remove paragraphs (b)(1) and (b)(5);

b. Redesignate paragraphs (b)(2), (b)(3), (b)(4), and (b)(6) as paragraphs (b)(1), (b)(2), (b)(3), and (b)(4), respectively;

c. In paragraph (c)(3), after the words ''Revised recommendation on testing of'', remove the words ''live-saving'' and add, in their place, the words ''life-saving''; and

d. Add paragraphs (c)(6) and (c)(7) to read as follows:

§ 160.133–5 Incorporation by reference.

* * * * *

(c) * * *

(6) Annex 4 to MSC 89/25, Report of the Maritime Safety Committee on its Eighty-Ninth Session, ''Resolution MSC.320(89), Adoption of Amendments to the International Life-Saving Appliance (LSA) Code,'' (adopted May 20, 2011), IBR approved for §§ 160.133–3, 160.133–5(c)(6), 160.133–7(d)(1), 160.133–7(b)(8), and 160.133–7(b)(9) (Resolution MSC.320(89)).

(7) Annex 5 to MSC 89/25, Report of the Maritime Safety Committee on its Eighty-Ninth Session, ''Resolution MSC.321(89), Adoption of Amendments to the Revised Recommendation on Testing of Life-Saving Appliances (Resolution MSC.81(70)),'' (adopted May 20, 2011), IBR approved for §§ 160.133–5(c)(7), 160.133–7(a)(2), and 160.133–13(d)(2) (Resolution MSC.321(89)).

7. Amend § 160.133–7 as follows:

a. In paragraph (a)(1), after the words ''IMO LSA Code,'' add the words ''as amended by Resolution MSC.320(89),'';

b. In paragraph (a)(2), after the words ''IMO Revised recommendation on testing,'' add the words ''as amended by Resolution MSC.321(89),'';

c. Revise paragraph (b)(3) as set out below;

d. In paragraph (b)(8), after the words ''required by'', add the word ''IMO'', and after the words ''LSA Code'', add

the words '', as amended by Resolution MSC.320(89),'';

e. In paragraph (b)(9), after the words ''required by'', add the word ''IMO'', and after the words ''LSA Code'', add the words '', as amended by Resolution MSC.320(89),''; and

f. Remove paragraph (b)(15).

§ 160.133–7 Design, construction, and performance of release mechanisms.

* * * * *

(b) * * *

(3) *Steel.* Each major structural component of each release mechanism must be constructed of corrosion-resistant steel. Corrosion-resistant steel must be a type 302 stainless steel per ASTM A 276, ASTM A 313 or ASTM A 314 (incorporated by reference, see § 160.133–5 of this subpart). Other corrosion-resistant materials may be used if accepted by the Commandant as having equivalent or superior corrosion-resistant characteristics;

* * * * *

§ 160.133–13 [Amended]

8. Amend § 160.133–13 as follows:

a. In paragraph (d)(2), after the words ''tests described in IMO Revised recommendation on testing,'' add the words ''as amended by Resolution MSC.321(89),'' and after the words ''with these paragraphs of IMO Revised recommendation on testing,'' add the words ''as amended by Resolution MSC.321(89),'';

b. Remove paragraph (d)(2)(iii); and

c. Redesignate paragraphs (d)(2)(iv), (d)(2)(v), and (d)(2)(vi) as paragraphs (d)(2)(iii), (d)(2)(iv), and (d)(2)(v), respectively.

§ 160.133–15 [Amended]

9. In § 160.133–15, amend paragraph (e) by removing the words, ''Each approved release mechanism constructed with non-corrosion-resistant steel must be confirmed to have met the coating mass and bend tests requirement specified under ASTM A 653 (incorporated by reference, see § 160.133–5 of this subpart) after galvanizing or other anti-corrosion treatment has been applied. This compliance can be ascertained through a supplier's certification papers or through conducting actual tests.''

Subpart 160.135 [Amended]

10. Amend the title to Subpart 160.135 by removing the word ''(SOLAS)''.

Subpart 160.135—Lifeboats

§ 160.135–5 [Amended]

11. In § 160.135–5, amend paragraph (d)(4) by removing the word ''and'' and adding, in its place, the punctuation '','', and, after the numbers ''160.135–13'', adding the words '', and 160.135–15''.

12. Amend § 160.135–15 as follows:

a. In paragraph (d), remove the word ''(e)(2)'' and add, in its place, the word ''(e)'';

b. In paragraph (e)(1)(iv), remove the reference ''§ 160.135–13(c)(2)(i)(B)'' and add, in its place, the reference ''§ 160.135–11(c)(2)(i)(B)''; and

c. Revise paragraph (e)(2) to read as follows:

§ 160.135–15 Production inspections, tests, quality control, and conformance of lifeboats.

* * * * *

(e) * * *

(2) *Post assembly tests and inspections.* The finished lifeboat must be visually inspected inside and out. The manufacturer must develop and maintain a visual inspection checklist designed to ensure that all applicable requirements have been met and the lifeboat is equipped in accordance with approved plans. Each production lifeboat of each design must pass each of the tests described in the IMO Revised recommendation on testing, part 2, section 5.3 (incorporated by reference, see § 160.135–5 of this subpart).

§ 160.156–5 [Amended]

13. In § 160.156–5, amend paragraph (d)(4) by removing the word ''and'' and adding, in its place, the punctuation '','', and, after the numbers ''160.156–13'', adding the words '', and 160.156–15''.

§ 160.156–7 [Amended]

14. In § 160.156–7, amend paragraph (b)(13) by removing the word ''lifeboat'' and adding, in its place, the words ''rescue boat''.

§ 160.156–9 [Amended]

15. Amend § 160.156–9 as follows:

a. In paragraph (b)(22)(iv), remove the word ''lifeboat'' and add, in its place, the words ''rescue boat''; and

b. In paragraph (d)(2), remove the word ''lifeboat'' and add, in its place, the words ''rescue boat''.

16. Amend § 160.156–15 as follows:

a. In paragraph (e)(1), remove the words ''In accordance with the interval prescribed in paragraph (d)(1) of this section, each'' and add, in their place, the word ''Each''; and

b. Revise paragraph (e)(2) to read as follows:

§ 160.156–15 Production inspections, tests, quality control, and conformance of rescue boats and fast rescue boats.

* * * * *

(e) * * *

(2) *Post assembly tests and inspections.* The finished rescue boat must be visually inspected inside and out. The manufacturer must develop and maintain a visual inspection checklist designed to ensure that all applicable requirements have been met and the rescue boat is equipped in accordance with approved plans. Each production rescue boat of each design must pass each of the tests described in the IMO Revised recommendation on testing, part 2, section 5.3 (incorporated by reference, see § 160.156–5 of this subpart).

PART 164—MATERIALS

17. The authority citation for part 164 is revised to read as follows:

Authority: 46 U.S.C. 3306, 3703, 4302; E.O. 12234;; 45 FR 58801;; 3 CFR, 1980 Comp., p. 277; and Department of Homeland Security Delegation No. 0170.1.

Dated: November 15, 2012.

J.G. Lantz,

Director of Commercial Regulations and Standards, U.S. Coast Guard.

[FR Doc. 2012–28492 Filed 11–23–12; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 63

[IB Docket No. 12–299; FCC 12–125]

Reform of Rules and Policies on Foreign Carrier Entry Into the U.S. Telecommunications Market

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission is proposing to make changes to the criteria under which it considers applications and notifications from foreign carriers or affiliates of foreign carriers for entry into the U.S. market for international telecommunications services and facilities under section 214 of Communications Act of 1934, as amended (the ''Act'') and section 2 of the Cable Landing License Act. By this document, the Commission seeks to eliminate outdated or unnecessary rules, simplify rules that it may retain, reduce regulatory costs and burdens imposed on applicants, and improve transparency with respect to filing requirements of the ECO Test. It also seeks to promote competition to achieve greater decisional flexibility in evaluating applications and notifications, and continue to protect

important interests related to national security, law enforcement, foreign policy, and trade policy.

DATES: Submit comments on or before December 26, 2012, and replies on or before January 15, 2013. Written comments on the Paperwork Reduction Act (PRA) proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB) and other interested parties on or before January 25, 2013.

ADDRESSES: You may submit comments, indentified by Docket No. 12–299, by any of the following methods:

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

• *Federal Communications Commission's ECFS Web site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.

• *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, *etc.*) by email to *FCC504@fcc.gov,* phone: 202–418–0530 (voice), tty: 202–418–0432.

In addition to filing comments as described above, a copy of any comments on the PRA information collection requirements contained herein should be submitted to the FCC via email to *PRA@fcc.gov* and to Nicholas A. Fraser, OMB, via email to *Nicholas_A._Fraser@omb.eop.gov* or via fax at 202–395–5167.

For detailed instructions on submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Jodi Cooper or James Ball, Policy Division, International Bureau, FCC, (202) 418–1460 or via email to *Jodi.Cooper@fcc.gov, James.Ball@fcc.gov.* On PRA matters, contact Cathy Williams, Office of the Managing Director, FCC, (202) 418–2918 or via email to *Cathy.Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking in IB Docket No. 12–299, FCC 12–125, adopted on October 10, 2012 and released on October 11, 2012. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street SW., Washington, DC 20554. The document also is available for download over the Internet at *http://transition.fcc.gov/Dailylowbar;Releases/Daily_Business/2012/db1011/FCC–12–125A1.pdf.* The complete text also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), located in Room CY–B402, 445 12th Street, SW., Washington, DC 20554. Customers may contact BCPI at its Web site, *http://www.bcpiweb.com,* or call 1–800–378–3160.

Comment Filing Procedures

Pursuant to §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated above. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

• *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS Web site at *http://fjallfoss.fcc.gov/ecfs2/.*

• *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. 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.

• All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

• 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.

Summary of Notice of Proposed Rulemaking

1. The Notice of Proposed Rulemaking (NPRM) proposes changes to the criteria that the Federal Communications Commission (FCC) considers in analyzing applications filed by foreign carriers or affiliates of foreign carriers for entry into the U.S. market for international telecommunications services and facilities pursuant to section 214 of the Communications Act of 1934, as amended, and section 2 of the Cable Landing License Act. The Commission seeks comment in the NPRM on proposals to eliminate or, in the alternative, simplify the ECO Test that applies to Commission review of (1) international section 214 applications, (2) cable landing license applications, and (3) notifications of foreign carrier affiliations. The ECO Test is a set of criteria designed to protect the U.S. telecommunications market from potential anticompetitive activities by foreign carriers or their affiliates with market power in their country. The Commission currently applies the ECO Test to applications filed by foreign carriers or their affiliates from countries that are not members of the WTO. The Commission also applies the ECO Test in the context of its rules requiring authorized U.S. international carriers and cable landing licensees to notify the Commission of their foreign carrier affiliations.

2. In the 1995 *Foreign Carrier Entry Order,* the Commission concluded that the public interest would be served by regulating the entry of foreign carriers or their affiliates into the U.S. market for international telecommunications and facilities under section 214 of the Communications Act. In that proceeding the Commission adopted rules that examined, as one factor in its overall public interest analysis of an application for international section 214 authority, whether ''effective competitive opportunities'' exist for U.S. carriers in the destination markets of foreign carriers seeking to enter the U.S. international services market through affiliation with a new or existing carrier. The Commission applied the ECO Test only to applications to provide service to foreign points where the affiliated foreign carrier had market power, and the Commission's analysis did not distinguish between World Trade Organization (WTO) countries and non-WTO Member countries. Although the *Foreign Carrier Entry Order* did not discuss application of the ECO Test to submarine cable applications, the Commission historically had applied an analysis similar to the section 214 ECO Test analysis on a case-by-case basis under the Cable Landing License Act.

3. The Commission, in its 1997 *Foreign Participation Order,* replaced the section 214 ECO Test adopted in the *Foreign Carrier Entry Order,* with an open entry standard for applicants from WTO Member countries. The Commission adopted a rebuttable presumption by which it presumes that foreign investment from WTO Member

countries does not pose competitive concerns in the U.S. market. The Commission, however, retained the ECO Test with respect to foreign entrants from non-WTO Member countries, finding that circumstances that existed when it adopted the *Foreign Carrier Entry Order* had not changed sufficiently with respect to countries that were not members of the WTO, *i.e.,* that non-WTO countries were not liberalized and presented legal and practical barriers to entry. The Commission concluded that its goals of increasing competition in the U.S. telecommunications service market and opening foreign telecommunications service markets would continue to be served by opening the U.S. market to applicants from non-WTO countries where the applicants can demonstrate that there are effective competitive opportunities for U.S. carriers in the foreign country. The Commission did not presume, however, that an application from a carrier in either a WTO or non-WTO country poses no national security, law enforcement, foreign policy or trade policy concerns, and accords deference to Executive Branch agencies in identifying and interpreting issues of concern related to these matters.

4. *ECO Test Criteria for Section 214 Applications and Notifications:* The ECO Test that applies to international section 214 authority applications filed by foreign carriers or certain of their affiliates is codified in section 63.18(k) of the Commission's rules. For section 214 applications, the Commission's rules require that a foreign carrier applicant from a non-WTO country must demonstrate: (1) The legal ability of U.S. carriers to enter the foreign market and provide facilities-based and/or resold international services, in particular international message telephone service (IMTS), (2) the existence of reasonable and nondiscriminatory charges, terms and conditions for interconnection to a foreign carrier's domestic facilities for termination and origination of international services or the provision of the relevant resale service, (3) the existence of competitive safeguards in the foreign country to protect against anticompetitive practices, (4) the existence of an effective regulatory framework in the foreign country to develop, implement and enforce legal requirements, interconnection arrangements and other safeguards, and (5) any other factors the applicant deems relevant to the ECO Test demonstration.

5. The Commission also applies the ECO Test in the context of its rules requiring authorized international section 214 carriers to notify the Commission of their foreign carrier affiliations. A U.S. authorized carrier that acquires or seeks to acquire an affiliation with a foreign carrier that is authorized to operate in a non-WTO country that the U.S. carrier is authorized to serve under section 214 must show, under the ECO Test requirements in § 63.18 of the Commission's rules, that its operations on the route for which it proposes to acquire an affiliation with the non-WTO foreign carrier continues to serve the public interest. If the U.S. carrier cannot make this showing, or demonstrate that the foreign carrier lacks market power in the non-WTO Member country, then the Commission may impose conditions necessary to address any public interest harms or may proceed to an immediate revocation hearing.

6. *ECO Test criteria for Submarine Cable Applications and Notifications:* The Commission's ECO Test as it applies to applications for submarine cable landing licenses filed by foreign carriers or certain of their affiliates is not codified in the rules. The test is similar, but not identical, to the analysis for international section 214 applications. The Commission examines: (1) The legal, or *de jure,* ability of U.S.-licensed companies to have ownership interests in submarine cables landing in the foreign market, and (2) if no explicit legal restrictions on ownership exist, the practical, or *de facto,* ability of U.S.-licensed companies to have ownership interests in cable facilities in the foreign market. The Commission also considers other public interest factors consistent with its discretion under the Cable Landing License Act that may weigh in favor of or against grant of a license, including any national security, law enforcement, foreign policy or trade policy concerns that may be raised by a particular application.

7. In addition, the Commission applies the ECO Text in the context of its rules requiring U.S. authorized cable landing licensees to notify the Commission of their foreign carrier affiliations. Under Commission rules, U.S. cable landing licensees have a continuing obligation to notify the Commission of an affiliation with a foreign carrier authorized to operate in a destination market where the U.S.-licensed cable lands. In certain circumstances, cable landing licensees have an obligation to obtain prior approval before acquiring an affiliation with a foreign carrier authorized to operate in a market where the U.S.-licensed cable lands. That is, the U.S. licensee must demonstrate in its notification either that the foreign carrier lacks market power in that country or that there are effective competitive opportunities for U.S.-licensed companies to land and operate submarine cables in that country. If the licensee is unable to make either showing, then the Commission may impose conditions on the authorization or proceed to an authorization revocation hearing.

8. *Re-examining the ECO Test:* The Commission now believes it is time to review the requirements of the ECO Test as it applies to section 214 authority applications, cable landing license applications, and foreign carrier affiliation notifications. There are now 156 countries that are Members of the WTO (in addition to the European Union), and 27 observer countries that are in the process of joining, or acceding to, the WTO. While this leaves approximately one-quarter of all countries outside the WTO that have not opened up their markets pursuant to WTO accords, the non-WTO Member countries represent a *de minimis* fraction, or approximately five percent of the world's gross domestic product. The detailed ECO Test requirements, as initially adopted in the *Foreign Carrier Entry Order,* were designed to be applied to countries that could support advanced regulatory regimes. Today, the ECO Test applies only to non-WTO Member countries, and these countries are small countries that may not have the necessary resources to support a regulatory framework that meets the detailed ECO Test requirements.

9. The Commission therefore proposes to re-examine current ECO Test requirements to either eliminate the ECO Test or modify ECO Test criteria it uses in review of section 214 applications, cable landing license applications, and foreign carrier affiliation notifications. If the ECO Test is maintained, the Commission proposes to codify that test in its rules governing submarine cable landing license applications. However, whether the ECO Test is eliminated or modified, the Commission proposes to continue to maintain its review of section 214 applications, cable landing license applications, and foreign carrier affiliation notifications under its dominant carrier safeguards and ''no special concessions'' rules. These rules, according to the Commission in previous rulings, help to prevent certain anticompetitive strategies that foreign carriers can use to discriminate among their U.S. carrier correspondents, such as refusal to interconnect and circuit blocking. Absent these rules, foreign

carriers with market power could use their market power to discriminate in favor of certain U.S. carriers, including their own affiliates. Furthermore, applications for section 214 authority and cable landing licenses, and foreign affiliation notifications, that involve foreign carrier entry or investment will continue to be coordinated with the appropriate Executive Branch agencies, and the Commission will accord deference to their views in matters related to national security, law enforcement, foreign policy, or trade policy that may be raised by a particular transaction.

10. *Proposals to Eliminate the ECO Test:* The Commission seeks comment on elimination of the ECO Test for section 214 authorizations, cable landing licenses and foreign carrier affiliation notifications. If the ECO Test is eliminated, the Commission would maintain the distinction in its rules between carriers or affiliates from WTO and non-WTO Member countries. Non-WTO applicants for section 214 authorizations would no longer be required to demonstrate compliance with the ECO Test. Instead, the Commission would rely on its authority to analyze potential anticompetitive harm on a case-by-case basis to make a public interest determination as to whether U.S. carriers are experiencing competitive problems in that market, and whether the public interest would be served by authorizing the foreign carrier to enter the U.S. market. The case-by-case analysis would require applicants to submit the information to us required by our rules applicable to section 214 applications and cable landing license applications. The applications would not be eligible for streamlined processing, and the foreign carrier affiliation notifications would continue to be subject to a 45-day notification prior to consummation of the transaction. Existing section 214 carriers and cable landing licensees would still have to provide information showing that it is, or is seeking to become affiliated with, a foreign carrier with market power in a non-WTO country. The Commission could consult with the United States Trade Representative (USTR) and other agencies as to any anticompetitive problems that may exist for U.S. companies in the country of the applicant. U.S. carriers would also have an opportunity to file comments as to whether they have experienced problems in entering the relevant market of a non-WTO country. The Commission would have the flexibility to request additional information, if needed, which may be similar to the type of information required by the current ECO Test. If the Commission finds that U.S. carriers are experiencing competitive problems in that market, then it would have the flexibility to seek additional information from the applicant relating to U.S. carrier ability to enter the foreign market of the applicant and impose, if necessary, appropriate conditions on the authorization or license.

11. The Commission requests comment on eliminating an ECO Test determination from our rules and policies applicable to U.S.-licensed companies and applicants under section 214 of the Communications Act and under the Cable Landing License Act. Specifically, commenters should address whether the Commission's dominant carrier safeguards and the ''no special concessions'' rules provide adequate protection against anti-competitive harm, or whether additional safeguards are necessary to protect U.S. carriers from competitive harm in their provision of U.S. international services and facilities on routes between the United States and non-WTO countries.

12. In proposing elimination of the ECO Test, the Commission seeks comment on to what extent eliminating the ECO Test would reduce costs incurred by carriers by the review of applications involving an ECO Test determination, and whether there may be benefits in retaining the ECO Test criteria that outweigh the costs and burdens associated with it.

13. *Alternative Proposal to Modify the Section 214 ECO Test:* If the Commission maintains the ECO Test, it seeks comment on ways to simplify and improve its application. First, under a modified approach, the Commission proposes retaining—either in a rule or by application on a case-by-case basis under our broad authority—the first prong of the section 214 ECO Test that requires the Commission to determine whether U.S. carriers have the legal, or *de jure,* ability to enter the foreign destination market and provide international facilities-based services and/or resold services. The Commission requests commenters to identify and comment on known legal barriers to entry in markets of non-WTO Member countries that may continue to exist, and more specifically of how laws, regulations, policies, and practices known to commenters prevent U.S. carriers from competing in a particular foreign market should this legal requirement be removed.

14. In modifying the ECO Test, the Commission also proposes to eliminate certain criteria that it considers to determine whether there are practical, or *de facto,* effective competitive opportunities for U.S. carriers to enter the foreign destination market. Specifically, the Commission proposes to eliminate (1) the requirement that applicants show that there is an effective regulatory framework in the foreign country to develop, implement, and enforce legal requirements, interconnection arrangements and other safeguards, and (2) the requirement that applicants must show whether competitive safeguards exist in the foreign country to protect against anticompetitive practices, with the exception of retaining a competitive safeguard that requires timely and nondiscriminatory disclosure of technical information needed to interconnect with carriers' facilities. Therefore, the Commission would continue to require applicants to show that there are reasonable and nondiscriminatory charges, terms, and conditions for interconnection to a foreign carrier's domestic facilities for termination and origination of international services. The Commission seeks comment on whether there is a practical basis for retaining these requirements based on carriers' experiences interconnecting to a foreign carrier's domestic facilities for termination and origination of international services. Further, the Commission also seeks comment on whether there is a policy basis for retaining current ECO Test criteria that apply to remaining non-WTO markets, and whether fewer criteria or additional criteria are required for either type of authorization.

15. *Codification of the Submarine Cable ECO Test:* The ECO Test for submarine cable landing licenses is not codified in the Commission's rules. Whether or not the ECO Test is eliminated or modified, the Commission proposes to amend the cable licensing rules to include certifications concerning foreign carrier affiliations in a manner similar to section 214 authorization rules. If the Commission retains the ECO Test, then the Commission proposes to codify in the cable landing license rules an ECO Test that contains criteria similar to the section 214 ECO Test criteria proposed in the alternative rules. Under this approach, the Commission seeks comment on proposed rules that would require applicants from non-WTO countries to demonstrate that U.S. carriers have both the legal, or *de jure,* and practical, or *de facto,* ability to own and operate submarine cables in a country where a cable lands. To

demonstrate *de facto* ability, the applicant would have to show that U.S. carriers would have the ability to collocate facilities, provide or obtain backhaul capacity, access technical network information, and interconnect to the public switched telephone network. These proposed rules would also apply to notifications filed by a cable landing licensee that becomes, or seeks to become, affiliated with, a foreign carrier possessing market power in a non-WTO Member country where the cable lands. The Commission seeks comment on these proposals.

16. The Commission also requests comment on the benefits and costs of the current ECO Test with respect to cable landing license applications and notifications. Specifically, is there an incentive for non-WTO countries to open their markets to U.S. carriers under the current test, or are there any other benefits to U.S. carriers in modification of the ECO Test? Conversely, what are the costs an applicant incurs in providing information under the current ECO Test? The Commission encourages commenters to discuss all aspects of this proposal as well as practical problems cable landing license applicants face in complying with the current ECO Test requirements.

Paperwork Reduction Act of 1995 Analyses

17. This document contains proposed new and modified information collection requirements. The Commission, as a part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

18. Written comments by the public on the proposed and/or modified information collections are due December 26, 2012. Written comments must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before January 25, 2013. In addition to filing comments with the Secretary, Marlene H. Dortch, a copy of any comments on the information collection(s) contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via email to *Judith.BHerman@fcc.gov* and to Kim A. Johnson, OMB Desk Officer, Room 10236 NEOB, 725 17th Street NW., Washington, DC 20503 or via email to *Kim_A._Johnson@omb.eop.gov.*

Initial Regulatory Flexibility Analysis

19. Pursuant to the Regulatory Flexibility Act (RFA), the Commission certifies that that an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the proposals considered in this NPRM is not warranted, and that a regulatory flexibility certification is appropriate for the reasons stated below.

20. First, the ECO Test rules that the Commission proposes to either eliminate or modify in this NPRM affect only applications filed by foreign carriers or their affiliates that hold market power in a country that is not a member of the WTO. Based on statistics available, there are currently 156 WTO Member countries (in addition to the European Union), and we calculate, based on 2010 World Bank gross domestic product (GDP) data, that the remaining non-WTO Member countries represent approximately five percent of the world's GDP. The ECO Test requirements are detailed and were designed to be applied to countries that could support advanced regulatory regimes. Most of the non-WTO Member countries are countries that may not have the necessary resources to support a regulatory framework that meets the ECO Test requirements. In this NPRM the Commission is proposing either to completely eliminate or modify the current ECO Test criteria that will result in lessening the economic impact on applicants from non-WTO Member countries requesting an ECO Test determination.

21. The Commission believes that the proposal and other options on which it seeks comment in this NPRM will reduce costs and burdens currently imposed on applicants, carriers, and licensees, including those that are small entities, and accelerate the authorization and licensing process, while continuing to ensure that the Commission has the information it needs to carry out its statutory duties. Therefore, the Commission certifies that the proposals in this NPRM, if adopted, will not have a significant impact on a substantial number of small entities. The Commission will send a copy of the NPRM, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

Ordering Clauses

22. *It is ordered* that, pursuant to sections 1, 2, 4(i) and (j), 201–205, 208, 211, 214, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i)–(j), 201–205, 208, 211, 214, 303(r), and 403, and the Cable Landing License Act, 47 U.S.C. 34–39 and Executive Order No. 10530, section 5(a), reprinted as amended in 3 U.S.C. 301, this Notice of Proposed Rulemaking is *adopted.*

23. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of Small Business Administration.

List of Subjects

47 CFR Part 1

Administrative practice and procedure, Cable landing licenses.

47 CFR Part 63

Communications common carriers.

Federal Communications Commission.

Bulah P. Wheeler,

Associate Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 1 and 63, and propose alternative rules to those parts as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 et seq.; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 227, 303(r), and 309.

2. Section 1.767 is amended by revising paragraph (a)(8), adding note to (a)(8)(iv), and revising note to section to read as follows:

§ 1.767 Cable Landing Licenses.

(a) * * *

(8) For each applicant:

(i) The place of organization and the information and certifications required in § 63.18(h) and (o) of this chapter;

(ii) A certification as to whether the applicant is, or is affiliated with, a foreign carrier, including an entity that owns or controls a cable landing station, in any foreign country. The certification shall state with specificity each such country;

(iii) A certification as to whether or not the applicant seeks to land and

operate a submarine cable connecting the United States to any country for which any of the following is true. The certification shall state with specificity the foreign carriers and each country:

(A) The applicant is a foreign carrier in that country; or

(B) The applicant controls a foreign carrier in that country; or

(C) Any entity that owns more than 25 percent of the applicant, or that controls the applicant, controls a foreign carrier in that country.

(D) Two or more foreign carriers (or parties that control foreign carriers) own, in the aggregate, more than 25 percent of the applicant and are parties to, or the beneficiaries of, a contractual relation (e.g., a joint venture or market alliance) affecting the provision or marketing of arrangements for the terms of acquisition, sale, lease, transfer and use of capacity on the cable in the United States; and

(iv) For any country that the applicant has listed in response to paragraph (a)(8)(iii) of this section that is not a member of the World Trade Organization, a demonstration as to whether the foreign carrier lacks market power with reference to the criteria in § 63.10(a) of this chapter.

Note to Paragraph (a)(8)(iv): Under § 63.10(a), the Commission presumes, subject to rebuttal, that a foreign carrier lacks market power in a particular foreign country if the applicant demonstrates that the foreign carrier lacks 50 percent market share in international transport facilities or services, including cable landing station access and backhaul facilities, intercity facilities or services, and local access facilities or services on the foreign end of a particular route.

* * * * *

Note to § 1.767: The terms ''affiliated'' and ''foreign carrier,'' as used in this section, are defined as in § 63.09 of this chapter except that the term ''foreign carrier'' also shall include any entity that owns or controls a cable landing station in a foreign market. The term ''country'' as used in this section refers to the foreign points identified in the U.S. Department of State list of Independent States of the World and its list of Dependencies and Areas of Special Sovereignty. *See http://www.state.gov.*

3. Section 1.768 is amended by revising paragraph (g)(2) to read as follows:

§ 1.768 Notification by and prior approval for submarine cable landing licensees that are or propose to become affiliated with a foreign carrier.

* * * * *

(g) * * *

(2) In the case of a prior notification filed pursuant to paragraph (a) of this section, the authorized U.S. licensee must demonstrate that it continues to serve the public interest for it to retain its interest in the cable landing license for that segment of the cable that lands in the non-WTO destination market. Such a showing shall include a demonstration as to whether the foreign carrier lacks market power in the non-WTO destination market with reference to the criteria in § 63.10(a) of this chapter. If the licensee is unable to make the required showing or is notified by the Commission that the affiliation may otherwise harm the public interest pursuant to the Commission's policies and rules under 47 U.S.C. 34 through 39 and Executive Order No. 10530, dated May 10, 1954, then the Commission may impose conditions necessary to address any public interest harms or may proceed to an immediate authorization revocation hearing.

Note to Paragraph (g)(2): Under § 63.10(a), the Commission presumes, subject to rebuttal, that a foreign carrier lacks market power in a particular foreign country if the applicant demonstrates that the foreign carrier lacks 50 percent market share in international transport facilities or services, including cable landing station access and backhaul facilities, intercity facilities or services, and local access facilities or services on the foreign end of a particular route.

* * * * *

PART 63—EXTENSION OF LINES, NEW LINES, AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

4. The authority citation for part 63 continues to read as follows:

Authority: Sections 1, 4(i), 4(j), 10, 11, 201–205, 214, 218, 403 and 651 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 160, 201–205, 214, 218, 403, and 571, unless otherwise noted.

5. Section 63.11 is amended by revising paragraph (g)(2) to read as follows:

§ 63.11 Notification by and prior approval for U.S. international carriers that are or propose to become affiliated with a foreign carrier.

* * * * *

(g) * * *

(2) In the case of a prior notification filed pursuant to paragraph (a) of this section, the U.S. authorized carrier must demonstrate that it continues to serve the public interest for it to operate on the route for which it proposes to acquire an affiliation with the foreign carrier authorized to operate in the non-WTO Member country. Such a showing shall include a demonstration as to whether the foreign carrier lacks market power in the non-WTO Member country with reference to the criteria in § 63.10(a) of this chapter. If the U.S. authorized carrier is unable to make the required showing in § 63.10(a), the U.S. authorized carrier shall agree to comply with the dominant carrier safeguards contained in section 63.10(c), effective upon the acquisition of the affiliation. If the U.S. authorized carrier is notified by the Commission that the affiliation may otherwise harm the public interest pursuant to the Commission's policies and rules, then the Commission may impose conditions necessary to address any public interest harms or may proceed to an immediate authorization revocation hearing.

Note to Paragraph (g)(2): Under § 63.10(a), the Commission presumes, subject to rebuttal, that a foreign carrier lacks market power in a particular foreign country if the applicant demonstrates that the foreign carrier lacks 50 percent market share in international transport facilities or services, including cable landing station access and backhaul facilities, intercity facilities or services, and local access facilities or services on the foreign end of a particular route.

* * * * *

6. Section 63.18 is amended by revising paragraph (k), removing paragraph (p), redesignating paragraph (q) as (p), and adding new paragraph (q) to read as follows:

§ 63.18 Contents of applications for international common carriers.

* * * * *

(k) For any country that the applicant has listed in response to paragraph (j) of this section that is not a member of the World Trade Organization, the applicant shall make a demonstration as to whether the foreign carrier has market power, or lacks market power, with reference to the criteria in § 63.10(a) of this chapter.

Note to Paragraph (k): Under § 63.10(a), the Commission presumes, subject to rebuttal, that a foreign carrier lacks market power in a particular foreign country if the applicant demonstrates that the foreign carrier lacks 50 percent market share in international transport facilities or services, including cable landing station access and backhaul facilities, intercity facilities or services, and local access facilities or services on the foreign end of a particular route.

* * * * *

(q) Any other information that may be necessary to enable the Commission to act on the application.

* * * * *

Alternative Proposed Rules

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 et seq.; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 227, 303(r), and 309.

2. Section 1.767 is amended by revising paragraph (a)(8) and note to section to read as follows:

§ 1.767 Cable Landing Licenses.

(a) * * *

(8) For each applicant:

(i) The place of organization and the information and certifications required in § 63.18(h) and (o) of this chapter;

(ii) A certification as to whether the applicant is, or is affiliated with, a foreign carrier, including an entity that owns or controls a cable landing station, in any foreign country. The certification shall state with specificity each such country;

(iii) A certification as to whether or not the applicant seeks to land and operate a submarine cable connecting the United States to any country for which any of the following is true. The certification shall state with specificity the foreign carriers and each country:

(A) The applicant is a foreign carrier in that country; or

(B) The applicant controls a foreign carrier in that country; or

(C) Any entity that owns more than 25 percent of the applicant, or that controls the applicant, controls a foreign carrier in that country.

(D) Two or more foreign carriers (or parties that control foreign carriers) own, in the aggregate, more than 25 percent of the applicant and are parties to, or the beneficiaries of, a contractual relation (e.g., a joint venture or market alliance) affecting the provision or marketing of arrangements for the terms of acquisition, sale, lease, transfer and use of capacity on the cable in the United States; and

(iv) For any country named in response to paragraph (a)(8)(iii) of this section, the applicant shall make one of the following showings:

(A) The named country is a Member of the World Trade Organization; or

(B) The foreign carrier lacks market power in the named country, with reference to the criteria in § 63.10(a) of this chapter; or

(C) The named country provides effective competitive opportunities to U.S. cable landing licensees to have ownership interests in submarine cables that land in that country. An effective competitive opportunities demonstration should address the following factors:

(1) Whether U.S. cable landing licensees have the legal ability to enter the market of the named country and have ownership interests in submarine cables that land in that country;

(2) Whether there exist reasonable and nondiscriminatory charges, terms and conditions to interconnect a cable in the named country, the ability to collocate facilities, provide or obtain backhaul capacity, and access to timely disclosed technical network information for the purpose of providing services in the market of that country; and

(3) Any other factors the applicant deems relevant to its demonstration.

Note to Paragraph (a)(8)(iv): Under § 63.10(a), the Commission presumes, subject to rebuttal, that a foreign carrier lacks market power in a particular foreign country if the applicant demonstrates that the foreign carrier lacks 50 percent market share in international transport facilities or services, including cable landing station access and backhaul facilities, intercity facilities or services, and local access facilities or services on the foreign end of a particular route.

* * * * *

Note to § 1.767: The terms ''affiliated'' and ''foreign carrier,'' as used in this section, are defined as in § 63.09 of this chapter except that the term ''foreign carrier'' also shall include any entity that owns or controls a cable landing station in a foreign market. The term ''country'' as used in this section refers to the foreign points identified in the U.S. Department of State list of Independent States of the World and its list of Dependencies and Areas of Special Sovereignty. *See http://www.state.gov.*

3. Section 1.768 is amended by revising paragraph (g)(2) to read as follows:

§ 1.768 Notification by and prior approval for submarine cable landing licensees that are or propose to become affiliated with a foreign carrier.

* * * * *

(g) * * *

(2) In the case of a prior notification filed pursuant to paragraph (a) of this section, the U.S. authorized licensee must demonstrate that it continues to serve the public interest for it to retain its interest in the cable landing license for that segment of the cable that lands in the non-WTO Member country by demonstrating either that the foreign carrier lacks market power in that country, with reference to the criteria in § 63.10(a) of this chapter, or that the country offers effective competitive opportunities to U.S. cable landing licensees to land and operate submarine cables in that country by making the required showing in § 1.767(a)(8)(iv)(C). If the licensee is unable to make either required showing or is notified by the Commission that the affiliation may otherwise harm the public interest pursuant to the Commission's policies and rules under 47 U.S.C. 34 through 39 and Executive Order No. 10530, dated May 10, 1954, then the Commission may impose conditions necessary to address any public interest harms or may proceed to an immediate authorization revocation hearing.

Note to Paragraph (g)(2): Under § 63.10(a), the Commission presumes, subject to rebuttal, that a foreign carrier lacks market power in a particular foreign country if the applicant demonstrates that the foreign carrier lacks 50 percent market share in international transport facilities or services, including cable landing station access and backhaul facilities, intercity facilities or services, and local access facilities or services on the foreign end of a particular route.

* * * * *

PART 63—EXTENSION OF LINES, NEW LINES, AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

4. The authority citation for part 63 continues to read as follows:

Authority: Sections 1, 4(i), 4(j), 10, 11, 201–205, 214, 218, 403 and 651 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 160, 201–205, 214, 218, 403, and 571, unless otherwise noted.

5. Section 63.18 is amended by revising paragraph (k)(3) introductory text, paragraphs (k)(3)(ii) and (iii), removing paragraphs (k)(3)(iv) and (v), and redesignating paragraph (k)(3)(vi) as (iv) to read as follows:

§ 63.18 Contents of applications for international common carriers.

* * * * *

(k) * * *

(3) The named foreign country provides effective competitive opportunities to U.S. carriers to compete in that country's market for the service that the applicant seeks to provide (facilities-based, resold switched, or resold private line services). An effective competitive opportunities demonstration should address the following factors:

* * * * *

(ii) If the applicant seeks to provide resold services, the legal ability of U.S. carriers to enter the foreign market and provide resold international switched services (for switched resale applications) or resold private line services (for private line resale applications);

(iii) Whether there exist reasonable and nondiscriminatory charges, terms and conditions, including timely disclosed technical information, for interconnection to a foreign carrier's domestic facilities for termination and origination of international services or the provision of the relevant resale service; and

(iv) Any other factors the applicant deems relevant to its demonstration.

* * * * *

[FR Doc. 2012–28224 Filed 11–23–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[WT Docket No. 10–254: DA 12–1745]

Updated Information and Comment Sought on Review of Hearing Aid Compatibility Regulations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Wireless Telecommunications Bureau (Bureau) seeks updated comment on the operation and effectiveness of the Commission's rules relating to hearing aid compatibility of wireless handsets. The Bureau seeks updated comment on whether, in light of technological and market developments, the Commission's deployment benchmarks continue to ensure that hearing aid-compatible handsets are available to all consumers. Additionally, the Bureau asks for current information on whether the rules have succeeded in making hearing aid-compatible phones available to consumers with a full range of different feature sets, and whether the rules appropriately account for the challenges facing smaller service providers.

DATES: Comments due on or before December 26, 2012.

ADDRESSES: You may submit comments, identified by WT Docket No. 10–254, by any of the following methods:

- Federal Communications Commission's Web Site: *http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- Mail.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FUTHER INFORMATION CONTACT: Jennifer Flynn, Spectrum & Competition Policy Division, Wireless Telecommunications Bureau, (202) 418–0612 or by email *Jennifer.Flynn@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice in WT Docket No. 10–254, DA 12–1745, released November 1, 2012. The full text of the Public Notice is available for public inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. Copies may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), 445 12th Street SW., Room CY–B402, Washington, DC 20554, 202–488–5300 or 800–378–3160 (voice), 202–488–5562 (TTY), 202–488–5563 (fax), or you may contact BCPI at its Web site: *http://www.BCPIWEB.com.* When ordering documents from BCPI, please provide the appropriate FCC document number, for example, DA 12–1745. The *Updated Information and Comment Sought on Review of Hearing Aid Compatibility Regulations Public Notice* is available on the Internet at the Commission's Web site at *http://www.fcc.gov/document/hearing-aid-compatibility-review-additional-comments-sought* and related documents are also available by using the search function for WT Docket No. 10–254 on the Commission's Electronic Comment Filing System (ECFS) Web page at *http://apps.fcc.gov/ecfs/.* To request information in accessible formats (computer diskettes, large print, audio recording, and Braille), send an email to *fcc504@fcc.gov* or call the FCC's Consumer and Governmental Affairs Bureau at 202–418–0530 (voice) or 202–418–0432 (TTY).

Summary

1. By the Public Notice, the Wireless Telecommunications Bureau (Bureau) seeks updated comment on the operation and effectiveness of the Commission's rules relating to hearing aid compatibility of wireless handsets, found at 47 CFR 20.19. In December 2010, the Bureau issued a public notice to initiate a comprehensive review of the wireless hearing aid compatibility regulations (*2010 Review PN*), 76 FR 2625, January 14, 2011. Due to intervening market, technical, and regulatory developments since the *2010 Review PN,* the Bureau seeks updated and additional comment on these matters.

Background

2. In the *Hearing Aid Compatibility Policy Statement and Second Report and Order* released on August 5, 2010, 75 FR 54508, Sept. 8, 2010, the Commission reiterated its intention, first stated in 2008, to initiate a review of the hearing aid compatibility rules for digital wireless services and handsets in 2010. Shortly thereafter, on October 8, 2010, the Twenty-first Century Communications and Video Accessibility Act of 2010 (CVAA, Pub. L. 111–260) became law, ensuring that individuals with disabilities have access to emerging Internet Protocol-based communications and video programming technologies in the 21st Century. Among other provisions, the CVAA extended hearing aid compatibility requirements to customer premises equipment ''used with advanced communications services that is designed to provide 2-way voice communications via a built-in speaker intended to be held to the ear in a manner functionally equivalent to a telephone.'' The CVAA preserved the exemption of mobile handsets from the requirement that all telephones be hearing aid-compatible, while maintaining the Commission's authority to revoke or limit such exemption.

3. In December 2010, the Bureau released the *2010 Review PN,* which sought comment on numerous questions relating to the operation of the current hearing aid compatibility rules and their success in making a broad selection of wireless phones accessible to people who use hearing aids and cochlear implants, as well as in making information about those phones available to the public. In particular, the *2010 Review PN* sought comment on several substantive issues.

4. First, the Bureau sought comment on the availability of hearing aid-compatible handsets. Specifically, the Bureau requested comment on whether the Commission's deployment benchmarks appropriately ensure that hearing aid-compatible handsets are available to all consumers. The Bureau also asked whether the rules have succeeded in making hearing aid-compatible phones available to consumers with a full range of different feature sets, and whether the rules appropriately account for the challenges facing smaller service providers. In addition, the Bureau requested comment on whether the M3 and T3 technical standards contained in American National Standards Institute Technical Standard C63.19 (ANSI Standard C63.19), which is incorporated in the Commission's rules,

appropriately ensure that users of hearing aids and cochlear implants will be able to access wireless communications.

5. The Bureau also sought comment on whether sufficient information about hearing aid-compatible phones is being made available to the Commission and the public. In particular, the Bureau asked whether the Commission's reporting system is collecting appropriate information in an efficient way, and whether that information is being made available to the public in an accessible manner. The Bureau further sought comment on whether manufacturers' and service providers' Web sites are providing useful and accessible information, whether point-of-sale and packaging disclosures are appropriately informing consumers, and whether the in-store testing requirement is effective. The Bureau also asked what actions the Commission might take to provide better information to consumers with hearing loss who obtain handsets from sources other than service providers.

6. The Bureau also sought comment on technical issues. Specifically, the Bureau asked whether additional measures are needed to facilitate acoustic coupling compatibility. The Bureau asked about the effects on hearing aid compatibility of display screens, wireless headsets, and simultaneous transmission capabilities in handsets. The Bureau also asked what actions the Commission might take to facilitate better interoperability of hearing aids and cochlear implants with handsets.

7. In addition, the Bureau sought comment about the state of innovation in solutions to enable people with hearing loss to access wireless technology and whether the Commission's rules appropriately facilitate such innovation, investment, and competition. Finally, the Bureau asked what the Commission should do to promote collaboration among consumers with hearing loss, the communications industry, and the hearing aid industry.

8. On April 9, 2012, the Bureau and the Office of Engineering and Technology released the *Hearing Aid Compatibility Third Report and Order,* 77 FR 41919, July 17, 2012, which adopted the 2011 revision of ANSI Standard C63.19 as an applicable technical standard for evaluating the hearing aid compatibility of wireless phones. The 2011 ANSI Standard expands the range of frequencies over which hearing aid compatibility can be tested to 698 MHz—6 GHz and it establishes a direct method for measuring the radio frequency (RF) interference level of wireless devices to hearing aids, thereby enabling testing procedures to be applied to operations over any RF air interface or protocol. The 2011 ANSI Standard also exempts from testing certain low power transmitters that are unlikely to cause unacceptable RF interference to hearing aids. Under the recently adopted rules, beginning August 16, 2013, newly introduced multi-band and multi-mode handset models that include operations not covered under ANSI Standard C63.19–2007 must be tested under ANSI Standard C63.19–2011 in order to be considered hearing aid-compatible. The Commission's deployment benchmarks will become applicable to operations over frequency bands and air interfaces that are newly covered under the 2011 revision of the standard on August 16, 2014, for manufacturers and nationwide carriers and on November 16, 2014, for other service providers.

Request for Comments

9. During the period since the record closed on the *2010 Review PN,* technologies and markets for both wireless handsets and hearing assistance devices have continued to evolve. For example, manufacturers have introduced many new handset models, including models that both do and do not meet hearing aid compatibility technical standards, as evidenced by the most recent annual reports filed by manufacturers on July 15, 2012. Many of these handsets offer 3G and 4G broadband capability as well as other advanced and innovative features. At the same time, increasing numbers of hearing aids are equipped with telecoils. The Bureau seeks comment on how this and other developments affect any of the matters addressed in the *2010 Review PN*. For example, do the Commission's rules continue to ensure that a full range of hearing aid-compatible handsets is available to all consumers? Have developments in the marketplace posed new challenges, or relieved pre-existing challenges, to smaller providers? Are consumers adequately informed about the capabilities of the new handsets and their functionality with hearing aids and cochlear implants? In particular, are consumers informed about the functioning of handsets that have a separate menu-driven mode for operation with telecoils, and that activating this mode may affect the phone's acoustic coupling performance? Do the existing technical standards adequately and completely measure the new handsets' hearing aid compatibility? With the introduction of devices in new sizes and form factors, is it sufficiently clear whether a device is ''typically held to the ear in any of its ordinary uses'' and therefore covered under the hearing aid compatibility rules? The Bureau encourages commenters to address these and any other effects of technological and market developments.

10. The Bureau also seeks comment on the impact of the newly adopted 2011 revision of ANSI Standard C63.19. In particular, because the direct measurement methodology made it possible to eliminate certain conservative assumptions, it is approximately 2.2 dB easier under the new standard for a GSM phone to receive an M3 rating. In light of this development, is it still necessary and appropriate to allow phones operating over GSM at 1900 MHz to achieve an M3 rating by means of a user-controlled power reduction? Do the new standard or the rules implementing that standard affect any other issues addressed in the *2010 Review PN*? The Bureau also notes that the Telecommunications Industry Association (TIA) has released new and revised standards relating to volume control and amplification for wireline phones, including digital cordless phones, which include revised measurement procedures as well as a new metric based on conversational gain. Although ASC C63® has not addressed these procedures and metrics in the context of mobile phones, the Consumer and Governmental Affairs Bureau has recognized their value in promoting accessibility to wireline services for people with hearing loss, and the Bureau invites comment on their potential relevance and benefits in the mobile context.

11. The Bureau encourages commenters, to the extent feasible, to include specific, quantifiable information regarding the costs and benefits of the Commission's hearing aid compatibility reporting and enforcement regime. Under the Hearing Aid Compatibility Act, the Commission is required to revoke or limit the exemption of phones used with public mobile services from hearing aid compatibility requirements if (i) Such revocation or limitation is in the public interest; (ii) continuation of the exemption without such revocation or limitation would have an adverse effect on hearing-impaired individuals; (iii) compliance with hearing aid compatibility requirements is technologically feasible for the telephones to which the exemption applies; and (iv) compliance with hearing aid compatibility requirements would not increase costs to such an

extent that the telephones to which the exemption applies could not be successfully marketed. However, the statute leaves the Commission substantial discretion to implement the mechanisms that most cost-effectively ensure compliance with these requirements. Accordingly, the Bureau invites further comment on the costs and benefits of these mechanisms, particularly as applied to small entities. For example, what are the costs to small entities of accurately and timely completing FCC Form 655 and of responding to the Commission's enforcement inquiries? What are the benefits to consumers of having the information in the hearing aid compatibility reports available from the smallest service providers as well as the major national and regional carriers? Are there alternative approaches that would achieve substantially the same benefits in a more cost-effective manner?

12. The Bureau also welcomes comment on any other new or changed circumstances relevant to the operation and effect of the hearing aid compatibility rules.

Procedural Matters

13. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- 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 mail, Express Mail, and Priority Mail should be addressed to 445 12th Street SW., Washington, DC 20554.

One copy of each pleading must be delivered electronically, by email or facsimile, or if delivered as paper copy, by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (according to the procedures set forth above for paper filings), to the Commission's duplicating contractor, Best Copy and Printing, Inc., at *FCC@BCPIWEB.COM* or (202) 488–5563 (facsimile).

Federal Communications Commission.

Jane E. Jackson,

Associate Chief, Wireless Telecommunications Bureau.

[FR Doc. 2012–28494 Filed 11–23–12; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 270

[Docket No. FRA–2011–0060, Notice No. 2]

2130–AC31

System Safety Program

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Reopening of comment period.

SUMMARY: By notice of proposed rulemaking (NPRM) published on September 7, 2012, FRA proposed regulations to require commuter and intercity passenger railroads to develop and implement a system safety program (SSP) to improve the safety of their operations. The comment period for the NPRM closed November 6, 2012. This document reopens the comment period until December 7, 2012.

DATES: The comment period for the proposed rule published September 7, 2012, at 77 FR 55372, is reopened. Written comments must be received by Friday, December 7, 2012. Comments received after that date will be considered to the extent possible without incurring additional expenses or delays.

ADDRESSES: *Comments:* Comments related to Docket No. FRA–2011–0060 may be submitted by any of the following methods:

- Web site: The Federal eRulemaking Portal, *www.regulations.gov.* Follow the Web site's online instructions for submitting comments.
- Fax: 202–493–2251.
- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590.
- Hand Delivery: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Room W12–140 on the Ground level of the West Building, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name, docket name, and docket number or Regulatory Identification Number (RIN) for this rulemaking (2130–AC31). Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or visit the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Room W12–140 on the Ground level of the West Building, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Daniel Knote, Staff Director, Passenger Rail Division, U.S. Department of Transportation, Federal Railroad Administration, Office of Railroad Safety, Mail Stop 25, West Building 3rd Floor, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone: 631–965–1827), *Daniel.Knote@dot.gov;* or Matthew Navarrete, Trial Attorney, U.S. Department of Transportation, Federal Railroad Administration, Office of Chief Counsel, Mail Stop 10, West Building 3rd Floor, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone: 202–493–0138), *Matthew.Navarrete@dot.gov.*

SUPPLEMENTARY INFORMATION: On October 29 and 30, 2012, Hurricane Sandy struck the Northeast region of the United States causing significant

damage, flooding, and loss of power. Many passenger railroads in the Northeast region were affected by Hurricane Sandy and are still making efforts to resume normal service. Due to these extraordinary circumstances, FRA is reopening the comment period and extending the deadline for the NPRM so that the railroads impacted by Hurricane Sandy have an adequate opportunity to submit comments. The comment deadline is reopened and extended from November 6, 2012 to December 7, 2012.

Privacy Act

Interested parties should be aware that anyone is able to search the electronic form of all comments received into any agency docket by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). See *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov or you may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Issued in Washington, DC, on November 19, 2012.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2012–28561 Filed 11–23–12; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2012–0095; FXES11130900000–134–FF09E30000]

Endangered and Threatened Wildlife and Plants; Initiation of Status Review and 5-Year Review of the Preble's Meadow Jumping Mouse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of initiation of status review and 5-year review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), under the authority of the Endangered Species Act of 1973, as amended (Act), announce the initiation of a status review of the Preble's meadow jumping mouse (*Zapus hudsonius preblei*) (Preble's) throughout its range. We conduct status reviews to determine whether a species should be listed as endangered or threatened under the Act. Following this status review, we will issue a 12-month finding on two petitions to delist Preble's. Because a status review also is required for the 5-year review of listed species under section 4(c)(2)(A) of the Act, we are electing to prepare these reviews simultaneously. At the conclusion of these simultaneous reviews, we will issue the 12-month finding on the petitions, as provided in section 4(b)(3)(B) of the Act, and make the requisite determination under section 4(c)(2)(B) of the Act based on the results of the 5-year review. Through this notice, we encourage all interested parties to provide us information regarding the Preble's. We also announce the availability of new information relevant to our consideration of the status of the Preble's.

DATES: To allow us adequate time to conduct these reviews, we request that we receive comments and information no later than December 26, 2012. The deadline for submitting an electronic comment using the Federal eRulemaking Portal (see **ADDRESSES** section, below) is 11:59 p.m. Eastern Time on this date. After December 26, 2012, you must submit information using the U.S. mail or hand-delivery option provided in the **ADDRESSES** section below. Please note that we may not be able to address or incorporate information that we receive after the above requested date.

ADDRESSES: You may submit comments by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Search for Docket No. FWS–R6–ES–2012–0095 and then follow the instructions for submitting comments.
- U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS–R6–ES–2012–0095; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will post all information received on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Request for Information section below for more details).

FOR FURTHER INFORMATION CONTACT: Susan Linner, Field Supervisor, Colorado Ecological Services Office; mailing address P.O. Box 25486, DFC (MS 65412), Denver, CO 80225; telephone (303) 236–4773; office location: 134 Union Boulevard, Suite 670, Lakewood, CO 80228. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Previous Federal Actions

For a detailed description of Federal actions concerning the Preble's, please refer to the May 13, 1998, listing under the Act (63 FR 26517); the July 10, 2008, final rule amending the listing determination for the Preble's (73 FR 39790); and our August 5, 2011, reinstatement of listing protections for the Preble's (76 FR 47490).

On December 23, 2003, we received two nearly identical petitions, one from the State of Wyoming's Office of the Governor and the second from Coloradans for Water Conservation and Development, seeking to remove the Preble's from the Federal List of Endangered and Threatened Wildlife (Freudenthal 2003; Sonnenberg 2003). The petitions maintained that Preble's should be delisted based on the taxonomic revision suggested by Ramey *et al.* (2003) and new distribution, abundance, and trends data that suggested the subspecies was no longer endangered or threatened (Freudenthal 2003, p. 1; Sonnenberg 2003, p. 1).

On July 10, 2008, we published a final rule amending the listing for the Preble's by removing protections for the Preble's in Wyoming (73 FR 39790). In that rule, we determined that the Preble's was not threatened throughout all of its range, but the portion of its range located in Colorado represented a ''significant portion of the range'' (SPR) where the Preble's should retain its threatened status.

On June 23, 2009, a petition for review of the 2008 amendment to the listing was filed in the United States District Court for the District of Colorado. The petitioners challenged, among other things, our interpretation of SPR as applied to the Preble's decision. The Service filed a motion for voluntary remand and vacatur of the 2008 Preble's amended listing decision. On July 7, 2011, the United States District Court for the District of Colorado granted this motion and ordered the 2008 amended listing decision vacated and remanded as of August 6, 2011 (*Center for Native Ecosystems, et al.* v. *Salazar, et al.,* 09–cv–01463–AP–JLK, 2011 U.S. Dist. LEXIS 72664). On August 5, 2011, the Service issued a final rule complying with the court order and reinstating the regulatory protections under the Act for the Preble's in Wyoming, effective August 6, 2011 (76 FR 47490).

The court also ordered that by June 1, 2013, the Service must complete its status review of the Preble's and publish a 12-month finding in the **Federal Register** for the petitions submitted by the State of Wyoming and Coloradans

for Water Conservation and Development to delist the Preble's.

On December 9, 2011, we published a notice of our draft policy (76 FR 76987) to establish a joint interpretation and application of SPR with the National Marine Fisheries Service that reflects a permissible reading of the law and its legislative history, and minimizes undesirable policy outcomes, while fulfilling the conservation purposes of the Act. To date, our draft policy on SPR has not been finalized.

Background

The Preble's is recognized as 1 of 12 subspecies of meadow jumping mouse (*Zapus hudsonius*), a species that ranges from the Pacific Coast of Alaska to the Atlantic Coast and from the northern limit of forests south to New Mexico, Oklahoma, and Georgia (Hafner *et al.* 1981, p. 501; Hall 1981, p. 843; Krutzsch 1954, pp. 420–421). Meadow jumping mice are small rodents with long tails, large hind feet, and long hind legs. Total length of an adult is approximately 7 to 10 inches (187 to 255 millimeters), with the tail of 4 to 6 inches (108 to 155 millimeters) comprising about 60 percent of that length (Krutzsch 1954, p. 420; Armstrong *et al.* 2011, p. 189).

The Preble's is found along the foothills in southeastern Wyoming southward along the eastern edge of the Front Range of Colorado to Colorado Springs in El Paso County, Colorado (Hall 1981, p. 844; Clark and Stromberg 1987, pp. 184–188; Armstrong *et al.* 2011, p. 189; Clippenger 2002, pp. 14–15, 20). Typical habitat for the Preble's is comprised of well-developed riparian vegetation with adjacent, relatively undisturbed grassland communities and a nearby water source (Bakeman 1997, pp. 22–31). Preble's are typically captured in areas with multi-storied cover with an understory of grasses or forbs or a mixture thereof (Bakeman 1997, pp. 22–31; Schorr 2001, pp. 23–24). The shrub canopy is often willow (*Salix* spp.), although other shrub species may occur (Shenk and Eussen 1998, p. 9–11). Trainor *et al.* (2007, pp. 471–472) found that high-use areas for the Preble's tended to be close to creeks and were positively associated with the percentage of shrubs, grasses, and woody debris. Hydrologic regimes that support Preble's' habitat range from large perennial rivers, such as the South Platte River, to small drainages only 3 to 10 feet (1 to 3 meters) in width.

Meadow jumping mice are primarily nocturnal or crepuscular (active during twilight), but also may be active during the day. The Preble's uses uplands at least as far out as 330 feet (100 meters) beyond the 100-year floodplain (Shenk and Sivert 1999, p. 11; Ryon 1999, p. 12; Schorr 2001, p. 14; Trainor *et al.* 2012). While Preble's dispersal capabilities are thought to be limited, in one instance a Preble's was documented moving as far as 0.7 mile (1.1 kilometers) in 24 hours (Ryon 1999, p. 12). The Preble's typically enters hibernation in September or October and emerges the following May (Whitaker 1963, p. 5; Meaney *et al.* 2003, p. 621).

For additional information on the biology of this subspecies, see the May 13, 1998, final rule to list the Preble's as threatened (63 FR 26517) and the October 8, 2009, proposal to revise critical habitat for the Preble's in Colorado (74 FR 52066).

Request for Information

To ensure our determination is based on the best available scientific and commercial information, we request information on the Preble's from governmental agencies, Native American Tribes, the scientific community, industry, and any other interested parties. We are seeking any new information including:

(1) Data from any systematic surveys for the Preble's, as well as any studies that may show distribution, status, population size, or population trends;

(2) Information concerning the taxonomic status of the Preble's;

(3) Quantitative information regarding the life history, ecology, and habitat use of the Preble's;

(4) Information on the current and foreseeable threats faced by the Preble's in all or a significant portion of its range in relation to the five listing factors (as defined in section 4(a)(1) of the Endangered Species Act, as amended [16 U.S.C. 1531 *et seq.*]);

(5) Information regarding the effects of current and foreseeable land management on the status of the Preble's;

(6) Specific information on the potential effects of climate change on the Preble's and its habitat;

(7) Information demonstrating what, for the Preble's, might constitute an SPR in light of our December 9, 2011, draft policy on SPR (76 FR 76987); and

(8) Information regarding contact and interaction among Preble's populations or other information relevant to a distinct population segment analysis (see 61 FR 4722, February 7, 1996).

You may submit information concerning the status review or the 5-year review by one of the methods listed 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 you submit a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Information and supporting documentation we receive and use in preparing a 12-month finding and 5-year review 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, Colorado Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

New Information Available for Review

Pertinent information received, developed, or analyzed since our July 10, 2008, final rule amending the listing determination for the Preble's (73 FR 39790) is available for review on the Service's Web site *http://www.fws.gov/mountain-prairie/species/mammals/preble/,* or by contacting the Field Supervisor, Colorado Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**). This information includes both scientific publications and selected unpublished reports. Compilations of data, correspondence, and other information are also available on the Service's Web site. See the Federal eRulemaking Portal at *http://www.regulations.gov* (Docket No. FWS–R6–ES–2012–0095) for additional information we receive during the comment period opened by this document.

References Cited

A complete list of all the references is available on the Internet at *http://www.regulations.gov* and upon request from the Field Supervisor, Colorado Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT.**

Authors

The primary authors of this notice are staff members of the Colorado Ecological Services Office, U.S. Fish and Wildlife Service.

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: November 15, 2012.

G. Mendel Stewart,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2012–28629 Filed 11–23–12; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 77, No. 227
Monday, November 26, 2012

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

November 19, 2012.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by December 26, 2012 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal & Plant Health Inspection Service

Title: National Poultry Improvement Plan (NPIP).

OMB Control Number: 0579–0007.

Summary of Collection: The National Poultry Improvement Plan (NPIP) is a voluntary Federal-State-industry mechanism for controlling certain poultry diseases and for improving poultry flocks and products through disease control techniques. The National Turkey Improvement Plan was combined with the NPIP in 1970 to create the NPIP, as it now exists. Emu, rhea, ostrich, and cassowary breeding flocks are also allowed participation in the Plan. The NPIP requires several information collection activities, including: The memorandum of understanding; flock selecting and testing report; sales reports, including sales of hatching eggs, chicks, and poults, breeding flock and slaughter plant participation summaries, hatchery participation summaries, salmonella investigation reports, flock and hatchery inspection reports. Sentinel bird identification, salmonella serotyping requests, small chick order printouts and appraisal and indemnity forms. Authority for this program is contained in the U.S. Department of Agriculture Organic Act of 1944, as amended (7 U.S.C. 429). The cooperative work is carried out through a Memorandum of Understanding with the participating States.

Need and Use of the Information: APHIS will collection information to continually improve the health of the U.S. poultry population and the quality of U.S. poultry products. If the information were collected less frequently or not collected, APHIS could not affectively monitor the health of the nation's poultry population.

Description of Respondents: Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 12,195.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 103,363.

Animal and Plant Health Inspection Service

Title: Animal Welfare.

OMB Control Number: 0579–0093.

Summary of Collection: The Laboratory Animal Welfare Act (AWA) (Pub. L. 89–544) enacted August 24, 1966, and amended December 24, 1970 (Pub. L. 91–579); April 22, 1976 (Pub. L. 94–279); and December 23, 1985 (Pub. L. 99–198) required the U.S. Department of Agriculture (USDA) to regulate the humane care and handling of most warm-blooded animals, including marine mammals, used for research or exhibition purposes, sold as pets, or transported in commerce. The legislation and its amendments were the result of extensive demand by organized animal welfare groups and private citizens requesting a Federal law to protect such animals. The Animal and Plant Health Inspection Service (APHIS), Animal Care (AC) has the responsibility to enforce the AWA and the provisions of 9 CFR, Chapter 1, Subchapter A, which implements the AWA.

Need and Use of the Information: APHIS will collect information to insure that animals used in research facilities or for exhibition purposes are provided humane care and treatment. The information is used to ensure those dealers, exhibitors, research facilities, carriers, etc., are in compliance with the AWA and regulations and standards promulgated under this authority of the Act.

Description of Respondents: Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 11,783.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 50,245.

Animal and Plant Health Inspection Service

Title: National Veterinary Accreditation Program.

OMB Control Number: 0579–0297.

Summary of Collection: The Animal Health Protection Act, (APHA) of 2002 is the primary Federal law governing the protection of animal health. The law gives the Secretary of Agriculture broad authority to detect, control, or eradicate pests or diseases of livestock or poultry. The APHA is contained in Title X, Subtitle E, Sections 10401–18 of Public Law 107–171, May 13, 2002, the Farm

Security and Rural Investment Act of 2002. The Animal and Plant Health Inspection Service (APHIS) is the Agency charged with carrying out this disease prevention mission. An important approach for disease detection and control is provided to APHIS by the assistance of private veterinarians through the National Veterinary Accreditation Program (NVAP). This voluntary program, administered by APHIS, certifies private practitioners, to work cooperatively with Federal and State animal health authorities.

Need and Use of the Information: APHIS will use VS form 1–36A to collect information to certify private practitioners to work cooperatively with Federal and State animal health authorities as accredited private veterinarians on various approaches for disease prevention and proactive disease surveillance as effective methods for maintaining a healthy animal population and for enhancing the United States' ability to compete in the global market for animal and animal product trade.

Description of Respondents: Business or other for-profit.

Number of Respondents: 23,800.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 11,900.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2012–28506 Filed 11–23–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

November 19, 2012.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: WIC Program Regulations-Reporting and Recordkeeping Burden.

OMB Control Number: 0584–0043.

Summary of Collection: The WIC Program is authorized by the Child Nutrition Act of 1966, as amended, and is administered by State agencies in accordance with WIC program regulations at 7 CFR part 246. This submission incorporates the information collection burden associated with requirements contained in the Healthy Hunger-Free Kids Act of 2010 (Pub. L. 111–296).

Need and Use of the Information: The Food and Nutrition Service (FNS) will collect information that include participant certification information (e.g. income and nutrition risk); nutrition education documentation; local agency and vendor application and agreement information; vendor sales and shelf price data; data related to vendor monitoring and training; and, financial and food delivery system records. The information is needed for the general operation of the Program, including regulatory compliance, and for ongoing program integrity and cost-saving efforts. The information collected is also used by FNS to manage, plan, evaluate, make decisions and report on WIC program operations. If the information were not collected the efficiency and effectiveness of the program would be jeopardized, the likelihood of misuse or improper use of Federal funds would increase, and FNS' ability to detect violations or abusive behavior would diminish greatly.

Description of Respondents: State, Local, or Tribal Government; individuals or households; business or other for-profit; not-for-profit institutions.

Number of Respondents: 9,023,066.

Frequency of Responses: Recordkeeping; Report: Quarterly; semi-annually; annually; biennially.

Total Burden Hours: 4,024,697.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2012–28510 Filed 11–23–12; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Flathead and McKenzie Rivers and McKenzie National Recreational Trail Visitor Surveys

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on an extension with no revisions of a currently approved information collection, Flathead Wild and Scenic River Visitor Survey and McKenzie River Visitor Survey.

DATES: Comments must be received in writing on or before January 25, 2013 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Matt Peterson, U.S. Department of Agriculture (USDA) Forest Service, Willamette National Forest, 3106 Pierce Parkway, Suite D, Springfield, OR 97477. Comments also may be submitted via email to: *mbpeterson@fs.fed.us* The public may inspect comments received at USDA Forest Service, Willamette National Forest, 3106 Pierce Parkway, Suite D, Springfield, OR, during normal business hours. Visitors are encouraged to call ahead to 541–225–6421 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Flathead—Colter Pence, Flathead National Forests, 406–387–3949 and Willamette—Matt Peterson, Willamette National Forest, 541–225–6421. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 800–877–8339, between 8 a.m. and 8 p.m.,

Eastern Standard time, Monday through Friday.

SUPPLEMENTARY INFORMATION: *Title:* Flathead Wild and Scenic River Visitor Survey and McKenzie River Visitor Survey.

OMB Number: 0596–0229.

Expiration Date of Approval: 04/30/2013.

Type of Request: Extension with no revision of a currently approved information collection

Abstract: The Flathead and Willamette National Forests are proposing to continue implementation of an information collection from forest visitors who are recreating on or near the Flathead Wild and Scenic River, McKenzie Wild and Scenic River, or McKenzie National Recreational Trail. Because of the differences in the issues on each River and the need for different information, two separate surveys will be administered for the Flathead and Willamette Rivers though the methodology for collection will be essentially identical.

The visitor survey will support development of the Flathead Comprehensive River Management Plan (CRMP), implementation of the exiting Upper McKenzie River Management Plan, and will provide needed information for managers to protect and enhance the outstandingly remarkable values for which the Flathead and McKenzie Rivers were designated. In addition, the survey proposed will help managers identify the most important indicators to monitor over the life of the plan, determine if any thresholds are being approached, and if management action may need to occur.

Information will continue to be collected from visitors who are recreating on or near the Flathead and McKenzie Rivers and McKenzie National Recreational Trail by in-person, written surveys which will be administered by Forest Service or National Park Service (Flathead) employees, volunteers, or study cooperators to randomly selected visitors. Surveys will ask visitors to provide information about their trip and activities, environmental and social conditions that may alter the quality of their recreational experience, and their attitudes toward different existing and potential recreation management policies and practices. Visitors' responses are voluntary and anonymous.

Data will be entered into an Excel database. Once data entry has been completed and validated, the hardcopy questionnaires will be discarded. Data will be imported into SPSS (Statistical Package for the Social Sciences) for analysis. The database will be maintained at the respective National Forest to be used for development of subsequent management plans and direction.

Collecting thoughts from the public on how these areas should be managed and consideration of their interests and priorities is a critical component to developing a fair and balanced management plan and strategy. Without the public's involvement, a plan has the risk of being biased and ineffective.

Estimate of Annual Burden: The survey is expected to take 20 minutes to complete.

Type of Respondents: National Forest and National Park (Flathead) visitors (adults, age 16 and older) who are recreating on or near the Flathead or McKenzie Rivers or the McKenzie National Recreational Trail.

Estimated Annual Number of Respondents: 1000 (Willamette) and 1200 (Flathead).

Estimated Annual Number of Responses per Respondent: One response per respondent.

Estimated Total Annual Burden on Respondents: 333 hours (Willamette) and 400 hours (Flathead).

Comment is Invited

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: November 5, 2012.

James M. Pena,

Associate Deputy Chief, National Forest System.

[FR Doc. 2012–28511 Filed 11–23–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

White River National Forest; Eagle County, CO; Vail Mountain Recreation Enhancements Projects EIS

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Vail Mountain Ski Resort (Vail) recently submitted a proposal to the White River National Forest (WRNF) for new and enhanced activities within its Forest Service-administered Special Use Permit (SUP) area. The WRNF has accepted this proposal, and is initiating a National Environmental Policy Act (NEPA) analysis to document and disclose potential impacts. The Proposed Action—the Vail Mountain Recreation Enhancements Project—is built on the goal of fostering enhanced opportunities for, and appreciation of, natural resource-based recreation on public lands administered by the WRNF. The proposed projects are designed to take advantage of existing lift and guest service infrastructure across Vail's SUP area and proposed non-ski-based activities are designed to suit a wide range of visitors to the WRNF and the Vail Valley.

DATES: Comments concerning the scope of the analysis must be received by December 26, 2012. The draft environmental impact statement is expected to be available for public review in August or September 2013 and the final environmental impact statement is expected in the winter of 2013/14.

ADDRESSES: Comments may be submitted online at *www.vailreceis.info.* Send written comments to: Scott Fitzwilliams, Forest Supervisor, c/o Don Dressler, Winter Sports Administrator, White River National Forest, P.O. Box 190, Minturn, CO 81645; FAX (970) 945–9343 or by email to: *comment@vailreceis.info* (include ''Vail Recreation Enhancements Project EIS'' in the subject line). Additional details of the Proposed Action, figures, the EIS scoping process, how to comment electronically, and the overall NEPA process can be viewed at *www.vailreceis.info.*

FOR FURTHER INFORMATION CONTACT: Additional information related to the proposed project can be obtained from: Don Dressler, Winter Sports Administrator, Eagle/Holy Cross Ranger District, 24747 U.S. Highway 24, P.O. Box 190, Minturn, Colorado 81645. Mr. Dressler can be reached by phone at (970) 827–5157 or by email at

drdressler@fs.fed.us. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Purpose and Need for Action: In November 2011, the National Forest Ski Area Permit Act of 1986 was amended to clarify the authority of the Secretary of Agriculture regarding additional recreational uses of NFS land that is subject to ski area permits, and for other purposes. The Proposed Action was designed in response to the Ski Area Recreational Opportunity Enhancement Act of 2011 (the 2011 Act) which encourages outdoor recreation and enjoyment of nature, harmony with the natural environment, and requires (to the extent practical) that activities shall be located within the developed portions of ski areas.

As a recreation-based economy, the Vail Valley both relies on, and attracts, large numbers of visitors throughout the year, most of which—either knowingly or unknowingly—come to recreate on public lands. These visitors can be broadly placed into two types: (1) Those who are likely to engage in dispersed recreational activities (*i.e.,* hiking, biking and camping); and (2) those who seek more organized, controlled activities. The need for specialized knowledge, equipment, skills and familiarity with the mountain environment can be a significant barrier for some visitors to engage in outdoor activities. Vail's customer surveys indicate that visitors to the Valley are consistently seeking a more diverse range of recreational activities, particularly for families, children and the aging, but extending to people seeking more adventurous activities. This extends to both non-skiing and after-skiing activities, as well as an enhanced variety of activities in the non-winter months.

The Need for Action is to respond to Vail's proposal to implement activities consistent with the Ski Area Recreational Opportunity Enhancement Act of 2011. Based on the aforementioned information, the Purpose of Action is to:

1. Provide new and innovative forms of year-round, outdoor recreation on NFS land for visitors to the Vail Valley.
2. Utilize existing lift and guest service infrastructure throughout Vail's SUP area to support new recreational activities.
3. Capitalize on the relationship between the WRNF and Vail Resorts to connect people with the natural environment and enhance understanding and appreciation of the purpose and value of public lands.

Proposed Action: The Proposed Action includes the 13 elements, identified below. A full description of each element can be found at: *www.vailreceis.info.*

- Educational Opportunities and Interpretive Information
- Game Creek Canopy Tour
- Front Side Canopy Tour
- Adventure Ridge Forest Flyer
- Pride Express Forest Flyer
- Rappel Activity at Adventure Ridge
- Expanded Hiking and Mountain Bike Trails
- Riparian Experience at Adventure Ridge
- Family Forest Park at Adventure Ridge
- Modified Horse Trail in Game Creek Bowl
- Observation Decks and Towers at Adventure Ridge and Wildwood
- Reconfigured Talon's Deck and Barbeque Area at Eagles Nest
- Wedding Deck at The 10th

As a whole and individually, proposed projects have been designed to harmonize with, and benefit from, the natural setting of the NFS lands within Vail's existing Forest Service-administered SUP area. They are designed to both complement and improve the existing non-skiing recreational opportunities that are currently offered on NFS lands at Vail Mountain. All of the proposed projects rely on the Alpine forest setting on NFS lands within the Vail SUP, either because of the natural surroundings (such as the forest canopy) or because of the natural conditions (such as topography and vertical relief).

Due to engineering, planning and resource considerations, the WRNF and Vail are in the process of finalizing many of the proposed project locations and specifics across the project area. While some proposed project locations are considered accurate at this time (*e.g.,* observation decks and the wedding deck), others are more conceptual, and will be further refined in the coming months as site-specific mapping and updated engineering/planning/design data is considered (*e.g.,* Forest Flyers and canopy tours). Finally, while the conceptual areas and extents of proposed hiking and mountain bike trails have been identified across Vail Mountain, the precise locations of any approved trails would be determined on a case-by-case basis (in coordination with Forest Service specialists, as appropriate) to arrive at a design that is both functional and minimizes/eliminates resource impacts.

Responsible Official: The Responsible Official is Scott Fitzwilliams, Forest Supervisor for the WRNF.

Nature of Decision To Be Made: Based on the analysis that will be documented in the forthcoming EIS, the Responsible Official will decide whether or not to implement, in whole or in part, the Proposed Action or another alternative that may be developed by the Forest Service as a result of scoping.

Scoping Process: This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. The Forest Service is soliciting comments from Federal, State and local agencies and other individuals or organizations that may be interested in or affected by implementation of the proposed projects. Public questions and comments regarding this proposal are an integral part of this environmental analysis process. Input provided by interested and/or affected individuals, organizations and governmental agencies will be used to identify resource issues that will be analyzed in the environmental impact statement. The Forest Service will identify significant issues raised during the scoping process, and use them to formulate alternatives, prescribe mitigation measures and project design features, or analyze environmental effects.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however.

Dated: November 13, 2012.

David Neely,

District Ranger.

[FR Doc. 2012–28202 Filed 11–23–12; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

National Institute of Food and Agriculture

Solicitation of Input From Stakeholders Regarding the Youth Farm Safety Education and Certification Competitive Grants Program

AGENCY: National Institute of Food and Agriculture, USDA.

ACTION: Notice of public meeting and request for stakeholder input.

SUMMARY: The Youth Farm Safety Education and Certification (YFSEC) program is authorized under Extension Activities, Smith-Lever 3(d) Programs. By this notice, NIFA is designated to act on behalf of the Secretary of Agriculture in soliciting public comment from interested persons regarding program and funding priorities for the Youth Farm Safety Education and Certification Program.

DATES: One listening session will be held on December 12, 2012 to collect stakeholder input. All comments not otherwise presented or submitted for the record at the meeting must be submitted by close of business December 26, 2012, to assure consideration in the development of the proposed FY 2013 program guidelines.

ADDRESSES: The December 12, 2012 meeting will use a webinar format and will be accessible by conference call (audio) and Internet (visual only). Connection details for the meeting will be posted on the National Institute of Food and Agriculture Web site (*www.nifa.usda.gov*) or by contacting the individual listed under **FOR FURTHER INFORMATION** (below). You may submit comments, identified by NIFA–2013–0007, by any of the following methods:

Email: FarmSafety@nifa.usda.gov. Include NIFA–2013–0007 in the subject line of the message.

Mail: Paper submissions should be submitted to Farm Safety Comments; Division of Agricultural Systems, Institute of Food Production and Sustainability, National Institute of Food and Agriculture, U.S. Department of Agriculture; STOP 2240, 1400 Independence Avenue SW., Washington, DC 20250–2240.

Hand Delivery/Courier: Farm Safety Comments; Division of Agricultural Systems, Institute of Food Production and Sustainability, National Institute of Food and Agriculture, U.S. Department of Agriculture; Room 3446, Waterfront Centre, 800 9th Street SW., Washington, DC 20024. Instructions: All submissions must include the identifier NIFA–2013–0007.

FOR FURTHER INFORMATION CONTACT: Ms. Camielle Compton, (202) 401–6825 (phone), or *FarmSafety@nifa.usda.gov.*

SUPPLEMENTARY INFORMATION:

Additional Meeting and Comment Procedures

Persons wishing to present oral comments at the December 12th meeting are requested to pre-register by contacting Camielle Compton, (202) 401–6825 (phone), or by email to *FarmSafety@nifa.usda.gov.*

Participants may reserve one five-minute comment period. More time may be available, depending on the number of people wishing to make a presentation. Reservations for oral comments will be confirmed on a first-come, first-served basis. All comments not presented or submitted for the record at the meeting must be submitted by close of business on December 26, 2012, to be considered in the development of the FY 2013 Farm Safety program guidelines. All comments and the official transcript of the meeting, when they become available, will be available on the NIFA Web page for six months.

Background and Purpose

The YFSEC program is authorized by the Smith-Lever Act of May 8, 1914, as amended (7 U.S.C. 341 et seq.). Section 7403 of the Food, Conservation, and Energy Act (FCEA) of 2008 (Pub. L. 110–246) amended section 3(d) of the Smith-Lever Act of 1914 [7 U.S.C. 343(d)] to include 1890 Land-Grant Colleges and Universities, including Tuskegee University and West Virginia State University, as institutions eligible for funding. Beginning in FY 2009, the eligibility to compete for funding for both programs was further broadened to include the University of the District of Columbia.

The YFSEC program supports national efforts to deliver timely, pertinent, and appropriate training to youth actively working, with or without compensation, in agricultural production, regardless of whether the agricultural production enterprise is or is not family-owned. NIFA supports training for the existing Agricultural Hazardous Occupation Order by updating and assessing curricula, testing procedures, and certification means. Two complete curricula have been developed through the YFSEC program and are available at *www.agsafety4youth.info.* The intent of the listening session and written comments is to gather stakeholder input on program focus and priorities for agricultural safety and health education. USDA–NIFA suggests the following questions be addressed in drafting comments on the program:

1. What are the current educational gaps in agricultural safety and health education that could be addressed through this program?
2. What are the critical components of a coordinated approach to Agricultural Safety and Health Education?
3. Is there a need for a one-stop-shop for education and program materials in agricultural safety and health?
4. What educational standards should be considered in development of the curriculum?
5. What can be done to improve educational outreach to vulnerable populations, such as non-english-speaking and immigrant youth, in agricultural jobs?
6. What partners would be beneficial to engage in developing a more comprehensive and effective agricultural health and safety curriculum for youth?
7. What educational approaches, such as use of social media, could be used to get the message out, both more effectively and to a larger number of young workers?

The December 12, 2012 listening session is scheduled to assist NIFA leadership in more fully addressing stakeholder needs and assuring that the Farm Safety programs address the highest priorities authorized under this program.

Implementation Plans

NIFA plans to consider stakeholder input received from this meeting as well as other written comments and stakeholder input in developing the FY 2013 program guidelines, dependent on Congressional appropriation. NIFA anticipates releasing the proposed FY 2013 RFA(s) by March 2013.

Done at Washington, DC, this 16th day of November 2012.

Sonny Ramaswamy,

Director, National Institute of Food and Agriculture.

[FR Doc. 2012–28522 Filed 11–23–12; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Designation of Fishery Management Council Members and Application for Reinstatement of State Authority.

OMB Control Number: 0648–0314.

Form Number(s): NA.

Type of Request: Regular submission (revision and extension of a current information collection).

Number of Respondents: 146.

Average Hours Per Response: Nominations of principal state officials and designees, 1 hour; nominations for Council members, 80 hours per package of 3 nominations, nominees' background information, 16 hours.

Burden Hours: 4,607.

Needs and Uses: This request is for revision and extension of a currently approved information collection.

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as amended in 1996, provides for the nomination for members of Fishery Management Councils by state governors and Indian treaty tribes, for the designation of a principal state fishery official who will perform duties under the Magnuson-Stevens Act, and for a request by a state for reinstatement of state authority over a managed fishery. Nominees for council membership must provide the governor or tribe with background documentation, which is then submitted to NOAA with the nomination. The information submitted with these actions will be used to ensure that the requirements of the Magnuson-Stevens Act are being met.

Change: Adobe fillable nomination kits are now available on the Council Nomination Web site.

Affected Public: State, local or tribal governments.

Frequency: Annually and on occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: *OIRA_Submission@omb.eop.gov.*

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: November 19, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–28536 Filed 11–23–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–84–2012]

Foreign-Trade Zone 7—Mayaguez, Puerto Rico; Notification of Proposed Production Activity; Pepsi Cola Puerto Rico Distributing, LLC, (Soft Drink and Fruit Drink Beverages), Toa Baja, Puerto Rico

The Puerto Rico Industrial Development Company, grantee of FTZ 7, submitted a notification of proposed production activity on behalf of Pepsi Cola Puerto Rico Distributing, LLC (PCPRD), located in Toa Baja, Puerto Rico. The notification conforming to the requirements of the regulations of the Foreign-Trade Zones Board (15 CFR § 400.22) was received on November 5, 2012.

The PCPRD facility is located at Carretera 865, KM 0.4, in Toa Baja, Puerto Rico. A separate application for subzone status at the PCPRD facility was submitted and will be processed under Section 400.31 of the Board's regulations. The facility is used for the production of bottled and canned soft drink and fruit drink beverages. Production under FTZ procedures could exempt PCPRD from customs duty payments on the foreign status components and materials used in export production. On its domestic sales, PCPRD would be able to choose the duty rate during customs entry procedures that applies to canned and bottled soft drink and fruit drink beverages (duty free) for the foreign status inputs noted below. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

Components and materials sourced from abroad include: fruit nectars (excluding orange juice and grapefruit juice), labels, plastic bottles, and plastic caps for bottles (duty rates range from 3.0 to 5.8%; 2¢/liter). The request indicates that PCPRD will not use foreign-status sugar in the proposed FTZ production activity.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is January 7, 2013.

A copy of the notification 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 Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Pierre Duy at *Pierre.Duy@trade.gov*, or (202) 482–1378.

Dated: November 11, 2012.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–28624 Filed 11–23–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–863]

Administrative Review of Honey From the People's Republic of China: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 6, 2012, the Department of Commerce (''Department'') published in the **Federal Register** the preliminary results of the tenth administrative review, covering the period December 1, 2010, through November 30, 2011, of the antidumping duty order on honey from the People's Republic of China (''PRC'').[1] We gave interested parties an opportunity to comment on the *Preliminary Results.* After reviewing interested parties' comments, we made no changes for the final results of review. The final antidumping duty margins for this review are listed in the ''Final Results of Review'' section below.

DATES: *Effective Date:* November 26, 2012.

FOR FURTHER INFORMATION CONTACT: Bob Palmer or Catherine Bertrand, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–9068 or (202) 482–3207, respectively.

SUPPLEMENTARY INFORMATION:

[1] *See Honey From the People's Republic of China: Preliminary Results of Review,* 77 FR 46699 (August 6, 2012) (''*Preliminary Results*'').

Background

On April 16, 2012, Petitioners [2] withdrew their request for an administrative review for all companies under review except Dongtai Peak Honey Industry Co., Ltd. (''Peak'').[3] On May 1, 2012, the Department rescinded the review with respect to Anhui Honghui, Foodstuff (Group) Co., Ltd., Shanghai Bloom International Trading Co., Ltd., Shanghai Taiside Trading Co., Ltd., Tianjin Eulia Honey Co., Ltd., and Wuhan Bee Healthy Co., Ltd., because the requests for review of these companies were withdrawn and they were not part of the PRC-wide entity.[4]

As noted above, on August 6, 2012, the Department published the *Preliminary Results* of this administrative review. In the *Preliminary Results,* we set the deadline for interested parties to submit case briefs and rebuttal briefs to September 5, 2012, and September 10, 2012, respectively. On September 5, 2012, Peak filed a case brief. On September 10, 2012, the Petitioners filed a rebuttal brief. The Department did not hold a public hearing pursuant to 19 CFR 351.310(d), as no interested parties requested one.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs submitted by parties to this review are addressed in the ''Administrative Review of Honey from the People's Republic of China: Issue and Decision Memorandum for the Final Results'' (''I&D Memo''), which is dated concurrently with this notice, and which is hereby adopted by this notice. A list of the issues which parties raised and to which we respond to in the I&D Memo is attached to this notice as an Appendix. The I&D Memo is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the Central Records Unit (''CRU''), room 7046 of the main Department of Commerce building. In addition, a complete version of the I&D Memo can be accessed directly on the Internet at *http://www.trade.gov/ia.* The signed I&D Memo and the electronic versions of the I&D Memo are identical in content.

Scope of the Order

The products covered by the order are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight and flavored honey.[5] The merchandise subject to the order is currently classifiable under subheadings 0409.00.00, 1702.90.90 and 2106.90.99 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under order is dispositive.[6]

PRC-Wide Entity

In the *Preliminary Results,* the Department determined that those companies remaining under review as of April 1, 2012, which did not demonstrate eligibility for a separate rate effectively became part of the PRC-wide entity.[7] Since the *Preliminary Results,* no interested parties have submitted comments regarding these findings. Therefore, we will continue to treat these companies as part of the PRC-wide entity.

Facts Available

As noted in the *Preliminary Results,* the Department issued the non-market economy (''NME'') antidumping duty questionnaire to Peak for individual examination in this review.[8] However, because the record lacks a complete questionnaire response from Peak, the Department found that the information necessary to calculate an accurate margin is not available on the record of this review.[9] Further, we found that because we issued questions regarding Peak's separate rate status to which Peak did not timely respond, Peak did not establish its eligibility for a separate rate in this segment of the proceeding, and thus is considered part of the PRC-wide entity.[10]

Because Peak, as part of the PRC-wide entity, failed to respond in a timely manner to the Department's requests for information, the Department finds that the PRC-wide entity did not cooperate to the best of its ability, and its non-responsiveness necessitates the use of facts available, pursuant to sections 776(a)(2)(A), (B) and (C) of the Tariff Act of 1930, as amended (''Act''). Because the PRC-wide entity, including Peak, withheld requested information, failed to provide information in a timely manner and in the form requested, and significantly impeded this proceeding, we continue to find that the PRC-wide entity, failed to cooperate to the best of its ability, and, accordingly, find it appropriate to apply to it a margin based on adverse facts available (''AFA''). The Department's determination is in accordance with sections 76(a)(2)(A), (B), (C) and 776(b) of the Act.[11] For a further discussion regarding Peak, *see* I&D Memo.

Final Results of Review

The weighted-average dumping margins for the POR are as follows:

Manufacturer/exporter	Margin (per kilogram)
PRC-Wide entity [12]	$2.63

Assessment

Consistent with these final results, and pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.212(b), the Department will direct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries. Consistent with *AR5 Final Results,* we will direct CBP to assess importer-specific assessments rates based on the resulting per-unit (*i.e.,* per kilogram) amount on each entry of the subject merchandise during the review period.[13] The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review.

The Department recently announced a refinement to its assessment practice in

[2] Petitioners are the American Honey Producers Association and the Sioux Honey Association.

[3] *See* Letter from Petitioners to the Secretary of Commerce ''Petitioners' Partial Withdrawal of Request for Tenth Administrative Review'' (April 16, 2012).

[4] *See Honey From the People's Republic of China: Partial Rescission of Antidumping Duty Administrative Review,* 77 FR 25682 (May 1, 2012).

[5] *See* I&D Memo issued concurrently with this notice for a complete description of the Scope of the Order.

[6] *See Notice of Antidumping Duty Order And Amendment To Final Determination: Honey from the People's Republic of China,* 66 FR 59026 (December 10, 2001).

[7] *See Preliminary Results,* 77 FR at 46700.

[8] *See Preliminary Results,* 77 FR at 46699.

[9] *See id.* at 46702.

[10] *See id.*

[11] *See, e.g., Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 71 FR 69546 (December 1, 2006) and accompanying Issues and Decision Memorandum at Comment 1. *See also Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results of the First Administrative Review and New Shipper Review,* 72 FR 10689, 10692 (March 9, 2007) (decision to apply total AFA to the NME-wide entity) unchanged in *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of the First Antidumping Duty Administrative Review and First New Shipper Review,* 72 FR 52052 (September 12, 2007).

[12] The PRC-wide entity includes Dongtai Peak Honey Industry Co., Ltd.

[13] *See Honey from the People's Republic of China: Final Results and Rescission, In Part, of Aligned Antidumping Duty Administrative Review and New Shipper Review,* 73 FR 424321 (July 21, 2008) (''*AR5 Final Results*'').

NME cases. Pursuant to this refinement in practice, for entries that were not reported in the U.S. sales databases submitted by companies individually examined during this review, the Department will instruct CBP to liquidate such entries at the NME-wide rate. In addition, if the Department determines that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the NME-wide rate. For a full discussion of this practice, *see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of these final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporter listed above, the cash deposit rate will be established in the final results of this review (except, if the rate is zero or *de minimis, i.e.,* less than 0.5 percent, no cash deposit will be required for that company); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate $2.63 per kilogram; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to 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, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this administrative review and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: November 19, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix—I&D Memo

Comment 1: Whether the Department Properly Rejected Peak's Extension Request
Comment 2: Whether the Department Properly Rejected Peak's SAQR
Comment 3: Peak's Separate Rate Status
Comment 4: Whether the Adverse Inference is Appropriate
Comment 5: Whether the AFA Rate is Appropriate

[FR Doc. 2012–28625 Filed 11–23–12; 8:45 a.m.]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC363

Caribbean Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Caribbean Fishery Management Council (Council) and its Administrative Committee will hold meetings.

DATES: The meetings will be held on December 19–20, 2012. The Council will convene on Tuesday, December 19, 2012 from 9 a.m. to 5 p.m., and the Administrative Committee will meet from 5:15 p.m. to 6 p.m. The Council will reconvene on Wednesday, December 20, 2012 from 9 a.m. to 5 p.m.

ADDRESSES: The meetings will be held at the Marriott Frenchman's Reef and Morning Star Hotel, #4 Estate Bakkeroe, St. Thomas, U.S.V.I. 00802.

FOR FURTHER INFORMATION CONTACT: Mr. Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–1920, telephone: (787) 766–5926.

SUPPLEMENTARY INFORMATION: The Council will hold its 144th regular Council Meeting to discuss the items contained in the following agenda:

December 19, 2012, 9 a.m.–5 p.m.

- Call to Order
- Adoption of Agenda
- Consideration of 143rd Council Meeting Verbatim Transcriptions
- Executive Director's Report
- Amendment 5 to the Atlantic Highly Migratory Species Fishery Management Plan (FMP)
  1. Address results of recent stock assessments for scalloped hammerhead, sandbar, dusky, blacknose, and Gulf of Mexico blacktip sharks
  2. Proposed measures to end overfishing and rebuild overfished stocks include establishing total allowable catches and commercial quotas, quota linkages, modifying recreational minimum size and reporting requirements and creating and modifying time/area closures
  3. Public comment period for the proposed rule end on February 12, 2013.
- Amendment 4 to the Coral FMP—Removal of Seagrasses Species from the Coral FMP
  1. Final action expected by the Council
  2. Timeline for implementation of the new regulations
- Regulatory Amendment 4 to the Reeffish FMP—Implementation of Minimum Size Limits for Parrotfish in St. Croix
  1. Final action expected by the Council
  2. Timeline for implementation of the new regulations
- ACLs—SSC Report
  1. 2012 Annual Catch Limits (ACLs) overages by Island
  2. Implementation of accountability measures in 213 for any ACLs Overages
- Research Priorities—SSC Report
  1. Status of the 5-year research plan
  2. Next steps
  3. Timeline for completion of the research plan

- Island Specific FMP
  1. Environmental assessment for shift in management from species based to island based management
  2. Island specific scoping documents
  3. Island Specific fishery management plan draft outline
  4. Scheduling of scoping hearings
  5. Timeline for completion of new island-specific FMPs

Public Comment Period (5-minutes presentations)

December 19, 2012, 5:15 p.m.–6 p.m.

- Administrative Committee Meeting
- Budget 2012/13/14
  —SSC/AP Membership
  —Other Business

December 20, 2012, 9 a.m.–5 p.m.

- Endangered Species Act Procedures: Updates on Queen Conch, Corals and Nassau Groupers
- CITES: Queen Conch Status—Nancy Daves
- Queen Conch Compatibility Issues with USVI
  —Discussion of Management Options
- Outreach and Education Panel Report—Alida Ortíz
  —Report of the new CFMC Web site
- NMFS Outreach and Education Projects—Lee Carrubba
- Trap Reduction Spiny Lobster Report—Anthony Iarocci
- STFA Updates on Lobster and Traps Projects, among others
- Enforcement Reports
  —Puerto Rico—DNER
  —U.S. Virgin Islands—DPNR
  —NOAA/NMFS
  —U.S. Coast Guard
- Administrative Committee Recommendations
- Meetings Attended by Council Members and Staff

Public Comment Period (5-minute presentations)

- Other Business
- Next Council Meeting

The established times for addressing items on the agenda may be adjusted as necessary to accommodate the timely completion of discussion relevant to the agenda items. To further accommodate discussion and completion of all items on the agenda, the meeting may be extended from, or completed prior to the date established in this notice.

The meetings are open to the public, and will be conducted in English. Simultaneous Interpretation (English/Spanish) will be provided. Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be subjects for formal action during these meetings. 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 Fishery Conservation and Management Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. For more information or request for sign language interpretation and/other auxiliary aids, please contact Mr. Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–1920, telephone: (787) 766–5926, at least 5 days prior to the meeting date.

Dated: November 20, 2012.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012–28552 Filed 11–23–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC364

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) South of Humbug Policy Workgroup (Workgroup) for Pacific halibut will hold a working meeting, which is open to the public.

DATES: The Workgroup meeting will be held Thursday, December 13, 2012 from 10 a.m. until business for the day is completed.

ADDRESSES: The meeting will be held at the Pacific Council Office, Large Conference Room, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384; telephone: (503) 820–2280.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Ms. Kelly Ames, Staff Officer, Pacific Council: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The overarching goals of the Workgroup meeting are to explore the best methods for incorporating the area south of the Oregon/California border into the International Pacific Halibut Commission's (IPHC) Pacific halibut stock assessment, examine the effect of including that area on the Area 2A apportionment, and evaluate methods to manage the fishery south of Humbug Mountain to comply with allocation provisions of the Catch Sharing Plan and the overall total allowable catch apportioned to Area 2A. No management actions will be decided by the Workgroup. The Workgroup's task will be to develop recommendations for IPHC and Council consideration in 2013.

Although non-emergency issues not contained in the meeting agenda may come before the Workgroup for discussion, those issues may not be the subject of formal Workgroup action during this meeting. Workgroup action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Workgroup'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 Mr. Kris Kleinschmidt at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: November 20, 2012.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012–28553 Filed 11–23–12; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 10:00 a.m., Friday December 7, 2012.

PLACE: 1155 21st St. NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance and Enforcement Matters. In the event that the times or dates of these or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov*

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2012–28704 Filed 11–21–12; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETINGS: Commodity Futures Trading Commission.

TIME AND DATE: 10:00 a.m., Friday December 14, 2012.

PLACE: 1155 21st St. NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance and Enforcement Matters. In the event that the times or dates of these or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov*

FOR MORE INFORMATION CONTACT: Sauntia S. Warfield, 202–418–5084.

Sauntia Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2012–28705 Filed 11–21–12; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETINGS: Commodity Futures Trading Commission.

TIME AND DATE: 10:00 a.m., Friday December 21, 2012.

PLACE: 1155 21st St. NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance and Enforcement Matters. In the event that the times or dates of these or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov*

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2012–28706 Filed 11–21–12; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission

TIME AND DATE: 10:00 a.m., Friday December 28, 2012

PLACE: 1155 21st St. NW., Washington, DC, 9th Floor Commission Conference Room

STATUS: Closed

MATTERS TO BE CONSIDERED: Surveillance and Enforcement Matters. In the event that the times or dates of these or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov*

Contact Person for More Information: Sauntia S. Warfield, 202–418–5084.

Sauntia Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2012–28708 Filed 11–21–12; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

The following notice of a scheduled meeting is published pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, 5 U.S.C. 552b.

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIMES AND DATES: The Commission has scheduled a meeting for the following date: November 29, 2012 at 11:00 a.m.

PLACE: Three Lafayette Center, 1155 21st St. NW., Washington, DC, Lobby Level Hearing Room (Room 1300).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission has scheduled this meeting to consider various rulemaking matters, including the issuance of proposed rules and the approval of final rules. The agenda for this meeting is available to the public and posted on the Commission's Web site at *http://www.cftc.gov.* In the event that the time or date of the meeting changes, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, Assistant Secretary of the Commission, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2012–28703 Filed 11–21–12; 4:15 pm]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

GPS Satellite Simulator Control Working Group Meeting

AGENCY: Space and Missile Systems Center, Global Positioning Systems (GPS) Directorate, Department of the Air Force, DoD.

ACTION: Meeting Notice.

SUMMARY: This meeting notice is to inform GPS simulator manufacturers, who supply products to the Department of Defense (DoD), and GPS simulator users, both government and DoD contractors, that the GPS Directorate will host a GPS Satellite Simulator Control Working Group (SSCWG) meeting on 14 December 2012 from 0900–1600 PST at Los Angeles Air Force Base.

The purpose of this meeting is to disseminate information about GPS simulators, discuss current and on-going efforts related to GPS simulators, and to discuss future GPS simulator development. This event will be conducted as a classified meeting.

FOR FURTHER INFORMATION CONTACT: We request that you register for this event no later than 10 December 2012. Please send your registration (name, organization, phone number and email address) to *wayne.urubio.3@us.af.mil* and have your security personnel submit your VAR through JPAS. SMO Code: GPSD and POC: Lt Wayne Urubio, 310–653–4603. Please visit *http://www.gps.gov/technical/sscwg/* for information regarding an address and a draft agenda.

Henry Williams Jr,

DAF, Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2012–28550 Filed 11–23–12; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2012–ICCD–0059]

Agency Information Collection Activities; Comment Request; Mathematics and Science Partnerships Program: Annual Performance Report

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before January 25, 2013.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2012–ICCD–0059 or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E117, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: Electronically mail *ICDocketMgr@ed.gov.* Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Mathematics and Science Partnerships Program: Annual Performance Report.

OMB Control Number: 1810–0669.

Type of Review: Revision of an existing information collection.

Respondents/Affected Public: State, Local, or Tribal Governments.

Total Estimated Number of Annual Responses: 600.

Total Estimated Number of Annual Burden Hours: 7,800.

Abstract: The Mathematics and Science Partnerships (MSP) program is a formula grant program to the States in which states make competitive awards to projects. The authorizing legislation, Title II, Part B, Section 2202 (f) of the Elementary and Secondary Education Act of 1965 as amended by the No Child Left Behind Act of 2001, requires all locally funded projects to report annually to the Secretary documenting progress towards goals and objectives. The Annual Performance Report (APR) is an online reporting tool. Annual reporting requirements include impact on increasing teacher learning and student achievement; standard descriptive information on the MSP projects; the professional development participants; the professional development models, content, and processes; the evaluation plans; and lessons learned. By structuring the reporting so that all MSPs are required to provide standardized data, the program office is better able to examine outcomes across funded partnerships. The primary objective of the proposed revision is to reduce burden on reporting entities while ensuring that needed data continue to be collected. Proposed revisions include removing items that duplicate information, condensing sections of the APR that require substantial project burden to complete, and clarifying reporting instructions to improve quality of responses.

Dated: November 20, 2012.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2012–28619 Filed 11–23–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2012–ICCD–0058]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; William D. Ford Federal Direct Loan Program (DL) Regulations—Servicemembers Civil Relief Act (SCRA)

AGENCY: Department of Education (ED), Federal Student Aid (FSA)

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before December 26, 2012.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2012–ICCD–0058 or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E117, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: Electronically mail *ICDocketMgr@ed.gov.* Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the

Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: William D. Ford Federal Direct Loan Program (DL) Regulations—Servicemembers Civil Relief Act (SCRA).

OMB Control Number: 1845–0094.

Type of Review: Extension.

Respondents/Affected Public: Individuals or households; Private Sector (Not-for-profit institutions); State, Local or Tribal Governments.

Total Estimated Number of Annual Responses: 2,723.

Total Estimated Number of Annual Burden Hours: 681.

Abstract: Upon a loan holder's receipt of a written request from a borrower and a copy of the borrower's military orders, the regulations at 34 CFR 685.202 provide that the maximum interest rate (as defined in 50 U.S.C. 527, App. Section 207 (d)) that may be charged on Federal Family Education Loan Program loans made prior to the borrower entering active duty status is six percent while the borrower is on active duty status. This request is for an extension of the approved recordkeeping requirements contained in the regulations related to the administrative requirements of the Direct Loan Program.

Dated: November 20, 2012.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2012–28620 Filed 11–23–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Energy Efficiency and Renewable Energy

State Energy Advisory Board (STEAB)

AGENCY: Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of Open Teleconference.

SUMMARY: This notice announces a teleconference call of the State Energy Advisory Board (STEAB). The Federal Advisory Committee Act (Pub. L. 92–463; 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, December 20, 2012; 3:30 p.m.–4:00 p.m. (EST).

FOR FURTHER INFORMATION CONTACT: To receive the call-in number and passcode, please contact: Gil Sperling, STEAB's Designated Federal Officer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW., Washington, DC 20585. Phone number is (202) 287–1644.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: To provide advice and make recommendations to the Assistant Secretary for the Office of Energy Efficiency and Renewable Energy regarding goals and objectives, programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. 101–440).

Tentative Agenda: Receive an update on the activities of the STEAB's Task Forces, review the activities of the newly formed STEAB Strategic Planning Subcommittee, and provide an update to the Board on routine business matters and other topics of interest, and follow-up on activities of the Weatherization Taskforce's meeting at DOE.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Gil Sperling at the address or telephone number listed above. Requests to make oral comments must be received five days prior to the meeting; reasonable provisions will be made to include requested topic(s) on the agenda. The Chair of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 60 days on the STEAB Web site at: *www.steab.org.*

Issued at Washington, DC, on November 19, 2012.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2012–28568 Filed 11–23–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2710–061; 2712–078]

Black Bear Hydro Partners, LLC and Black Bear Development Holdings, LLC and Black Bear SO, LLC; Notice of Application for Partial Transfer of Licenses, and Soliciting Comments and Motions To Intervene

On October 25, 2012, Black Bear Hydro Partners, LLC, sole licensee (transferor) and Black Bear Development Holdings, LLC and Black Bear SO, LLC (transferees) filed an application for the partial the transfer of licenses for the Orono Hydroelectric Project, FERC No. 2710, and the Stillwater Hydroelectric Project, FERC No. 2712, both located on the Stillwater Branch of the Penobscot River in Penobscot County, Maine.

Applicants seek Commission approval to partially transfer the licenses for the Orono and Stillwater Hydroelectric Projects from the transferor as sole licensee to the transferor and transferees as co-licensees.

Applicants' Contact: Ms. Christine Miller, Esq., Black Bear Hydro Partners, LLC, Black Bear Development Holdings, LLC, Black Bear SO, LLC, c/o ArcLight Capital Partners, LLC, 200 Clarendon Street, Boston, MA 02117, Phone (617) 531–6338 and Ms. Margaret A. Moore, Ms. Jessica C. Friedman, and Ms. Julia S. Wood, Van Ness Feldman, LLP, 1050 Thomas Jefferson St. NW., Washington, DC 20007–3877, Phone (202) 298–1800.

FERC Contact: Patricia W. Gillis (202) 502–8735, *patricia.gillis@ferc.gov.*

Deadline for filing comments and motions to intervene: 15 days from the issuance of this notice by the Commission. Comments and motions to intervene may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1) and the instructions on the Commission's Web site under *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original plus seven copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. More information about this project can be viewed or printed on the eLibrary link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.*

Enter the docket number (P–2710 or P–2712) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Dated: November 16, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–28467 Filed 11–23–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1121–112]

Pacific Gas and Electric Company; Notice of Application Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment of License.

b. *Project No.:* 1121–112.

c. *Date Filed:* November 13, 2012.

d. *Applicant:* Pacific Gas and Electric Company.

e. *Name of Project:* Battle Creek.

f. *Location:* On the mainstem Battle Creek, and on the North Fork and South Fork Battle Creek in Shasta and Tehama Counties, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Ms. Elisabeth Rossi, License Coordinator, Pacific Gas and Electric Company, 245 Market Street, San Francisco, CA 94105. Tel: (415) 973–2032.

i. *FERC Contact:* Ms. Andrea Claros, (202) 502–8171, *andrea.claros@ferc.gov.*

j. Deadline for filing comments, motions to intervene, and protests, is 30 days from the issuance date of this notice. All documents may be filed electronically via the Internet. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: The Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments.

Please include the project numbers (P–1121–112) on any comments, motions, or protests filed.

k. *Description of Request:* Pacific Gas and Electric Company (licensee) is proposing to change the design of an unconstructed fish barrier structure in Baldwin Creek, from what was previously approved by Commission Order issued August 25, 2009. Rather than locating the barrier on top of the Asbury Diversion Dam, the barrier would be located approximately 500 feet downstream of the diversion dam. The fish barrier would be a reinforced concrete overflow weir structure approximately 10 feet tall and 45 feet wide, which would include: an upper barrier weir with a 2-foot long metal overhanging cap, a 14-foot-long elevated jump apron with a 4-foot over hang, a 20-foot-long smooth apron, and a lower 60-foot-long rough apron. The purpose of the barrier is to prevent steelhead migrations above the Asbury Dam to protect the Darrah Springs State Fish Hatchery from diseases carried by migrating fish. The licensee is also proposing to revise the project boundary to incorporate the barrier and an access road.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) Bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the license amendment. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: November 15, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–28466 Filed 11–23–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP13–13–000]

Dominion Transmission, Inc.; Notice of Application

Take notice that on November 1, 2012, Dominion Transmission, Inc. (DTI), 120 Tredegar Street, Richmond, VA 23219, filed in the above referenced docket an abbreviated application

pursuant to section 7(c) of the Natural Gas Act (NGA) for authorization to construct, install, own, operate and maintain its Natrium to Market Project (Project) located in Greene and Westmoreland Counties, Pennsylvania. Specifically, DTI will provide 185,000 dekatherms per day (Dth/d) of firm transportation service from a receipt point located at an interconnect between DTI and the processing facilities of Dominion Natrium, LLC in Marshall County, West Virginia to an interconnect between DTI and Texas Eastern Transmission, LP in Greene County, Pennsylvania, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions concerning this application may be directed to Brad A. Knisley, Regulatory and Certificates Analyst III, Dominion Transmission, Inc., 701 East Cary Street, Richmond, VA 23219, telephone no. (804) 771–4412, facsimile no. (804) 771–4804 and email: *Brad.A.Knisley@dom.com*.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on December 6, 2012.

Dated: November 15, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–28469 Filed 11–23–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13946–001]

Tarrant Regional Water District; Notice of Application for Amendment of Exemption and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of Exemption.

b. *Project No.:* P–13946–001.

c. *Date Filed:* October 26, 2012.

d. *Applicant:* Tarrant Regional Water District.

e. *Name of Project:* Arlington Outlet Hydroelectric Project.

f. *Location:* The Arlington Outlet Hydroelectric Project is located at the Arlington Outlet Discharge Facility, a flow control facility in Tarrant Regional Water District's water distribution system located in Tarrant County, Texas. The project does not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Dena Wiggins, Partner, Ballard Spahr LLP, 1909 K Street NW., 12th Floor, Washington, DC, 20006; Telephone: (202) 661–2225.

i. *FERC Contact:* Any questions on this notice should be addressed to Christopher Chaney, Telephone (202) 502–6778 or *christopher.chaney@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* 30 days from the issuance date of this notice.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/efiling.asp*). Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system (*http://www.ferc.gov/docs-filing/ecomment.asp*) and must include name and contact information at the end of comments. The Commission strongly encourages electronic filings.

All documents (original and seven copies) filed by paper should be sent to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please include the project number (P–13946–001) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners

filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Application:* The exemptee proposes to amend the site and powerhouse arrangements and the installed capacity based on the project's final design. Under the proposed amendment, the powerhouse footprint would increase from 39 feet by 42 feet to 46 feet by 46 feet, the powerhouse would be constructed approximately 40 feet to the northwest, the discharge pipe would be relocated from the south side to the east side of the powerhouse, and the authorized installed capacity would increase from 1,300 kilowatts (kW) to 1,350 kW. No change in project operation is proposed.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site using the ''eLibrary'' link at *http://elibrary.ferc.gov/idmws/search/fercgensearch.asp*. Enter the docket number excluding the last three digits (P–13946) in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: November 16, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–28468 Filed 11–23–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12690–005]

Public Utility District No. 1 of Snohomish County, Washington; Notice of Revised Procedural Schedule for Processing the License Application

Based on the information in the record now, the Commission will continue processing the license application for the Admiralty Inlet Pilot Tidal Project according to the schedule below. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Commission issues non-draft EA.	January 18, 2013.
Comments on EA due	February 18, 2013.

Dated: November 19, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–28546 Filed 11–23–12; 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: RP13–283–000.
Applicants: East Tennessee Natural Gas, LLC.
Description: Contracting Process Nov2012 Filing to be effective 1/1/2013.
Filed Date: 11/15/12.
Accession Number: 20121115–5076.
Comments Due: 5 p.m. ET 11/27/12.

Docket Numbers: RP13–284–000.
Applicants: Maritimes & Northeast Pipeline, L.L.C.
Description: Contracting Processes Nov2012 Filing to be effective 1/1/2013.
Filed Date: 11/15/12.
Accession Number: 20121115–5082.
Comments Due: 5 p.m. ET 11/27/12.

Docket Numbers: RP13–285–000.
Applicants: Ozark Gas Transmission, L.L.C.
Description: Contracting Processes Nov2012 Filing to be effective 1/1/2013.
Filed Date: 11/15/12.
Accession Number: 20121115–5083.
Comments Due: 5 p.m. ET 11/27/12.

Docket Numbers: RP13–286–000.
Applicants: Discovery Gas Transmission L.L.C.
Description: 2013 HMRE Filing to be effective 1/1/2013.
Filed Date: 11/15/12.
Accession Number: 20121115–5085.
Comments Due: 5 p.m. ET 11/27/12.

Docket Numbers: RP13–287–000.
Applicants: Saltville Gas Storage Company L.L.C.
Description: Contracting Processes Nov2012 Filing to be effective 1/1/2013.
Filed Date: 11/15/12.
Accession Number: 20121115–5089.
Comments Due: 5 p.m. ET 11/27/12.

Docket Numbers: RP13–288–000.
Applicants: Egan Hub Storage, LLC.
Description: Contracting Processes Nov2012 Filing to be effective 1/1/2013.
Filed Date: 11/15/12.
Accession Number: 20121115–5092.
Comments Due: 5 p.m. ET 11/27/12.

Docket Numbers: RP13–289–000.
Applicants: Bobcat Gas Storage.
Description: Contracting Processes Nov2012 Filing to be effective 1/1/2013.
Filed Date: 11/15/12.
Accession Number: 20121115–5093.
Comments Due: 5 p.m. ET 11/27/12.

Docket Numbers: RP13–290–000.
Applicants: Iroquois Gas Transmission System, L.P.

Description: 11/15/12 Negotiated Rates—BG Energy Merchants, LLC (RTS) 6040–39 & -40 to be effective 12/1/2012.
Filed Date: 11/15/12.
Accession Number: 20121115–5146.
Comments Due: 5 p.m. ET 11/27/12.

Docket Numbers: RP13–291–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: 11/15/12 HUB Negotiated Rates Blanket Filing 2 to be effective 11/15/2012.
Filed Date: 11/15/12.
Accession Number: 20121115–5148.
Comments Due: 5 p.m. ET 11/27/12.

Docket Numbers: RP13–292–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: 11/15/12 Negotiated Rates—Barclays Bank PLC to be effective 12/1/2012.
Filed Date: 11/15/12.
Accession Number: 20121115–5149.
Comments Due: 5 p.m. ET 11/27/12.

Docket Numbers: RP13–293–000.
Applicants: Equitrans, L.P.
Description: Reservation of Capacity for Future Service to be effective 12/15/2012.
Filed Date: 11/15/12.
Accession Number: 20121115–5156.
Comments Due: 5 p.m. ET 11/27/12.

Docket Numbers: RP13–294–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Create ENS Service to be effective 1/1/2013.
Filed Date: 11/16/12.
Accession Number: 20121116–5034.
Comments Due: 5 p.m. ET 11/28/12.

Docket Numbers: RP13–295–000.
Applicants: Tennessee Gas Pipeline Company, L.L.C.
Description: Update Tariff Prior to EP2DART Conversion Filing to be effective 12/17/2012.
Filed Date: 11/16/12.
Accession Number: 20121116–5074.
Comments Due: 5 p.m. ET 11/28/12.

Docket Numbers: RP13–296–000.
Applicants: ANR Pipeline Company.
Description: Remove Rate Schedule X–64 to be effective 11/1/2012.
Filed Date: 11/16/12.
Accession Number: 20121116–5165.
Comments Due: 5 p.m. ET 11/28/12.

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: RP12–1070–001.
Applicants: Midwestern Gas Transmission Company.
Description: Negotiated Rate Non-Conforming Agreement—Sequent to be effective 10/1/2012.
Filed Date: 11/15/12.
Accession Number: 20121115–5145.
Comments Due: 5 p.m. ET 11/27/12.

Docket Numbers: RP13–121–001.
Applicants: Crossroads Pipeline Company.
Description: NAESB 2.0 Compliance Filing to be effective 12/1/2012.
Filed Date: 11/16/12.
Accession Number: 20121116–5103.
Comments Due: 5 p.m. ET 11/28/12.

Docket Numbers: RP13–225–001.
Applicants: Gulf South Pipeline Company, LP.
Description: Amendment to Filing in Docket No. RP13–225–000 to be effective 11/1/2012.
Filed Date: 11/16/12.
Accession Number: 20121116–5033.
Comments Due: 5 p.m. ET 11/28/12.

Docket Numbers: RP13–99–001.
Applicants: Empire Pipeline, Inc.
Description: Empire-NAESB v2 CF to be effective 12/1/2012.
Filed Date: 11/16/12.
Accession Number: 20121116–5189.
Comments Due: 5 p.m. ET 11/28/12.

Docket Numbers: RP13–97–001.
Applicants: National Fuel Gas Supply Corporation.
Description: NAESB V2.0 CF to be effective 12/1/2012.
Filed Date: 11/19/12.
Accession Number: 20121119–5022.
Comments Due: 5 p.m. ET 12/3/12.

Any person desiring to protest in any 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, and service 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: November 19, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–28573 Filed 11–23–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1285–003.
Applicants: Craven County Wood Energy Limited Partnership.
Description: Craven County Wood Energy Limited Partnership submits Notice of Non-Material Change in Status.
Filed Date: 11/15/2012.
Accession Number: 20121115–5173.
Comments Due: 5 p.m. ET 12/6/12.

Docket Numbers: ER12–2676–000.
Applicants: Piedmont Green Power, LLC.
Description: Refund Compliance Report to be effective N/A.
Filed Date: 11/16/12.
Accession Number: 20121116–5122.
Comments Due: 5 p.m. ET 12/7/12.

Docket Numbers: ER13–388–000.
Applicants: Sky River LLC.
Description: Sky River LLC and North Sky River Energy, LLC Shared Facilities Agreement to be effective 11/16/2012.
Filed Date: 11/15/12.
Accession Number: 20121115–5151.
Comments Due: 5 p.m. ET 12/6/12.

Docket Numbers: ER13–390–000.
Applicants: Public Service Company of New Mexico.
Description: Executed Asset Purchase Agreement to be effective 1/15/2013.
Filed Date: 11/16/12.
Accession Number: 20121116–5000.
Comments Due: 5 p.m. ET 12/7/12.

Docket Numbers: ER13–391–000.
Applicants: Pacific Gas and Electric Company.
Description: Notices of Termination for Four PG&E E&P Agreements to be effective 10/24/2012.
Filed Date: 11/16/12.
Accession Number: 20121116–5001.
Comments Due: 5 p.m. ET 12/7/12.

Docket Numbers: ER13–392–000.
Applicants: M&R Energy Resources Corp.
Description: Baseline New to be effective 11/16/2012.
Filed Date: 11/16/12.
Accession Number: 20121116–5003.
Comments Due: 5 p.m. ET 12/7/12.

Docket Numbers: ER13–393–000.
Applicants: PJM Interconnection, L.L.C.
Description: Panther Creek ISA? Original Service Agreement No. 3443 to be effective 10/19/2012.
Filed Date: 11/16/12.

Accession Number: 20121116–5032.
Comments Due: 5 p.m. ET 12/7/12.

Docket Numbers: ER13–394–000.
Applicants: International Transmission Company.
Description: Filing of Executed Agreement in Compliance with ER12–1742 with Modification to be effective 7/10/2012.
Filed Date: 11/16/12.
Accession Number: 20121116–5046.
Comments Due: 5 p.m. ET 12/7/12.

Docket Numbers: ER13–395–000.
Applicants: Safe Harbor Water Power Corporation.
Description: Revision to Safe Harbor Market-Base Rate Tariff to be effective 11/16/2012.
Filed Date: 11/16/12.
Accession Number: 20121116–5058.
Comments Due: 5 p.m. ET 12/7/12.

Docket Numbers: ER13–396–000.
Applicants: PJM Interconnection, L.L.C.
Description: 3rd Quarter 2012 Updates to PJM Operating Agreement and RAA Membership Lists to be effective 9/30/2012.
Filed Date: 11/16/12.
Accession Number: 20121116–5079.
Comments Due: 5 p.m. ET 12/7/12.

Docket Numbers: ER13–397–000.
Applicants: PJM Interconnection, L.L.C.
Description: Amendments to Schedule 12-Appendix re RTEP approved by PJM Board Oct 16, 2012 to be effective 2/14/2013.
Filed Date: 11/16/12.
Accession Number: 20121116–5089.
Comments Due: 5 p.m. ET 12/7/12.

Docket Numbers: ER13–398–000.
Applicants: The Detroit Edison Company.
Description: The Detroit Edison Company submits Informational Report.
Filed Date: 11/9/12.
Accession Number: 20121109–5240.
Comments Due: 5 p.m. ET 11/30/12.

Docket Numbers: ER13–399–000.
Applicants: Southern California Edison Company.
Description: Notice of Cancellation of Letter Agmt SCE Tehachapi Wind Energy Storage Project to be effective 9/8/2012.
Filed Date: 11/16/12.
Accession Number: 20121116–5104.
Comments Due: 5 p.m. ET 12/7/12.

Docket Numbers: ER13–400–000.
Applicants: PacifiCorp.
Description: BPA General Transfer Agreement (East) to be effective 9/22/2010.
Filed Date: 11/16/12.
Accession Number: 20121116–5123.
Comments Due: 5 p.m. ET 12/7/12.

Docket Numbers: ER13–401–000.
Applicants: Southwest Power Pool, Inc.
Description: 607R17 Westar Energy, Inc. NITSA NOAS to be effective 11/1/2012.
Filed Date: 11/16/12.
Accession Number: 20121116–5127.
Comments Due: 5 p.m. ET 12/7/12.

Docket Numbers: ER13–402–000.
Applicants: Smoky Mountain Transmission LLC.
Description: Baseline New Tariff to be effective 11/16/2012.
Filed Date: 11/16/12.
Accession Number: 20121116–5145.
Comments Due: 5 p.m. ET 12/7/12.

Docket Numbers: ER13–403–000.
Applicants: Smoky Mountain Transmission LLC.
Description: Smoky Mountain Transmission LLC submits tariff filing per 35.13(a)(2)(iii: OATT Filing to be effective 11/16/2012.
Filed Date: 11/16/12.
Accession Number: 20121116–5172.
Comments Due: 5 p.m. ET 12/7/12.

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: November 16, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–28548 Filed 11–23–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DI13–2–000]

Bar None Ranch LLC; Notice of Declaration of Intention and Soliciting Comments, Protests, and/or Motions To Intervene

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.
b. *Docket No:* DI13–2–000.
c. *Date Filed:* November 2, 2012.
d. *Applicant:* Bar None Ranch LLC.
e. *Name of Project:* Snodgrass Springs Micro Hydro Project.
f. *Location:* The proposed Snodgrass Springs Micro Hydro Project will be located on Snodgrass Creek, near the town of Lava Hot Springs, Bannock County, Idaho, affecting T. 10 S., R. 38 E., sec. 28, Boise Meridian.
g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).
h. *Applicant Contact:* Blaine Nye, 1200 Bay Laurel, Menlo Park, CA 94025; telephone: (650) 326–0777; email: *www.blaine@scginc.com.*
i. *FERC Contact:* Any questions on this notice should be addressed to Ashish Desai, (202) 502–8370, or Email address: *Ashish.Desai@ferc.gov.*
j. *Deadline for filing comments, protests, and/or motions is:* 30 days from the issuance of this notice by the Commission. Comments, Motions to Intervene, and Protests may be filed electronically via the Internet. See 18 CFR 385.2001(a)(l)(iii) and the instructions on the Commission's Web site under the ''eFiling'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings, please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.*

Please include the docket number (DI13–2–000) on any comments, protests, and/or motions filed.

k. *Description of Project:* The proposed run-of-river Snodgrass Springs Micro Hydro Project will consist of: (1) Water transported from three springs into an 8-foot-by-8-foot underground reservoir or cistern; (2) a buried 4-inch-diameter, 200-foot-long penstock; (3) an 1,800-watt Alternative Power Machine Model 1800 turbine/generator, to be located in a cabin; (4) a 4-inch-diameter, 300-foot long pipe tailrace, directing the water into Snodgrass Creek; and (5) appurtenant facilities. The power generated will be used in a local cabin.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be

affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Locations of the Application:* Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the Docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email FERCOnlineSupport@ferc.gov for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents* — All filings must bear in all capital letters the title ''COMMENTS'', ''PROTESTS'', AND/OR ''MOTIONS TO INTERVENE'', as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any Motion to Intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: November 16, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–28470 Filed 11–23–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF12–21–000]

Gulf South Pipeline Company, LP; Notice of Intent To Prepare an Environmental Assessment for the Planned Southeast Market Expansion Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Southeast Market Expansion Project (SEME Project) involving construction and operation of facilities by Gulf South Pipeline Company, LP (Gulf South) in Jasper, Forrest, Perry, Greene, George, and Jackson Counties, Mississippi and Mobile County, Alabama. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine what issues they need to evaluate in the EA. Please note that the scoping period will close on December 19, 2012.

You may submit comments in written form or verbally. Further details on how to submit written comments are in the Public Participation section of this notice. In lieu of or in addition to sending written comments, the Commission invites you to attend the public scoping meetings scheduled as follows:

Date and time	Location
December 4, 2012, 7:00 PM EST.	New Augusta Elementary School, 100 8th Avenue S, New Augusta, MS, (601) 964–3226.
December 5, 2012, 7:00 PM EST.	Oak Park Elementary School, 1205 Queensburg Avenue, Laurel, MS, (601) 428–5046.
December 6, 2012, 7:00 PM EST.	George County Middle School, 330 Church Street, Lucedale, MS, (601) 947–3106.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the planned facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' is available for viewing on the FERC Web site (*www.ferc.gov*). This fact sheet addresses a number of typically-asked questions, including the use of eminent domain and how to participate in the Commission's proceedings.

Summary of the Planned Project

Gulf South plans to construct and operate approximately 70 miles of new 30-inch-diameter and 24-inch-diameter natural gas pipeline and 3 new compressor stations in Mississippi and Alabama. The SEME Project would provide about 450 million standard cubic feet of natural gas per day to the Florida and Southeast markets via an interconnect with Florida Gas Transmission Company and a new high pressure interconnect with Gulf South's existing Index 311 pipeline. According to Gulf South, the project is necessary to provide new natural gas transportation capacity to meet an increased level of gas supplies in the region.

The SEME Project would consist of the following:

• Construction of 70 miles of new 30-inch-diameter and 24-inch-diameter pipeline (approximately 42.2 miles and

27.8 miles, respectively), which would begin near the southern terminus of Petal Gas Storage, L.L.C.'s transmission facilities in Forrest County, Mississippi and end at Gulf South's existing Index 311 pipeline tie-in, approximately 4.5 miles west of Semmes, Alabama;

• Installation of ancillary facilities associated with the new pipeline including one meter and regulating station, five mainline valves, two pig [1] launchers, two pig receivers, and overpressure protection devices; and

• Installation of three new compressor stations, including:

▪ The Forrest Compressor Station, which would be located in Forrest County, Mississippi at the beginning of the proposed 70-mile pipeline and would provide 16,000 nominal horsepower (hp) of compression;

▪ The Jasper Compressor Station, which would be located on Gulf South's existing Index 818 pipeline in Jasper County, Mississippi and would provide 13,222 nominal hp of compression; and

▪ The Moss Point Compressor Station, which would be located at the intersection of Gulf South's existing Index 300 pipeline and the Pascagoula Lateral in Jackson County, Mississippi and would provide 2,000 nominal hp of compression.

The general location of the project facilities is shown in Appendix 1.[2]

Land Requirements for Construction

Construction of the planned facilities would disturb about 1,133 acres of land for the aboveground facilities, pipeline, and access roads. Following construction, Gulf South would maintain about 453 acres for permanent operation of the project's facilities; the remaining acreage would be restored and revert to former uses. About 80 percent of the planned pipeline route parallels existing pipeline, utility, or road rights-of-way.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [3] to discover and address concerns the public may have about proposals. This process is referred to as scoping. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the planned project under these general headings:

• Geology and soils;
• Land use;
• Water resources, fisheries, and wetlands;
• Cultural resources;
• Vegetation and wildlife;
• Air quality and noise;
• Endangered and threatened species;
• Socioeconomics;
• Public safety; and
• Cumulative impacts.

We will also evaluate possible alternatives to the planned project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Although no formal application has been filed, we have already initiated our NEPA review under the Commission's pre-filing process. The purpose of the pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before the FERC receives an application. As part of our pre-filing review, we have begun to contact some federal and state agencies to discuss their involvement in the scoping process and the preparation of the EA.

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary. Depending on the comments received during the scoping process, we may also publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section below.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues related to this project to formally cooperate with us in the preparation of the EA.[4] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with applicable State Historic Preservation Offices (SHPOs), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[5] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPOs as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before December 19, 2012.

For your convenience, there are three methods you can use to submit your comments to the Commission. In all instances, please reference the project docket number (PF12–21–000) with your submission. The Commission encourages electronic filing of

[1] A "pig" is a tool that the pipeline company inserts into and pushes through the pipeline for cleaning the pipeline, conducting internal inspections, or other purposes.

[2] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called "eLibrary" or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] "We," "us," and "our" refer to the environmental staff of the Commission's Office of Energy Projects.

[4] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, § 1501.6.

[5] The Advisory Council on Historic Preservation regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov*.

(1) You can file your comments electronically using the eComment feature located on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. This is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You can file your comments electronically using the eFiling feature located on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the planned project.

If we publish and distribute the EA, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (Appendix 2).

Becoming an Intervenor

Once Gulf South files its application with the Commission, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the User's Guide under the ''e-filing'' link on the Commission's Web site. Please note that the Commission will not accept requests for intervenor status at this time. You must wait until the Commission receives a formal application for the project.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (i.e., PF12–21). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/esubscribenow.htm*.

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information. Information about the project may also be found on Gulf South's Web site at *http://www.gulfsouthpl.com/ExpansionProjectsGS.aspx*.

Dated: November 19, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–28541 Filed 11–23–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL13–21–000]

California Independent System Operator Corporation; Notice Establishing Answer Period to Limited Emergency Protest

On November 16, 2012, JP Morgan Ventures Energy Corp. (JPMVEC) filed a Limited Emergency Protest (Protest) regarding the comment period for the California Independent System Operator Corporation's (CAISO) petition for declaratory order and request for expedited treatment filed on November 16, 2012. *(See Notice of Petition for Declaratory Order,* November 16, 2012)

Upon consideration, notice is hereby given that the date for filing answers to JPMVEC's Protest is shortened to and including November 20, 2012.

Dated: November 19, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–28549 Filed 11–23–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR13–10–000]

Moss Bluff Hub, LLC; Notice of Filing

Take notice that on November 15, 2012, Moss Bluff Hub, LLC, (Moss Bluff) filed to revise its Statement of Operating Conditions (SOC) to reflect, among other things modifications to Section 3 (Request for Storage Service), as more fully described in the filing.

Any person desiring to participate in this rate filing 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). 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. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at http://www.ferc.gov. Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on Tuesday, November 27, 2012.

Dated: November 19, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–28545 Filed 11–23–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR13–9–000]

Magic Valley Pipeline, L.P.; Notice of Filing

Take notice that on November 15, 2012, Magic Valley Pipeline, L.P. (Magic Valley) filed to revise its Statement of Operating Conditions (SOC) to reflect among other things, the discontinuation of interruptible transportation service as more fully described in the filing.

Any person desiring to participate in this rate filing 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). 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. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on Tuesday, November 27, 2012.

Dated: November 19, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–28544 Filed 11–23–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. PR13–6–000; PR13–7–000]

Washington Gas Light Company; Notice of Petition for Rate Approval

Take notice that on November 9, 2012, Washington Gas Light Company (Washington Gas) filed its Lost and unaccounted-for Gas (LAUF) as provided for in Paragraph IV.F of its FERC NGPA Gas Tariff as more fully detailed in the petition.

Any person desiring to participate in this rate filing 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). 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. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on Tuesday, November 27, 2012.

Dated: November 19, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–28543 Filed 11–23–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR13–7–000]

Enterprise Liquids Pipeline LLC; Notice of Petition for Declaratory Order

Take notice that on November 14, 2012, pursuant to Rule 207(a)(2) of the Commission's Rules of Practices and Procedure, 18 CFR 385.207(a)(2)(2012), Enterprise Liquids Pipeline LLC, filed a petition seeking a declaratory order approving the rate structures, services and prorationing terms, as more fully explained in its petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). 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. Any person wishing to become a party must file a notice of

intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on Tuesday, December 4, 2012

Dated: November 15, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–28471 Filed 11–23–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14438–000]

Resolute Marine Energy, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On July 25, 2012, Resolute Marine Energy, Inc. (Resolute or Applicant) filed an application for a preliminary permit under section 4(f) of the Federal Power Act proposing to study the feasibility of the Yakutat Alaska Wave Energy Project No. 14438. Resolute supplemented its application on September 19, 2012. The proposed project would be located within a 25.26 square mile area within Alaska State submerged lands in the Gulf of Alaska, near the City and Borough of Yakutat, Alaska.

A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of: (1) Between 7 and 15 Surge Wave Energy Converters for a maximum total installed capacity of 750 kilowatts; (2) a single transmission line to bring project power to shore; (3) shore-based power conditioning equipment, transformers, and voltage regulations facilities; and (5) appurtenant facilities. The project would have an estimated annual generation of 3,942 megawatthours.

Applicant Contact: Mr. P. William Staby, Resolute Marine Energy, Inc., 3 Post Office Square, 3rd floor, Boston, MA 02109; (917) 626–6790; *wstaby@resolutemarine.com.*

FERC Contact: Kenneth Hogan (202) 502–8434 or via email at: *Kenneth.hogan@ferc.gov.*

Deadline for filing comments, motions to intervene, and competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14438) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: November 15, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–28465 Filed 11–23–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications

listed are grouped by docket numbers in ascending order. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket No.	Filed date	Presenter or requester
Prohibited:		
1. CP11–515–000	11–19–12	Minisink Resident.[1]
Exempt:		
1. CP12–29–000	10–26–12	FERC Staff.[2]
2. CP11–161–000	11–8–12	Hon. Barbara Buono.
3. EL11–50–000	11–16–12	U.S. Congress.[3]

[1] Distributed protest card regarding the 11–15–12 Commission Meeting.
[2] Phone record.
[3] Letter signed by 13 members of the Congress of the United States.

Dated: November 19, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–28547 Filed 11–23–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–464–000]

Petal Gas Storage, L.L.C., Hattiesburg Industrial Gas Sales, L.L.C.; Notice of Offer of Settlement

Take notice that on November 8, 2012, Petal Gas Storage, L.L.C. (Petal) and Hattiesburg Industrial Gas Sales, L.L.C. (Hattiesburg), filed a Stipulation and Agreement (Settlement), including *pro forma* tariff records, pursuant to 18 CFR 385.602 (2012) to resolve all issues in the above-captioned docket raised by Consolidated Edison of New York, Inc. (ConEd).

The Stipulation and Agreement is uncontested by all settling parties (Petal, Hattiesburg and ConEd) within the meaning of Rule 602(g). Petal and Hattiesburg have submitted to ConEd a draft service agreement that would govern ConEd's firm storage service under Petal's Rate Schedule FSS. Petal has also agreed as a part of the Settlement to make the tariff filings set forth in Article I of the Stipulation and Agreement to address ConEd's concerns regarding the terms and conditions of Petal's FSS service. Except as specified, each of the tariff filings will be generally applicable to all Petal customers, including former Hattiesburg customers, and are designed to replicate certain aspects of the terms and conditions of the 311 firm storage service offered by Hattiesburg. Petal agrees to submit tariff filing in a compliance filing to the Commission within thirty days of the effective date of this Settlement, all as described more fully in the Settlement filing.

Petal states that it has served copies of this filing on all affected customers and interested state commissions. Pursuant to Rule 602(f)(2) of the Commission's Rules of Practice and Procedure, 18 CFR 385.602(f)(2) (2012), initial comments on the Settlement are due not later than 20 days after the filing of the Settlement, and reply comments are due not later than 30 days after the filing of the Settlement.

The Commission encourages electronic submission interventions and comments in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comments are due by: November 28, 2012.

Reply Comments are due by: December 8, 2012.

Dated: November 19, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–28542 Filed 11–23–12; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

Federal Advisory Committee Act; Technological Advisory Council

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the Federal Communications Commission's (FCC) Technological Advisory Council will hold a meeting on Monday, December 10, 2012 in the Commission Meeting Room, from 1 p.m. to 4 p.m. at the Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

DATES: December 10, 2012.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Walter Johnston, Chief, Electromagnetic Compatibility Division, 202–418–0807; *Walter.Johnston@FCC.gov.*

SUPPLEMENTARY INFORMATION: The FCC Technological Advisory Council discussed progress and issues related to its 2012 work program at its last meeting on September 24, 2012. This meeting will present the final recommendations of the TAC work groups and discuss recommendations for future work efforts. The FCC will attempt to accommodate as many people as possible. However, admittance will be limited to seating availability. Meetings are also broadcast live with open captioning over the internet from the FCC Live Web page at *http://www.fcc.gov/live/.* The public may submit written comments before the meeting to: Walter Johnston, the FCC's Designated Federal Officer for Technological Advisory Council by email: *Walter.Johnston@fcc.gov* or U.S. Postal Service Mail (Walter Johnston, Federal Communications Commission, Room 7–A224, 445 12th Street SW., Washington, DC 20554). Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling

the Office of Engineering and Technology at 202–418–2470 (voice), (202) 418–1944 (fax). Such requests should include a detailed description of the accommodation needed. In addition, please include your contact information. Please allow at least five days advance notice; last minute requests will be accepted, but may be impossible to fill.

Federal Communications Commission.

Bulah P. Wheeler,

Associate Secretary.

[FR Doc. 2012–28491 Filed 11–23–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (''PRA''), 44 U.S.C. 3501 *et seq.,* the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the renewal of an existing information collection, as required by the PRA. On September 20, 2012 (77 FR 58378), the FDIC solicited public comment for a 60-day period on the renewal of the following information collection: Mutual-to-Stock Conversion of State Savings Banks. No comments were received. Therefore, the FDIC hereby gives notice of submission of its request for renewal to OMB for review.

DATES: Comments must be submitted on or before December 26, 2012.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html.*
- *Email: comments@fdic.gov.* Include the name of the collection in the subject line of the message.
- *Mail:* Gary A. Kuiper (202.898.3877), Counsel, Room NYA–5046, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Gary A. Kuiper, at the FDIC address above.

SUPPLEMENTARY INFORMATION:

Proposal To Renew the Following Currently-Approved Collection of Information

Title: Mutual-to-Stock Conversion of State Savings Banks.

OMB Number: 3064–0117.

Affected Public: State nonmember banks.

Estimated Number of Respondents: 15.

Estimated burden per respondent: 250.

Estimated Total Annual Burden Hours: 3750 hours.

General Description of Collection: State nonmember savings banks musts file with the FDIC a notice of intent to convert to stock form, and provide the FDIC with copies of documents filed with state and federal banking and/or securities regulators in connection with the proposed conversion.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 20th day of November 2012.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2012–28587 Filed 11–23–12; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Information Collection; Submission for OMB Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act, and request for comment.

SUMMARY: The Federal Deposit Insurance Corporation, 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 a new information collection, as required by the Paperwork Reduction Act of 1995.

An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The FDIC is soliciting comment concerning its information collection titled, ''Annual Stress Test Reporting Template and Documentation for Covered Banks with Total Consolidated Assets of $50 Billion or More under the Dodd-Frank Wall Street Reform and Consumer Protection Act.''

DATES: Comments must be received by December 26, 2012.

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

- *Agency Web Site: http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow the instructions for submitting comments on the FDIC Web site.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: Comments@FDIC.gov.* Include ''Annual Stress Test Reporting Template and Documentation'' on the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, FDIC, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery/Courier:* Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose.html* including any personal information provided. Comments may be inspected at the FDIC

Public Information Center, 3501 North Fairfax Drive, Room E–1002, Arlington, VA 22226 between 9 a.m. and 4:30 p.m. on business days.

Additionally, please send a copy of your comments to: By mail to the U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503 or by facsimile to 202.395.6974, Attention: Federal Banking Agency Desk Officer.

FOR FURTHER INFORMATION CONTACT: You can request additional information from Gary Kuiper, 202.898.3877, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., NYA–5046, Washington, DC 20429. In addition, copies of the templates referenced in this notice can be found on the FDIC's Web site (*http://www.fdic.gov/regulations/laws/federal/propose.html*).

SUPPLEMENTARY INFORMATION: The FDIC is requesting comment on the following new proposed information collection:

Annual Stress Test Reporting Template and Documentation for Covered Banks With Total Consolidated Assets of $50 Billion or More Under the Dodd-Frank Wall Street Reform and Consumer Protection Act

Section 165(i)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act [1] (Dodd-Frank Act) requires certain financial companies, including state nonmember banks and state savings associations, to conduct annual stress tests [2] and requires the primary financial regulatory agency [3] of those financial companies to issue regulations implementing the stress test requirements.[4] A state nonmember bank or state savings association is a ''covered bank'' and therefore subject to the stress test requirements if its total consolidated assets are more than $10 billion. Under section 165(i)(2), a covered bank is required to submit to the Board of Governors of the Federal Reserve System (Board) and to its primary financial regulatory agency a report at such time, in such form, and containing such information as the primary financial regulatory agency may require.[5] On October 9, 2012, the FDIC published in the **Federal Register** a final rule implementing the section 165(i)(2) annual stress test requirement.[6] This notice describes the reports and information required to meet the reporting requirements under section 165(i)(2). These information collections will be given confidential treatment (5 U.S.C. 552(b)(4)).

The FDIC intends to use the data collected through these proposed templates to assess the reasonableness of the stress test results of covered banks and to provide forward-looking information to the FDIC regarding a covered bank's capital adequacy. The FDIC also may use the results of the stress tests to determine whether additional analytical techniques and exercises could be appropriate to identify, measure, and monitor risks at the covered bank. The stress test results are expected to support ongoing improvement in a covered bank's stress testing practices with respect to its internal assessments of capital adequacy and overall capital planning.

The Dodd-Frank Act stress testing requirements apply to all covered banks, but the FDIC recognizes that many covered banks with consolidated total assets of $50 billion or more have been subject to stress testing requirements under the Board's Comprehensive Capital Analysis and Review (CCAR). The FDIC also recognizes that these banks' stress tests will be applied to more complex portfolios and therefore warrant a broader set of reports to adequately capture the results of the stress tests. These reports will necessarily require more detail than would be appropriate for smaller, less complex institutions. Therefore, the FDIC has decided to specify separate reporting templates for covered banks with total consolidated assets between $10 billion and $50 billion and for covered banks with total consolidated assets of $50 billion or more. In cases where a covered bank with assets less than $50 billion is affiliated with a banking organization with assets of $50 billion or more, the FDIC reserves the authority to require that covered bank to use the reporting template for larger banks with total consolidated assets of $50 billion or more. The FDIC may also, on a case-by-case basis, require a covered bank with assets of $50 billion or more to report stress test results using a simpler format to be specified by the FDIC. The reporting templates for institutions with assets of $50 billion or more are described below.

The FDIC has worked closely with the Board and the Office of the Comptroller of the Currency (OCC) to make the agencies' respective rules implementing annual stress testing under the Dodd-Frank Act consistent and comparable by requiring similar standards for scope of application, scenarios, data collection and reporting forms. The FDIC has worked to minimize any potential duplication of effort related to the annual stress test requirements. The FDIC also recognizes that many covered banks with total consolidated assets of $50 billion or more are required to submit reports using CCAR reporting form FR Y–14A.[7] Therefore, the FDIC based its reporting requirements closely on the Board's form FR Y–14A for covered banks with total consolidated assets of $50 billion or more. The FDIC recognizes the Board modified the FR Y–14A and, to the extent practical, the FDIC anticipates keeping its reporting requirements consistent with the Board's FR Y–14A in order to minimize burden on covered banks.[8] In order to fully evaluate the stress test results submissions, the FDIC may conduct follow-up discussions with or request responses to follow-up questions from respondents, as needed.

Description of Reporting Templates for Banks With $50 Billion or More in Assets

The FDIC DFAST–14A Summary Schedule includes data collection worksheets necessary for the FDIC to assess the company-run stress test results for baseline, adverse and severely adverse scenarios as well as any other scenario specified in accordance with regulations specified by the FDIC. The DFAST–14A Summary Schedule includes worksheets that collect information on the following areas:

1. Income Statement;
2. Balance Sheet;
3. Capital Statement;
4. Retail Risk;
5. Securities: Available-for-Sale/Held to Maturity (AFS/HTM);
6. Trading;
7. Counterparty Credit Risk (CCR);
8. Operational Risk; and
9. Pre-Provision Net Revenue (PPNR).

Each covered bank reporting to the FDIC using this form will be required to submit to the FDIC a separate DFAST–14A Summary Schedule for each scenario provided to covered banks in accordance with regulations implementing Section 165(i)(2) as specified by the FDIC.

Worksheets: Income Statement

This income statement worksheet collects data for the quarter preceding the planning horizon and for each quarter of the planning horizon for the stress test on projected losses and revenues in the following categories.

1. Loan losses;

[1] Public Law 111–203, 124 Stat. 1376, July 21, 2010.

[2] 12 U.S.C. 5365(i)(2)(A).

[3] 12 U.S.C. 5301(12).

[4] 12 U.S.C. 5365(i)(2)(C).

[5] 12 U.S.C. 5365(i)(2)(B).

[6] 77 FR 62417, October 15, 2012.

[7] *http://www.federalreserve.gov/reportforms.*

[8] 77 FR 60695, October 4, 2012.

2. Losses due to contingent commitments and liabilities;
3. Other Than Temporary Impairments (OTTI) on assets held to maturity and available for sale;
4. Trading account losses;
5. Allowance for loan and lease losses;
6. Pre-provision net revenue; and
7. Repurchase reserve/liability for representations and warranties.

This schedule provides information used to assess losses that covered banks can sustain in adverse and severely adverse stress scenarios.

Worksheets: Balance Sheet

The balance sheet worksheet collects data for the quarter preceding the planning horizon and for each quarter of the planning horizon for the stress test on projected equity capital, as well as on assets and liabilities in the following categories.

1. HTM Securities;
2. AFS Securities;
3. Loans;
4. Trading Assets;
5. Intangibles;
6. Deposits; and
7. Trading Liabilities.

The FDIC intends to use this worksheet to assess the projected changes in assets and liabilities that a covered bank can sustain in an adverse and severely adverse stress scenario. This worksheet will also be used to assess the revenue and loss projections identified in the income statement worksheet.

Worksheets: Capital

The capital worksheet collects data for the quarter preceding the planning horizon and for each quarter of the planning horizon for the stress test on the following areas.

1. Changes to Equity Capital;
2. Changes to Regulatory Capital; and
3. Capital Actions.

The FDIC intends to use this worksheet to assess the impact on capital of the projected losses and projected changes in assets that the covered bank can sustain in a stressed scenario. In addition to reviewing the worksheet in the context of the balance sheet and income statement projections, the FDIC also intends to use this worksheet to assess the adequacy of the capital plans and capital planning processes for each covered bank.

Worksheets: Retail Projections

The retail projections worksheets collect data for each quarter of the planning horizon for the stress test on projected balances and losses for major retail portfolios: residential real estate, credit card, automobile, student loans, small business loans, and other consumer. For residential real estate, the worksheets collect data for first lien mortgages, home equity lines of credit, and home equity loans. For all major retail portfolios, the worksheets contain separate segments for domestic and international loans for various product types. Within each broad product-type segment, the reporting for the portfolio is divided into a number of sub-segments that embody unique risk characteristics. This modular product-type design of the retail worksheet allows for a targeted data collection that encompasses only the material portfolios in a given product area for a particular covered bank. A covered bank would be required to complete only the segments and sub-segments material for that bank. This design is intended to limit burden while maximizing the supervisory information produced from the collection.

Worksheets: Securities

Several securities worksheets collect data related to AFS and HTM securities. The worksheets collect data and information such as: Projected OTTI by asset class for each quarter of the forecast time horizon; methodologies and assumptions used to generate the OTTI projections for each asset class; projected stressed fair market value (FMV) for each asset class as well as qualitative information on the methodologies and assumptions used to generate the stressed market value; and actual FMV including the source (vendor or proprietary) and key assumptions used in determining market values (if using a proprietary model).

Worksheets: Trading and Counterparty Risk

The trading and counterparty risk worksheets collect projected losses associated with a specified global market risk scenario for covered banks with large trading operations. The FDIC provides a set of risk factors relevant to the trading and counterparty positions so that respondent covered banks project trading and counterparty components in the adverse and severely adverse scenarios.

Completion of the trading and counterparty risk worksheets would be required only for those banks subject to the market shock provided by the FDIC.

Worksheets: Operational Risk

The operational risk worksheets collect data on covered banks' projections of operational losses for each quarter of the planning horizon for the stress test. Operational losses are defined as losses arising from inadequate or failed internal processes, people, and systems or from external events including legal losses. Some examples of operational loss events are losses related to improper business practices (including class action lawsuits), execution errors, and fraud. Additional detail may be requested in order for the FDIC to evaluate the transformation of the covered banks' historical loss experience into operational loss projections. Additional detail also may be requested on any budgeting processes used to project operational losses.

Completion of the operational risk worksheets would be required only for those banks subject to advanced approaches risk-based capital rules.

Worksheets: PPNR

For the PPNR worksheets, covered banks must provide projections for the three major components of PPNR (net interest income, non-interest income, and non-interest expense) for each quarter of the planning horizon. Collection of these data in this format is based on the assumption that the revenues generated by different business lines are affected differently by different stress scenarios, and such a view facilitates a more robust analysis of the resulting projections.

Description of FDIC DFAST–14A Counterparty Credit Risk Template

The CCR template collects, on various worksheets, data to identify credit valuation adjustment (CVA), exposures, and CVA sensitivities for the covered bank's top counterparties along a number of dimensions, including current CVA, stressed CVA, net current exposure, and gross current exposure. Covered banks also must submit aggregate CVA, exposures, and CVA sensitivities by ratings categories. The Notes to the CCR Schedule worksheet allow covered banks to voluntarily submit additional information to provide clarity to the portfolio. Covered banks are required to report results for one scenario and two specifications to capture Expected Exposure profiles.

Completion of the CCR template would be required only for those institutions subject to the market shock provided by the FDIC.

Description of FDIC DFAST–14A Basel III and Dodd-Frank Template

The Basel III and Dodd-Frank template collects projections of Tier 1 Common Equity, Tier 1 Capital, Risk-Weighted Assets (RWA), and Leverage Exposures (along with granular

components of those elements) under the baseline scenario for each year through 2017. Banks are required to complete the schedule based on the methodologies outlined in the U.S. banking agencies NPRs: Basel III NPR, Advanced Approaches NPR, and final market risk capital rule (see FDIC Joint Release dated June 12, 2012 [9]). Covered banks also are required to include data on the projected impact of any significant actions planned in response to Basel III and the Dodd-Frank Act (for example, asset sales, asset wind-downs, and data collection and modeling enhancements). The FDIC expects to align this template and its instructions with the rules implementing the Basel III framework in the U.S. when those rules are final.

Description of FDIC DFAST–14A Regulatory Capital Instruments Template

The regulatory capital instruments schedule collects historical data and projections of covered banks' balances of the funded instruments that are included in regulatory capital. The schedule collects data by instrument type, in addition to projections for issuances and redemptions that contribute to changes in balances under the covered bank baseline scenario.

Description of FDIC DFAST–14A Operational Risk Template

The operational risk schedule collects data on covered banks' historical and current operational losses. This schedule is only required from covered banks subject to the advanced approaches risk-based capital rules. The first worksheet gathers data on covered banks' operational risk capital by unit-of-measure (undiversified basis) from Q4 of the previous year to Q3 of the reporting year. The second worksheet gather data on the total dollar value of a covered banks' legal reserve balance as of September 30.

Description of FDIC DFAST–14A Scenario Template

To conduct the stress test required under this rule, a covered bank may need to project additional economic and financial variables to estimate losses or revenues for some or all of its portfolios. In such a case, the covered bank is required to complete a worksheet for each scenario where such additional variables are used to conduct the stress test. Each scenario worksheet collects the variable name (matching that reported on the Scenario Variable Definitions worksheet), the actual value of the variable during the Q3 of the reporting year, and the projected value of the variable for nine future quarters.

Description of FDIC DFAST–14A Contact Information Template

The contact information template includes a directory worksheet for reporting points of contact for each of the templates described above: summary, counterparty credit risk, Basel III and Dodd-Frank, operational risk, regulatory capital instruments, and scenario.

Description of Supporting Documentation

Covered banks must submit clear documentation of the projections included in the worksheets to support efficient and timely review of annual stress test results by the FDIC. The supporting documentation should be submitted electronically and is not expected to be reported in the workbooks used for required data reporting. This supporting documentation must clearly describe the methodology used to produce the stress test projections, and must include how the macroeconomic factors were translated into a covered bank's projections, as well as technical details of any underlying statistical methods used. Where company-specific assumptions are made that differ from the broad macroeconomic assumptions incorporated in stress scenarios provided by the FDIC, the documentation must also describe such assumptions and how those assumptions relate to reported projections. Where historical relationships are relied upon, the covered banks must describe the historical data and provide the basis for the expectation that these relationships would be maintained in each scenario, particularly under adverse and severely adverse conditions.

Comment Summary

In the **Federal Register** of August 30, 2012 (77 FR 52718), the FDIC published a 60-day notice requesting public comment on the templates and the collection of information. The FDIC did not receive any comments.

Burden Estimates

The FDIC estimates the burden of this collection of information as follows:

Estimated Number of Respondents: 4.

Estimated Annual Burden per Respondent: 1,040 hours.

Estimated Total Annual Burden: 4,160 hours.

The FDIC recognizes the Board has estimated 79,200 hours for bank holding companies to prepare their systems for submitting data for the FR Y–14.[10] The FDIC believes that these systems will also be used to submit data for the reporting templates described in this notice.

Comments continue to be invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the FDIC, including whether the information has practical utility; (b) The accuracy of the FDIC'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 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.

Dated at Washington, DC, this 20th day of November 2012.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2012–28596 Filed 11–23–12; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update Listing of Financial Institutions in Liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the **Federal Register**) may be relied upon as ''of record'' notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation

[9] *http://www.fdic.gov/news/news/press/2012/pr12068.html.*

[10] 77 FR 60695 (October 4, 2012).

Web site at *www.fdic.gov/bank/individual/failed/banklist.html* or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: November 19, 2012.

Federal Deposit Insurance Corporation.

Pamela Johnson,

Regulatory Editing Specialist.

INSTITUTIONS IN LIQUIDATION

[In alphabetical order]

FDIC Ref. No.	Bank name	City	State	Date closed
10466	Hometown Community Bank	Braselton	GA	11/16/2012

[FR Doc. 2012–28554 Filed 11–23–12; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notice

AGENCY: Federal Election Commission.

DATE AND TIME: Wednesday, November 28, 2012 at 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. 437g. Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C. Matters concerning participation in civil actions or proceedings or arbitration. Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shawn Woodhead Werth,

Secretary and Clerk of the Commission.

[FR Doc. 2012–28757 Filed 11–21–12; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Federal Open Market Committee Domestic Policy Directive of October 23–24, 2012

In accordance with Section 271.25 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on October 23–24, 2012.[1]

''The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. To further its long-run objectives, the Committee seeks conditions in reserve markets consistent with federal funds trading in a range from 0 to ¼ percent. The Committee directs the Desk to continue the maturity extension program it announced in June to purchase Treasury securities with remaining maturities of 6 years to 30 years with a total face value of about $267 billion by the end of December 2012, and to sell or redeem Treasury securities with remaining maturities of approximately 3 years or less with a total face value of about $267 billion. For the duration of this program, the Committee directs the Desk to suspend its policy of rolling over maturing Treasury securities into new issues. The Committee directs the Desk to maintain its existing policy of reinvesting principal payments on all agency debt and agency mortgage-backed securities in the System Open Market Account in agency mortgage-backed securities. The Desk is also directed to continue purchasing agency mortgage-backed securities at a pace of about $40 billion per month. The Committee directs the Desk to engage in dollar roll and coupon swap transactions as necessary to facilitate settlement of the Federal Reserve's agency MBS transactions. The System Open Market Account Manager and the Secretary will keep the Committee informed of ongoing developments regarding the System's balance sheet that could affect the attainment over time of the Committee's objectives of maximum employment and price stability.''

By order of the Federal Open Market Committee, November 15, 2012.

William B. English,

Secretary, Federal Open Market Committee.

[FR Doc. 2012–28508 Filed 11–23–12; 8:45 am]

BILLING CODE 6210–01–P

[1] Copies of the Minutes of the Federal Open Market Committee at its meeting held on October 23–24, 2012, which includes the domestic policy directive issued at the meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, DC 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's Annual Report.

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 19, 2012.

A. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Quanah Financial Corporation Employee Stock Ownership Plan, Quanah, Texas,* to retain 32.73 percent of Quanah Financial Corporation, Quanah, Texas, and thereby indirectly acquire First Capital Bank, Quanah, Texas.

Board of Governors of the Federal Reserve System.

Dated: November 20, 2012.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2012–28556 Filed 11–23–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 101 0137]

Hertz Global Holdings, Inc.; Analysis of Agreement Containing Consent Orders To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis To Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before December 17, 2012.

ADDRESSES: Interested parties may file a comment at *https://ftcpublic.commentworks.com/ftc/hertzdollarthriftyconsent* online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Hertz, File No. 101 0137'' on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/hertzdollarthriftyconsent* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Michael R. Moiseyev (202–326–3106), FTC, Bureau of Competition, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis To Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for November 15, 2012), on the World Wide Web, at *http://www.ftc.gov/os/actions.shtm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before December 17, 2012. Write ''Hertz, File No. 101 0137'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which * * * is privileged or confidential,'' as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/hertzdollarthriftyconsent* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Hertz, File No. 101 0137'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before December 17, 2012. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis of Agreement Containing Consent Order To Aid Public Comment

I. Introduction

The Federal Trade Commission (''Commission'') has accepted from Hertz Global Holdings, Inc. (''Hertz''), subject to final approval, an Agreement Containing Consent Orders (''Consent Agreement''), which is designed to remedy the anticompetitive effects resulting from Hertz's proposed acquisition of Dollar Thrifty Automotive Group, Inc. (''Dollar Thrifty''). Under the terms of the Consent Agreement, Hertz will divest its Advantage Rent A Car (''Advantage'') business as well as the right to operate at 16 additional Dollar Thrifty on-airport locations at which Advantage does not yet operate to Franchise Services of North America, Inc. (''FSNA'') and Macquarie Capital

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

USA Inc. (''Macquarie'') (collectively ''FSNA/Macquarie''). Hertz will also divest 13 additional Dollar Thrifty on-airport locations to FSNA/Macquarie or another buyer, subject to the approval of the Commission, following the closing of its acquisition of Dollar Thrifty.

The proposed Consent Agreement has been placed on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the proposed Consent Agreement and will decide whether it should withdraw from the proposed Consent Agreement, modify it, or make it final.

Pursuant to an Agreement and Plan of Merger dated August 26, 2012, Hertz plans to acquire Dollar Thrifty for approximately $2.3 billion. The Commission's Complaint alleges that the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by lessening competition in the market for airport car rentals.

II. The Parties

Hertz, headquartered in Park Ridge, New Jersey, is a global supplier of automobile and equipment rentals and related products and services. The company provides car rentals to consumers at virtually every large or medium-sized commercial airport in the United States.

Dollar Thrifty is headquartered in Tulsa, Oklahoma, and supplies automobile rentals to customers throughout the United States and Canada. In the United States, Dollar Thrifty is present at most major airports, and it operates 86 company-owned airport locations.

III. The Relevant Product and Structure of the Markets

The acquisition threatens to harm competition in the airport car rental market. Airport car rentals consist of car rentals made to consumers at airport locations. Airport car rentals are a distinct relevant market because alternative modes of transportation, such as a taxis or buses, are not reasonable substitutes. Other forms of transportation do not provide the convenience, autonomy, or cost efficiency of renting a car, and, as a practical matter, customers are unlikely to turn to these alternative forms of transportation in response to a small but significant increase in airport car rental prices. There are two categories of airport car rentals: those made to individual customers; and contracted rentals that are available only to volume purchasers, such as corporate or government customers who have pre-negotiated car rental contracts and tour operators offering vacation packages. The competitive concerns associated with the proposed transaction are similar whether the market is viewed as an overall airport car rental market, or as a narrower one excluding rentals made pursuant to pre-negotiated rates and terms.

There are four major competitors operating in the airport car rental market: Hertz, which operates the Advantage and Hertz brands; Dollar Thrifty, which operates the Dollar and Thrifty brands; Avis Budget Group, Inc., which operates the Avis and Budget brands; and Enterprise Holdings, Inc., which operates the National, Alamo, and Enterprise brands. Market shares vary by individual airport, but on a national level these four firms account for approximately 98% of all U.S. airport car rentals.

The relevant geographic markets in which to evaluate the competitive effects of the acquisition are 72 individual airport locations:

- Albuquerque, New Mexico (Albuquerque International Sunport Airport)
- Atlanta, Georgia (Hartsfield-Jackson International Airport)
- Austin, Texas (Austin-Bergstrom International Airport)
- Baltimore, Maryland (Baltimore/Washington International Thurgood Marshall Airport)
- Boston, Massachusetts (Logan International Airport)
- Burbank, California (Burbank Bob Hope Airport)
- Burlington, Vermont (Burlington International Airport)
- Charleston, South Carolina (Charleston International Airport)
- Charlotte, North Carolina (Charlotte Douglas International Airport)
- Chicago, Illinois (Chicago Midway International Airport)
- Chicago, Illinois (Chicago O'Hare International Airport)
- Cincinnati, Ohio (Cincinnati/Northern Kentucky International Airport)
- Cleveland, Ohio (Cleveland Hopkins International Airport)
- Colorado Springs, Colorado (Colorado Springs Airport)
- Dallas, Texas (Dallas Love Field Airport)
- Dallas, Texas (Dallas/Fort Worth International Airport)
- Detroit, Michigan (Detroit Metro Airport)
- Denver, Colorado (Denver International Airport)
- Des Moines, Iowa (Des Moines Airport)
- El Paso, Texas (El Paso Airport)
- Fort Lauderdale, Florida (Fort Lauderdale-Hollywood Airport)
- Fort Myers, Florida (Southwest Florida International Airport)
- Fort Walton Beach, Florida (Fort Walton Beach Regional Airport)
- Harlingen, Texas (Valley International Airport)
- Hartford, Connecticut (Bradley International Airport)
- Hilo, Hawaii (Hilo International Airport)
- Honolulu, Hawaii (Honolulu International Airport)
- Houston, Texas (George Bush Intercontinental Airport)
- Houston, Texas (William P. Hobby Airport)
- Jacksonville, Florida (Jacksonville International Airport)
- Kahului, Hawaii (Kahului Airport)
- Las Vegas, Nevada (McCarran International Airport)
- Lihue, Hawaii (Lihue Airport)
- Los Angeles, California (Los Angeles International Airport)
- Louisville, Kentucky (Louisville International Airport)
- Manchester, New Hampshire (Manchester-Boston Regional Airport)
- Miami, Florida (Miami International Airport)
- Milwaukee, Wisconsin (Milwaukee International Airport)
- Minneapolis-St. Paul, Minnesota (Minneapolis-St. Paul International Airport)
- Nashville, Tennessee (Nashville International Airport)
- New York, New York (LaGuardia Airport)
- New York, New York (John F. Kennedy International Airport)
- Newark, New Jersey (Newark Liberty International Airport)
- Norfolk, Virginia (Norfolk International Airport)
- Oakland, California (Oakland International Airport)
- Oklahoma City, Oklahoma (Will Rogers World Airport)
- Omaha, Nebraska (Omaha Airport)
- Los Angeles, California (Ontario International Airport)
- Orange County, California (John Wayne Airport)
- Orlando, Florida (Orlando International Airport)
- Pensacola, Florida (Pensacola International Airport)
- Phoenix, Arizona (Sky Harbor Airport)
- Pittsburgh, Pennsylvania (Pittsburgh International Airport)

- Portland, Oregon (Portland International Airport)
- Providence, Rhode Island (T.F. Green Airport)
- Raleigh-Durham, North Carolina (Raleigh-Durham International Airport)
- Reno, Nevada (Reno-Tahoe International Airport)
- Richmond, Virginia (Richmond International Airport)
- Sacramento, California (Sacramento International Airport)
- Salt Lake City, Utah (Salt Lake City International Airport)
- San Antonio, Texas (San Antonio International Airport)
- San Diego, California (San Diego International Airport)
- Sanford, Florida (Orlando-Sanford International Airport)
- San Francisco, California (San Francisco International Airport)
- San Jose, California (Norman Y. Mineta San Jose International Airport)
- Sarasota, Florida (Sarasota Bradenton International Airport)
- Seattle, Washington (Seattle-Tacoma International Airport)
- Tampa, Florida (Tampa International Airport)
- Tulsa, Oklahoma (Tulsa International Airport)
- Washington, District of Columbia (Ronald Reagan National Airport)
- Washington, District of Columbia (Washington Dulles International Airport)
- West Palm Beach, Florida (Palm Beach International Airport)

IV. Entry

Neither new entry nor repositioning and expansion sufficient to deter or counteract the anticompetitive effects of the proposed acquisition is likely to occur within two years. A new entrant to the airport car rental market would face significant obstacles, as entering the airport car rental business on an efficient scale is both expensive and time-consuming. In order to compete effectively across geographic markets, a new entrant must have concession contracts in place that allow it to operate at each individual airport, establish brand identity, gain access to online travel agencies and other distribution channels, and be of a size sufficient to achieve economies of scale. Further, in order to draw customers, a new entrant would have to develop a reputation for quality and reliability, and it would take at least several years to acquire a reputation on par with the existing national firms. These entry barriers have limited existing fringe firms from expanding beyond their regional footprints and collective low single-digit market share. Accordingly, new entry would not be timely, likely, or sufficient to counteract the anticompetitive effects that would arise as a result of the acquisition.

V. Effects of the Acquisition

Hertz and Dollar Thrifty are two of four major competitors in markets for airport car rentals. By eliminating the substantial competition between Hertz and Dollar Thrifty, the proposed acquisition would cause consumers of airport car rentals to pay higher prices and experience reduced levels of service and slower innovation rates.

With only four suppliers of national significance, the markets for airport car rentals are already highly concentrated. In many instances, Hertz and Dollar Thrifty compete head-to-head for the sale of airport car rentals in each relevant market. Among other ways of competing with Dollar Thrifty, Hertz's low-priced Advantage brand is positioned similarly to Dollar Thrifty in terms of price, features, and customer service, and Hertz's incentive to continue to expand Advantage would be reduced significantly post-acquisition. The elimination of the direct current and future competition between Hertz and Dollar Thrifty would allow Hertz to increase prices, slow the pace of innovation, and/or decrease service levels. In addition, the fact that only three firms would own all of the most competitively significant brands after the proposed acquisition leads to an increased likelihood of coordination among the remaining competitors.

VI. The Consent Agreement

The proposed Consent Agreement resolves the acquisition's anticompetitive effects by requiring Hertz to divest its entire Advantage business as well as 16 additional on-airport locations to FSNA/Macquarie. This divestiture will effectively replicate the loss of current and future competition that would occur if Hertz acquires Dollar Thrifty. Also, by creating a new independently-owned competitor with a national footprint, the Consent Agreement effectively addresses the threat of increased coordinated interaction among the remaining competitors. The Consent Agreement also requires that Hertz divest 13 additional Dollar Thrifty airport concession agreements and related assets to a Commission-approved buyer, whether FSNA/Macquarie or another acquirer, within 60 days of the closing of the acquisition. This requirement further ensures that the acquisition will not harm competition in the airport car rental market.

FSNA/Macquarie possesses the resources and capability to acquire the divested assets and replace Dollar Thrifty as an effective competitor in the affected geographic markets. FSNA has existing relationships with the major online travel agencies, has the IT infrastructure necessary to support the divested assets, and managers experienced in running a national airport car rental company. Macquarie is a global provider of banking, financial, advisory, investment and funds management services. Macquarie has committed substantial financial resources to the Advantage transaction, and it expects to provide additional growth capital as needed. FSNA/Macquarie's resources and expertise, together with the initial rental car fleet and other support terms contained in the Consent Agreement, will enable FSNA/Macquarie to compete effectively as the fourth largest rental car company in the country.

Pursuant to the Consent Agreement, FSNA/Macquarie will receive the assets necessary to replicate Advantage's airport car rental business, and this, coupled with the divestiture of the additional Dollar Thrifty airport concession agreements and related assets, remedies the unilateral and coordinated anticompetitive effects of the transaction. In addition to ensuring that employees of the businesses have the incentive to continue their employment with the acquirers, the Consent Agreement requires Hertz to provide FSNA/Macquarie with access to an initial rental car fleet and related support until FSNA/Macquarie can independently obtain its own fleet of cars. Combined, the Consent Agreement provisions ensure the benefits of competition that would otherwise have been lost through the acquisition will be maintained.

The Commission has appointed an interim monitor to oversee the divestiture of the assets after the Consent Agreement has been signed. In order to ensure that the Commission remains informed about the status of the proposed divestitures, the proposed Consent Agreement requires the parties to file periodic reports with the Commission until the divestiture is accomplished. If the Commission determines that Hertz has not fully complied with its obligations under the Decision and Order within ten days after the date the Decision and Order becomes final, the Commission may seek civil penalties to ensure that Hertz remains in compliance.

The purpose of this analysis is to facilitate public comment on the Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Decision and Order or to modify its terms in any way.

By direction of the Commission, Commissioner Rosch dissenting.

Donald S. Clark,

Secretary.

[FR Doc. 2012–28517 Filed 11–23–12; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: HHS–OS–17339–30D]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Office of the Secretary, Department of Health and Human Services, has submitted an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB) for review and approval. The ICR is for renewal of the approved information collection assigned OMB control number 0990–0302, scheduled to expire on November 31, 2012. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public on this ICR during the review and approval period.

DATES: Comments on the ICR must be received on or before December 26, 2012.

ADDRESSES: Submit your comments to *OIRA_submission@omb.eop.gov* or via facsimile to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690–6162.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the OMB control number 0990–0302 and document identifier HHS–OS–17339–30D for reference.

Information Collection Request Title: Medical Reserve Corps Unit Profile and Reports.

OMB No.: 0990–0302.

Abstract: Medical Reserve Corps (MRC) units are currently located in almost 1,000 communities across the United States, and represent a resource of more than 205,000 volunteers. In order to continue supporting the MRC units in communities across the United States, and to continue planning for future emergencies that are national in scope, detailed information about the MRC units, including unit demographics, contact information (regular and emergency), volunteer numbers, unit characteristics and information about activities is needed by the Division of Civilian Volunteer Medical Reserve Corps (DCVMRC). MRC Unit Leaders are asked to update this information on the MRC Web site at least quarterly, and to participate in a Technical Assistance Assessment at least annually. This OMB extension request is for 3 years.

Need and Proposed Use of the Information: DCVMRC uses MRC unit data in reports and presentations, and analyzes the data to assess the maturation and sustainment of the program, confirm that MRC units are carrying out activities in support of the Surgeon General's priorities, and to best tailor the technical assistance provided to MRC units. In addition, the data serves as an important recruitment tool for the individual MRC units. Often, before committing to volunteer with an MRC unit, potential volunteers go to the MRC Web site (*www.medicalreservecorps.gov*) to review the local MRC profile, which includes its name and point of contact, the most recent MRC unit activities, the community served, the date established, a narrative profile, and an up-to-date count of its volunteers.

Likely Respondents: MRC Unit Leaders

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions, to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information, to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information, and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
MRC Unit Registration Form	1,000	6	1	6,000
Total		6,000		6,000

Keith A. Tucker,

Information Collection Clearance Officer.

[FR Doc. 2012–28567 Filed 11–23–12; 8:45 am]

BILLING CODE 4150–47–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; Health Information Technology; HIT Policy Committee: Request for Comment Regarding the Stage 3 Definition of Meaningful Use of Electronic Health Records (EHRs)

AGENCY: Health Information Technology (HIT) Policy Committee, Office of the National Coordinator for Health Information Technology (ONC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces the HIT Policy Committee's request for comments on its draft recommendations for meaningful use Stage 3.

DATES: To be assured consideration, electronic comments must be received no later than 11:59p.m. ET on January 14, 2013.

ADDRESSES: Because of staff and resource limitations, we are only accepting comments electronically through *http://www.regulations.gov*. Follow the ''Submit a comment'' instructions. Attachments should be in Microsoft Word or Excel, WordPerfect, or Adobe PDF. Please do not submit duplicative comments.

FOR FURTHER INFORMATION CONTACT: MacKenzie Robertson, Office of the National Coordinator, Patriots Plaza III, 355 E Street SW., Washington, DC 20201, (202) 205–8089, *mackenzie.robertson@hhs.gov*.

SUPPLEMENTARY INFORMATION: The Request for Comment can be found on the ONC Web site at *http://www.healthit.gov/buzz-blog/*.

Inspection of Public Comments: All comments received before the close of the comment period will be available for public inspection, including any personally identifiable or confidential business information that is included in a comment. Please do not include anything in your comment submission that you do not wish to share with the general public. Such information includes, but is not limited to: A person's social security number; date of birth; driver's license number; state identification number or foreign country equivalent; passport number; financial account number; credit or debit card number; any personal health information; or any business information that could be considered to be proprietary. We will post all comments received before the close of the comment period on *http://www.regulations.gov*. Follow the search instructions on that Web site to view public comments.

Dated: November 14, 2012.

MacKenzie Robertson,

FACA Program Lead, Office of Policy and Planning, Office of the National Coordinator for Health Information Technology.

[FR Doc. 2012–28584 Filed 11–23–12; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10441]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. Type of Information Collection Request: New collection; *Title:* Medicare Plan Finder Experiment; *Use:* The mission of the Centers for Medicare & Medicaid Services (CMS) is to ensure the provision of health care to its beneficiaries. Recent legislative mandates, including the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, require CMS to provide information to beneficiaries about the quality of the Medicare health and prescription drug plans. To provide that information, all Medicare health and prescription drug plans with an enrollment of 600 or more are required to collect and report data following protocols that CMS has established. CMS has also contracted with various organizations to develop valid and reliable quality measures and to consider how best to report those measures to beneficiaries.

A primary vehicle for reporting quality information to beneficiaries is the Medicare Plan Finder, a section of the Medicare Web site that is intended to help beneficiaries make informed choices among health and prescription drug plans. The Medicare Plan Finder tool contains a great deal of potentially useful information, including extensive data on the fixed and variable costs associated with being enrolled in plans, the benefits and coverage that plans offer, and the quality of service that plans provide, as revealed by member experience data, disenrollment statistics, and a variety of measures of clinical processes and outcomes.

One of the key challenges that CMS has faced is how to engage beneficiaries with the quality information provided in the Medicare Plan Finder. Among the possible reasons that beneficiaries may fail to engage with this information are first, that several steps are required for a user of the Medicare Plan Finder to gain access to comparative plan information, and second that once the user does reach a data display, the amount of information presented is voluminous, and can seem overwhelming.

This study will use an experimental design to assess the effectiveness of two potential enhancements to the Medicare Plan Finder tool that may help address these barriers to engagement and use of quality information. The purpose of this experiment is to test the effects of two prospective enhancements to the Medicare Plan Finder (MPF) Web site. We refer to these prospective enhancements as the ''Quick Links'' home page and the ''enhanced data display.'' *Form Number:* CMS–10441(OCN#: 0938–New); *Frequency:* Reporting—Once; *Affected Public:* individuals or households; *Number of Respondents:* 600; *Total Annual Responses:* 600; *Total Annual Hours:* 252. (For policy questions regarding this collection contact David Miranda at 410–786–7819. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on *January 10, 2013.*

OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–6974, Email: *OIRA_submission@omb.eop.gov*.

Dated: November 19, 2012.

Martique Jones,

Director, Regulations Development Group, Division B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2012–28569 Filed 11–23–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10452 and CMS–10453]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* New collection; *Title of Information Collection:* CMS Enterprise Identity Management System; *Use:* The Enterprise Identity Management (EIDM) solution will provide an enterprise-wide solution that will also support CMS' senior management goal to improve the Provider and Health Information Exchange experience by providing an enterprise-wide set of credentials and single sign-on capability for multiple CMS applications. In order to prove the identity of an individual requesting electronic access to CMS protected information or services, CMS will collect a core set of attributes about that individual.

These core attributes will be used to:

1. Provide the identity proofing service sufficient data to establish that the individual's identity is provable to a NIST assurance level;
2. Store the approval information returned by the identity proofing service;
3. Provide CMS with additional data for multi-factor identification (personal questions and answers);
4. Provide the user a single sign-on, federated CMS EIDM ID and Password;
5. Authenticate the user; and
6. Authorize the user for application access.

The information collected will be gathered and used solely by CMS and approved contractor(s) and state health insurance exchanges. Information confidentiality will conform to HIPAA and FISMA requirements. Respondents may also access CMS Terms of Service and CMS Privacy Statement on the Web. *Form Numbers:* CMS–10452 (OCN: 0938–New); *Frequency:* Reporting—On occasion; *Affected Public:* Individuals and households; *Number of Annual Respondents:* 26 million; *Total Annual Responses:* 26,000,000; *Total Annual Hours:* 8,666,667. (For policy questions regarding this collection contact Robert Burger at 410–786–2125. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* New collection; *Title of Information Collection:* The Medicare Advantage and Prescription Drug Program: Part C Explanation of Benefits CFR 422.111(b)(12); *Use:* CMS is requesting OMB approval for the information collection requirements referenced in the April 15, 2011 final rule revising the Medicare Advantage (MA) and Part D programs for calendar year 2012 (77 FR 21432–21577). The rule revised the MA disclosure requirements in 42 CFR 422.111(b) by adding the authority for CMS to require MA organizations to furnish a written explanation of benefits directly to enrollees, in a manner specified by CMS and in a form easily understandable to enrollees, when benefits are provided under Part 422. The collection instrument that requires OMB approval concerns the disclosure requirements in paragraph 42 CFR 422.111(b)(12). This information collection request would require MA organizations to furnish directly to enrollees, in the manner specified by CMS and in a form easily understandable to such enrollees, a written explanation of benefits, when benefits are provided under Part 422. *Form Number:* CMS–10453 (OCN: 0938–New); *Frequency:* On occasion; *Affected Public:* Private Sector—Business or other for-profits. *Number of Respondents:* 564. *Number of Responses:* 2,256. *Total Annual Hours:* 101,520. (For policy questions regarding this collection contact Chris McClintick at 410–786–4682. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by *January 25, 2013:*

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number _____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: November 19, 2012.

Martique Jones,

Director, Regulations Development Group, Division B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2012–28570 Filed 11–23–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3262–FN]

Medicare and Medicaid Programs; Approval of the American Association for Accreditation of Ambulatory Surgery Facilities (AAAASF) for Continuing CMS Approval of Its Ambulatory Surgical Center Accreditation Program

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Final notice.

SUMMARY: This notice announces our decision to approve the American Association for Accreditation of Ambulatory Surgery Facilities (AAAASF) for continued recognition as a national accrediting organization for ambulatory surgical centers (ASCs) that wish to participate in the Medicare or Medicaid programs.

DATES: *Effective Date:* This final notice is effective November 27, 2012 through November 27, 2018.

FOR FURTHER INFORMATION CONTACT: Cindy Melanson, (410) 786–0310. Patricia Chmielewski, (410) 786–6899.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services in an ambulatory surgical center (ASC) provided certain requirements are met. Section 1832 (a)(2)(F)(i) of the Social Security Act (the Act) establishes distinct criteria for facilities seeking designation as an ASC. Regulations concerning provider agreements are at 42 CFR part 489 and those pertaining to activities relating to the survey and certification of facilities are at 42 CFR part 488. The regulations at 42 CFR part 416 specify the conditions that an ASC must meet to participate in the Medicare program, the scope of covered services, and the conditions for Medicare payment for ASCs.

Generally, to enter into an agreement, an ASC must first be certified by a State survey agency as complying with the conditions or requirements set forth in 42 CFR part 416. Thereafter, the ASC is subject to regular surveys by a State survey agency to determine whether it continues to meet these requirements. There is an alternative, however, to surveys by State agencies.

Section 1865(a)(1) of the Act provides that, if a provider entity demonstrates through accreditation by an approved national accrediting organization that all applicable Medicare conditions are met or exceeded, we will deem those provider entities as having met the requirements. Accreditation by an accrediting organization is voluntary and is not required for Medicare participation.

If an accrediting organization is recognized by the Secretary as having standards for accreditation that meet or exceed Medicare requirements, any provider entity accredited by the national accrediting body's approved program would be deemed to meet the Medicare conditions. A national accrediting organization applying for approval of its accreditation program under part 488, subpart A, must provide us with reasonable assurance that the accrediting organization requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions. Our regulations concerning the approval of accrediting organizations are set forth at § 488.4 and § 488.8(d)(3). The regulations at § 488.8(d)(3) require an accrediting organization to reapply for continued approval of its accreditation program every 6 years or sooner as determined by CMS.

American Association for Accreditation of Ambulatory Surgery Facilities (AAAASFs) current term of approval for their ASC accreditation program expires November 27, 2012.

II. Application Approval Process

Section 1865(a)(3)(A) of the Act provides a statutory timetable to ensure that our review of applications for CMS approval of an accreditation program is conducted in a timely manner. The Act provides us with 210 days from receipt of a complete application, with any documentation necessary, to make the determination and to complete our survey activities and application process. Within 60 days after receiving a complete application, we must publish a notice in the **Federal Register** that identifies the national accrediting body making the request, describes the request, and provides no less than a 30 day public comment period. At the end of the 210-day period, we must publish a notice in the **Federal Register** approving or denying the application.

III. Provisions of the Proposed Notice

On June 22, 2012, we published a proposed notice in the **Federal Register** (77 FR 37678) announcing AAAASF's request for continued approval of its ASC accreditation program. In the proposed notice, we detailed our evaluation criteria. Under section 1865(a)(2) of the Act and in our regulations at § 488.4 and § 488.8, we conducted a review of AAAASF's application in accordance with the criteria specified by our regulations, which include, but are not limited to the following:

- An onsite administrative review of AAAASF's—(1) corporate policies; (2) financial and human resources available to accomplish the proposed surveys; (3) procedures for training, monitoring, and evaluation of its surveyors; (4) ability to investigate and respond appropriately to complaints against accredited facilities; and (5) survey review and decision-making process for accreditation.
- The comparison of AAAASF's accreditation to CMS's current Medicare ASC conditions for coverage.
- A documentation review of AAAASF's survey process to—

+ Determine the composition of the survey team, surveyor qualifications, and AAAASF's ability to provide continuing surveyor training.

+ Compare AAAASF's processes to those of State survey agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.

+ Evaluate AAAASF's procedures for monitoring ASCs found to be out of compliance with AAAASF's program requirements. The monitoring procedures are used only when AAAASF identifies noncompliance. If noncompliance is identified through validation reviews, the State survey agency monitors corrections as specified at § 488.7(d).

+ Assess AAAASF's ability to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.

+ Establish AAAASF's ability to provide CMS with electronic data and reports necessary for effective validation and assessment of the organization's survey process.

+ Determine the adequacy of staff and other resources.

+ Confirm AAAASF's ability to provide adequate funding for performing required surveys.

+ Confirm AAAASF's policies with respect to whether surveys are announced or unannounced.

+ Obtain AAAASF's agreement to provide CMS with a copy of the most current accreditation survey together with any other information related to the survey as we may require, including corrective action plans.

In accordance with section 1865(a)(3)(A) of the Act, the June 22, 2012 proposed notice also solicited public comments regarding whether AAAASF's requirements met or

exceeded the Medicare conditions for coverage for ASCs. We received no public comments in response to our proposed notice.

IV. Provisions of the Final Notice

A. Differences Between AAAASF's Standards and Requirements for Accreditation and Medicare's Conditions and Survey Requirements

We compared AAAASF's ASC requirements and survey process with the Medicare conditions for coverage and survey process as outlined in the State Operations Manual (SOM). Our review and evaluation of AAAASF's ASC application, which were conducted as described in section III of this final notice, yielded the following:

- To meet the requirements at § 416.41(b)(2), AAAASF revised its standards to ensure the ASC's transfer agreement is with a local, Medicare-participating hospital that meets the requirements for emergency services.
- To meet the requirements at § 416.44(a)(2), AAAASF revised its standards to address the requirement that ''the ASC must have a separate recovery room and waiting area.''
- AAAASF revised its crosswalk to ensure that all regulatory references are correct for the following citations: § 416.42(a)(2), § 416.42(c)(2), § 416.44(c)(3), § 416.50(c)(1), § 416.50(e), and § 416.50(g).
- To meet the requirements at § 488.4(a)(4), AAAASF modified its policies to ensure all personnel files are accurate and complete.
- To meet the requirements at § 488.4(a)(5), AAAASF modified its policies to improve the accuracy and consistency of data submissions to CMS.
- To meet the requirements at § 488.4(a)(6), AAAASF modified its policies to ensure all compliant investigations are conducted in accordance with the requirements in chapter Five of the SOM.
- To meet the requirements at § 488.6(a), AAAASF revised its policies and procedures to ensure deemed status survey files are complete and accurate.
- To meet the requirements at § 488.12, AAAASF modified its policies to ensure all pertinent survey information, including all surveys conducted, is included in the final accreditation decision letters.
- To meet the medical record requirements at Appendix L of the SOM, AAAASF revised its policies to ensure surveyors review the required number of medical records during a survey.
- To meet the requirements at Section 2728 of the SOM, AAAASF modified its policies regarding timeframes for sending and receiving a plan of correction.
- To meet the requirements at Section 3012 of the SOM, AAAASF modified its policies to ensure follow-up, focused surveys for condition level noncompliance are conducted timely.
- To meet the requirements at Section 2700A of the SOM, AAAASF modified its policies to ensure all surveys are conducted unannounced.

B. Term of Approval

Based on our review and observations described in section III of this final notice, we have determined that AAAASF's requirements for ASCs meet or exceed our requirements. Therefore, we approve AAAASF as a national accreditation organization for ASCs that request participation in the Medicare program, effective November 27, 2012 through November 27, 2018.

V. Collection of Information Requirements

This document does not impose any information reporting, recordkeeping or third-party disclosure requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

Authority: Section 1865 of the Social Security Act (42 U.S.C. 1395bb).

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—ASC Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 20, 2012.

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2012–28640 Filed 11–23–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1597–N]

Medicare Program; Semi-Annual Meeting of the Advisory Panel on Hospital Outpatient Payment (HOP Panel)—March 11 and 12, 2013

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the first semi-annual meeting of the Advisory Panel on Hospital Outpatient Payment (HOP, the Panel), (the Ambulatory Payment Classification (APC) Panel) for 2013. The purpose of the Panel is to advise the Secretary of the Department of Health and Human Services (DHHS) (the Secretary) and the Administrator of the Centers for Medicare & Medicaid Services (CMS) (the Administrator) on the clinical integrity of the APC groups and their associated weights, and hospital outpatient therapeutic supervision issues.

DATES: *Meeting Date:* The first semi-annual meeting in 2013 is scheduled for the following dates and times.

Note: The times listed in this notice are Eastern Daylight Time (EDT) and are approximate times; consequently, the meetings may last longer than the times listed in this notice, but will not begin before the posted times:

- Monday, March 11, 2013, 1 p.m. to 5 p.m. EDT
- Tuesday, March 12, 2013, 9 a.m. to 5 p.m. EDT

Deadlines

Deadline for Presentations and Comments

The email copy of a presentation or comment and form CMS–20017 must be in the Designated Federal Official's (DFO's) email inbox (*APCPanel@cms.hhs.gov*) by 5 p.m. EDT, Friday, January 25, 2013. The hardcopy of the presentation must be received by the DFO on or before Friday, February 1, 2013. Presentations and comments that are not received by the due dates will be considered late and will not be included on the agenda. (See below for submission instructions for both hardcopy and electronic submissions.)

Meeting Registration Timeframe: Monday, January 9, 2013 through Friday, February 22, 2013 at 5 p.m. EDT.

Participants planning to attend this meeting in person must register online, during the above specified timeframe at: *https://www.cms.gov/apps/events/default.asp.* On this Web page, double click the ''Upcoming Events'' hyperlink, and then double click the ''HOP Panel'' event title link and enter the required information. Include any requests for special accommodations. *Note:* Participants who do not plan to attend this meeting in person should not register. No registration is required for participants that plan to view the meeting via webcast.

Submission Instructions for Presentations and Comments

Because of staffing and resource limitations, we cannot accept written comments and or presentations by FAX.

Presentations

Presentation subject matter must be within the scope of the Panel designated in the Charter. Any presentations outside of the scope of this Panel will be returned and/or amendments requested. Unrelated topics include, but are not limited to, the conversion factor, charge compression, revisions to the cost report, pass-through payments, correct coding, new technology applications (including supporting information/documentation), provider payment adjustments, supervision of hospital outpatient diagnostic services and the types of practitioners that are permitted to supervise hospital outpatient services. The Panel may not recommend that services be designated as nonsurgical extended duration therapeutic services.

All presentations are limited to 5 minutes total presentation time, regardless of the number of individuals or organizations represented by a single presentation. Presenters may use their 5 minutes to represent either one or more agenda items.

All presentations will be considered public information and may be posted on the CMS Web site and will be shared with the public. Presenters should not send pictures of patients or Medicare beneficiaries in any of the documents (unless their faces have been blocked out) or include any examples with personally identifiable information.

In order to consider presentation and/or comment requests, we will need to receive the following information:

1. A hardcopy of your presentation; only hardcopy comments and presentations can be reproduced for public dissemination.

2. An email copy of your presentation sent to the DFO mailbox, *APCPanel@cms.hhs.gov*.

3. Form CMS–20017 with complete contact information that includes name, address, phone, and email addresses for all presenters and a contact that can answer any questions and or provide revisions that are requested for the presentation.

○ Presenters must clearly explain the action(s) that they are requesting CMS to take in the appropriate section of the form. A presenter's relationship to the organization that they represent must also be clearly listed.

○ The form is now available through the CMS Forms Web site. The Uniform Resource Locator (URL) for linking to this form is as follows: *http://www.cms.hhs.gov/cmsforms/downloads/cms20017.pdf*.

Meeting Location and Webcast: The meeting will be held in the Auditorium, CMS Central Office, 7500 Security Boulevard, Woodlawn, Maryland 21244–1850.

Alternately, the public may view this meeting via a webcast. During the scheduled meeting, webcasting is accessible online at: *http://cms.gov/live* or *http://www.ustream.tv*. Viewers interested in receiving the webcast from *http://www.ustream.tv* will need to type ''CMS Public Events'' in the search bar to access the webcast.

FOR FURTHER INFORMATION CONTACT: For inquiries about the Panel, contact the DFO: Chuck Braver, 7500 Security Boulevard, Mail Stop: C4–05–17, Woodlawn, MD 21244–1850. Phone: (410) 786–3985. Email: *APCPanel@cms.hhs.gov*

Mail hardcopies and email copies to the following addresses: Chuck Braver, DFO, CMS, CM, HAPG, DOC—HOP Panel, 7500 Security Blvd. Mail Stop: C4–05–17, Woodlawn, MD 21244–1850 Email: *APCPanel@cms.hhs.gov*

Note: We recommend that you advise couriers of the following information: When delivering hardcopies of presentations to CMS, call (410) 786–4532 or (410) 786–6719 to ensure receipt of documents by appropriate staff.

News Media: Representatives must contact our Public Affairs Office at (202) 690–6145.

Advisory Committees' Information Lines: The phone numbers for the CMS Federal Advisory Committee Hotline are 1–877–449–5659 (toll free) and (410) 786–3985 (local).

Web Sites: For additional information on the Panel and updates to the Panel's activities, we refer readers to view our Web site at the following: *http://www.cms.gov/Regulations-and-Guidance/Guidance/FACA/AdvisoryPanelonAmbulatoryPaymentClassificationGroups.html*.

You may also search information about the Panel and its membership in the Federal Advisory Committee Act (FACA) database at the following URL: *https://www.fido.gov/facadatabase/public.asp*.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary is required by section 1833(t)(9)(A) of the Social Security Act (the Act) and section 222 of the Public Health Service Act (PHS Act) to consult with an expert outside advisory panel regarding the clinical integrity of the Ambulatory Payment Classification (APC) groups and relative payment weights. The Panel (which was formerly known as the Advisory Panel on Ambulatory Payment Classification Groups) is governed by the provisions of the Federal Advisory Committee Act (Pub. L. 92–463), as amended (5 U.S.C. Appendix 2), to set forth standards for the formation and use of advisory panels.

The Charter provides that the Panel shall meet up to 3 times annually. We consider the technical advice provided by the Panel as we prepare the proposed and final rules to update the outpatient prospective payment system (OPPS).

II. Agenda

The agenda for the March 2013 meeting will provide for discussion and comment on the following topics as designated in the Panel's Charter:

- Addressing whether procedures within an APC group are similar both clinically and in terms of resource use.
- Evaluating APC group weights.
- Reviewing the packaging of OPPS services and costs, including the methodology and the impact on APC groups and payment.
- Removing procedures from the inpatient list for payment under the OPPS.
- Using single and multiple procedure claims data for CMS' determination of APC group weights.
- Addressing other technical issues concerning APC group structure.
- Recommending the appropriate supervision level (general, direct, or personal) for individual hospital outpatient therapeutic services.

The subject matter before the Panel will be limited to these and related topics. Unrelated topics include, but are not limited to, the conversion factor, charge compression, revisions to the cost report, pass-through payments, correct coding, new technology applications (including supporting information/documentation), provider payment adjustments, hospital outpatient supervision of diagnostic services and the types of practitioners who are permitted to supervise hospital outpatient services.

The Panel may not recommend that services be designated as nonsurgical extended duration therapeutic services.

The Panel may use data collected or developed by entities and organizations, other than the DHHS and CMS in conducting its review. We recommend organizations submit data for the Panel's and CMS staff's review. The Agenda will be posted on the CMS Web site before the meeting.

III. Oral Comments

In addition to formal oral presentations, which are limited to 5 minutes total per presentation, there will be an opportunity during the meeting for public oral comments, which will be limited to 1 minute for each individual and a total of 3 minutes per organization.

IV. Meeting Attendance

The meeting is open to the public; however, attendance is limited to space available. Priority will be given to those who pre-register, and attendance may be limited based on the number of registrants and the space available.

Persons wishing to attend this meeting, which is located on Federal property, must register by following the instructions in the ''*Meeting Registration Timeframe*'' section of this notice. A confirmation email will be sent to the registrants shortly after completing the registration process.

V. Security, Building, and Parking Guidelines

The following are the security, building, and parking guidelines:

- Persons attending the meeting, including presenters, must be pre-registered and on the attendance list by the prescribed date.
- Individuals who are not pre-registered in advance may not be permitted to enter the building and may be unable to attend the meeting.
- Attendees must present valid photo identification to the Federal Protective Service or Guard Service personnel before entering the building. Without a current, valid photo ID, persons may not be permitted entry to the building.
- Security measures include inspection of vehicles, inside and out, at the entrance to the grounds.
- All persons entering the building must pass through a metal detector.
- All items brought into CMS including personal items, for example, laptops and cell phones are subject to physical inspection.
- The public may enter the building 30 to 45 minutes before the meeting convenes each day.
- All visitors must be escorted in areas other than the lower and first-floor levels in the Central Building.
- The main-entrance guards will issue parking permits and instructions upon arrival at the building.

VI. Special Accommodations

Individuals requiring sign-language interpretation or other special accommodations must include the request for these services during registration.

VII. Panel Recommendations and Discussions

The Panel's recommendations at any Panel meeting generally are not final until they have been reviewed and approved by the Panel on the last day of the meeting, before the final adjournment. These recommendations will be posted to our Web site after the meeting.

VIII. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

(Catalog of Federal Domestic Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 14, 2012.

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2012–28639 Filed 11–23–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–1021]

Medical Device User Fee and Modernization Act; Notice to Public of Web Site Location of Fiscal Year 2013 Proposed Guidance Development

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the Web site location where the Agency will post two lists of guidance documents that the Center for Devices and Radiological Health (CDRH) is intending to publish in Fiscal Year (FY) 2013. In addition, FDA has established a docket where stakeholders may provide comments and/or propose draft language for those topics, suggest new or different guidance documents, and comment on the priority of topics for guidance.

DATES: Submit either electronic or written comments at any time.

ADDRESSES: Submit electronic comments on the proposed guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Philip Desjardins, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 5452, Silver Spring, MD 20993–0002, 301–796–5678.

SUPPLEMENTARY INFORMATION:

I. Background

During negotiations over the Medical Device User Fee Amendments of 2012 (MDUFA III), Title II, Food and Drug Administration Safety and Innovation Act (Pub. L. 112–114), FDA agreed, in return for additional funding from industry, to meet a variety of quantitative and qualitative goals intended to help get safe and effective medical devices to market more quickly. These commitments include annually posting a list of prioritized medical device guidance documents that the Agency intends to publish within 12 months of the date this list is published each fiscal year (the ''A-list'') and a list of device guidance documents that the Agency intends to publish, as the Agency's guidance-development resources permit each fiscal year (the ''B-list''). In addition to posting lists of prioritized device guidance documents, FDA has committed to updating its Web site in a timely manner to reflect the Agency's review of previously published guidance documents, including the deletion of guidance documents that no longer represent the Agency's interpretation of, or policy on, a regulatory issue, and notation of guidance documents that are under review by the Agency. Fulfillment of this commitment will be reflected through the issuance of updated guidance on existing topics, removal of guidances that that no longer reflect FDA's current thinking on a particular topic, and annual updates to A-list and B-list announced in this notice.

This notice announces the Web site location of the two lists of guidance documents which CDRH is intending to publish during FY 2013. We note that the Agency is not required to publish every guidance on either list if the resources needed would be to the detriment of meeting quantitative review timelines and statutory obligations. The Agency is not precluded from issuing guidance documents that are not on either list.

FDA and CDRH priorities are subject to change at any time. Topics on this and past guidance priority lists may be removed or modified based on current

priorities. CDRH's experience in guidance development has shown that there are many reasons that CDRH staff may not complete the entire agenda of guidance documents it undertakes. Staff are frequently diverted from guidance development to other priority activities. In addition, at any time new issues may arise to be addressed in guidance that could not have been anticipated at the time the annual list is generated. These issues may involve newly identified public health issues as well as special control documents that are necessary for the classification of de novo devices.

FDA anticipates that feedback from stakeholders, including draft language for guidance documents, will allow CDRH to better prioritize and more efficiently draft guidances that will be useful to industry and other stakeholders. FDA intends to update the list each year.

FDA invites interested persons to submit comments on any or all of the guidance documents on the lists. FDA has established a docket where comments on the FY 2013 lists, draft language for guidance documents on those topics, suggestions for new or different guidances, and relative priority of guidance documents may be submitted (see **ADDRESSES**). FDA believes this docket is an important tool for receiving information from interested parties and for sharing this information with the public. Similar information about planned guidance development is included in the annual Agency-wide notice issued under its good guidance practices (21 CFR 10.115(f)(5)). The CDRH lists, however, will be focused exclusively on device-related guidances and will be made available on FDA's Web site at the beginning of each fiscal year from 2013 to 2017. To access the lists of guidance documents CDRH is intending to publish in FY 2013, visit FDA's Web site *http://www.fda.gov/Medical Devices/DeviceRegulationandGuidance/Overview/MDUFAIII/ucm321367.htm*

II. Request for Comments

Interested persons may submit either written comments regarding this document to the Division of Dockets Management (see **ADDRESSES**) or electronic comments to *http://www.regulations.gov.* 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.*

Dated: November 7, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–28539 Filed 11–23–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0001]

Risk Communication 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: Risk Communication 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 February 12, 2013, from 8 a.m. to 3 p.m.

Location: FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (rm. 1503), Silver Spring, MD 20993. 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: Lee L. Zwanziger, Risk Communication Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 3278, Silver Spring, MD 20993, 301–796–9151, FAX: 301–847–8611, email: *RCAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: On February 12, 2013, the Committee will discuss general factors in risk communication about FDA regulated products, including approaches to avoid message fatigue and related communication barriers such as prevention or warning fatigue or inaccurate risk perception.

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 January 28, 2013. Oral presentations from the public will be scheduled between approximately 10:30 a.m. and 11:30 a.m. on February 12, 2013. 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 January 17, 2013. 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 January 18, 2013. Interested persons can also log on to *https://collaboration.fda.gov/rcac/* to hear and see the proceedings.

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 Lee L. Zwanziger at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 19, 2012.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2012–28462 Filed 11–23–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Methodological Studies for the Population Assessment of Tobacco and Health (PATH) Study

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institute on Drug Abuse (NIDA), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: Methodological Studies for Population Assessment of Tobacco and Health (PATH) Study. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* The PATH study will establish a population-based framework for monitoring and evaluating the behavioral and health impacts of regulatory provisions implemented as part of the Family Smoking Prevention and Tobacco Control Act (FSPTCA) by the Food and Drug Administration (FDA). NIDA is requesting generic approval from OMB for methodological studies to improve the PATH study instrumentation and data collection procedures. These methodological studies will support ongoing assessment and refinement of the PATH study's design, and highlight ways to improve study implementation and techniques for retention and followup. Data collection methods to be used in these methodological studies include: in-person and telephone surveys; web and smartphone/mobile phone surveys; and focus group and individual in-depth qualitative interviews. Biospecimens may also be collected from adults.

Frequency of Response: Annual [As needed on an on-going and concurrent basis]. *Affected Public:* Individuals. *Type of Respondents:* Youth (ages 12–17) and Adults (ages 18+). *Annual Reporting Burden:* See Table 1. The annualized cost to respondents is estimated at: $227,562. There are no capital, operating or maintenance costs.

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN SUMMARY—METHODOLOGICAL STUDIES FOR THE PATH STUDY

Data collection activity	Type of respondent	Number of respondents	Responses per respondent	Hours per response	Annual hour burden
In-person and telephone surveys	Adults	3,000	1	1½	4,500
	Youth	2,000	1	1½	3,000
Web and smartphone/mobile phone surveys	Adults	3,000	1	1½	4,500
	Youth	2,000	1	1½	3,000
Focus groups and individual in-depth qualitative interviews	Adults	800	1	2	1,600
	Youth	800	1	2	1,600
Total		11,600			18,200

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans contact Kevin P. Conway, Ph.D., Deputy Director, Division of Epidemiology, Services, and Prevention Research, National Institute on Drug Abuse, 6001 Executive Blvd., Room 5185; Rockville, MD 20852, or call non-toll free number 301–443–8755 or email your request, including your address to: *PATHprojectofficer@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

Dated: November 14, 2012.

Glenda J. Conroy,

Executive Officer (OM Director), NIDA.

[FR Doc. 2012–28575 Filed 11–23–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Report of the Evidence-Based Methodology Workshop on Polycystic Ovary Syndrome—Request for Comments

SUMMARY: The National Institutes of Health (NIH) will place in the docket for public review and comment a report resulting from the NIH Evidence-Based Methodology Workshop on Polycystic Ovary Syndrome, to be held December

3–5, 2012. The purpose of the report is to summarize the workshop and identify future research priorities. The report will be available online beginning December 7, 2012, at *http://prevention.nih.gov/workshops/2012/pcos/default.aspx*.

DATES: Comments on the report will be accepted from December 7, 2012, to January 4, 2013.

ADDRESSES: Written comments must be postmarked by January 4, 2013, and should be sent to the NIH Office of Disease Prevention, ATTN: Paris A. Watson, 6100 Executive Boulevard, Suite 2B03, Bethesda, Maryland 20892. Email comments should be sent to *prevention@mail.nih.gov* by January 4, 2013.

FOR FURTHER INFORMATION CONTACT: To request more information, please contact Paris A. Watson at 301–496–6615 or *prevention@mail.nih.gov*.

SUPPLEMENTARY INFORMATION: Polycystic ovary syndrome (PCOS) is a common hormone disorder that affects approximately 5 million reproductive-aged women in the United States. Women with PCOS have difficulty becoming pregnant (i.e., are infertile) due to hormone imbalances that cause or result from altered development of ovarian follicles. One such imbalance is high blood levels of androgens, which can come from both the ovaries and adrenal gland. Other organ systems that are affected by PCOS include the pancreas, liver, muscle, blood vasculature, and fat.

In addition to fertility impairment, other common symptoms of PCOS include:

- Irregular or no menstrual periods (for women of reproductive age)
- Acne
- Weight gain
- Excess hair growth on the face and body
- Thinning scalp hair
- Ovarian cysts.

Women with PCOS are often resistant to the biological effects of insulin and, as a consequence, may have high insulin levels. As such, women with PCOS are at risk for type 2 diabetes, high cholesterol, and high blood pressure. Obesity also appears to worsen the condition. Costs to the U.S. health care system to identify and manage PCOS are approximately $4 billion annually; however, this estimate does not include treatment of the serious conditions associated with PCOS.

For most of the 20th century, PCOS was a poorly understood condition. In 1990, the NIH held a conference on PCOS to create both a working definition of the disorder and diagnostic criteria. The outcome of this conference, the *NIH Criteria,* served as a standard for researchers and clinicians for more than a decade. In 2003, a consensus workshop in Rotterdam developed new diagnostic criteria, the *Rotterdam Criteria*. The 2012 NIH Evidence-Based Methodology Workshop on PCOS seeks to clarify:

- The benefits and drawbacks of using the *Rotterdam Criteria;*
- The condition's causes, predictors, and long-term consequences;
- The optimal prevention and treatment strategies.

The NIH workshop is sponsored by the Office of Disease Prevention and the *Eunice Kennedy Shriver* National Institute of Child Health and Human Development. A multidisciplinary steering committee developed the workshop agenda. The NIH Library created an extensive, descriptive bibliography on PCOS to facilitate workshop discussion. During the two-and-one-half-day workshop, invited experts will discuss the body of evidence and attendees will have opportunities to provide comments during open discussion periods. After weighing the evidence, an unbiased, independent panel will prepare a report that summarizes the workshop and identifies future research priorities.

The report will be available online beginning December 7, 2012, at *http://prevention.nih.gov/workshops/2012/pcos/default.aspx*.

Dated: November 16, 2012.

Francis S. Collins,

Director, National Institutes of Health.

[FR Doc. 2012–28608 Filed 11–23–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2011–0619]

Mechanisms of Compliance With United States Citizenship Requirements for the Ownership of Vessels Eligible To Engage in Restricted Trades by Publicly Traded Companies

AGENCY: Coast Guard, DHS.

ACTION: Notice; response to comments.

SUMMARY: As part of its January 2011 report on a Coast Guard investigation into the citizenship of owners of a publicly traded company, the National Vessel Documentation Center recommended requesting comments and information on the various measures that publicly traded companies employ to comply with the statutory requirement that at least 75 percent of the ownership of companies that operate vessels engaged in the coastwise trade be vested in U.S. citizens. On November 3, 2011, the Coast Guard published a notice in the **Federal Register** seeking those comments and that information. The Coast Guard read the written submissions and listened to oral comments generated by that notice and issues today's notice to inform industry and the public on how the Coast Guard plans to exercise its discretion in enforcing the referenced U.S. citizen ownership requirement.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, are part of docket USCG–2011–0619 and are available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to *http://www.regulations.gov,* inserting USCG–2011–0619 in the ''Search'' box, and then clicking ''Search.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Mr. Douglas Cameron, United States Coast Guard, National Vessel Documentation Center; telephone 304–271–2506, email *Douglas.G.Cameron@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: On November 3, 2011, the Coast Guard published a notice in the **Federal Register** (76 FR 68203) (''2011 notice'') requesting comments and information on the various measures that publicly traded companies employ in order to comply with the requirement in 46 U.S.C. 50501 that at least 75 percent of the ownership of companies that operate vessels engaged in the coastwise trade be vested in U.S. citizens. The 2011 notice was published because of a recommendation in a January 12, 2011, Coast Guard report of an investigation into the citizenship of Trico Marine Services, Inc. (''Trico Report''). A copy of this report has been placed in the docket and is also available via *http://www.uscg.mil/hq/cg5/nvdc/* (under the Latest News tab). The Coast Guard solicited the following information in the 2011 notice (emphasis added):

This notice solicits information, for the benefit of the Coast Guard but also for the mutual benefit of industry, as to the mechanisms that publicly traded companies have employed, *including but not limited to those mentioned in the quoted language above,* to assure compliance with United States citizenship requirements. We are also requesting information on the manner in which those mechanisms function to provide that assurance and, when called upon to do so, to offer proof of compliance. 76 FR 68205.

The reference to ''the quoted language above'' was to language in the most recent Coast Guard statement published in the **Federal Register** which addressed this subject. *See* 58 FR 60256, November 15, 1993 (''1993 final rule''). At that time, the Coast Guard offered the following statement which referenced only two mechanisms as examples (emphasis added):

The documentation laws are meant to be restrictive and are intended to limit the persons who are eligible to document vessels under U.S. law and acquire trading privileges. Corporations can make proof of citizenship less difficult, *for instance by restricting sale of their stock to U.S. citizens, or using a transfer agent to administer a dual stock certificate system.* Of course, any U.S. corporation that is unwilling to subject itself to the possibility of having to prove that it qualifies for coastwise or fisheries privileges can choose not to seek them. The Coast Guard will not be bound by any presumptions or inferences in making eligibility determinations for documentation purposes. 58 FR 60258–59.

Comments in Response to 2011 Notice

The comments the Coast Guard received from industry in response to the 2011 notice detailed how companies monitor and determine compliance with the statutory standard in the current paperless securities trading market, which is regulated by the Securities and Exchange Commission (''SEC'') and more complex than the system that existed when the Coast Guard issued its 1993 final rule. Those comments indicated that publicly-traded companies employ several measures to monitor and determine compliance, sometimes in combination with one another. These include, among others:

- Use of the Depository Trust Company segregated account (or ''SEG–100'') system;
- Monitoring SEC filings re: 5% holders (Schedules 13D, 13G, Form 13F) and follow-up requests for information from filers;
- Use of protective provisions in organizational documents in order to guard against and rectify the possibility of what are referred to as excess shares;
- Communications with Non-Objecting Beneficial Owners (or ''NOBOs'');
- Analysis of registered stockholders; and
- Use of dual stock certificates.

We also considered comments made at a general discussion of these issues at a forum organized by the Chamber of Shipping of America held on September 13, 2012, in Washington, DC, the minutes of which have been placed in the online docket (USCG–2011–0619 via *www.regulations.gov*).

The Coast Guard has taken all of the comments offered into account and is grateful to the commenters who were thorough, candid and forthcoming in their responses to the 2011 notice, both in the written responses and the discussion engaged in at the forum referred to above. The responses received and information provided are exactly what had been hoped for by publication of the notice and affirmed our sense, following issuance of the Trico Report, that it was appropriate, in light of the significant technological changes that have occurred in the trading of shares of stock since the Coast Guard's 1993 final rule, to take another look at the issue.

The Coast Guard recognizes that in the modern, complex, multi-faceted, and dynamic securities market no single measure or combination of measures may always provide direct proof of the citizenship of every shareholder. The Coast Guard also recognizes that the choice of compliance measures is best left up to the individual company as each one is best positioned to evaluate initially and on an on-going basis the totality of its circumstances.

Companies that employ, and diligently administer and adhere to, measures such as those identified above in an active system of monitoring stock ownership may use these as a sufficient basis to file an Application for Initial Issue, Exchange, or Replacement of Certificate of Documentation (form CG–1258) to document a vessel with a coastwise endorsement. In that regard, while the Coast Guard expects diligence and good faith efforts, it will be realistic about acceptable measures in the current trading environment. Finally, the Coast Guard acknowledges that it does not seek to unnecessarily restrict access to the legitimate capital markets, which it recognizes to be essential to the maintenance of a strong and vibrant coastwise shipping industry, nor to mandate a one-size-fits-all structure or mechanism to ensure compliance with U.S. citizenship requirements. The Coast Guard, however, must fulfill its obligation to ensure compliance with those requirements, and will look for due diligence and timely good faith action by every company that seeks to participate in restricted trading privileges, using means that are available to the company and at its disposal, in order to satisfy U.S. citizenship requirements.

The Coast Guard has a long-standing policy that the filing of a properly completed CG–1258 establishes a rebuttable presumption that the applicant is a United States citizen. *See* 46 CFR 67.43. The presumption can be rebutted with evidence that the statutory requirements have not been met. Such evidence can provide the basis for the Coast Guard to initiate an investigation and the burden will be upon the vessel owner to establish compliance. In investigations of publicly-traded companies for compliance with the statutory citizenship requirements, the Coast Guard will give positive consideration to a company's diligent and good faith efforts to timely and effectively monitor the ownership of its stock and take prompt action where necessary so as to maintain compliance with the statutory requirements.

Further Development of Enforcement Policy

The Coast Guard will continue to listen to industry and the public and monitor events concerning this issue. We anticipate refining our enforcement policy as we see how well our stated policy works in allowing the Coast Guard to meet its obligation to ensure that at least 75 percent of the ownership of companies that operate vessels engaged in the coastwise trade are vested in U.S. citizens. If we see the need for any new enforcement policy, we would invite comments on any such policy through a separate notice. We appreciate all the comments made in response to the 2011 notice.

This notice is issued under authority of 5 U.S.C. 552(a).

Dated: November 14, 2012.

Timothy V. Skuby,

Director, National Vessel Documentation Center, U.S. Coast Guard.

[FR Doc. 2012–28560 Filed 11–23–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2012–1030]

Chemical Transportation Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Committee Management; Notice of Federal Advisory Committee Meeting.

SUMMARY: The Chemical Transportation Advisory Committee (CTAC) and its Subcommittees and Working Groups will meet on December 11 through 13, 2012, in Washington, DC, to discuss marine transportation of hazardous materials in bulk. The meetings will be open to the public.

DATES: CTAC will meet Tuesday, December 11, 2012, from 8 a.m. to 3 p.m. and Wednesday, December 12, 2012, from 8 a.m. to 3 p.m. CTAC Subcommittee and Working Group meetings will begin upon completion of the CTAC meeting agenda on Wednesday, December 12, 2012, and continue until 3 p.m., and resume again on Thursday, December 13, 2012, from 8 a.m. to 3 p.m. Please note that the meetings may close early if the committee has completed its business.

All written materials, comments, and requests to make oral presentations at the meeting should reach Lieutenant Sean Peterson, Assistant Designated Federal Officer (ADFO) for CTAC by November 29, 2012. For contact information please see the **FOR FURTHER INFORMATION CONTACT** section below. Any written material submitted by the public will distributed to the Committee and become part of the public record.

ADDRESSES: The meetings will be held at U.S. Coast Guard Headquarters Room 6319, 2100 Second Street SW., Washington, DC. Attendees will be required to provide a picture identification card and pass through a magnetometer in order to gain admittance to the U.S. Coast Guard Headquarters Building. Visitors should also arrive at least 30 minutes in advance of the meeting in case of long lines at the entrance.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Commander Michael Roldan as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the committee as listed in the ''Agenda'' section below. Comments must be submitted in writing no later than November 29, 2012, and may be submitted by one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.* (Preferred method to avoid delays in processing.)

- Fax: 202–493–2252.
- Mail: Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- Hand delivery: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided. You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Docket: This notice, and documents or comments related to it, may be viewed in our online docket, USCG 2012–1030 at *http://www.regulations.gov*.

A public comment period will be held during the meeting concerning matters being discussed. Public comments will be limited to three minutes per speaker. Please note that the public comment period may end before the time indicated following the last call for comments. Contact the individuals listed below to register as a speaker.

FOR FURTHER INFORMATION CONTACT: Commander Michael Roldan, Designated Federal Officer (DFO) of the CTAC, or Lieutenant Sean Peterson, Assistant Designated Federal Officer, telephone 202–372–1403, fax 202–372–1926. If you have any questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. (Pub. L. 92–463).

CTAC is an advisory committee authorized under section 871 of the Homeland Security Act of 2002, Title 6, United States Code, section 451, and chartered under the provisions of the FACA. The Committee acts solely in an advisory capacity to the Secretary of the Department of Homeland Security (DHS) through the Commandant of the Coast Guard and the Director of Commercial Regulations and Standards on matters relating to marine transportation of hazardous materials in bulk. The Committee advises, consults with, and makes recommendations reflecting its independent judgment to the Secretary.

Agendas of Meetings

The agenda for CTAC is as follows:

1. Introductions and opening remarks.
2. Swearing in newly appointed members.
3. USCG presentations on the following items of interest:
   a. Hazardous Substances Response Plans.
   b. Vapor control systems and mobile vapor control systems.
   c. Classification of Biofuels and Biofuel blends. Shipments and use as fuel of Liquefied Natural Gas and Compressed Natural Gas.
   d. Air emissions.
   e. Tank Barge best practices.
   f. Certification of 3rd party witnesses for the International Convention for the Prevention of Pollution from Ships prewash.
   g. Material Safety Data Sheets requirement for oils carried as cargo and fuel.
   h. Pending International Maritime Organization issues.
   i. Security, Transportations Worker Identification Credential, etc.
   j. USCG Centers of Excellence.
   k. Food grade product safety.
   l. Other items of interest raised by the committee and the public.
4. Public Comment Period.
5. Prioritization of key issues to focus on.
6. Set next meeting date and location.
7. Set Subcommittee and Working Group Meeting schedule.

Subcommittees and Working Group Meetings. Contingent on available expertise at the meeting, working groups will be formed to address the items of interest listed in paragraph (3) above. The agenda for each working group formed will include the following:

(1) Review task statements.
(2) Develop work plan.
(3) Begin working on tasks.

Dated: November 19, 2012.

J.G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. 2012–28559 Filed 11–23–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket No. FEMA–2012–0003; Internal Agency Docket No. FEMA–B–1261]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency; DHS.

ACTION: Notice; correction.

SUMMARY: On July 30, 2012, FEMA published in the **Federal Register** a

proposed flood hazard determination notice at FR 77 44651 that contained a table which included a Web page address through which the Preliminary Flood Insurance Rate Map (FIRM), and where applicable, the Flood Insurance Study (FIS) report for the communities listed in the table could be accessed. The information available through the Web page address has subsequently been updated. The table provided here represents the proposed flood hazard determinations and communities affected for Mecklenburg County, North Carolina, and Incorporated Areas.

DATES: Comments are to be submitted on or before February 25, 2013.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1261, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov*.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064 or (email) *Luis.Rodriguez3@fema.dhs.gov*.

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed in the table below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the table below. Any request for reconsideration of the revised flood hazard determinations shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations will also be considered before the FIRM and FIS report are made final.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP may only be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *http://www.floodsrp.org/pdfs/srp_fact_sheet.pdf*.

Correction

In the proposed flood hazard determination notice published at 77 FR 44651 in the July 30, 2012, issue of the **Federal Register**, FEMA published a table titled ''Mecklenburg County, North Carolina, and Incorporated Areas.'' This table contained a Web page address through which the Preliminary FIRM, and where applicable, FIS report for the communities listed in the table could be accessed online. A Revised Preliminary FIRM and/or FIS report have subsequently been issued for some or all of the communities listed in the table. The information available through the web page address listed in the table has been updated to reflect the Revised Preliminary information and is to be used in lieu of the information previously available.

Community	Community Map Repository Address
Mecklenburg County, North Carolina, and Incorporated Areas	
Maps Available for Inspection Online at: http://mapserver.mecklenburgcountync.gov/fmr/	
City of Charlotte	City Hall, 600 East 4th Street, Charlotte, NC 28202.
Town of Matthews	Town Hall, 232 Matthews Station Street, Matthews, NC 28105.
Town of Mint Hill	Town Hall, 7151 Matthews-Mint Hill Road, Mint Hill, NC 28277.
Town of Pineville	Town Hall, 200 Dover Street, Pineville, NC 28134.
Unincorporated Areas of Mecklenburg County	Mecklenburg County Government Center, 600 East 4th Street, Charlotte, NC 28202.

Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.''

Dated: October 31, 2012.

James A. Walke,

Acting Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2012–28623 Filed 11–23–12; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2012–N256; 40120–1112–0000–F2]

Receipt of Applications for Endangered Species Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibits activities with listed species unless a Federal permit is issued that allows such activities. The ESA requires that we invite public comment before issuing these permits.

DATES: We must receive written data or comments on the applications at the address given below, by December 26, 2012.

ADDRESSES: Documents and other information submitted with the applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, GA 30345 (Attn: Cameron Shaw, Permit Coordinator).

FOR FURTHER INFORMATION CONTACT: Cameron Shaw, telephone 904/731–3191; facsimile 904/731–3045.

SUPPLEMENTARY INFORMATION: The public is invited to comment on the following applications for permits to conduct certain activities with endangered and threatened species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and our regulations in the Code of Federal Regulations (CFR) at 50 CFR 17. This notice is provided under section 10(c) of the Act.

If you wish to comment, you may submit comments by any one of the following methods. You may mail comments to the Fish and Wildlife Service's Regional Office (see **ADDRESSES** section) or via electronic mail (email) to: *permitsR4ES@fws.gov*. Please include your name and return address in your email message. If you do not receive a confirmation from the Fish and Wildlife Service that we have received your email message, contact us directly at the telephone number listed above (see **FOR FURTHER INFORMATION CONTACT** section). Finally, you may hand deliver comments to the Fish and Wildlife Service office listed above (see **ADDRESSES** section).

Before including your address, telephone number, email address, or other personal identifying information in your comments, 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 comments to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Permit Application Number: TE–13844A

Applicant: Aquatic Resources Management, Lexington, Kentucky.

Applicant requests amendment to authorization to conduct presence/absence surveys for three (3) bat species, one(1) freshwater fish species, twelve (12) fresh-water mussel species, one (1) snake species, one (1) insect species and two (2) plant species in the State of Tennessee.

Permit Application Number: TE–7747

Applicant: U.S. Forest Service, National Forests in Florida, Tallahassee, Florida.

Applicant requested renewed authority to capture, mark, translocate and install artificial nesting cavities for the red-cockaded woodpecker (*Picoides borealis*). These activities will be conducted on National Forests throughout Florida.

Permit Application Number: TE–82796A

Applicant: Christopher McGrath, Leicester, North Carolina.

Applicant requests reauthorization to conduct presence/absence surveys and scientific studies on the following species:

Indiana bat (*Myotis sodalis)*
Gray bat (*Myotis grisescens)*
Virginia big-eared bat (*Corynorhinus townsendii virginianus)*
Carolina Flying Squirrel (*Glaucomys sabrinus carolinensis*)

These surveys will be conducted in, Virginia, Tennessee, Kentucky, North Carolina and South Carolina.

Permit Application Number: TE–171553

Applicant: The Ivory-billed Woodpecker Foundation, Gurley, Alabama.

The applicant requests renewed authorization to collect discarded feathers, feces, and egg shell fragments from Ivory-billed woodpeckers (*Campephilus principalis*) and to examine non-active nests sites throughout the historic range of this species.

Permit Application Number: TE–89074A

Applicant: Christopher Haggerty, Homosassa, Florida.

The applicant requests authorization to conduct scientific research involving capture and handling of reticulated flatwoods salamanders (*Ambystoma bishop*) and frosted flatwoods salamanders (*Ambystoma cingulatum*). This study will be conducted in Escambia, Okaloosa, Walton, Washington, Jackson, Liberty, Franklin, Wakulla, Jefferson, Baker and Alachua Counties, Florida.

Permit Application Number: TE–63633A

Applicant: Biodiversity Research Institute, Gorham, Maine.

The applicant requests amended authorization to expand the location they are authorized to conduct scientific research on Indiana bats (*Myotis sodalis*) and Gray bats (*Myotis grisescens*) into the states of Georgia, Ohio, Alabama, Louisiana, Mississippi and Kentucky.

Permit Application Number: TE–834056

Applicant: North Florida Wildlife LLC, Crawfordville, Florida.

Applicant requests amended authority to translocate red-cockaded woodpecker (*Picoides borealis*). These activities will be conducted throughout the range of the species.

Permit Application Number: TE–89083A

Applicant: Robert Bahn, Eatonton, Georgia.

The application requests authorization to conduct presence/absence surveys for the following freshwater fish species:

Etowah Darter (*Etheostoma etowahae*)
Amber Darter (*Percina antesella*)
Conasauga Logperch (*Percina jenkinsi*)

These surveys will be conducted in Tennessee, Georgia and Alabama.

Permit Application Number: TE–114069

Applicant: Fairchild Tropical Botanic Garden, Miami, Florida.

The applicant requests amended authorization to collect seeds and cuttings for scientific research from the following plant species:

Buxus vahlii Vahl's boxwood
Calyptranthes thomasiana
Catesbaea melanocarpa Tropical lilythorn
Zanthoxylum thomasianum St. Thomas pricklyash

Collection will be done in Miami-Dade County, Florida and Saint John, U.S. Virgin Islands.

Dated: November 9, 2012.

Mark J. Musaus,

Acting Regional Director.

[FR Doc. 2012–28558 Filed 11–23–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–ES–2012–N272; FXES11130600000D2–123–FF06E00000]

Endangered and Threatened Wildlife and Plants; Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following application to conduct certain activities with endangered or threatened species. The Endangered Species Act of 1973, as amended (Act), prohibits activities with endangered and threatened species unless a Federal permit allows such activity. The Act also requires that we invite public comment before issuing these permits.

DATES: To ensure consideration, please send your written comments by December 26, 2012.

ADDRESSES: You may submit comments or requests for copies or more information by any of the following methods. Please refer to the respective permit number (e.g., Permit No. TE–123456) for each application. A limited number of CD–ROMs and hard copies are also available.

- Email: *permitsR6ES@fws.gov*. Please refer to the respective permit number (e.g., Permit No. TE–123456) in the subject line of the message.
- U.S. Mail: Kris Olsen, Permit Coordinator, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 25486–DFC, Denver, CO 80225.
- In-Person Drop-off, Viewing, or Pickup: Call (303) 236–4256 to make an appointment during regular business hours at 134 Union Blvd., Suite 645, Lakewood, CO 80228.

FOR FURTHER INFORMATION CONTACT: Kris Olsen, Permit Coordinator Ecological Services, (303) 236–4256 (phone); *permitsR6ES@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

Background

The Act (16 U.S.C. 1531 et seq.) prohibits activities with endangered and threatened species unless a Federal permit allows such activity. Along with our implementing regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17, the Act provides for permits, and requires that we invite public comment before issuing these permits.

A permit granted by us under section 10(a)(1)(A) of the Act authorizes applicants to conduct activities with U.S. endangered or threatened species for scientific purposes, enhancement of propagation or survival, or interstate commerce (the latter only in the event that it facilitates scientific purposes or enhancement of propagation or survival). Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Applications Available for Review and Comment

We invite local, State, and Federal agencies, and the public to comment on the following applications. Please refer to the appropriate permit number (e.g., Permit No. TE–123456) for the application when submitting comments.

Documents and other information the applicants have submitted with these applications are available for review, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552).

Permit Application Number: TE–180540

Applicant: Lisa Church, Bureau of Land Management, Kanab Field Office, Kanab, Utah

The applicant requests renewal of an existing permit to take (harass by survey and transport) Utah prairie dog (*Cynomys parvidens*) in conjunction with surveys and population monitoring activities in Utah for the purpose of enhancing the species' survival.

National Environmental Policy Act (NEPA)

In compliance with NEPA (42 U.S.C. 4321 *et seq.*), we have made an initial determination that the proposed activities in these permits are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement (516 DM 6 Appendix 1, 1.4C(1)).

Public Availability of Comments

All comments and materials we receive in response to this request will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*)

Dated: November 16, 2012.

Michael G. Thabault,

Assistant Regional Director, Mountain-Prairie Region.

[FR Doc. 2012–28540 Filed 11–23–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–IA–2012–N280; FXIA16710900000P5–123–FF09A30000]

Endangered Species; Marine Mammals; Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species, marine mammals, or both. With some exceptions, the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA) prohibit activities with listed species unless Federal authorization is acquired that allows such activities.

DATES: We must receive comments or requests for documents on or before December 26, 2012. We must receive requests for marine mammal permit public hearings, in writing, at the address shown in the **ADDRESSES** section by December 26, 2012.

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or email *DMAFR@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I request copies of applications or comment on submitted applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an email or address not listed under **ADDRESSES**. If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I review comments submitted by others?

Comments, including names and street addresses of respondents, will be available for public review at the street address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. 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.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), along with Executive Order 13576, ''Delivering an Efficient, Effective, and Accountable Government,'' and the President's Memorandum for the Heads of Executive Departments and Agencies of January 21, 2009—Transparency and Open Government (74 FR 4685; January 26, 2009), which call on all Federal agencies to promote openness and transparency in Government by disclosing information to the public, we invite public comment on these permit applications before final action is taken. Under the MMPA, you may request a hearing on any MMPA application received. If you request a hearing, give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Service Director.

III. Permit Applications

A. Endangered Species

Applicant: Blank Park Zoo, Des Moines, IA; PRT–705206

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for the following families, genera and species, to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Families:
- Hylobatidae

Genus:
- Lemur

Species:
- Siberian tiger (*Panthera tigris altaica*)
- Snow leopard (*Uncia uncia*)
- Japanese macaque (*Macaca fuscata*)
- Golden headed tamarin (*Leontopithecus chrysomelas*)
- Pink pigeon (*Nesoenas mayeri*)
- Panamanian golden frog (*Atelopus zeteki*).

Applicant: Staten Island Zoo, Staten Island, NY; PRT–813047

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for the following species, to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Species:
- Cotton-top tamarin (*Saguinus oedipus*)
- Leopard (*Panthera pardus*)
- Chinese alligator (*Alligator sinensis*)
- Aruba Island rattlesnake (*Crotalus unicolor*)
- Panamanian golden frog (*Atelopus zeteki*)

Applicant: Lionshare Farm Zoological LLC, Greenwich, CT; PRT–195196

The applicant requests amendment of their captive-bred wildlife registration under 50 CFR 17.21(g) to include cheetah (*Acinonyx jubatus*) and jackass penguin (*Spheniscus demersus*) to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: St. Catherines Island Foundation, Midway, GA; PRT–89124A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the ring-tailed lemur (*Lemur catta*) and Grevy's Zebra (*Equus grevyi*) to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Johnny B Corporation, Kennesaw, GA; PRT–89321A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the following species, to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Species:
- Ring-tailed lemur (*Lemur catta*)
- Black and white ruffed lemur (*Varecia variegata*)
- Red ruffed lemur (*Varecia rubra*)
- Black lemur (*Eulemur macaco*)
- Brown lemur (*Eulemur fulvus*)
- Cotton-top tamarin (*Saguinus oedipus*)
- Lar gibbon (*Hylobates lar*)
- South American tapir (*Tapirus terrestris*)
- Salmon-crested cockatoo (*Cacatua moluccensis*)
- Golden parakeet (*Guarouba guarouba*)

Cuban amazon (*Amazona leucocephala*)
Bali starling (*Leucopsar rothschildi*)

Applicant: Terry Owen, Sonora, TX; PRT–89708A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the barasingha (*Rucervus duvaucelii*), Eld's deer (*Rucervus eldii*), scimitar-horned oryx (*Oryx dammah*), Arabian oryx (*Oryx leucoryx*), addax (*Addax nasomaculatus*), dama gazelle (*Nanger dama*), and red lechwe (*Kobus leche*) to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Terry Owen, Sonora, TX; PRT–89824A

The applicant requests a permit authorizing interstate and foreign commerce, export, and cull of excess barasingha (*Rucervus duvaucelii*), scimitar-horned oryx (*Oryx dammah*), and addax (*Addax nasomaculatus*) from the captive herd maintained at their facility, for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Endangered Species Propagation, Survival and Research Center, Inc., Mertzon, TX; PRT–748351

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for Arabian oryx (*Oryx leucoryx*) to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Tony Roach, Junction, TX; PRT–89123A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the scimitar-horned oryx (*Oryx dammah*), to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: James Sillers, Imlay City, MI; PRT–89821A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for red siskin (*Carduelis cucullata*) to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Zoological Society of Philadelphia, Philadelphia, PA; PRT–89481A

The applicant requests a permit to import 15 male and 15 female captive-born Rodrigues flying fox from the Gerald Durrell Endemic Wildlife Sanctuary, Vacoas, Mauritius, for the purpose of enhancement of the survival of the species.

Applicant: Brian Holeman, Ardmore, PA; PRT–83682A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the scimitar-horned oryx (*Oryx dammah*), Arabian oryx (*Oryx leucoryx*), addax (*Addax nasomaculatus*), and dama gazelle (*Nanger dama*) to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Diane Hitchcock, Delhi, NY; PRT–84317A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the golden parakeet (*Guarouba guarouba*) to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Karla White, Okeechobee, FL; PRT–89715A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the golden parakeet (*Guarouba guarouba*) to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Kingdom of Mammals, Central, IN; PRT–713600

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for the following species, to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.
Species:
Leopard (*Panthera pardus*)
Snow leopard (*Uncia uncia*)
Clouded leopard (*Neofelis nebulosa*)

Applicant: Wildlife Conservation Society, Bronx, NY; PRT–678969

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for the following families, genera and species, to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.
Families:
Bovidae
Camelidae
Cebidae
Cercopithecidae
Cervidae
Equidae
Felidae (*does not* include jaguar, margay or ocelot)
Hominidae
Hylobatidae
Lemuridae
Macropodidae
Bucerotidae
Cathartidae
Gruidae
Psittacidae (*does not* include thick-billed parrot)
Rheidae
Spheniscidae
Sturnidae (*does not* include *Aplonis pelzelni*)
Alligatoridae
Boidae (*does not* include Mona boa or Puerto Rico boa)
Crocodylidae (*does not* include the American Crocodile)
Emydidae
Testudinidae
Genus:
Tragopan
Bettongia
Species:
Red siskin (*Carduelis cucullata*)

Applicant: Alan Flynn, Brockton, MA; PRT–027091

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for radiated tortoise (*Astrochelys radiata*) to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: San Diego Zoo Global, San Diego, CA; PRT–778487

The applicant requests reissuance of their permit for scientific research with captive-born giant pandas currently held under loan agreement with the Government of China under the provisions of the USFWS Panda Policy. The proposed research will cover all aspects of behavior, reproductive physiology, genetics, nutrition, and animal health and is a continuation of activities currently in progress. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Robert Opferman, Pueblo, CO; PRT–073270

The applicant requests renewal of their captive-bred wildlife registration

under 50 CFR 17.21(g) for radiated tortoise (*Astrochelys radiata*) to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Roosevelt Park Zoo, Minot, ND; PRT–680444

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for the following families, genera and species, to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Families:
- Lemuridae

Genus:
- Hylobates

Species:
- Cotton-top tamarin (*Saguinus oedipus*)
- Bengal tiger (*Panthera tigris tigris*)
- Amur leopard (*Panthera pardus orientalis*)
- Snow leopard (*Uncia uncia*)

Applicant: Zoological Society of Sioux Falls, Sioux Falls, SD; PRT–773473

The applicant requests renewal and amendment of their captive-bred wildlife registration under 50 CFR 17.21(g) for the following families, genera and species, to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Families:
- Cercopithecidae
- Hylobatidae
- Lemuridae

Genus:
- Panthera

Species:
- Yellow-footed rock wallaby (*Petrogale xanthopus*)
- Cheetah (*Acinonyx jubatus*)
- Black rhinoceros (*Diceros bicornis*)
- Grevy's zebra (*Equus grevyi*)
- African wild dog (*Lycaon pictus*)
- Humboldt penguin (*Spheniscus humboldti*)
- Komodo monitor (*Varanus komodoensis*)
- Galapagos tortoise (*Chelonoidis nigra*)
- Panamanian golden frog (*Atelopus zeteki*)

Applicant: Central Florida Zoological Park, Lake Monroe, FL; PRT–675130

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for the following families, genera and species, to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Families:
- Cebidae
- Felidae (does not include jaguar, margay or ocelot)
- Hylobatidae
- Lemuridae
- Crocodylidae
- Varanidae
- Viperidae (includes *Crotalus unicolor* but not *Crotalus willardi*)

Species:
- Grand Cayman blue iguana (*Cyclura lewisi)*

Multiple Applicants

The following applicants each request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Charles Kleiser, Mill Creek, WA; PRT–89909A

Applicant: Joseph Borgesen, Clarkston, MI; PRT–89908A

B. Endangered Marine Mammals and Marine Mammals

Applicant: Seward Association for the Advancement of Marine Science, Alaska SeaLife Center, Seward, AK; PRT–73634A

The applicant requests a permit to take non-releasable northern sea otters (*Enhydra lutris kenyoni*) for the purpose of public display. These would be animals that strand from the non-ESA-listed stocks in Alaska and that the Service would declare non-releasable because they do not demonstrate the skills and abilities needed to survive in the wild. Further, each of these non-releasable sea otters would be eligible to be exported for the purpose of public display to facilities that meet the criteria under the MMPA. This notification covers activities to be conducted by the applicant over a 5-year period.

Concurrent with publishing this notice in the **Federal Register**, we are forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2012–28634 Filed 11–23–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Ho-Chunk Nation Beloit Casino Project, City of Beloit, Rock County, WI

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA) as lead agency intends to gather information necessary for preparing an Environmental Impact Statement (EIS) in connection with the Ho-Chunk Nation (Nation) application for a proposed 33-acre fee-to-trust transfer and casino project to be located in the City of Beloit, Rock County, Wisconsin. This notice also announces a public scoping meeting to identify potential issues and content for inclusion in the EIS.

DATES: Written comments on the scope of the EIS must arrive by December 26, 2012. The public scoping meeting will be held on December 13, 2012, from 6 p.m. until the last public comment is received.

ADDRESSES: You may mail or hand carry written comments to Ms. Diane Rosen, Midwest Regional Director, Bureau of Indian Affairs, Midwest Region, Norman Pointe II Building, 5600 West American Boulevard, Suite 500, Bloomington, MN 55347. Please include your name, return address, and ''DEIS Scoping Comments, Ho-Chunk Nation Beloit Casino Project'' on the first page of your written comments. The public scoping meeting will be held at Aldrich Middle School, 1859 Northgate Drive, Beloit, Wisconsin 53511.

FOR FURTHER INFORMATION CONTACT: Scott Doig, Environmental Protection Specialist, Bureau of Indian Affairs, Midwest Region, Norman Pointe II Building, 5600 West American Boulevard, Suite 500, Bloomington, MN 55347; Phone (612) 725–4514.

SUPPLEMENTARY INFORMATION: The proposed action would transfer approximately 33 acres of land from fee to trust status, upon which the Nation would develop a casino, hotel, parking, and other supporting facilities. The property is located within the incorporated boundaries of the City of Beloit, Wisconsin. Areas of environmental concern identified for analysis in the EIS include land resources, water resources, air quality, noise, biological resources, cultural

resources, resource use patterns, traffic and transportation, public health/environmental hazards, public services and utilities, socioeconomics, environmental justice, and visual resources/aesthetics. Alternatives identified for analysis include the proposed action, a no-action commercial (non-gaming) construction alternative, a no-action no-construction alternative, a reduced-intensity development alternative, and an alternative site location alternative. The range of issues and alternatives are open to revision based on comments received in response to this notice. Additional information, including a map of the project site, is available by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Other related approvals may be required to implement the project, including approval of the Nation's fee-to-trust application, determination of the site's eligibility for gaming, compliance with the Clean Water Act, and local service agreements. To the extent applicable, the EIS will identify and evaluate issues related to these approvals.

Public Comment Availability: Comments, including names and addresses of respondents, will be available for public review at the BIA address shown in the **ADDRESSES** section, during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask in your comment that your personal identifying information be withheld from public review, the BIA cannot guarantee that this will occur.

Authority: This notice is published in accordance with sections 1503.1 and 1506.6 of the Council on Environmental Quality Regulations (40 CFR parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of the Interior National Environmental Policy Act Implementation Policy (43 CFR part 46), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: September 20, 2012.

Donald E. Laverdure,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 2012–28551 Filed 11–23–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Jackson Rancheria—Tribal Council Ordinance No. 2012–01—Sale, Consumption & Possession of Alcoholic Beverages at the Jackson Rancheria

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes Jackson Rancheria's Tribal Council Ordinance No. 2012–01—Sale, Consumption & Possession of Alcoholic Beverages at the Jackson Rancheria. The Ordinance regulates and controls the sale, consumption and possession of liquor within the Jackson Rancheria's Indian country. This Ordinance will increase the ability of the tribal government to control the distribution and possession of liquor within its Indian country and at the same time will provide an important source of revenue and strengthening of the tribal government and the delivery of tribal services.

DATES: *Effective Date:* This Act is effective as of November 26, 2012.

FOR FURTHER INFORMATION CONTACT: Sophia Torres, Tribal Government Specialist, Pacific Regional Office, Bureau of Indian Affairs, 2800 Cottage Way—Room W–2820, Sacramento, CA 95825; Telephone (916) 978–6073; Fax (916) 978–6099; or De Springer, Office of Indian Services, 1849 C Street NW., MS/4513/MIB, Washington, DC 20240; Telephone (202) 513–7626; Fax (202) 208–5113.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953; Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner,* 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Jackson Rancheria Tribal Council adopted Ordinance No. 2012–01, by Tribal Council Resolution No. 2012–02, on January 15, 2012.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs. I certify that the Tribal Council duly adopted Jackson Rancheria's Tribal Council Ordinance No. 2012–01—Sale, Consumption & Possession of Alcoholic Beverages at the Jackson Rancheria on January 15, 2012.

Dated: November 13, 2012.

Kevin K. Washburn,

Acting Assistant Secretary—Indian Affairs.

The Jackson Rancheria's Tribal Council Ordinance No. 2012–01—Sale, Consumption & Possession of Alcoholic Beverages reads as follows:

Sale, Consumption & Possession of Alcoholic Beverages at the Jackson Rancheria

The Tribal Council of the Jackson Band of Miwuk Indians of the Jackson Rancheria, the governing body of the Jackson Band of Miwuk Indians of the Jackson Rancheria, hereby enacts this Ordinance to govern the sale, consumption, and possession of alcoholic beverages on Rancheria lands.

Preamble

1. Title 18, United States Code, Section 1161, provides Indian tribes with authority to enact ordinances governing the consumption, possession, and sale of alcoholic beverages on their Reservations, provided such ordinance is certified by the Secretary of the Interior, published in the **Federal Register** and such activities are in conformity with state law.

2. The Jackson Band of Miwuk Indians of the Jackson Rancheria is a federally recognized Indian tribe (hereinafter referred to as the ''Tribe'') exercising sovereign authority over the lands of the Jackson Rancheria located within Amador County, California, and held in trust by the United States on behalf of the Tribe (hereinafter referred to as ''Rancheria'') on which tribal members reside in private homes and the Tribe conducts various tribal businesses.

3. Pursuant to Article III Section 1 and Article VI of the Tribe's Constitution, the Tribal Council is the governing body of the Tribe with the power to enact ordinances to promote the general welfare and economic advancement of the Tribe and its members.

4. The Tribe is the owner and operator of the Jackson Rancheria Casino & Hotel which includes an outdoor entertainment area, an RV park with a recreation center, and a General Store (collectively referred to herein as ''Tribal Business Enterprises''), which are all located on the Rancheria.

5. The Tribal Business Enterprises are an integral and indispensable part of the Tribe's economy, providing income to the Tribe and training and employment to its members.

6. The Tribal Council has determined that it is in the Tribe's best interest to offer for sale alcoholic beverages under limited conditions established by the

Tribal Council and to update, consolidate, and replace two previous Tribal Council Ordinances governing the limited sale and consumption of alcoholic beverages.

7. It is the purpose of this ordinance to set out the terms and conditions under which the sale, consumption, and possession of alcoholic beverages may take place as provided for herein.

General Terms

1. The sale of alcohol at the Jackson Rancheria Casino & Hotel (including its outdoor entertainment area) for on-premises consumption only is hereby authorized. For purposes of this paragraph 1, ''on-premises'' is defined as the Jackson Rancheria Casino & Hotel and its outdoor entertainment area.

2. The sale of alcohol at the Tribe's RV Park for on-premises consumption only is hereby authorized. For purposes of this paragraph 2, ''on-premises'' is defined as the Tribe's RV Park which includes a recreation center.

3. The Jackson Rancheria General Store is hereby authorized for the off-sale of alcohol only. For purposes of this paragraph 3, ''off-sale of alcohol'' is defined as sale of alcohol for consumption off the premises of the General Store and within the following areas: (a) outside the boundaries of the Jackson Rancheria lands; and (b) within the Jackson Rancheria in areas with overnight accommodations, specifically the RV Park, the individual hotel rooms of the Jackson Rancheria Casino & Hotel, and private homes located on the Rancheria.

4. The sale of said alcoholic beverages authorized by this ordinance shall be limited to the time, place and manner restrictions enacted by the Tribal Council. No alcohol may be sold at any location on the Rancheria pursuant to this ordinance other than at the Tribal Business Enterprises.

5. The sale of said alcoholic beverages authorized by this ordinance shall be in conformity with all applicable laws of the State of California, and the sale of said beverages shall be subject to state sales tax, federal excise tax and any fees required by the Federal Bureau of Alcohol, Tobacco & Firearms. This includes but is not limited to the following examples:

a. No person under the age of 21 years shall consume, acquire or have in his or her possession at the Tribal Business Enterprises any alcoholic beverage.

b. No person shall sell alcohol to any person under the age of 21 at the Tribal Business Enterprises.

c. No person shall sell alcohol to a person apparently under the influence of liquor.

6. All liquor sales at the Tribal Business Enterprises shall be on a cash only basis and no credit shall be extended to any person, organization or entity, except that this provision does not prevent the use of credit cards or debit credit cards issued by any financial institution.

7. In addition to the foregoing paragraphs pertaining to the sale and consumption of alcohol, the consumption and possession of alcoholic beverages where no sale is involved is hereby authorized only in areas within the Rancheria with overnight accommodations, specifically the RV Park, the individual hotel rooms of the Jackson Rancheria Casino & Hotel, and private homes located on the Rancheria, including possession while specifically en route to these areas. All such consumption and possession shall comply with all applicable tribal, federal and state laws and regulations. For purposes of this paragraph 7, ''where no sale is involved'' is defined as consumption or possession of alcohol where no money is requested or paid.

8. This ordinance updates, consolidates, and replaces Tribal Council Ordinance No. 99–04 enacted in 1999 to govern the limited sale of alcoholic beverages at the Tribe's Conference Center and Tribal Council Ordinance No. 2008–01 enacted in 2008 to govern the limited sale of alcoholic beverages at the Tribe's General Store. Therefore, said Ordinance No. 99–04 and Ordinance No. 2008–01 shall be repealed as of the Effective Date of this ordinance, as defined below.

Posting

This ordinance shall be conspicuously posted at each Tribal Business Enterprise on the Jackson Rancheria where alcohol is sold pursuant to this ordinance at all times it is open to the public.

Enforcement

1. This ordinance may be enforced by the Tribal Council by implementation of monetary fines not to exceed $500 and/or withdrawal of authorization to sell alcohol. Prior to any enforcement action, the Tribal Council shall provide the alleged offender of this ordinance with at least three (3) days notice of an opportunity to be heard during a specially-called Tribal Council meeting. The decision of the Tribal Council shall be final.

2. This ordinance also may be enforced by the Amador County Sheriff's Office at the request of the Tribal Council.

3. In the exercise of its powers and duties under this ordinance, the Tribal Council and its individual members shall not accept any gratuity or compensation from any liquor wholesaler, retailer, or distributor for the Jackson Rancheria, including all of its Tribal Business Enterprises.

Severability, Amendment, and Sovereign Immunity

1. If any provision or application of this ordinance is determined by review to be invalid, such adjudication shall not be held to render ineffectual the remaining portions of this title or to render such provisions inapplicable to other persons or circumstances.

2. This ordinance may only be amended by a majority vote of the Tribal Council.

3. Nothing in this ordinance in any way limits, alters, restricts or waives the Tribe's sovereign immunity from unconsented suit or action.

Effective Date

This ordinance shall become effective following its certification by the Secretary of the Interior and its publication in the **Federal Register**.

[FR Doc. 2012–28538 Filed 11–23–12; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAK–963000–L1410000–FQ0000; F–08649]

Public Land Order No. 7806; Partial Revocation of Secretarial Order Dated September 24, 1942; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a Secretarial Order insofar as it affects approximately 1,905 acres of public lands withdrawn on behalf of the Federal Aviation Administration for Air Navigation Site No. 189 at Farewell, Alaska. The Federal Aviation Administration no longer needs the lands for air navigation purposes.

DATES: *Effective Date:* November 26, 2012.

FOR FURTHER INFORMATION CONTACT: Robert L. Lloyd, BLM Alaska State Office, 222 W. Seventh Avenue, #13, Anchorage, AK 99513, 907–271–4682. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above

individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration has determined that approximately 1,905 acres of Air Navigation Site No. 189 is excess to its needs and has requested a partial revocation of the withdrawal. Upon revocation, the State of Alaska selection applications made under the Alaska Statehood Act and the Alaska National Interest Lands Conservation Act become effective without further action by the State. While the land remains in Federal ownership, there is no significant restriction on subsistence uses. If the lands are ultimately conveyed to the State of Alaska pursuant to the Alaska Statehood Act, that conveyance will not result in a significant restriction on subsistence. Even if any such restriction would result upon conveyance of the land to the State, conveyance of the land is authorized by Section 810(c) of the Alaska National Interest Lands Conservation Act.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

1. The Secretarial Order dated September 24, 1942, which withdrew public lands and reserved them on behalf of the Federal Aviation Administration for Air Navigation Site No. 189, is hereby revoked only insofar as it affects the following described land:

Seward Meridian, Alaska

T. 28 N., R. 25 W., more particularly described as follows:

Parcel A, a portion of U.S. Survey No. 2640, Alaska, is described as follows: Beginning at corner No. 1, U.S. Survey No. 2640; thence along a portion of line 1–4, S. 14°21′59″ W., a distance of 2,765.52 feet, to a point not monumented; thence N. 75°53′00″ W., a distance of 18,479.03 feet to a point on line 3–2, not monumented; thence along a portion of line 3–2, N. 14°20′30″ E., a distance of 2,846.73 feet to corner No. 2; thence along line 2–1, S. 75°37′54″ E., a distance of 18,480.13 feet to corner No. 1, the point of beginning, containing 1190.44 acres more or less.

Parcel B, a portion of U.S. Survey No. 5408, Alaska, is described as follows:

Beginning at corner No. 6, Lot 1, U. S. Survey No. 2640, on line 4–1, U.S. Survey No. 5408; thence along a portion of said line 4–1, S. 75°38′58″ E., a distance of 2,639.78 feet, to corner No. 1; thence along line 1–2, S. 14°23′28″ W., a distance of 5,939.45 feet, to corner No. 2; thence along line 2–3, N. 75°36′00″ W., a distance of 5,940.00 feet to corner No. 3; thence along a portion of line 3–4, N. 14°24′03″ E., a distance of 4,675.46 feet to a point not monumented; thence S. 75°35′54″ E., a distance of 3,295.12 feet, to a point not monumented; thence N. 14°35′22″ E., a distance of 1,261.78 feet to corner No. 6, Lot 1, U. S. Survey No. 2640, the point of beginning, containing 714.11 acres more or less.

The total area described contains approximately 1,905 acres, more or less, at Farewell, Alaska.

2. The State of Alaska applications for selection made under Section 6(a) of the Alaska Statehood Act of July 7, 1958, 48 U.S.C. note prec. 21 and under Section 906(e) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(e) become effective without further action by the State upon publication of this Public Land Order in the **Federal Register**, if such land is otherwise available. Land selected by, but not conveyed to, the State will be subject to Public Land Order No. 5186, (37 FR 5589 (1972)), as amended, and any other withdrawal or segregation of record.

Dated: October 25, 2012.

Rhea S. Suh,

Assistant Secretary—Policy, Management and Budget.

[FR Doc. 2012–28643 Filed 11–23–12; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

[LLCAD08000–L14300000–ET0000; CACA 51737]

Public Land Order No. 7801; Withdrawal of Public Lands for Protection of Proposed Expansion of Twentynine Palms, CA

Correction

In notice document 2012–23479 beginning on page 58864 of the issue of Monday, September 24, 2012 make the following correction:

On page 58865, beginning in the first column, under the heading ''*a. Federal surface and mineral estate:*'', and ending on the same page, in the third column, on the last line, the text should read as follows:

San Bernardino Meridian

Western Acquisition Area

T. 4 N., R. 2 E.,
Sec. 1.
T. 5 N., R. 2 E.,
Secs. 1 and 2;
Secs. 11 to 14, inclusive, and 23 to 26, inclusive;
Sec. 35.
T. 6 N., R. 2 E.,
Sec. 13;
Secs. 23 to 26, inclusive;
Sec. 35.
T. 4 N., R. 3 E.,
Sec. 1, lots 1 and 2 of NE¼, lots 1 and 2 of NW¼, NW¼SW¼, and SE¼;
Sec. 2;
Sec. 3, E½ of lot 1 of NE¼, lot 2 of NE¼, lot 2 of NW¼, and S½S½;
Sec. 4, lots 1 and 2 of NE¼, lots 1 and 2 of NW¼, SW¼, and S½SE¼;
Secs 5 and 6;
Sec. 7, E½;
Secs. 8 and 9;
Sec. 10, N½N½;
Sec. 12, N½ and SE¼.
T. 5 N., R. 3 E., partly unsurveyed.
Secs. 2 to 35, inclusive;
Sec. 36, SW¼.
T. 4 N., R. 4 E.,
Secs. 1 to 15, inclusive;
Sec. 17;
Sec. 18, N½;
Sec. 20, N½;
Secs. 21 to 27, inclusive;
Sec. 28, N½.
T. 5 N., R. 4 E., partly unsurveyed.
Secs. 2 to 11, inclusive;
Sec. 12, all except for Mineral Survey No. 6336;
Sec. 13, E½, E½E½NW¼, E½SW¼, and E½W½SW¼;
Secs. 14, 15, and 16;
Sec. 17, NW¼ and S½;
Secs. 18 to 24, inclusive;
Sec. 25, N½, SW¼, and W½SE¼;
Sec. 26, lots 1 to 4, inclusive, W½, and SE¼;
Secs. 27 to 36, inclusive.
T. 6 N., R. 4 E.,
Secs. 1 to 15, inclusive, and 17 to 24, inclusive;
Sec. 26;
Secs. 27 and 28, all except for Mineral Survey Nos. 3000 and 3980;
Secs. 29 to 35, inclusive;
Sec. 36, N½ and SW¼.
T. 3 N., R. 5 E.,
Secs. 1, 2, and 3;
Sec. 4, lots 1 to 12, inclusive, and E½NW¼NE¼SW¼;
Secs. 5 and 6;
Sec. 9, lots 1 and 2;
Sec. 10, lots 1 to 7, inclusive;
Sec. 11;
Sec. 12, lots 1 to 12, inclusive.
T. 4 N., R. 5 E., partly unsurveyed.
Secs. 2 to 35, inclusive.
T. 5 N., R. 5 E.,
Secs. 4 and 5;
Sec. 6, lots 1 to 10, inclusive, SE¼NW¼, E½SW¼, N½SE¼, and SW¼SE¼;
Sec. 7, lots 1 to 4, inclusive, lots 6 and 7, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 8;
Secs. 14, 15, 18, 19, 20, 22, 23, 26, 27, 28, 30, 31, 32, 34, and 35.
T. 6 N., R. 5 E.,
Secs. 17 to 20, inclusive, and 29 to 32, inclusive.

Southern Acquisition Area

T. 2 N., R. 9 E.,
Sec. 25;
Sec. 26, all except for N½NW¼SW¼SW¼;
Sec. 27, E½ except for W½SE¼SE¼SE¼;
Sec. 34, S½NE¼NE¼NE¼, SE¼NE¼NE¼, W½NE¼NE¼, NW¼NE¼, and E½NW¼;
Sec. 35, N½ except for N½NE¼NE¼NE¼ and S½SW¼NW¼NE¼.

T. 2 N., R. 10 E.,
Secs. 2 to 11, inclusive;
Sec. 14, that portion lying north and west of the boundary of the Cleghorn Lakes Wilderness Area;
Sec. 15 and 17 to 22, inclusive;
Sec. 23, that portion lying west of the boundary of the Cleghorn Lakes Wilderness Area;
Sec. 26, that portion lying west and south of the boundary of the Cleghorn Lakes Wilderness Area;
Secs. 27 to 35, inclusive.

Eastern Acquisition Area

T. 4 N., R. 11 E.,
Secs. 1, 2, 11, 12, and 14.
T. 5 N., R. 11 E.,
Sec. 35.
T. 3 N., R. 12 E.,
Secs. 1, 2, and 3;
Secs. 10 to 15, inclusive;
Secs. 22, 23, and 24;
Sec. 25, that portion lying west of the boundary of the Sheephole Valley Wilderness Area;
Secs. 26 and 27;
Sec. 34, that portion lying north and east of the boundary of Cleghorn Lakes Wilderness Area;
Sec. 35.
T. 4 N., R. 12 E.,
Secs. 1 to 8, inclusive;
Secs. 10, 11, 12, 14, and 15;
Sec. 18, all except for Mineral Survey No. 5802;
Sec. 19, N½ except for Mineral Survey Nos. 5802 and 5805;
Sec. 21, E½;
Secs. 23 to 27, inclusive;
Sec. 28, E½;
Secs. 34 and 35.
T. 5 N., R. 12 E.,
Secs. 19 and 20, all except the lands conveyed by Patent No. 1000678;
Secs. 21 to 27, inclusive;
Sec. 28, N½ and SW¼;
Secs, 29 and 30, all except the lands conveyed by Patent No. 1000678;
Secs. 31 to 35, inclusive.
T. 3 N., R. 13 E.,
Sec. 4, that portion lying west of the Sheephole Valley Wilderness Area;
Secs. 5 and 7;
Sec. 8, 17, 18, and 19, those portions lying west of the Sheephole Valley Wilderness Area.
T. 4 N., R. 13 E.,
Secs. 1 to 4, inclusive, 6 to 15, inclusive, and 17 to 22, inclusive;
Secs. 23, 24, and 27, those portions lying northwesterly of the Sheephole Valley Wilderness Area;
Secs. 28 to 32, inclusive;
Secs. 33 and 34, that portion lying northwesterly of the Sheephole Valley Wilderness Area.
T. 5 N., R. 13 E.,
Secs. 19 and 20;
Sec. 22, W½;
Secs. 23 to 28, inclusive, and 30, 31, 32, 34, and 35.
T. 3 N., R. 14 E.,
Secs. 1 and 2;
Secs. 3, 4, and 10, those portions lying east of the Sheephole Valley Wilderness Area;
Secs. 11, 12, and 13;
Secs. 14 and 15, those portions lying east of the Sheephole Valley Wilderness Area.
T. 4 N., R. 14 E.,
Secs. 6, 7, 8, 10, 11, 12, 14, 15, 17, and 18;
Sec. 20, that portion lying northeasterly of the Sheephole Valley Wilderness Area;
Secs. 21 to 24, inclusive;
Sec. 25, that portion lying northwesterly of the Cadiz Dunes Wilderness Area;
Secs. 26, 27, and 28;
Sec. 29, that portion lying northeasterly of the Sheephole Valley Wilderness Area;
Secs. 33, 34, and 35.
T. 5 N., R. 14 E.,
Secs. 30 and 31.
T. 4 N, R. 15 E.,
Secs. 1 to 4, inclusive;
Sec. 5, all except for railroad rights-of-way;
Secs. 6, 7, and 8;
Sec. 9, all except for railroad rights-of-way;

[FR Doc. C1–2012–23479 Filed 11–23–12; 8:45 am]

BILLING CODE 1505–01–D

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–794]

Certain Electronic Devices, Including Wireless Communication Devices, Portable Music and Data Processing Devices, and Tablet Computers; Notice of Commission Determination To Review the Final Initial Determination; Schedule for Filing Written Submissions on the Issues Under Review and on Remedy, Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review the final initial determination issued by the presiding administrative law judge in the above-captioned investigation on September 14, 2012. The Commission requests certain briefing from the parties on the issues under review, as indicated in this notice. The Commission also requests briefing from the parties and the public on the issues of remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Clark S. Cheney, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2661. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on August 1, 2011, based on a complaint filed by Samsung Electronics Co., Ltd. of Korea and Samsung Telecommunications America, LLC of Richardson, Texas (collectively, ''Samsung''). 76 FR 45860 (Aug. 1, 2011). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electronic devices, including wireless communication devices, portable music and data processing devices, and tablet computers, by reason of infringement of various patents, including U.S. Patent Nos. 7,706,348 (''the '348 patent''), 7,486,644 (''the '644 patent''), 7,450,114 (''the '114 patent''), and 6,771,980 (''the '980 patent''). The notice of investigation names Apple Inc. of Cupertino, California, as the only respondent.

On September 14, 2012, the presiding administrative law judge (''ALJ'') issued his final initial determination (''ID'') in this investigation finding no violation of section 337. The ALJ determined that the '348, '644, and '980 patents are valid but not infringed and that the '114 patent is both invalid and not infringed. The ALJ further determined that the economic prong of the domestic industry requirement is satisfied for all four patents at issue, but that the technical prong is not satisfied for any of the asserted patents.

On October 1, 2012, complainant Samsung and the Commission investigative attorney filed petitions for review of the ID, while Apple filed a contingent petition for review.

Having examined the record of this investigation, including the ID, the petitions for review, and the responses thereto, the Commission has determined to review the ALJ's determination of no violation in its entirety.

In connection with the final disposition of this investigation, the Commission may issue an order that results in the exclusion of the subject articles from entry into the United

States. *See* 19 U.S.C. 1337(d). Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337TA360, USITC Pub. No. 2843, Comm'n Op. at 7–10 (December 1994).

When the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) The public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

When the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Parties to the investigation, interested government agencies, the Office of Unfair Import Investigations (''OUII''), and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding.

The Commission further encourages briefing from the parties to the investigation, interested government agencies, OUII, and any other interested parties on the following topics:

1. Does the mere existence of a FRAND undertaking with respect to a particular patent preclude issuance of an exclusion order based on infringement of that patent? Please discuss theories in law, equity, and the public interest, and identify which (if any) of the 337(d)(1) public interest factors preclude issuance of such an order.

2. Where a patent owner has offered to license a patent to an accused infringer, what framework should be used for determining whether the offer complies with a FRAND undertaking? How would a rejection of the offer by an accused infringer influence the analysis, if at all?

3. Would there be substantial cost or delay to design around the technology covered by the '348 and '644 patents asserted in this investigation? Could such a design-around still comply with the relevant ETSI standard?

4. What portion of the accused devices is allegedly covered by the asserted claims of each of the '348 and '644 patents? Do the patents cover relatively minor features of the accused devices?

In addition to the foregoing, the parties to the investigation are requested to brief their positions on the following subset of the issues under review, with reference to the applicable law and the evidentiary record:

5. What evidence in the record explains the legal significance of Samsung's FRAND undertakings under French law?

6. [ ]

7. [ ]

8. With respect to the asserted claims of the '348 patent, what record evidence shows that a person of ordinary skill in the art would understand the phrase ''10 bit TFCI information'' to allow or preclude the use of padding bits? What is the difference between the ''10 bit TFCI information'' in the portion of Table 1a shown in columns 13 and 14 of '348 patent and the TFCI information with padding zeroes allegedly used in the alleged domestic industry devices? Is the patent's discussion of padding zeroes at col. 3, lines 27–34 of any relevance? What consequence would construing ''10 bit TFCI information'' to allow padding bits have on the issues of infringement, validity, and the technical prong of the domestic industry requirement?

9. With respect to the asserted claims of the '348 patent, what claim language, if any, limits the claim to the use of a look-up table and precludes the claim from covering the embodiment of the invention shown in Figures 8 and 14 of the '348 patent?

10. With respect to asserted claims 82–84 of the '348 patent, identify any support in the patent specification or the record generally for construing the term ''puncturing'' in asserted claims 82–84 to encompass ''excluding'' bits (*see, e.g.,* '348 patent at 32:10–17). What consequence would such a construction have on the issues of infringement, validity, and the technical prong of the domestic industry requirement?

11. With respect to the asserted claims of the '644 patent, what is the proper construction of ''extracting''? What variable, if any, in the source code relied upon by Samsung to prove infringement and domestic industry represents a ''60-bit rate-matched block'' that has been extracted from a received signal?

12. With respect to the '980 patent, has Samsung waived all infringement and domestic industry allegations except for those based on claim 10? Identify by source code file name or other specific record designation the precise ''dialing program'' that Samsung relies upon to prove infringement and domestic industry with respect to claim 10. Also identify, using record evidence, the conditions that trigger execution of the ''dialing program'' in the relevant devices.

13. With respect to the '980 patent, if the Commission were to construe ''dialing icon'' to require a ''pictorial element,'' what record evidence demonstrates that Samsung's alleged domestic industry products meet that limitation?

The parties have been invited to brief only the discrete issues enumerated above, with reference to the applicable law and evidentiary record. The parties are not to brief other issues on review, which are adequately presented in the parties' existing filings.

Written Submissions: Written submissions and proposed remedial orders in response to this notice must be filed no later than close of business on December 3, 2012. Complainant and OUII are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is also requested to state the dates that the patents expire and the HTSUS numbers under which the accused products are imported. Initial submissions by the parties are limited to 80 pages, not including any attachments or exhibits related to discussion of the public interest. Initial submissions by other members of the public are limited to 50 pages, not including any attachments or exhibits related to discussion of the public interest. Reply submissions must be filed no later than the close of business December 10,

2012. All reply submissions are limited to 50 pages, not including any attachments or exhibits related to discussion of the public interest. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number (''Inv. No. 337–TA–794'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with the any confidential filing. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

Issued: November 19, 2012.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–28509 Filed 11–23–12; 8:45 am]

BILLING CODE 7020–02–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Committee on Rules of Practice and Procedure

AGENCY: Judicial Conference of the United States Committee on Rules of Practice and Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Committee on Rules of Practice and Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATE: January 3–4, 2013.

TIME: 8:30 a.m. to 5:00 p.m.

ADDRESSES: The Charles Hotel, Harvard Square, One Bennett Street, Cambridge, MA 02138.

FOR FURTHER INFORMATION CONTACT: Jonathan C. Rose, Rules Committee Secretary, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: November 20, 2012.

Jonathan C. Rose,

Rules Committee Secretary.

[FR Doc. 2012–28627 Filed 11–23–12; 8:45 am]

BILLING CODE 2210–55–P

DEPARTMENT OF JUSTICE

[OMB Number 1110–NEW]

Agency Information Collection Activities: Proposed Collection, Comments Requested; Notice of Collection of Information Relative to Threats of Explosive Device Violence at Institutions of Higher Education

ACTION: Emergency 60-day Notice.

The Department of Justice, Federal Bureau of Investigation (FBI), National Center for the Analysis of Violent Crime (NCAVC), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with established review procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until 12/5/2012. This process is conducted in accordance with 5 CFR 1320.10.

All comments, suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Andre Simons, Federal Bureau of Investigation, NCAVC, Critical Incident Response Group, FBI Academy, 1 Range Road, Quantico, Virginia, 22135.Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Comments 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 of other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* Emergency notice: Identify bomb-related incidents (including hoax devices and threats where no device was involved) occurring at institutions of higher education (IHE), and how each IHE has responded to these incidents.

(2) *The title of the form/collection:* Institution of Higher Education Bomb Threat/Incident Survey

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* N/A

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* IHE law enforcement or campus safety agencies.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 1200 respondents will be contacted to complete a survey consisting of 19 questions. It is estimated that a burden of approximately 20 to 60 minutes will be cast upon each respondent to complete the survey. However, this estimated burden will depend on individualized data retrieval systems, availability of requested data, and other

variables that could not be estimated via sample testing.

(6) *An estimate of the total public burden (in hours) associated with this collection:* There are approximately 24,000 to 72,000 burden minutes associated with this information collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE., Room 3W–1407B, NW., Washington, DC 20530.

Dated: November 20, 2012.

Jerri Murray,

Department Clearance Officer for PRA, United States Department of Justice.

[FR Doc. 2012–28579 Filed 11–23–12; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0277]

Agency Information Collection Activities: Proposed Collection; Comments Requested; Revision of Currently Approved Collection; Office for Victims of Crime Training and Technical Assistance Center (OVC TTAC) Feedback Form Package

ACTION: 30-day notice.

The Department of Justice, Office of Justice Programs, Office for Victims of Crime, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 77, Number 176, page 55862, on September 11, 2012, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until December 26, 2012. This process is conducted in accordance with 5 CFR 1320.10.

If you have 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 Shelby Crawford, Victim Justice Program Specialist, Office for Victims of Crime, Office of Justice Programs, Department of Justice, 810 7th Street NW., Washington, DC 20530.

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:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of Existing Collection.

(2) *The Title of the Form/Collection:* OVC TTAC Feedback Form Package.

(3) *The Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number(s): NA. Office for Victims of Crime, Office of Justice Programs, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract. Primary:* State, Local or Tribal agencies/organizations. Other: Federal Government; individuals or households; not-for-profit institutions; businesses or other for-profit. Abstract: The Office for Victims of Crime Training and Technical Assistance Center (OVC TTAC) Feedback Form Package is designed to collect the data necessary to continuously assess the satisfaction and outcomes of assistance provided through OVC TTAC for both monitoring and accountability purposes to continuously meet the needs of the victim services field. OVC TTAC will give these forms to recipients of training and technical assistance, scholarship applicants, users of the Web site and call center, consultants/instructors providing training, agencies requesting services, and other professionals receiving assistance from OVC TTAC. The purpose of this data collection will be to capture important feedback on the respondent's satisfaction and outcomes of the resources provided. The data will then be used to advise OVC on ways to improve the support that it provides to the victim services field at-large.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* There are approximately 11,119 respondents who will require an average of 8 minutes (ranging from 4 to 15 minutes across all forms) to respond to a single form each year.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual public burden hours for this information collection are estimated to be 1,736 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., Room 3W–1407B, Washington, DC 20530.

Dated: November 20, 2012.

Jerri Murray,

Department Clearance Officer for PRA, United States Department of Justice.

[FR Doc. 2012–28581 Filed 11–23–12; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0001]

Agency Information Collection Activities: Proposed Collection; Comments Requested; ATF Distribution Center Contractor Survey

ACTION: 30-day notice.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 77, Number 181, page 57590 on September 18, 2012, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until December 26, 2012. This process is conducted in accordance with 5 CFR 1320.10.

Written comments concerning this information collection should be sent to

the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to email them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the eight digit OMB number or the title of the collection.

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:

(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.

Summary of Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* ATF Distribution Center Survey.

(2) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 1370.4. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: Individuals or households.

Need for Collection

The information provided on the form is used to evaluate the ATF Distribution Center and the services it provides to the users of ATF forms and publications.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 240 respondents will complete a 1 minute form.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 4 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street NE., Room 3W–1407B, Washington, DC 20530.

Dated: November 20, 2012.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2012–28602 Filed 11–23–12; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0010]

Agency Information Collection Activities: Proposed Collection; Comments Requested; Application To Transport Interstate or Temporarily Export Certain National Firearms Act (NFA) Firearms

ACTION: 30-Day Notice.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 77, Number 185, page 58869 on September 24, 2012, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until December 26, 2012. This process is conducted in accordance with 5 CFR 1320.10. Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to email them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the eight digit OMB number or the title of the collection.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Summary of Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application to Transport Interstate or Temporarily Export Certain National Firearms Act (NFA) Firearms.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 5320.20. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Other: None.

Need for Collection

The information is used by ATF to determine the lawful transportation of an NFA firearm and/or to pursue the criminal investigation into an unregistered NFA firearm.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 4400 respondents will complete a 20 minute form.

(6) *An estimate of the total burden (in hours) associated with the collection:* There is an estimated 1467 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution

Square, 145 N Street NE., Room 3W–1407B, Washington, DC 20530.

Dated: November 20, 2012.

Jerri Murray,

Department Clearance Officer for PR, U.S. Department of Justice.

[FR Doc. 2012–28604 Filed 11–23–12; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0066]

Agency Information Collection Activities: Proposed Collection; Comments Requested; Manufacturers of Ammunition, Records and Supporting Data of Ammunition Manufactured and Disposed of

ACTION: 30-day notice.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 77, Number 181, page 57592 on September 18, 2012, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until December 26, 2012. This process is conducted in accordance with 5 CFR 1320.10.

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to email them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the eight digit OMB number or the title of the collection.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Summary of Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Manufacturers of Ammunition, Records and Supporting Data of Ammunition Manufactured and Disposed of.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None.

Need for Collection

These records are used by ATF in criminal investigations and compliance inspections in fulfilling the Bureau's mission to enforce the Gun Control Law.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: It is estimated that 260 respondents will take 30 minutes to respond.

(6) An estimate of the total burden (in hours) associated with the collection: There are an estimated 130 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street NE., Room 3W–1407B, Washington, DC 20530.

Dated: November 20, 2012.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2012–28605 Filed 11–23–12; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

[OMB Number 1140–0072]

Agency Information Collection Activities: Proposed Collection; Comments Requested; Employee Possessor Questionnaire

ACTION: 30-Day notice.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 77, Number 181, page 57592 on September 18, 2012, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until December 26, 2012. This process is conducted in accordance with 5 CFR 1320.10.

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to email them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the eight digit OMB number or the title of the collection.

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:

(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.

Summary of Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Employee Possessor Questionnaire.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 5400.28. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Other: Business or other for-profit.

Need for Collection

Each employee possessor in the explosives business or operations required to ship, transport, receive, or possess (actual or constructive), explosive materials must submit this form. The form will be submitted to ATF to determine whether the person who provided the information is qualified to be an employee possessor in an explosive business or operation.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: It is estimated that 10,000 respondents will complete the form within 20 minutes.

(6) An estimate of the total burden (in hours) associated with the collection: There are an estimated 3,334 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street NE., Room 3W–1407B, Washington, DC 20530.

Dated: November 20, 2012.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2012–28606 Filed 11–23–12; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0008]

Agency Information Collection Activities: Proposed Collection; Comments Requested; Application and Permit for Permanent Exportation of Firearms

ACTION: 30-day notice of information collection under review.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 77, Number 181, page 57591 on September 18, 2012, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until December 26, 2012. This process is conducted in accordance with 5 CFR 1320.10.

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to email them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the eight digit OMB number or the title of the collection.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Summary of Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application and Permit for Permanent Exportation of Firearms.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 9(5320.9). Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: Individuals or households.

Need for Collection

The form is used to obtain permission to export firearms and serves as a vehicle to allow either the removal of the firearms from registration in the National Firearms Registration and Transfer Record or collection of an excise tax. It is used by Federal firearms licensees and others to obtain a benefit.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 930 respondents will complete an 18 minute form.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 279 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street NE., Room 3W–1407B, Washington, DC 20530.

Dated: November 20, 2012.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2012–28603 Filed 11–23–12; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0073]

Agency Information Collection Activities: Proposed Collection; Comments Requested; Furnishing of Samples

ACTION: 30-day notice.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 77, Number 181, page 57593 on September 18, 2012, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until December 26, 2012. This process is conducted in accordance with 5 CFR 1320.10.

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to email them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the eight digit OMB number or the title of the collection.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Summary of Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Furnishing of Samples.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None.

Need for Collection

Licensed manufacturers and licensed importers and persons who manufacture or import explosive materials or ammonium nitrate must, when required by the Director, furnish samples of such explosive materials or ammonium nitrate; information on chemical composition of those products; and any other information that the Director determines is relevant to the identification of the ammonium nitrate.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 100 respondents will take 30 minutes to submit the samples.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 50 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street NE., Room 3W–1407B, Washington, DC 20530.

Dated: November 20, 2012.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2012–28607 Filed 11–23–12; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[OMB Number 1117–0031]

Agency Information Collection Activities: Proposed Collection; Comments Requested: Application for Registration Under Domestic Chemical Diversion Control Act of 1993 and Renewal Application for Registration Under Domestic Chemical Diversion Control Act of 1993 DEA Forms 510 & 510A

ACTION: 60-Day notice.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until January 25, 2013. This process is conducted in accordance with 5 CFR 1320.10.

If you have 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 Cathy A. Gallagher, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g.,

permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Registration under Domestic Chemical Diversion Control Act of 1993 and Renewal Application for Registration under Domestic Chemical Diversion Control Act of 1993 DEA Forms 510 & 510A.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: DEA Forms 510 and 510a.

Component: Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: none.

Abstract: The Domestic Chemical Diversion Control Act requires that manufacturers, distributors, importers, and exporters of List I chemicals which may be diverted in the United States for the production of illicit drugs must register with DEA. Registration provides a system to aid in the tracking of the distribution of List I chemicals.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

	Respondents	Burden (minutes)	Total hour burden	@ $52.80/hour =
DEA–510 (paper)	17	0.5 hours	8.5	$448.80
DEA–510 (electronic)	143	0.25 hours	35.75	1,887.60
DEA–510a (paper)	158	0.5 hours	79	4,171.20
DEA–510a (electronic)	896	0.25 hours	224	11,827.20
Total	1054		347.25	18,334.80

Total percentage electronic: 85.7% for renewal and 95% for new.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 347.25 annual burden hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street NE., Room 3W–1407B, Washington, DC 20530.

Dated: November 20, 2012.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2012–28578 Filed 11–23–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[OMB Number 1117–0029]

Agency Information Collection Activities: Proposed Collection; Comments Requested: Annual Reporting Requirement for Manufacturers of Listed Chemicals

ACTION: 60-Day notice.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until January 25, 2013. This process is conducted in accordance with 5 CFR 1320.10.

If you have 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 Cathy A. Gallagher, Chief, Liaison and Policy Section, Drug Enforcement Administration, Office of Diversion Control, 8701 Morrissette Drive, Springfield, VA. 22152.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Annual Reporting Requirement for Manufacturers of Listed Chemicals.

(3) *Agency form number, if any and the applicable component of the Department sponsoring the collection:* Form number: none. Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: None.

Abstract: This information collection permits the Drug Enforcement Administration to monitor the volume and availability of domestically manufactured listed chemicals. These listed chemicals may be subject to diversion for the illicit production of controlled substances. This information collection is required by law.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that there are one hundred (100) total respondents for this information collection. One hundred (100) persons respond annually at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* It is estimated that there are

100 annual burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3W–1407B, Washington, DC 20530.

Dated: November 20, 2012.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2012–28577 Filed 11–23–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0218]

Office of Juvenile Justice and Delinquency Prevention; Agency Information Collection Activities: Proposed Collection; Comments Requested; Census of Juveniles in Residential Placement (Revision of a Currently Approved Collection)

ACTION: 60-Day Notice.

The Department of Justice (DOJ), Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until January 25, 2013. This process is conducted in accordance with 5 CFR 1320.10.

If you have 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 Brecht Donoghue, (202) 305–1270, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection Back to Top

(1) *Type of information collection:* Revision of a Currently Approved Collection.

(2) *The title of the form/collection:* Census of Juveniles in Residential Placement.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is CJ–14, Office of Juvenile Justice and Delinquency Prevention, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Federal Government, State, Local or Tribal. Other: Not-for-profit institutions; Business or other for-profit.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 2,550 respondents will complete a 3.5-hour questionnaire.

(6) *An estimate of the total public burden (in hours) associated with the collection:* Approximately 9,225 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., Room 3W–1407B, Washington, DC 20530.

Dated: November 20, 2012.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2012–28580 Filed 11–23–12; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Child Labor, Forced Labor, and Forced or Indentured Child Labor in the Production of Goods in Foreign Countries and Efforts by Certain Countries To Eliminate the Worst Forms of Child Labor

AGENCY: The Bureau of International Labor Affairs, United States Department of Labor.

ACTION: Notice: Request for information and invitation to comment.

SUMMARY: This notice is a request for information and/or comment on reports issued by the Bureau of International Labor Affairs (ILAB) September 26, 2012, regarding child labor and forced labor in foreign countries. Relevant information will be used by the Department of Labor (DOL) in preparation of its ongoing reporting under Congressional mandates and Presidential directive. In addition, ILAB will use relevant information to conduct assessments of each country's individual advancement toward eliminating the worst forms of child labor during the current reporting period compared to previous years.

DATES: Submitters of information are requested to provide their submission to the Office of Child Labor, Forced Labor and Human Trafficking (OCFT) at the email or physical address below by 5 p.m. January 15, 2013.

To Submit Information: Information submitted to DOL should be submitted directly to OCFT, Bureau of International Labor Affairs, U.S. Department of Labor at (202) 693–4843 (this is not a toll free number). Comments, identified as ''Docket No. DOL–2012–0006,'' may be submitted by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov.

The portal includes instructions for submitting comments. Parties submitting responses electronically are encouraged not to submit paper copies.

Facsimile (fax): OCFT at 202–693–4830.

Mail, Express Delivery, Hand Delivery, and Messenger Service (1 copy): Karrie Peterson at U.S. Department of Labor, OCFT, Bureau of International Labor Affairs, 200 Constitution Avenue NW., Room S–5317, Washington, DC 20210.

Email: Email submissions should be addressed to Karrie Peterson at *peterson.karrie.m@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Karrie Peterson (see contact information above).

SUPPLEMENTARY INFORMATION: I. Section 105(b)(1) of the Trafficking Victims

Protection Reauthorization Act of 2005 (''TVPRA of 2005''), Public Law 109–164 (2006), directed the Secretary of Labor, acting through ILAB, to ''develop and make available to the public a list of goods from countries that the Bureau of International Labor Affairs has reason to believe are produced by forced labor or child labor in violation of international standards'' (TVPRA List).

Pursuant to this mandate, in December 2007 DOL published in the **Federal Register** a set of procedural guidelines that ILAB follows in developing the TVPRA List (72 FR 73374). The guidelines set forth the criteria by which information is evaluated; established procedures for public submission of information to be considered by ILAB; and identified the process ILAB follows in maintaining and updating the List after its initial publication.

ILAB published its first TVPRA List on September 30, 2009, and has issued updates in 2010, 2011, and 2012. This List is updated periodically as additional countries and territories are researched and new information for countries and territories already reviewed is evaluated. For a copy of the 2012 TVPRA report, Frequently Asked Questions, and other materials relating to the TVPRA List, see ILAB's TVPRA Web page at: *http://www.dol.gov/ILAB/programs/ocft/tvpra.htm.*

II. Executive Order No. 13126 (E.O. 13126) declared that it was ''the policy of the United States Government * * * that the executive agencies shall take appropriate actions to enforce the laws prohibiting the manufacture or importation of goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part by forced or indentured child labor.'' Pursuant to E.O. 13126, and following public notice and comment, the Department of Labor published in the January 18, 2001, **Federal Register**, a final list of products (''E.O. List''), identified by country of origin, that the Department, in consultation and cooperation with the Departments of State (DOS) and Treasury [relevant responsibilities now within the Department of Homeland Security (DHS)], had a reasonable basis to believe might have been mined, produced or manufactured with forced or indentured child labor (66 FR 5353). In addition to the List, the Department also published on January 18, 2001, ''Procedural Guidelines for Maintenance of the List of Products Requiring Federal Contractor Certification as to Forced or Indentured Child Labor,'' which provide for maintaining, reviewing, and, as appropriate, revising the EO List (66 FR 5351).

Pursuant to Sections D through G of the Procedural Guidelines, the EO List may be updated through consideration of submissions by individuals or through OCFT's own initiative.

DOL has officially revised the EO List three times, on July 20, 2010, May 31, 2011, and April 3, 2012, each time after public notice and comment as well as consultation with DOS and DHS. In addition, DOL published an initial determination on September 27, 2012 proposing another revision to the EO List and requesting public comment (76 FR 61384).

The current EO List, Procedural Guidelines, and related information can be accessed on the Internet at *http://www.dol.gov/ILAB/regs/eo13126/main.htm.*

III. The Trade and Development Act of 2000 (TDA), Public Law 106–200 (2002), established a new eligibility criterion for receipt of trade benefits under the Generalized System of Preferences (GSP), Caribbean Basin Trade and Partnership Act (CBTPA), and Africa Growth and Opportunity Act (AGOA). The TDA amends the GSP reporting requirements of Section 504 of the Trade Act of 1974, 19 U.S.C. 2464, to require that the President's annual report on the status of internationally recognized worker rights include ''findings by the Secretary of Labor with respect to the beneficiary country's implementation of its international commitments to eliminate the worst forms of child labor.'' Title II of the TDA and the TDA Conference Report, Joint Explanatory Statement of the Committee of Conference, 106th Cong.2d.Sess. (2000), indicate that the same criterion applies for the receipt of benefits under CBTPA and AGOA, respectively.

In addition, the Andean Trade Preference Act, as amended and expanded by the Andean Trade Promotion and Drug Eradication Act, Public Law 107–210, Title XXXI (2002), includes as a criterion for receiving benefits ''[w]hether the country has implemented its commitments to eliminate the worst forms of child labor as defined in section 507(6) of the Trade Act of 1974.'' DOL fulfills these reporting mandates through annual publication of the U.S. Department of Labor's Findings on the Worst Forms of Child Labor with respect to countries eligible for the aforementioned programs. The 2011 report and additional background information are available on the Internet at *http://www.dol.gov/ILAB/programs/ocft/tda.htm.*

Information Requested and Invitation to Comment: Interested parties are invited to comment and provide information regarding DOL's 2011 TDA Report; the 2012 TVPRA List; and the current E.O. 13126 List, all of which may be found on the Internet at *http://www.dol.gov/ilab/programs/ocft/research.htm* or obtained from OCFT. DOL requests comments or information to update the findings and suggestions for government action for countries reviewed in the TDA Report, as well as to assess each country's individual advancement toward eliminating the worst forms of child labor during the current reporting period compared to previous years. For more information on the types of issues covered in the TDA Report, please see Appendix II of the report. In addition, DOL especially appreciates information on the nature and extent of child labor, forced labor, and forced or indentured child labor in the production of goods in foreign countries as well as information on government, industry, or third-party actions to address these issues for countries reviewed for the E.O. and TVPRA lists. Materials submitted should be confined to the specific topics of these reports. DOL will generally consider sources with dates up to five years old (i.e., data not older than January 1, 2007). DOL appreciates the extent to which submissions clearly indicate the time period to which they apply. In the interest of transparency, classified information will not be accepted. Where applicable, information submitted should indicate its source or sources, and copies of the source material should be provided. If primary sources are utilized, such as research studies, interviews, direct observations, or other sources of quantitative or qualitative data, details on the research or data-gathering methodology should be provided. Please see the 2011 TDA Report, 2012 TVPRA List, and E.O. List for a complete explanation of relevant terms, definitions, and reporting guidelines employed by DOL, or refer to ILAB's previous Request for Information published in the **Federal Register** on February 16, 2012 (77 FR 9267).

This notice is a general solicitation of comments from the public.

Signed at Washington, DC, this 15th day of November 2012.

Carol Pier,

Acting Deputy Undersecretary for International Affairs.

[FR Doc. 2012–28515 Filed 11–23–12; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Employment and Training Administration

Comment Request for Information Collection for Contractor Information Gathering, Extension Without Revisions

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. 3506(c)(2)(A)].

This program helps ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, ETA is soliciting comments concerning the collection of data about Standard Job Corps Request for Proposal and related contractor information gathering and reporting requirements (expiration date November 30, 2012).

DATES: Written comments must be submitted to the office listed in the addresses section below on or before January 25, 2013.

ADDRESSES: Submit written comments to Lawrence Lyford, Office of Job Corps, Room N–4507, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Telephone number: 202–693–3121 (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 877–889–5627 (TTY/TDD). Fax: 202–693–3113. Email: *lyford.lawrence@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Job Corps is the nation's largest residential, educational, and career technical training program for young Americans. Job Corps was established in 1964 by the Economic Opportunity Act and currently is authorized by Title I–C of the Workforce Investment Act of 1998. For nearly 50 years, Job Corps has helped prepare nearly 3 million at-risk young people between the ages of 16 and 24 for success in our nation's workforce. With 125 centers in 48 states, Puerto Rico, and the District of Columbia, Job Corps assists students across the nation in attaining academic credentials, including a High School Diploma (HSD) and/or General Educational Development (GED), and career technical training credentials, including industry-recognized certifications, state licensures, and pre-apprenticeship credentials.

Job Corps is a national program administered by the U.S. Department of Labor (DOL) through the National Office of Job Corps and six Regional Offices. DOL awards and administers contracts for the recruiting and screening of new students, center operations, and the placement and transitional support of graduates and former enrollees. Large and small corporations and nonprofit organizations manage and operate 97 Job Corps centers under contractual agreements with DOL. These contract center operators are selected through a competitive procurement process that evaluates potential operators' technical expertise, proposed costs, past performance, and other factors, in accordance with the Competition in Contracting Act and the Federal Acquisition Regulations. The remaining 28 Job Corps centers, called Civilian Conservation Centers, are operated by the U.S. Department of Agriculture Forest Service, via an interagency agreement.

II. Review Focus

The Department is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses

III. Current Actions

The Request for Proposal (RFP) provides potential offerors with the Government's expectations for the development of proposals to operate Job Corps centers. The proposals developed by offerors in response to the RFP are evaluated in terms of technical factors and costs. These proposals serve as the principal basis for selection of a successful offeror. The operation of the Job Corps program is such that many activities required of contractors must be coordinated with other organizations, both Federal and nonfederal. Most of the information collection requirements of Job Corps center operators stem directly from operational needs or are necessary to ensure compliance with Federal requirements and the terms of the contract.

Statistical reports are typically generated from source documents directly by the Federal government, not the contractors. Data is entered directly into a database and reports are generated from the data. Examples of these data include are ETA Forms 2110 (Center Financial Report), 2181 & 2181A (Center Operations Budget), 6–127 (Job Corps Utilization Summary), 6–131A (Disciplinary Discharge), 6–131B (Review Board Hearings), 6–131C (Rights to Appeal), 6–40 (Student Profile), 6–61 (Notice of Termination) and 3–38 (Property Inventory Transcription.)

In addition, several forms are provided in Portable Data File (PDF) format. These forms include the 6–125 (Job Corps Health Staff Activity), 6–128 (Job Corps Health Annual Service Costs), 6–112 (Immunization Record), 6–135 (CM Health Record Envelope), 6–136 (CM Health Record Folder), 6–37 (Inspection Residential & Educational Facilities), 6–38 (Inspection Water Supply Facilities), and 6–39 (Inspection of Waste Treatment Facilities Costs).

Type of Review: extension without changes

Title: Standard Job Corps Contractor Information Gathering

OMB Number: 1205–0219

Affected Public: Business, for profit and not-for-profit institutions, and Tribal governments.

Recordkeeping: Center operators are required to keep accurate records on each Job Corps student. All records are required to be maintained on a Job Corps center for five years. The annual burden hours estimated for the preparation of the Standard Center Job Corps Request for Proposal submitted by new and experienced contractors is 16,183 hours. Data collection for the Center Financial and the Center

Operations Budget Reports is made more than quarterly, and is essential to ensure contractor financial compliance with contractual requirements and to ensure operation of the program.

Required activity	ETA Form No.	Number of respondents	Submissions per year	Total annual submissions	Hours per submission	Total burden hours
Center Financial Report	2110	125	12	1500	1	1500
Center Operations Budget	2181/2181/A	97	3	291	1	291
Total						1,791

Center staff members enter data utilizing a personal computer that transmits the data electronically to a centralized database. Many management and performance reports are created from this database.

Required activity	ETA Form No.	Number of respondents	Submissions per year	Total annual submissions	Hours per submission	Total burden hours
Job Corps Utilization Summary	6–127	125	12	1500	0.01875 (1 minute)	25
Disciplinary Discharge	6–131A	1500	1	1500	0.01875	25
Review Board Hearings	6–131B	1500	1	1500	0.01875	25
Rights to Appeal	6–131C	1500	1	1500	0.01875	25
Student Profile	6–40	1500	1	1500	0.01875	25
Notice of Termination	6–61	1500	1	1500	0.01875	25
Property Inventory Transcription	3–28	126	52	6552	0.0275 (3 minutes)	328
Total						478

Certain student personnel requirements such as student payroll information, student training and education courses received, student leave, disciplinary actions and medical information are also collected in an electronic information system. The initial data entry is maintained in the national database and used for multiple reporting purposes, therefore reducing the need to enter the data more than once. The total burden associated with the input of data to data screens is 20,847 hours.

Major recordkeeping and operational forms listed below that pertain to student and facility administrative matters are provided in PDF forms. The total burden for processing these forms is 38,574 hours.

Required activity	ETA Form No.	Number of respondents	Submissions per year	Total annual submissions	Hours per submission	Total burden hours
Job Corps Health Staff Activity	6–125	125	1	125	0.25 (25 min)	31
Job Corps Health Annual Service Costs	6–128	125	1	125	0.25	31
Immunization Record	6–112	71000	1	71000	0.05 (5 min)	3,550
CM Health Record Envelope	6–135	71000	1	71000	0.125 (13 min)	8,875
CM Health Record Folder	6–136	71000	1	71000	0.125	8,875
Inspection of Residential & Educational Facilities	6–37	125	4	500	0.5	250
Inspection of Waste Treatment Facilities Costs	6–39	23	4	92	1.25 (1hr. 25 min)	130
Inspection Water Supply Facilities	6–38	125	4	500	1.25	625
Total						22,367

A total of 8,625 burden hours are estimated for the preparation of the Center Operating Plans listed below that are required for the operation of a Job Corps center.

Required activity	ETA Form No.	Number of respondents	Submissions per year	Total annual submissions	Hours per submission	Total burden hours
Center Operation Plan		125	1	125	30	3750
Maintenance		125	1	125	5	625
C/M Welfare		125	1	125	2	250
Annual VST		125	1	125	24	3,000
Annual Staff Training		125	1	125	1	125

Required activity	ETA Form No.	Number of respondents	Submissions per year	Total annual submissions	Hours per submission	Total burden hours
Energy Conservation		125	1	125	5	625
Outreach		125	1	125	2	250
Total						8,625

Total Estimated Burden: 65,651 hours.

Total Burden Cost (Capital/Startup): The Office of Job Corps has automated the data collection process for its centers. The Center Information System allows all centers to directly input data into a national database. The maintenance cost associated with the system is estimated to be $2.7 million per year for hardware and software.

Total Burden Cost (Operating/Maintaining): The costs to contractors for accomplishing record keeping requirements are computed by the Federal government annually. While precise costs cannot be identified, at the present time and based on past experience, the annual related costs for contractor staff are estimated to be $992,658, which represents an average cost of $15.12 per hour.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: Signed in Washington, DC, on this 3rd day of October, 2012.

Jane Oates,

Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2012–28563 Filed 11–23–12; 8:45 am]

BILLING CODE 4510–FT–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–81,210]

Verso Paper Corporation, Sartell Mill Division, Including On-Site Leased Workers From Securitas Security Services, Manpower, Inc., Banick Logging, Inc., Beck Lumber Company, Bell Timber, Inc., Benson Timber, Inc., Big H Logging, Demenge Trucking & Forest Products, LLC, Dick Walsh Forest Products, Dobbs Logging, Inc., Douglas Hustad Logging, Dukek Logging, Inc.—Dukek Trucking, Inc., Edin Logging, Inc., Enberg Logging Supply, Great Northern Logging, Inc., Gregerson Logging, Haverinen Brothers Logging, Hodgden Logging, Inc., Holden Logging, Hufnagle Forest Resources, LLC, Johnson Timber Harvesting, Inc., Kimball Logging, Inc., Koski Wood Services, Larson Lumber Company, Lovdahl & Sons, LLC, Lundberg Forest Products, Inc., Mccabe Forest Products, Inc., Nelson Brothers Logging, LLC, North Shore Forest Products, Inc., Northern Logging, Inc., Northland Timber Company, Olson Forest Products, Pelland Logging, Inc., Richard Dukek Logging, Inc., Riverdale Environmental Svcs, Inc., Ron Weiss Logging, Inc., Roy Lundmark Company, Sawyer Enterprise, LLC, Sawyer Timber Co., LLP, Shawn Fletcher Trucking, Skoe Lumber Company, Timberline Trucking, Inc., Trout Enterprise, Inc., and Wood Forest Products, Inc. and Including Bryce Kowalzek and Ted Kromy, Sartell, Minnesota; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 1, 2012, applicable to workers and former workers of Verso Paper Corporation, Sartell Mill Division, Sartell, Minnesota (Verso). The subject firm worker group did not include on-site leased workers. The workers' firm is engaged in activities related to the production of coated mechanical and supercalendered paper for various commercial printing applications.

Based on information provided in a later-filed petition, the Department reviewed the certification for Verso.

Additional information provided by the company official and the State of Minnesota revealed that the subject worker group includes on-site leased workers from several commercial entities as well as two on-site contractors (Bryce Kowalzek and Ted Kromy). The certification is being amended to reflect this new information.

The intent of the Department's certification is to include all workers of Verso who have met the appropriate TAA criteria.

Based on these findings, the Department is amending this certification to include on-site leased workers from Securitas Security Services, Manpower, Inc., Banick Logging, Inc., Beck Lumber Company, Bell Timber, Inc., Benson Timber, Inc., Big H Logging, Demenge Trucking & Forest Products, LLC, Dick Walsh Forest Products, Dobbs Logging, Inc., Douglas Hustad Logging, Dukek Logging, Inc.—Dukek Trucking, Inc., Edin Logging, Inc., Enberg Logging Supply, Great Northern Logging, Inc., Gregerson Logging, Haverinen Brothers Logging, Hodgden Logging, Inc., Holden Logging, Hufnagle Forest Resources, LLC, Johnson Timber Harvesting, Inc., Kimball Logging, Inc., Koski Wood Services, Larson Lumber Company, Lovdahl & Sons, LLC, Lundberg Forest Products, Inc., McCabe Forest Products, Inc., Nelson Brothers Logging LLC, North Shore Forest Products, Inc., Northern Logging, Inc., Northland Timber Company, Olson Forest Products, Pelland Logging, Inc., Richard Dukek Logging, Inc., Riverdale Environmental Services, Inc., Ron Weiss Logging, Inc., Roy Lundmark Company, Sawyer Enterprise, LLC, Sawyer Timber Co., LLP, Shawn Fletcher Trucking, Skoe Lumber Company, Timberline Trucking, Inc., Trout Enterprise, Inc., and Wood Forest Products, Inc., and including two individuals (Bryce Kowalzek and Ted Kromy), Sartell, Minnesota.

The amended notice applicable to TA–W–81,210 is hereby issued as follows:

All workers of Verso Paper Corporation, Sartell Mill Division, Sartell, Minnesota, including on-site leased workers from Securitas Security Services, Manpower, Inc., Banick Logging, Inc., Beck Lumber Company, Bell Timber, Inc., Benson Timber, Inc., Big H Logging, Demenge Trucking & Forest Products, LLC, Dick Walsh Forest Products, Dobbs Logging, Inc., Douglas Hustad Logging, Dukek Logging, Inc.—Dukek Trucking, Inc., Edin Logging, Inc., Enberg Logging Supply, Great Northern Logging, Inc., Gregerson Logging, Haverinen Brothers Logging, Hodgden Logging, Inc., Holden Logging, Hufnagle Forest Resources, LLC, Johnson Timber Harvesting, Inc., Kimball Logging, Inc., Koski Wood Services, Larson Lumber Company, Lovdahl & Sons, LLC, Lundberg Forest Products, Inc., McCabe Forest Products, Inc., Nelson Brothers Logging LLC, North Shore Forest Products, Inc., Northern Logging, Inc., Northland Timber Company, Olson Forest Products, Pelland Logging, Inc., Richard Dukek Logging, Inc., Riverdale Environmental Services, Inc., Ron Weiss Logging, Inc., Roy Lundmark Company, Sawyer Enterprise, LLC, Sawyer Timber Co., LLP, Shawn Fletcher Trucking, Skoe Lumber Company, Timberline Trucking, Inc., Trout Enterprise, Inc., and Wood Forest Products, Inc., and including Bryce Kowalzek and Ted Kromy, Sartell, Minnesota, who became totally or partially separated from that employment on or after December 27, 2012 through February 1, 2012, and all workers in the group threatened with total or partial separation from February 1, 2012 through February 1, 2014, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 5th day of November, 2012.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2012–28613 Filed 11–23–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–81,880: TA–A–81,880A]

RG Steel Wheeling, LLC, Wheeling Office, A Division Of RG Steel, LLC, Including On-Site Leased Workers From Pro Unlimited and Green Energy Initiatives LLC, Including Workers Whose Wages Were Reported Through Severstal Wheeling, Wheeling, WV: Mountain State Carbon, LLC, Including Workers Whose Wages Were Reported Through RG Steel Wheeling, Llc and Severstal Wheeling Follansbee, WV; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 2, 2012, applicable to workers of RG Steel Wheeling, LLC, Wheeling Office, a division of RG Steel, LLC, including on-site leased workers from Pro Unlimited and Green Energy Initiatives, LLC, Wheeling, West Virginia (TA–W–81,880) and Mountain State Carbon, LLC, including workers whose wages were reported through RG Steel Wheeling, LLC, Follansbee, West Virginia (TA–W–81,880A). The Department's notice of determination was published in the **Federal Register** on October 19, 2012 (77 FR 64357).

At the request of a state workforce office, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to the production of coke.

New information shows that some workers separated from employment at the Wheeling Office (TA–W–81,880) and Mountain State Carbon (TA–W–81,880A) had their wages reported through a separate unemployment insurance (UI) tax account under the name Severstal Wheeling, a former owner of the workers' firms.

The intent of the Department's certification is to include all workers of the subject firm who meet the worker group certification criteria under Section 222(a) of the Act, 19 U.S.C. 2272(a).

Accordingly, the Department is amending this certification to properly reflect this matter. The amended notice applicable to TA–W–81,880 and TA–W–81,880A is hereby issued as follows:

All workers of RG Steel Wheeling, LLC, Wheeling Office, a division of RG Steel, LLC, including on-site leased workers from Pro Unlimited and Green Energy Initiatives, LLC, Wheeling, West Virginia (TA–W–81,880) and Mountain State Carbon, LLC, including workers whose wages were reported through RG Steel Wheeling, LLC, Follansbee, West Virginia (TA–W–81,880A), including workers, at both firms, whose unemployment insurance (UI) wages are reported through Severstal Wheeling who became totally or partially separated from who became totally or partially separated from employment on or after August 7, 2011 through October 2, 2014, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 2nd day of November, 2012.

Elliott S. Kushner

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2012–28614 Filed 11–23–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of October 29, 2012 through November 2, 2012.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) Imports of articles like or directly competitive with articles into which one

or more component parts produced by such firm are directly incorporated, have increased;

(C) imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) Imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) The increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) There has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) The shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) A significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) The acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) A significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) The workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) An affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) An affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) An affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) The petition is filed during the 1-year period beginning on the date on which—

(A) A summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) Notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) The workers have become totally or partially separated from the workers' firm within—

(A) The 1-year period described in paragraph (2); or

(B) Notwithstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W number	Subject firm	Location	Impact date
81,927	International Business Machines (IBM), Large Panel Assembly and Test Division (LPAT), Manpower.	Poughkeepsie, NY	August 21, 2011.
81,982	Leistritz Advanced Turbine Components, Inc., On-Site Leased Workers From Winston Personnel Group.	Rural Hall, NC	August 23, 2011.
82,053	Queen Cutlery Company, Servotronics, Inc.	Titusville, PA	October 3, 2011.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

TA–W number	Subject firm	Location	Impact date
81,947	Enkeboll Designs	Carson, CA	September 6, 2011.
82,003	RR Donnelley Johnson City, Kelly Services	Johnson City, TN	September 24, 2011.
82,025	Comcast Cable, West Division Customer Care	Sacramento, CA	October 1, 2011.
82,037	The Bank of New York Mellon, Asset Servicing Global Operations, Income Collections Department, etc.	Brooklyn, NY	October 2, 2011.
82,087	Medtronic Advanced Energy, Medtronic, Inc., Peak Surgical, ATR, Trendtec, and Validant.	Palo Alto, CA	October 16, 2011.
82,091	T-Shirt International, Inc., United Talent LLC	Culloden, WV	April 24, 2012.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criteria under paragraphs (a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W number	Subject firm	Location	Impact date
81,895	Medimedia Health, Inc., Outbound Customer Service Team	Carlstadt, NJ.	
81,895A	Medimedia Health, Inc., Outbound Customer Service Team	Yardley, PA.	
82,074	Komax Solar, Inc., Komax Holdings AG	York, PA.	

Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioning groups of workers are covered by active certifications. Consequently, further investigation in these cases would serve no purpose since the petitioning group of workers cannot be covered by more than one certification at a time.

TA–W number	Subject firm	Location	Impact date
81,930	Hydro Aluminum North America, Inc., Midwest Region, Penmac.	Monett, MO.	
82,013	Hewlett-Packard Company, Ink Jet and Web Services, World Wide Design Group.	Vancouver, WA.	

I hereby certify that the aforementioned determinations were issued during the period of October 29, 2012 through November 2, 2012. These determinations are available on the Department's Web site tradeact/taa/taa search firm.cfm under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Dated: November 6, 2012.

Elliott S. Kushner,

Certifying Officer, Office of Trade Adjustment Assistance .

[FR Doc. 2012–28616 Filed 11–23–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 6, 2012.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 6, 2012.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 8th day of November 2012.

Elliott S. Kushner,

Certifying Officer, Office of Trade Adjustment Assistance.

APPENDIX

[31 TAA petitions instituted between 10/22/12 and 11/2/12]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
82096	Thyssenkrupp Access (State/One-Stop)	Roanoke, IL	10/22/12	10/18/12
82097	Tholstrup Cheese USA Inc. (Workers)	Norton Shores, MI	10/22/12	10/18/12
82098	Choice Hotels International (State/One-Stop)	Grand Junction, CO	10/22/12	10/18/12
82099	Air Products & Chemicals (State/One-Stop)	Sparrows Point, MD	10/22/12	10/18/12
82100	NXP Semiconductor (State/One-Stop)	San Jose, CA	10/22/12	10/18/12
82101	BT Americas (Company)	EL Segundo, CA	10/22/12	10/15/12
82102	PPD Development, LLC (Workers)	Austin, TX 78744 and Morrisville, NC 27560.	10/22/12	10/17/12
82103	American Airlines (Union)	Chicago, IL	10/22/12	10/18/12
82104	Sauk Technologies (Union)	Saukville, WI	10/22/12	10/18/12
82105	Thorco Industries, Inc. (State/One-Stop)	Cassville, MO	10/22/12	10/19/12
82106	Xyratex International, Inc. (Company)	West Sacramento, CA	10/23/12	10/22/12
82107	Sub Zero and Wolf, Inc. (Workers)	Madison, WI	10/23/12	10/02/12
82108	Axa Equitable (Workers)	Syracuse, NY	10/24/12	10/23/12
82109	ArcelorMittal (Union)	Georgetown, SC	10/24/12	10/24/12
82110	Hewlett-Packard Company (State/One-Stop)	Wayland, MA	10/25/12	10/23/12
82111	Carolina Precision Plastics (CPP Global) (State/One-Stop)	Stratford, CT	10/26/12	10/25/12
82112	Rockwell Collins (State/One-Stop)	Cedar Rapids, IA	10/31/12	10/25/12
82113	SGL Carbon, LLC (Union)	St. Marys, PA	10/31/12	10/19/12
82114	BRP US Inc. (Company)	Spruce Pine, NC	10/31/12	10/31/12
82115	Cinch Connectors (State/One-Stop)	Vinita, OK	10/31/12	10/29/12
82116	Heraeus Kulzer, LLC (Company)	South Bend, IN	10/31/12	10/30/12
82117	Simple Way Limited Partnership, dba The Rosary Shop (Company).	McMinnville, OR	10/31/12	10/31/12
82118	Hanson Worldwide LLC (State/One-Stop)	Spokane, WA	10/31/12	10/29/12
82119	Hewlett-Packard Company (State/One-Stop)	Corvallis, OR	10/31/12	10/23/12
82120	Welch Allyn Inc. (Workers)	Skaneateles, NY	11/01/12	10/31/12
82121	Goodyear Tire & Rubber Company (Union)	Gadsden, AL	11/01/12	10/31/12
82122	Straits Steel and Wire Company (Company)	Ludington, MI	11/01/12	10/31/12
82123	Medtronic (State/One-Stop)	Mounds View, MN	11/01/12	10/31/12
82124	Brunswick Corporation Sea Ray Boats (State/One-Stop)	Knoxville, TN	11/02/12	11/01/12
82125	Honeywell, Inc. (Workers)	Mars Hill, NC	11/02/12	10/24/12
82126	Covidien (Workers)	Mansfield, MA	11/02/12	11/01/12

[FR Doc. 2012–28615 Filed 11–23–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–81,791]

Fasco, A Division of Regal Beloit Corporation, Including On-Site Leased Workers From Penmac Personnel Services, Eldon, MO; Notice of Revised Determination on Reconsideration

On September 14, 2012, the Department of Labor issued a Notice of Affirmative Determination Regarding Application for Reconsideration applicable to workers and former workers of Fasco, a division of Regal Beloit Corporation, Eldon, Missouri (subject firm). The subject worker group includes workers engaged in activities related to warehousing and distribution of electric motors, as well as engineering, customer service and information technology (IT) services. Workers are not separately identifiable by service supplied. The worker group includes on-site leased workers from Penmac Personnel Services.

Section 222(a)(1) has been met because a significant number or proportion of the workers in the subject firm have become totally or partially separated, or are threatened with such separation.

Based on information provided during the reconsideration investigation, the Department determines that worker separations at the subject firm are related to a shift in a portion of the supply of engineering services (or like or directly competitive services) to a foreign country and that the shift in the supply of these services contributed importantly to worker separations at the subject firm.

Conclusion

After careful review of the additional facts obtained during the reconsideration investigation, I determine that workers of Fasco, a division of Regal Beloit Corporation, Eldon, Missouri, who were engaged in employment related to the supply of warehousing, distribution, engineering, customer service and information technology services, meet the worker group certification criteria under Section 222(a) of the Act, 19 U.S.C. 2272(a). In accordance with Section 223 of the Act, 19 U.S.C. 2273, I make the following certification:

All workers of Fasco, a division of Regal Beloit Corporation, including on-site leased workers from Penmac Personnel Services, Eldon, Missouri who became totally or partially separated from employment on or after July 9, 2011, through two years from the date of certification, and all workers in the group threatened with total or partial separation from employment on the date of

certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 5th day of November, 2012.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2012–28617 Filed 11–23–12; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (12–102)]

Notice of Establishment of a NASA Federal Advisory Committee; Applied Sciences Advisory Committee

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: In accordance with the Federal Advisory Committee Act (FACA) (Pub. L. 92–463, as amended), and pursuant to Section 314(a) of the NASA Authorization Act of 2005 (Pub. L. 109–155), the NASA Administrator has determined that the establishment of the Applied Sciences Advisory Committee as a Federal advisory committee under FACA is necessary and in the public interest in connection with duties imposed upon NASA by law. This determination follows consultation with the Committee Management Secretariat, U.S. General Services Administration (GSA), in accordance with Section 102–3.60(a) of the GSA Final Rule on Federal Advisory Committee Management (41 CFR parts 101–6 and 102–3).

FOR FURTHER INFORMATION CONTACT: Mr. Peter Meister, Strategic Integration and Management Division, Science Mission Directorate, NASA Headquarters, 300 E Street SW., Washington, DC 20546, (202) 358–1557.

SUPPLEMENTARY INFORMATION:

Background: Section 313 of the NASA Authorization Act of 2005 directs that NASA establish a program of grants for competitively-awarded pilot projects to explore the integrated use of sources of remote sensing and other geospatial information to address State, local, regional and tribal agency needs. Section 314(a) of this Act requires that NASA establish an advisory committee to monitor the program established under Section 313. Pursuant to Section 314(a), in late 2008, NASA established the Applied Sciences Analysis Group (ASAG) as a task group under the auspices of the Earth Science Subcommittee of the NASA Advisory Council. It has been responsible for providing strategic and programmatic guidance for planning and prioritizing the Earth Science Division's Applied Sciences Program activities and has served as a community-based interdisciplinary forum for analysis. The AGAG held its first meeting in January 2009, with one or two meetings per year taking place since then. The ASAG has been governed by a Terms of Reference. During 2012, NASA has determined that the establishment of a separate independent Federal advisory committee known as the Applied Sciences Advisory Committee (ASAC) is more in line with the letter and spirit of the statutory requirement.

Nature and Purpose: The ASAC will be governed by a formal charter, consistent with FACA, the GSA Final Rule noted above, and related regulations, policies and guidelines. It shall draw upon the expertise of its members and other sources to provide advice and make recommendations to the Director, Earth Science Division, Science Mission Directorate, NASA Headquarters, on Applied Sciences programs, policies, plans and priorities. The ASAC's recommendations and analysis can be used to inform decisions on the programmatic scope and priorities, as well as the implementation of Applied Sciences programs. In addition, the ASAC will provide a regular forum for broad discussion of Earth science applications and the role of Applied Sciences within and outside of NASA. The ASAC will function solely as an advisory body and comply fully with the provisions of FACA.

Membership: The ASAC will consist of approximately 9–12 members who will serve as Special Government Employees for a two-year term, renewable at the discretion of the Director, Earth Science Division, Science Mission Directorate, NASA Headquarters. The ASAC Chair will also serve as a member of the Earth Science Subcommittee of the NASA Advisory Council.

Meetings: The ASAC shall meet approximately one to two times per year or as required by the Director, Earth Science Division, Science Mission Directorate, NASA Headquarters.

Duration: Since the ASAC is a nondiscretionary Federal advisory committee required by Federal statute; it is envisioned to be a continuing entity.

Designated Federal Officer: The NASA Designated Federal Officer (DFO) for ASAC is: Mr. Peter Meister, Strategic Integration and Management Division, Science Mission Directorate, NASA Headquarters, 300 E Street SW., Washington, DC 20546, (202) 358–1557.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2012–28537 Filed 11–23–12; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (12–099)]

Notice of Intent To Grant an Exclusive License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant an exclusive license.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant an exclusive license in the United States to practice the inventions described and claimed in the following U.S. Patent Applications: ''Reducing Sensor and Readout Circuitry Noise in Digital Domain Using Referencing Pixels'' Application Serial No. 13/489073, NASA Case No. GSC–16181 and ''Hilbert-Huang Transform Data Processing Real-Time System with 2–D Capabilities'' Application Serial No. 13/474367, NASA Case No. GSC–16328–1 to Syneren Technologies Corporation having its principal place of business in Lanham, Maryland. The patent rights in these inventions have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The prospective exclusive license may be granted unless, within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be

released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Mr. Bryan A. Geurts, Chief Patent Counsel/140.1, Goddard Space Flight Center, Greenbelt, MD 20771, (301) 286–7351.

FOR FURTHER INFORMATION CONTACT: Enidia Santiago-Arce, Innovative Partnerships Program Office/504, Goddard Space Flight Center, Greenbelt, MD 20771 (301) 286–5810. Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov/*.

Sumara M. Thompson-King,

Deputy General Counsel.

[FR Doc. 2012–28557 Filed 11–23–12; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Computing Communication Foundations; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Site Visit, Proposal Panel Review for Science and Technology Centers—Integrative Partnerships (#1192).

Date/Time: December 3, 2012, 6:30 p.m.–8:30 p.m.; December 4, 2012, 8:00 a.m.–8:00 p.m.; December 5, 2012, 8:30 a.m.–3:00 p.m.

Place: Purdue University, West Lafayette, IN.

Type of Meeting: Partial Closed.

Contact Person: John Cozzens, National Science Foundation, 4201 Wilson Boulevard, Room 1115, Arlington, VA 22230. Telephone: (703) 292–8910.

Purpose of Meeting: To assess the progress of the STC Award: 0939370, ''Emerging Frontiers of Science of Information'', and to provide advice and recommendations concerning further NSF support for the Center.

AGENDA

Monday, December 3, 2012

6:30 p.m. to 8:30 p.m.: Closed—Site Team and NSF Staff meets to discuss Site Visit materials, review process and charge.

Tuesday, December 4, 2012

8:00 a.m. to 1:00 p.m. Open—Presentations by Awardee Institution, faculty staff and students, to Site Team and NSF Staff. Discussions and question and answer sessions.

1:00 p.m.–8:00 p.m. Closed—Draft report on education and research activities.

Thursday, December 5, 2012

8:30 a.m.–noon: Open—Response presentations by Site Team and NSF Staff Awardee Institution faculty staff to. Discussions and question and answer sessions.

Noon to 3:00 p.m.: Closed—Complete written site visit report with preliminary recommendations.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 20, 2012.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2012–28635 Filed 11–23–12; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

President's Committee on the National Medal of Science; Notice of Meeting

Notice is hereby given of a change in meeting of the President' Committee on the National Medal of Science. Originally the meeting was scheduled for October 31, 2012. A notice was published in the **Federal Register** on Wednesday, October 10, 2012 on page 61644. However, due to Hurricane Sandy it was necessary to cancel. In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the rescheduled meeting:

Name: President's Committee on the National Medal of Science (1182).

Date and Time: Monday, December 10, 2012, 8:30 a.m.–2:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA, 22230. Type of Meeting: Closed.

Contact Person: Ms. Mayra Montrose, Program Manager, Room 1282, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: 703–292–4757.

Purpose of Meeting: To provide advice and recommendations to the President in the selection of the 2012 National Medal of Science recipients.

Agenda: To review and evaluate nominations as part of the selection process for awards.

Reason for Closing: The nominations being reviewed include information of a personal nature where disclosure would constitute unwarranted invasions of personal privacy. These matters are exempt under 5 U.S.C. 552b(c)(6) of the Government in the Sunshine Act.

Dated: November 20, 2012.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2012–28636 Filed 11–23–12; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Request for Comments (RFC)—Federal Cybersecurity Research and Development Strategic Plan

AGENCY: The National Coordination Office (NCO) for Networking Information Technology Research and Development (NITRD).

ACTION: Request for comments (RFC).

FOR FURTHER INFORMATION, CONTACT: Tomas Vagoun at *vagoun@nitrd.gov* or (703) 292–4873.

DATES: To be considered, submissions must be received by December 19, 2012.

SUMMARY: This Request For Comments (RFC) is issued by the Cyber Security and Information Assurance Research and Development Senior Steering Group (SSG) of the Federal Networking and Information Technology Research and Development (NITRD) Program. The SSG is preparing a report to provide an update on technological developments in Federal cybersecurity research and development since the release of the 2011 Federal Cybersecurity Research and Development Strategic Plan (the strategic plan). Also, in light of the ever evolving technological landscape of cybersecurity, and as input to its follow-on report, the SSG seeks comments on the progress over the past year in the research areas identified in the strategic plan, the strategic plan's impact in orienting private sector cybersecurity research and development activities, the successes and challenges in achieving the technological objectives outlined in the plan, and on any nascent or emerging areas in cybersecurity research and development that warrant further focus. Additionally, the comments will be used by the SSG in its assessment of future needs and directions in Federal cybersecurity research and development. Comments are to be submitted to *cybersecurity@nitrd.gov.*

SUPPLEMENTARY INFORMATION: Continued cybersecurity research and development is critical to ensuring that we are on track as a Nation to develop innovative tools and capabilities to address

cybersecurity threats. In December 2011, the White House Office of Science and Technology Policy (OSTP) released the ''Trustworthy Cyberspace: Strategic Plan for the Federal Cybersecurity Research and Development Program,'' a framework for a set of coordinated Federal strategic priorities and objectives for cybersecurity research. (*http://www.nitrd.gov/Publications/PublicationDetail.aspx?pubid=39*).

The strategic plan was developed under the leadership of the Cyber Security and Information Assurance Research and Development Senior Steering Group (SSG) of the Federal Networking and Information Technology Research and Development (NITRD) Program. It identifies key cybersecurity research and development themes that are shaping and facilitating a coordinated Federal research and development agenda to engender game-changing technologies. With this overarching template, the federal scientific community has been focusing on a common set of problems. The strategic plan is being executed by all of the agencies conducting and funding Federal cybersecurity research, including DARPA, Department of Homeland Security, Department of Energy, IARPA, National Institute of Standards and Technology, National Security Agency, National Science Foundation, and the Department of Defense. Input from industry, academia, and other stakeholders during the development of the strategic plan contributed greatly to the formulation of Federal research directions in cybersecurity. Guided by this plan, many research activities, initiatives, and solicitations have already been launched by Federal agencies in all areas defined by the plan.

In an effort to continue to evolve Federal strategic directions in cybersecurity research, the SSG seeks comments to gain a better understanding of the plan's impact. Furthermore, the SSG seeks input regarding prospective areas in cybersecurity research and development that might benefit from coordinated support by Federal agencies. To assist with its report, the SSG is requesting that interested parties submit written comments. We welcome comments from all interested parties, including, but not limited to, academia, private industry, and all levels of government. We seek comments on the following questions in relation to the strategic plan:

(1) Research Themes of the Strategic Plan:

(a) Do the research themes need to be refined or enhanced? If so, in what way?

(b) What are the research, development, implementation, transition-to-practice, or other challenges that need to be overcome to achieve the goals under each theme?

(c) Are there areas in cybersecurity research not addressed by the strategic plan that should be? If yes, what are they, why are they important, and what advances in such areas are needed to improve the security, safety, and trustworthiness of cyberspace?

(2) Activities that Advance the Strategic Plan:

(d) What activities are you or your organization undertaking that support the objectives of the strategic plan? Please include a brief description of initiatives, use-cases, capabilities, technologies, and/or achievements.

(e) How might your organization utilize the research outcomes?

(3) Sustainable Progress:

(f) What interactions, relationships, campaigns, or targeted assistance would support a sustainable process to drive changes envisioned by the research themes?

(g) What engagements among Federal agencies, government labs, industry, and universities are particularly effective in enabling rapid progress in the development of solutions?

To further enhance discussions related to cybersecurity research and this RFC, the Government will webcast a session on Federal cybersecurity research and development during the National Science Foundation's Secure and Trustworthy Cyberspace Principal Investigators Meeting. The session and the webcast will take place on November 27, 2012, from approximately 1:00 p.m.–3:00 p.m. EST. Additional instructions will be available at *http://cps-vo.org/group/satc.*

Submission Instructions

Submission email: submit your comments to *cybersecurity@nitrd.gov.*

Submission deadline: to be considered, submissions must be received by December 19, 2012.

To the extent applicable, when addressing a particular question included in this request for comments, comments should reference the relevant number associated with the question. Comments submitted will be made available to the public online or by alternative means. For this reason, do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. 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 RFC.

Submitted by the National Science Foundation for the National Coordination Office (NCO) for Networking and Information Technology Research and Development (NITRD) on November 19, 2012.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2012–28481 Filed 11–23–12; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0282]

Preoperational Testing of Onsite Electric Power Systems To Verify Proper Load Group Assignments, Electrical Separation, and Redundancy

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft regulatory guide; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is issuing for public comment draft regulatory guide (DG), DG–1294, ''Preoperational Testing of On-Site Electric Power Systems to Verify Proper Load Group Assignments, Electrical Separation, and Redundancy.'' DG–1294 is proposed Revision 1 of RG 1.41, dated March 1973. This revision expands the scope of the guide to encompass preoperational testing of electrical power systems used to meet current Station Blackout regulations, time requirements for startup and alignment of emergency power sources, and testing requirements for facilities licensed under 10 CFR Part 52.

DATES: Submit comments by January 31, 2013. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and is publicly available, by searching on *http://www.regulations.gov* under Docket ID NRC–2012–0282. You may submit comments by the following methods:

• Federal rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0282. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov*.

• Mail comments to: Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

• Fax comments to: RADB at 301–492–3446.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Thomas Kendzia, U.S. Nuclear Regulatory Commission, Office of New Reactors, Division of Construction Inspection and Operational Programs, Washington, DC 20555–0001, telephone: 301–415–8155 or email *Thomas.Kendzia@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2012–0282 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, by any of the following methods:

• Federal Rulemaking Web Site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0282.

• NRC's Agencywide Documents Access and Management System (ADAMS): You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search*.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The draft regulatory guide is available electronically under ADAMS Accession Number ML12228A589. The regulatory analysis may be found in ADAMS under Accession No. ML12228A591.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

• NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2012–0282 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 in comment submissions that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Additional Information

The NRC is issuing for public comment a draft guide in the NRC's ''Regulatory Guide'' series. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft regulatory guide entitled ''Preoperational Testing of On-Site Electric Power Systems to Verify Proper Load Group Assignments, Electrical Separation, and Redundancy'' is temporarily identified by its task number, DG–1294. The DG–1294 is proposed Revision 1 of Regulatory Guide 1.41, ''Preoperational Testing of On-Site Electric Power Systems to Verify Proper Load Group Assignments, Electrical Separation, and Redundancy'' dated March 1973.

Regulatory Guide 1.41 was developed to provide guidance on preoperational testing of on-site electrical power systems important to safety for load group assignments, electrical separation, and redundancy. The guide was first issued in 1973 and has not been revised despite multiple revisions to the underlying regulations. Since 1973 the Commission has amended its regulations for loss of all alternating current power (Station Blackout) and loss of large areas of the plant due to explosions or fire, and has established a new combined (construction and operating) licensing process under 10 CFR part 52.

This regulatory guide is being revised for three reasons: (1) To expand the scope of the guide to encompass preoperational tests for the electrical power systems used to meet the regulatory requirements addressing Station Blackout and loss of large areas of the plant due to explosions or fire; (2) to expand the scope of the guide to encompass testing the ability to meet time requirements for startup and alignment for use of electric power sources used to meet the regulatory requirements addressing Station Blackout and loss of large areas of the plant due to explosions or fire and (3) to update the guide references and address facilities licensed under 10 CFR part 52.

III. Backfitting and Issue Finality

As discussed in the ''Implementation'' section of this regulatory guide, the NRC has no current intention to impose this regulatory guide on holders of current operating licenses or combined licenses. Accordingly, the issuance of this regulatory guide would not constitute ''backfitting'' as defined in 10 CFR 50.109(a)(1) of the Backfit Rule or be otherwise inconsistent with the applicable issue finality provisions in 10 CFR part 52.

This regulatory guide may be applied to applications for operating licenses and combined licenses docketed by the NRC as of the date of issuance of the final regulatory guide, as well as future applications for operating licenses and combined licenses submitted after the issuance of the regulatory guide. Such action would not constitute backfitting as defined in 10 CFR 50.109(a)(1) or be otherwise inconsistent with the applicable issue finality provision in 10 CFR part 52, inasmuch as such applicants or potential applicants are not within the scope of entities protected by the Backfit Rule or the relevant issue finality provisions in Part 52.

Dated at Rockville, Maryland, this 15th day of November, 2012.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2012–28564 Filed 11–23–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0277]

Supplemental Environmental Impact Statement for Proposed Dewey-Burdock In-Situ Uranium Recovery Project in Custer and Fall River Counties, SD

AGENCY: Nuclear Regulatory Commission.

ACTION: Availability of draft supplemental environmental impact statement; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft Supplemental Environmental Impact Statement (Draft SEIS) for the Dewey-Burdock *In-Situ* Uranium Recovery (ISR) Project in Custer and Fall River Counties, South Dakota. The Draft SEIS is Supplement 4 to NUREG–1910, ''Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities,'' May 2009. By letter dated August 10, 2009, Powertech USA, Inc. (Powertech) submitted an application to the NRC for a new source materials license for the Dewey-Burdock ISR Project. Powertech is proposing to recover uranium from the Dewey-Burdock Project site using an *in-situ* recovery process.

DATES: The public comment period on the draft SEIS begins with publication of this notice and continues until January 10, 2013. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and are publically available, by searching on *http://www.regulations.gov* under Docket ID NRC–2012–0277. You may submit comments by any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0277. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- Mail comments to: Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- Fax comments to: RADB at 301–492–3446.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Haimanot Yilma, Project Manager, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–8029; email: *Haimanot.Yilma@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2012–0277 when contacting the NRC about the availability of information regarding this document. You may access information related to this document by any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0277.

NRC's Agencywide Documents Access and Management System (ADAMS): You may access publicly available documents associated with the Dewey-Burdock ISR Project through 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 is provided below. The ''Draft SEIS (NUREG–1910, Supplement 4) is available in ADAMS under Accession Numbers ML12312A039 (Volume 1) and ML12312A040 (Volume 2). NUREG–1910 is available in ADAMS under Accession Numbers ML091480244 (Volume 1) and ML091480188 (Volume 2).

- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2012–0277 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. 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. Further Information

Under the NRC's environmental protection regulations in part 51 of Title 10 of the *Code of Federal Regulations* (10 CFR), which implement the National Environmental Policy Act of 1969 (NEPA), preparation of an Environmental Impact Statement (EIS) or supplement to an EIS (SEIS) is required for issuance of a license to possess and use source material for uranium milling (see 10 CFR 51.20(b)(8)).

In May 2009, the NRC staff issued NUREG–1910, ''Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities'' (herein referred to as the GEIS). In the GEIS, NRC assessed the potential environmental impacts from construction, operation, aquifer restoration, and decommissioning of an *in-situ* leach uranium milling facility (also known as an ISR facility) located in four specific geographic regions of the western United States. The proposed Dewey-Burdock ISR Project is located within the Nebraska-South Dakota-Wyoming Uranium Milling Region identified in the GEIS. This Draft SEIS supplements the GEIS and incorporates by reference relevant portions from the GEIS, and uses site-specific information from the applicant's license application

and independent sources to fulfill the requirements in 10 CFR 51.20(b)(8).

The Draft SEIS for the proposed Dewey-Burdock Project may also be accessed on the internet at *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/* by selecting ''NUREG–1910'' and then ''Supplement 4,'' or on the NRC's Dewey-Burdock ISR Project Web page at *http://www.nrc.gov/materials/uranium-recovery/license-apps/dewey-burdock.html.* Additionally, a copy of the Draft SEIS will be available at the following public libraries:

Edgemont Public Library, 412 2nd Avenue, Edgemont, SD 57735.

Rapid City Public Library, 610 Quincy Street, Rapid City, SD 57701–3630.

Custer County Library, 447 Crook Street, Custer, SD 57730.

Weston County Library, 23 West Main Street, Newcastle, WY 82701.

Hot Springs Public Library, 145 N. Chicago Street, Hot Springs, SD 57747.

Oglala Lakota College Library, P.O. Box 310, Kyle, SD 57752.

The Draft SEIS was prepared in response to an application submitted by Powertech on August 10, 2009. The applicant proposes the construction, operation, aquifer restoration, and decommissioning of an *ISR* facility.

The Draft SEIS was prepared by the NRC and its contractor, the Center for Nuclear Waste Regulatory Analyses, in cooperation with the U.S. Bureau of Land Management (BLM). The NRC has prepared this Draft SEIS in compliance with NEPA and the NRC's regulations for implementing NEPA (10 CFR Part 51).

The proposed Dewey-Burdock ISR Project will be located approximately 21 kilometers (13 miles) north-northwest of Edgemont, South Dakota, in northern Fall River and southern Custer Counties. The proposed facility would encompass approximately 4,282 hectares (10,580 acres), which consists of two contiguous mining units: the Burdock Unit and the Dewey Unit.

The Draft SEIS is being issued as part of the NRC's process to decide whether to issue a license to Powertech pursuant to 10 CFR Part 40. In this Draft SEIS, the NRC staff has assessed the potential environmental impacts from the construction, operation, aquifer restoration, and decommissioning of the proposed Dewey-Burdock Project. The NRC staff assessed the impacts of the proposed action and its alternatives on land use; historical and cultural resources; visual and scenic resources; climatology, meteorology and air quality; geology, minerals and soils; water resources; ecological resources; socioeconomics; environmental justice; noise; traffic and transportation; public and occupational health and safety; and waste management. Additionally, the Draft SEIS analyzes and compares the benefits and costs of the proposed action.

In doing so, the NRC staff evaluated site-specific data and information on the Dewey-Burdock ISR Project to determine if Powertech's proposed activities and the site characteristics were consistent with those evaluated in the GEIS. NRC then determined which relevant sections of, and impact conclusions in, the GEIS could be incorporated by reference. The NRC staff also determined if additional data or analysis was needed to assess the potential environmental impacts for a specific environmental resource area. The NRC documented its assessments and conclusions in the Draft SEIS.

In addition to the action proposed by Powertech, the NRC staff addressed the no-action alternative, as well as alternative wastewater disposal options under the proposed action. All the alternatives were analyzed in detail. The no-action alternative serves as a baseline for comparing the potential environmental impacts of the proposed action.

After weighing the impacts of the proposed action and comparing the alternatives, the NRC staff, in accordance with 10 CFR 51.71(f), sets forth its preliminary recommendation regarding the proposed action. Unless safety issues mandate otherwise, the NRC staff preliminarily recommends that the proposed action be approved (*i.e.,* the NRC should issue a source material license for the proposed Dewey-Burdock ISR Project).

This Draft SEIS is being issued for public comment. The public comment period on the Draft SEIS begins with publication of this notice and continues until January 10, 2013. Written comments should be submitted as described in the **ADDRESSES** section of this document. The NRC will consider comments received or postmarked after that date to the extent practical.

Dated at Rockville, Maryland, this 8th day of November 2012.

For the Nuclear Regulatory Commission.

Aby Mohseni,

Deputy Director, Environmental Protection and Performance Assessment Directorate, and Environmental Protection, Office of Federal and State Materials.

[FR Doc. 2012–28425 Filed 11–21–12; 11:15 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–361–CAL, 50–362–CAL; ASLBP No. 13–924–01–CAL–BD01]

Southern California Edison Company; 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* 10 CFR 2.104, 2.105, 2.300, 2.309, 2.313, 2.318, and 2.321, notice is hereby given that an Atomic Safety and Licensing Board (Board) is being established to preside over the following proceeding:

Southern California Edison Company

(San Onofre Nuclear Generating Station, Units 2 and 3)

This proceeding involves a March 27, 2012 NRC Confirmatory Action Letter (CAL) issued to Southern California Edison Company (SCE), and the NRC Commission's November 8, 2012 decision in CLI–12–20 referring to the Atomic Safety and Licensing Board Panel that portion of Friends of the Earth's June 18, 2012 intervention petition challenging the CAL. In particular, the Commission directs (CLI–12–20, slip op. at 5) that a duly constituted Board ''consider whether: (1) the [CAL] issued to SCE constitutes a *de facto* license amendment that would be subject to a hearing opportunity under Section 189a [of the Atomic Energy Act]; and, if so, (2) whether the petition meets the standing and contention admissibility requirements of 10 CFR § 2.309.''

The Board is comprised of the following administrative judges:

E. Roy Hawkens, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001;

Dr. Anthony J. Baratta, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001l

Dr. Gary S. Arnold, 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 (10 CFR 2.302), which the NRC promulgated in August 2007 (72 FR 49,139).

Issued at Rockville, Maryland, this 19th day of November 2012.

E. Roy Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 2012–28562 Filed 11–23–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0002]

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission

DATES: Weeks of November 26, December 3, 10, 17, 24, 31, 2012

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland

STATUS: Public and Closed.

Week of November 26, 2012

Tuesday, November 27, 2012

9:00 a.m. Briefing on Operator Licensing Program (Public Meeting) (Contact: Jack McHale, 301–415–3254).

This meeting will be webcast live at the Web address—*www.nrc.gov*.

Wednesday, November 28, 2012

9:00 a.m. Discussion of Management and Personnel Issues (Closed—Ex. 2 & 6).

2:00 p.m. Discussion of Management and Personnel Issues (Closed—Ex. 1, 2 & 6).

Thursday, November 29, 2012

2:30 p.m. Briefing on Security issues (Closed—Ex. 1).

Week of December 3, 2012—Tentative

Thursday, December 6, 2012

9:30 a.m. Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting) (Contact: Ed Hackett, 301–415–7360).

This meeting will be webcast live at the Web address—*www.nrc.gov*.

Week of December 10, 2012—Tentative

There are no meetings scheduled for the week of December 10, 2012.

Week of December 17, 2012—Tentative

There are no meetings scheduled for the week of December 17, 2012.

Week of December 24, 2012—Tentative

There are no meetings scheduled for the week of December 24, 2012.

Week of December 31, 2012—Tentative

There are no meetings scheduled for the week of December 31, 2012.

* * * * *

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—301–415–1292. Contact person for more information: Rochelle Bavol, 301–415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html*.

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at 301–415–6200, TDD: 301–415–2100, or by email at *william.dosch@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an email to *darlene.wright@nrc.gov*.

Dated: November 20, 2012.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2012–28715 Filed 11–21–12; 4:15 pm]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act Meeting Cancellation Notice—OPIC November 28, 2012 Public Hearing

OPIC's Sunshine Act notice of its Public Hearing in Conjunction with each Board meeting was published in the **Federal Register** (Volume 77, Number 221, Pages 68162 and 68163) on November 15, 2012. No requests were received to provide testimony or submit written statements for the record; therefore, OPIC's public hearing scheduled for 2 p.m., November 28, 2012 in conjunction with OPIC's December 6, 2012 Board of Directors meeting has been cancelled.

Contact Person for Information: Information on the hearing cancellation may be obtained from Connie M. Downs at (202) 336–8438, or via email at *Connie.Downs@opic.gov*.

Dated: November 21, 2012.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 2012–28754 Filed 11–21–12; 4:15 pm]

BILLING CODE 3210–01–P

POSTAL REGULATORY COMMISSION

[Docket No. MC2013–20 and CP2013–19; Order No.1546]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of First-Class Package Contract 30 to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* November 28, 2012.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Notice of Filing
III. Ordering Paragraphs

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a formal request and associated supporting information to add First-Class Package Service Contract 30 to the competitive product list.[1] The Postal Service asserts that First-Class Package Service Contract 30 is a competitive product ''not of general

[1] Request of the United States Postal Service to Add First-Class Package Service Contract 27 to the Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, November 16, 2012 (Request).

applicability'' within the meaning of 39 U.S.C. 3632(b)(3). *Id.* at 1. The Request has been assigned Docket No. MC2013–20.

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment B. The instant contract has been assigned Docket No. CP2013–19.

Request. To support its Request, the Postal Service filed six attachments as follows:

- Attachment A—a redacted copy of Governors' Decision No. 11–6, authorizing the new product;
- Attachment B—a redacted copy of the contract;
- Attachment C—proposed changes to the Mail Classification Schedule competitive product list with the addition underlined;
- Attachment D—a Statement of Supporting Justification as required by 39 CFR 3020.32;
- Attachment E—a certification of compliance with 39 U.S.C. 3633(a); and
- Attachment F—an application for non-public treatment of materials to maintain redacted portions of the contract and related financial information under seal.

In the Statement of Supporting Justification, Dennis R. Nicoski, Manager, Field Sales Strategy and Contracts, asserts that the contract will cover its attributable costs, make a positive contribution to covering institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.* Attachment D at 1. Mr. Nicoski contends that there will be no issue of market dominant products subsidizing competitive products as a result of this contract. *Id.*

Related contract. The Postal Service included a redacted version of the related contract with the Request. *Id.* Attachment B. The contract is scheduled to become effective on the day that the Commission issues all regulatory approvals. *Id.* at 2. The contract will expire 3 years from the effective date unless, among other things, either party terminates the agreement upon 30 days' written notice to the other party. *Id.* The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a). *Id.* Attachment D.

The Postal Service filed much of the supporting materials, including the related contract, under seal. *Id.* Attachment F. It maintains that the redacted portions of the contract, customer-identifying information, and related financial information, should remain confidential. *Id.* at 3. This information includes the price structure, underlying costs and assumptions, pricing formulas, information relevant to the customer's mailing profile, and cost coverage projections. *Id.* The Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.* at 7.

II. Notice of Filings

The Commission establishes Docket Nos. MC2013–20 and CP2013–19 to consider the Request pertaining to the proposed First-Class Package Service Contract 30 product and the related contract, respectively.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than November 28, 2012. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Claude B. Lawrence to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2013–20 and CP2013–19 to consider the matters raised in each docket.
2. Pursuant to 39 U.S.C. 505, Claude B. Lawrence is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.
3. Comments by interested persons in these proceedings are due no later than November 28, 2012.
4. The Secretary shall arrange for publication of this Order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2012–28461 Filed 11–23–12; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. MC2013–18 and CP2013–17; Order No. 1544]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of First-Class Package Service Contract 28 to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* November 28, 2012.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Notice of Filing
III. Ordering Paragraphs

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a formal request and associated supporting information to add First-Class Package Service Contract 28 to the competitive product list.[1] The Postal Service asserts that First-Class Package Service Contract 28 is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). *Id.* at 1. The Request has been assigned Docket No. MC2013–18.

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment B. The instant contract has been assigned Docket No. CP2013–17.

Request. To support its Request, the Postal Service filed six attachments as follows:

- Attachment A—a redacted copy of Governors' Decision No. 11–6, authorizing the new product;
- Attachment B—a redacted copy of the contract;
- Attachment C—proposed changes to the Mail Classification Schedule competitive product list with the addition underlined;
- Attachment D—a Statement of Supporting Justification as required by 39 CFR 3020.32;

[1] Request of the United States Postal Service to Add First-Class Package Service Contract 27 to the Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, November 16, 2012 (Request).

• Attachment E—a certification of compliance with 39 U.S.C. 3633(a); and

• Attachment F—an application for non-public treatment of materials to maintain redacted portions of the contract and related financial information under seal.

In the Statement of Supporting Justification, Dennis R. Nicoski, Manager, Field Sales Strategy and Contracts, asserts that the contract will cover its attributable costs, make a positive contribution to covering institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.* Attachment D at 1. Mr. Nicoski contends that there will be no issue of market dominant products subsidizing competitive products as a result of this contract. *Id.*

Related contract. The Postal Service included a redacted version of the related contract with the Request. *Id.* Attachment B. The contract is scheduled to become effective on the day that the Commission issues all regulatory approvals. *Id.* at 2. The contract will expire 3 years from the effective date unless, among other things, either party terminates the agreement upon 30 days' written notice to the other party. *Id.* The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a). *Id.* Attachment D.

The Postal Service filed much of the supporting materials, including the related contract, under seal. *Id.* Attachment F. It maintains that the redacted portions of the contract, customer-identifying information, and related financial information, should remain confidential. *Id.* at 3. This information includes the price structure, underlying costs and assumptions, pricing formulas, information relevant to the customer's mailing profile, and cost coverage projections. *Id.* The Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.* at 7.

II. Notice of Filings

The Commission establishes Docket Nos. MC2013–18 and CP2013–17 to consider the Request pertaining to the proposed First-Class Package Service Contract 28 product and the related contract, respectively.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than November 28, 2012. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Pamela A. Thompson to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2013–18 and CP2013–17 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Pamela A. Thompson is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings are due no later than November 28, 2012.

4. The Secretary shall arrange for publication of this Order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2012–28459 Filed 11–23–12; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. MC2013–19 and CP2013–18; Order No. 1545]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of First-Class Package Contract 29 to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* November 28, 2012.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
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I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a formal request and associated supporting information to add First-Class Package Service Contract 29 to the competitive product list.[1] The Postal Service asserts that First-Class Package Service Contract 29 is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). *Id.* at 1. The Request has been assigned Docket No. MC2013–19.

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment B. The instant contract has been assigned Docket No. CP2013–18.

Request. To support its Request, the Postal Service filed six attachments as follows:

• Attachment A—a redacted copy of Governors' Decision No. 11–6, authorizing the new product;

• Attachment B—a redacted copy of the contract;

• Attachment C—proposed changes to the Mail Classification Schedule competitive product list with the addition underlined;

• Attachment D—a Statement of Supporting Justification as required by 39 CFR 3020.32;

• Attachment E—a certification of compliance with 39 U.S.C. 3633(a); and

• Attachment F—an application for non-public treatment of materials to maintain redacted portions of the contract and related financial information under seal.

In the Statement of Supporting Justification, Dennis R. Nicoski, Manager, Field Sales Strategy and Contracts, asserts that the contract will cover its attributable costs, make a positive contribution to covering institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.* Attachment D at 1. Mr. Nicoski contends that there will be no issue of market dominant products subsidizing competitive products as a result of this contract. *Id.*

Related contract. The Postal Service included a redacted version of the related contract with the Request. *Id.* Attachment B. The contract is scheduled to become effective on the

[1] Request of the United States Postal Service to Add First-Class Package Service Contract 27 to the Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, November 16, 2012 (Request).

day that the Commission issues all regulatory approvals. *Id.* at 2. The contract will expire 3 years from the effective date unless, among other things, either party terminates the agreement upon 30 days' written notice to the other party. *Id.* The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a). *Id.* Attachment D.

The Postal Service filed much of the supporting materials, including the related contract, under seal. *Id.* Attachment F. It maintains that the redacted portions of the contract, customer-identifying information, and related financial information, should remain confidential. *Id.* at 3. This information includes the price structure, underlying costs and assumptions, pricing formulas, information relevant to the customer's mailing profile, and cost coverage projections. *Id.* The Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.* at 7.

II. Notice of Filings

The Commission establishes Docket Nos. MC2013–19 and CP2013–18 to consider the Request pertaining to the proposed First-Class Package Service Contract 29 product and the related contract, respectively.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than November 28, 2012. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Claude B. Lawrence to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2013–19 and CP2013–18 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Claude B. Lawrence is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings are due no later than November 28, 2012.

4. The Secretary shall arrange for publication of this Order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2012–28460 Filed 11–23–12; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. MC2013–17 and CP2013–16; Order No. 1543]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of First-Class Package Contract 27 to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* November 28, 2012.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a formal request and associated supporting information to add First-Class Package Service Contract 27 to the competitive product list.[1] The Postal Service asserts that First-Class Package Service Contract 27 is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). *Id.* at 1. The Request has been assigned Docket No. MC2013–17.

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment B. The instant contract has been assigned Docket No. CP2013–16.

Request. To support its Request, the Postal Service filed six attachments as follows:

- Attachment A—a redacted copy of Governors' Decision No. 11–6, authorizing the new product;
- Attachment B—a redacted copy of the contract;
- Attachment C—proposed changes to the Mail Classification Schedule competitive product list with the addition underlined;
- Attachment D—a Statement of Supporting Justification as required by 39 CFR 3020.32;
- Attachment E—a certification of compliance with 39 U.S.C. 3633(a); and
- Attachment F—an application for non-public treatment of materials to maintain redacted portions of the contract and related financial information under seal.

In the Statement of Supporting Justification, Dennis R. Nicoski, Manager, Field Sales Strategy and Contracts, asserts that the contract will cover its attributable costs, make a positive contribution to covering institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.* Attachment D at 1. Mr. Nicoski contends that there will be no issue of market dominant products subsidizing competitive products as a result of this contract. *Id.*

Related contract. The Postal Service included a redacted version of the related contract with the Request. *Id.* Attachment B. The contract is scheduled to become effective on the day that the Commission issues all regulatory approvals. *Id.* at 2. The contract will expire 3 years from the effective date unless, among other things, either party terminates the agreement upon 30 days' written notice to the other party. *Id.* The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a). *Id.* Attachment D.

The Postal Service filed much of the supporting materials, including the related contract, under seal. *Id.* Attachment F. It maintains that the redacted portions of the contract, customer-identifying information, and related financial information, should remain confidential. *Id.* at 3. This information includes the price structure, underlying costs and assumptions, pricing formulas, information relevant to the customer's mailing profile, and cost coverage projections. *Id.* The Postal Service asks the Commission to protect

[1] Request of the United States Postal Service to Add First-Class Package Service Contract 27 to the Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, November 16, 2012 (Request).

customer-identifying information from public disclosure indefinitely. *Id.* at 7.

II. Notice of Filings

The Commission establishes Docket Nos. MC2013–17 and CP2013–16 to consider the Request pertaining to the proposed First-Class Package Service Contract 27 product and the related contract, respectively.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than November 28, 2012. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Pamela A. Thompson to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2013–17 and CP2013–16 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Pamela A. Thompson is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings are due no later than November 28, 2012.

4. The Secretary shall arrange for publication of this Order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2012–28458 Filed 11–23–12; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Industry Guides, OMB Control No. 3235–0069, SEC File No. 270–069.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Industry Guides are used by registrants in certain industries as disclosure guidelines to be followed in presenting information to investors in Securities Act (15 U.S.C. 77a *et seq.*) and Exchange Act (15 U.S.C. 78a *et seq.*) registration statements and certain other Exchange Act filings. The paperwork burden from the Industry Guides is imposed through the forms that are subject to the disclosure requirements in the Industry Guides and is reflected in the analysis of these documents. To avoid a Paperwork Reduction Act inventory reflecting duplicative burdens, for administrative convenience the Commission estimates the total annual burden imposed by the Industry Guides to be one hour.

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312; or send an email to: *PRA_Mailbox@sec.gov*.

Dated: November 19, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–28529 Filed 11–23–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form F–7, OMB Control No. 3235–0383, SEC File No. 270–331.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form F–7 (17 CFR 239.37) is a registration statement under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) used to register securities that are offered for cash upon the exercise of rights granted to a registrant's existing security holders to purchase or subscribe such securities. The information collected is intended to ensure that the information required to be filed by the Commission permits verification of compliance with securities law requirements and assures the public availability of such information. Form F–7 takes approximately 4 hours per response to prepare and is filed by approximately 5 respondents. We estimate that 25% of 4 hours per response (one hour) is prepared by the company for a total annual reporting burden of 5 hours (one hour per response × 5 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comment to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312; or send an email to: *PRA_Mailbox@sec.gov*.

Dated: November 19, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–28527 Filed 11–23–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 14f–1. OMB Control No. 3235–0108, SEC File No. 270–127.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Under Exchange Act Rule 14f–1 (17 CFR 240.14f–1), if a person or persons have acquired securities of an issuer in a transaction subject to Sections 13(d) or 14(d) of the Exchange Act, and changes a majority of the directors of the issuer otherwise than at a meeting of security holders, then the issuer must file with the Commission and transmit to security holders information related to the change in directors within 10 days prior to the date the new majority takes office as directors. The information filed under Rule 14f–1 must be filed with the Commission and is publicly available. We estimate that it takes approximately 18 burden hours to provide the information required under Rule 14f–1 and that the information is filed by approximately 172 respondents for a total annual reporting burden of 3,096 hours.

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comment to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: November 19, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–28534 Filed 11–23–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form F–8, OMB Control No. 3235–0378, SEC File No. 270–332.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form F–8 (17 CFR 239.38) may be used to register securities of certain Canadian issuers under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) that will be used in an exchange offer or business combination. The information collected is intended to ensure that the information required to be filed by the Commission permits verification of compliance with securities law requirements and assures the public availability of such information. We estimate that Form F–8 takes approximately one hour per response to prepare and is filed by approximately 10 respondents. We estimate that 25% of one hour per response (15 minutes) is prepared by the company for a total annual reporting burden of 3 hours (15 minutes/60 minutes per response × 10 responses = 2.5 hours rounded to 3 hours).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comment to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: November 19, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–28528 Filed 11–23–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 12d1–3, OMB Control No. 3235–0109, SEC File No. 270–116.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Exchange Act Rule 12d1–3 (17 CFR 240.12d1–3) requires a certification that a security has been approved by an exchange for listing and registration pursuant to Section 12(d) of the Securities Exchange Act of 1934 (15 U.S.C. 781(d)) to be filed with the Commission. The information required under Rule 12d1–3 must be filed with the Commission and is publicly available. We estimate that it takes approximately one-half hour per response to provide the information required under Rule 12d1–3 and that the information is filed by

approximately 688 respondents for a total annual reporting burden of 344 hours (0.5 hours per response x 688 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comment to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: November 19, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–28531 Filed 11–23–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Schedule 14D–9F, OMB Control No. 3235–0382, SEC File No. 270–339.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Schedule 14D–9F (17 CFR 240.14d–103) under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*) is used by any foreign private issuer incorporated or organized under the laws of Canada or by any director or officer of such issuer, where the issuer is the subject of a cash tender or exchange offer for a class of securities filed on Schedule 14D–1F. The information required to be filed with the Commission is intended to permit verification of compliance with the securities law requirements and assures the public availability of such information. We estimate that Schedule 14D–9F takes approximately 2 hours per response to prepare and is filed by approximately 6 respondents annually for a total reporting burden of 12 hours.

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: November 19, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–28535 Filed 11–23–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Schedule 13E–4F, OMB Control No. 3235–0375, SEC File No. 270–340.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Schedule 13E–4F (17 CFR 240.13e-102) may be used by an issuer that is incorporated or organized under the laws of Canada to make a cash tender or exchange offer for the issuer's own securities if less than 40 percent of the class of such issuer's securities outstanding that are the subject of the tender offer is held by U.S. holders. The information collected must be filed with the Commission and is publicly available. We estimate that it takes approximately 2 hours per response to prepare Schedule 13E–4F and that the information is filed by approximately 3 respondents for a total annual reporting burden of 6 hours (2 hours per response × 3 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comment to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: November 19, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–28533 Filed 11–23–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 13e–1, OMB Control No. 3235–0305, SEC File No. 270–255.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995

(44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 13e–1 (17 CFR 240.13e–1) under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*) makes it unlawful for an issuer who has received notice that it is the subject of a tender offer made under Section 14(d)(1) to purchase any of its equity securities during the tender offer, unless it first files a statement with the Commission containing information require by the Rule. This rule is in keeping with the Commission's statutory responsibility to prescribe rules and regulations that are necessary for the protection of investors. The information filed under Rule 13e–1 must be filed with the Commission and is publicly available. We estimate that it takes approximately 10 burden hours per response to provide the information required under Rule 13e–1 and that the information is filed by approximately 20 respondents. We estimate that 25% of the 10 hours per response (2.5 hours) is prepared by the company for a total annual reporting burden of 50 hours (2.5 hours per response × 20 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comment to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: November 19, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–28532 Filed 11–23–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form F–X, OMB Control No. 3235–0379, SEC File No. 270–336.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form F–X (17 CFR 239.42) is used to appoint an agent for service of process by Canadian issuers registering securities on Forms F–7, F–8, F–9 or F–10 under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), or filing periodic reports on Form 40–F under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The information collected must be filed with the Commission and is publicly available. We estimate that it takes approximately 2 hours per response to prepare Form F–X and that the information is filed by approximately 161 respondents for a total annual reporting burden of 322 hours (2 hours per response × 161 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comment to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: November 19, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–28530 Filed 11–23–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form 18–K, OMB Control No. 3235–0120, SEC File No. 270–108.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form 18–K (17 CFR 249.318) is an annual report form used by foreign governments or political subdivisions of foreign governments that have securities listed on an U.S. securities exchange. The information to be collected is intended to ensure the adequacy of information available to investors in the registration of securities and assures public availability. We estimate that Form 18–K takes approximately 8 hours to prepare and is filed by approximately 143 respondents for a total annual reporting burden of 1,144 hours. We estimate that 100% of the total burden is prepared by the issuer.

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Director/Chief

Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312; or send an email to: *PRA_Mailbox@sec.gov*.

Dated: November 19, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–28526 Filed 11–23–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Tuesday, November 29, 2012 at 2:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Paredes as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting will be: a litigiation matter; institution and settlement of injunctive actions; institution and settlement of administrative proceedings; and other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: November 20, 2012.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–28685 Filed 11–21–12; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68260; File No. SR–C2–2012–038]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Proposed Rule Change To Address Authority To Cancel Orders When a Technical or Systems Issue Occurs and To Describe the Operation of Routing Service Error Accounts

November 19, 2012.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 8, 2012, the C2 Options Exchange, Incorporated (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend its rules to (i) address the authority of the Exchange to cancel orders (or release routing-related orders) when a technical or systems issue occurs; and (ii) describe the operation of an Exchange error account(s) and routing broker error account(s), which may be used to liquidate unmatched executions that may occur in the provision of the Exchange's routing service. The text of the rule proposal is available on the Exchange's Web site (*http://www.c2exchange.com/Legal/RuleFilings.aspx*), at the Exchange's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to adopt new Rule 6.47 to address the authority of the Exchange to cancel orders (or release routing-related orders) when a technical or systems issue occurs and to adopt new Rule 6.37 [4] to describe the operation of an Exchange error account(s) (''Exchange Error Account(s)'') and routing broker error account(s), which may be used to liquidate unmatched executions that may occur in the provision of the Exchange's routing service.

By way of background, C2 operates a system of trading that allows automatic executions to occur electronically. As part of this infrastructure, C2 also automatically routes orders to other exchanges under certain circumstances. These routing services are provided in conjunction with one or more routing brokers that are not affiliated with the Exchange.[5] Mechanically, when the Exchange receives an order from a Trading Permit Holder (''TPH'') that is held in the Exchange system and determines to route an order to another exchange, the Exchange provides the routing broker with a corresponding order and instructions to route the order to another exchange(s). The routing broker then sends the corresponding order to the other exchange.[6]

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] In conjunction with adopting new Rule 6.37, the Exchange is proposing to renumber existing Rule 6.37, *Reporting of Trade Information,* to Rule 6.38.

[5] *See, e.g.,* Rule 6.36, *Order Routing to Other Exchanges.*

[6] Generally, the routing brokers route the orders directly to other exchanges. However, it is possible that a routing broker may route orders to another exchange through a third-party broker-dealer. In those cases, the third-party broker-dealer would route the orders to the other exchange in its name, and any executions would be submitted for clearance and settlement in the name of the routing broker so that any resulting positions are delivered to the routing broker upon settlement. As described above, normally the routing broker would then coordinate with the Exchange to arrange for any resulting securities positions to be delivered to the TPH that submitted the corresponding order to the Exchange. If error positions (as defined in proposed Rule 6.37) result in connection with the routing broker's use of a third-party broker-dealer for outbound routing, and those positions are delivered to the routing broker through the clearance and settlement process, those positions would be permitted to be resolved in accordance with proposed Rule 6.37. If the third-party broker-dealer received error positions and the positions were not delivered to the routing broker through the clearance and settlement process, then the third-party broker-dealer would resolve the position itself, and those positions would not be permitted to be resolved as set forth in proposed Rule 6.37.

In the normal course, the routing broker reports an execution or cancellation of the routed order back to the Exchange. Routed orders that are executed at another exchange are submitted for clearance and settlement in the name of the routing broker. The routing broker then coordinates with the Exchange to arrange for any resulting securities positions to be delivered to the TPH that submitted the original order to the Exchange (*i.e.,* upon receipt of a filled execution report for the routed order, the Exchange system pairs the execution against the TPH's original order being held in the Exchange system and reports the pairing for clearance and settlement purposes by submitting a non-tape, clearing only transaction).

From time to time, the Exchange encounters situations in which it becomes necessary to cancel orders (or release routing-related orders) and resolve error positions that result from errors of the Exchange, routing brokers, or another exchange.[7]

Proposed Rule 6.47 (Order Cancellation/Release)

The Exchange proposes to adopt new C2 Rule 6.47 to address the authority of the Exchange to cancel orders when a technical or systems issue occurs. Specifically, paragraph (a) of the proposed rule would expressly authorize the Exchange to cancel orders as it deems to be necessary to maintain fair and orderly markets if a technical or systems issue occurs at the Exchange,[8] the routing broker, or another exchange to which an Exchange order has been routed. Paragraph (a) would also provide that a routing broker may only cancel orders being routed to another exchange based on the Exchange's standing or specific instructions or as otherwise provided in the Exchange Rules.[9] Paragraph (a) would also provide that the Exchange shall provide notice of the cancellation to affected Trading Permit Holders as soon as practicable.

Paragraph (b) of the proposed rule provides that the Exchange may also determine to release orders being held on the Exchange awaiting an away exchange execution as it deems to be necessary to maintain fair and orderly markets if a technical or systems issues occurs at the Exchange, a routing broker, or another exchange to which an order has been routed (the process for ''releasing'' orders is illustrated in more detail below). Paragraph (c) of the proposed rule would provide that, for purposes of Rule 6.47, technical or system issues would include, without limitation, instances where the Exchange has not received confirmation of an execution (or cancellation) on another exchange from a routing broker within a response time interval designated by the Exchange, which interval may not be less than three (3) seconds.[10]

The examples set forth below describe some of the circumstances in which the Exchange may decide to cancel (or release) orders.

Example 1: If a routing broker or another exchange experiences a technical or systems issue that results in the Exchange or routing broker not receiving responses to immediate-or-cancel (''IOC'') orders sent to the other exchange, and that issue is not resolved in a timely manner, then the Exchange may seek to cancel the routed orders affected by the issue.[11] For instance, if a routing broker experiences a connectivity issue affecting the manner in which it sends and receives order messages to or from another exchange, it may be unable to receive timely execution or cancellation reports from the other exchange, and Exchange may consequently seek to cancel the affected routed orders (*e.g.,* by calling the routing broker and instructing the routing broker to attempt to cancel the orders) or perhaps the routing broker may initiate the cancellation of the affected routed orders pursuant to a standing or specific instruction from the Exchange. In these circumstances, the Exchange would also attempt to release the initial orders submitted by TPHs.[12]

Example 2: If the Exchange does not receive confirmation of an execution (or cancellation) of an IOC order sent to another exchange from a routing broker within a designated response time interval of three (3) seconds, then an automated system feature will release the initial order being held by the Exchange.[13] The Exchange would also

[7] The examples described in this filing are not intended to be exclusive. Proposed Rule 6.47 would provide general authority for the Exchange to cancel orders (or release routing-related orders) in order to maintain fair and orderly markets when technical or systems issues are occurring, and proposed Rule 6.37 also would set forth the manner in which error positions (which may occur in the provision of the Exchange's routing service) may be handled by the Exchange. The proposed rule change is not limited to addressing order cancellation (release) or error positions resulting only from the specific examples described in this filing.

[8] To confirm, the authority to cancel orders to maintain fair and orderly markets under proposed Rule 6.47 would apply to any technical or systems issue at the Exchange and would include any orders at the Exchange (*i.e.,* the authority to cancel orders would apply to any orders that are subject to the Exchange's routing service and any orders that are not subject to the Exchange's routing service). By comparison, the routing service error account provisions under proposed Rule 6.37 (discussed below) would apply only to original and corresponding orders that are subject to the Exchange routing service.

[9] As discussed above, the Exchange uses non-affiliated routing brokers to provide the routing services. These routing brokers are also not facilities of the Exchange. For all routing services, the Exchange determines the logic that provides when, how and where orders are routed away to other exchanges. The routing broker receives the routing instructions from the Exchange to route orders to other exchanges and to report executions back to the Exchange. The routing broker cannot change the terms of an order or the routing instructions, nor does the routing broker have any discretion about where to route an order. *See* Rule 6.36(c), (e) and (f). Under paragraph (a) to proposed Rule 6.47, the decision to take action with respect to orders affected by a technical or systems issue shall be made by the Exchange. Depending on where those orders are located, a routing broker would be permitted to initiate a cancellation of an order(s) pursuant to the Exchange's standing or specific instructions or as otherwise provided in the Exchange Rules (*e.g.,* the Exchange's standing instructions might provide, among other things, that the routing broker could initiate the cancellation of orders if the routing broker is experiencing technical or systems issues routing orders to an away exchange).

[10] A determination by the Exchange to cancel or release orders may not cause the Exchange to declare self-help against the other exchange pursuant Section E of the C2 Rules (which cross-reference paragraph (b)(1) of Chicago Board Options Exchange, Incorporated (''CBOE'') Rule 6.81, *Order Protection).* If the Exchange determines to cancel or release orders, as applicable, under proposed Rule 6.47 but does not declare self-help against that other exchange, the Exchange would continue to be subject to the trade-through requirements in Rule 6.81 with respect to that exchange.

[11] In a normal situation (*i.e.,* one in which a technical or systems issue does not exist), the Exchange should receive an immediate response back from the routing broker reporting any executions or cancellations from the other exchange, and would then pass the resulting fill or cancellation onto the TPH. If, after submitting an order for which a corresponding order has been routed to another exchange, a TPH sends an instruction to cancel the original order, the cancellation is held by the Exchange until a response is received from the routing broker on the corresponding order. For instance, if the other exchange executes the corresponding order, the execution would be passed onto the TPH and the cancellation instruction on the TPH's original order would be disregarded.

[12] Once an initial order is released, any cancellation that a TPH submitted to the Exchange on the initial order during such a situation would be honored. If a TPH did not submit a cancellation to the Exchange, however, that initial order would remain ''live'' and thus be eligible for execution or posting on the Exchange, and the Exchange would not treat any execution of the initial order or any subsequent routed order related to that initial order as an error (unless, of course, the order was itself subject to another technical or systems issue or any away exchange processing exceeded the applicable response time interval).

[13] This routing risk management feature would serve as one means for the Exchange to efficiently determine if there is a technical or system issue occurring. The feature, and the system functionality used to operate the feature, is generally modeled after a process that was utilized under the former Options Intermarket Linkage Plan (the ''Old Linkage Plan''). Under the Old Linkage Plan, an eligible market maker that sent a ''principal acting as agent order'' (referred to as a ''P/A Order'') through the linkage and who did not receive a reply from the away exchange within 30 seconds was able to reject any response received thereafter purporting to report a total or partial execution of that order. Over time, the time frame in which an away exchange was required to respond was ultimately reduced to 3 seconds. *See, e.g.,* Securities Exchange Act Release Nos. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000)(order approving Options Intermarket Linkage Plan submitted by the

Continued

attempt to cancel the routed order in these circumstances.[14]

Example 3: If the Exchange experiences a systems issue, the Exchange may take steps to cancel and/or release all outstanding orders affected by the issue (which orders may include orders that may or may not be subject to routing services). The Exchange would also attempt to cancel any routed orders related to the TPHs' initial orders, if applicable, in these circumstances.[15]

Proposed Rule 6.37 (Routing Service Error Accounts)

Proposed Rule 6.37 would provide that each routing broker shall maintain, in the name of the routing broker, one or more accounts for the purpose of liquidating unmatched trade positions that may occur in connection with the away exchange routing service provided under Rule 6.36 (''error positions'').[16] In addition, the Exchange may also maintain, in the name of the Exchange, one or more Exchange Error Accounts for the purpose of liquidating error positions in the circumstances described below.

Paragraph (a) of the proposed rule would provide that errors to which the rule would apply include any action or omission by the Exchange, a routing broker, or another exchange to which an Exchange order has been routed, either of which result in an unmatched trade position due to the execution of an original or corresponding order that is subject to the away market routing service and for which there is no corresponding order to pair with the execution (each a ''routing error''). Such routing errors would include, without limitation, positions resulting from determinations by the Exchange to cancel or release an order pursuant to proposed Rule 6.47 (as described above).

Paragraph (b) of the proposed rule would provide that, generally, each routing broker will utilize its own error account to liquidate error positions. However, in certain circumstances, the Exchange may utilize an Exchange Error Account. In particular, in instances where the routing broker is unable to utilize its own error account (*e.g.,* due to a technical, systems or other issue that prevents the routing broker from doing so) or where the an error is due to a technical or systems issue at the Exchange, the Exchange may (but would not be required to) determine it is appropriate to utilize an Exchange Error Account. In making such a determination to utilize an Exchange Error Account, the Exchange would consider whether is has sufficient time, information and capabilities considering the market circumstances to determine that an error is due to such circumstances and whether the Exchange can address the error.

The Exchange believes it is reasonable and appropriate to address routing errors through the error account of a routing broker in the manner proposed because, among other reasons, it is the executing broker associated with these transactions. The Exchange also believes that having the flexibility to determine to utilize an Exchange Error Account in the limited circumstances described above allows for administrative convenience and contributes to the Exchange's ability to maintain a fair and orderly market.[17] From a TPH perspective, there would be no impact resulting from the decision to use an Exchange Error Account or the routing broker's error account to liquidate the error position in these circumstances.

By definition, an error position in an Exchange Error Account would only include unmatched trades due to a routing error. In that regard, paragraph (c) of the proposed rule would provide that the Exchange shall not accept any positions in an Exchange Error Account from an account of a Trading Permit Holder or permit any Trading Permit Holder to transfer any positions from the Trading Permit Holder's account to an Exchange Error Account.[18]

To the extent a routing broker utilizes its own account to liquidate error positions, paragraph (d) of the proposed rule provides that the routing broker shall liquidate the error positions as soon as practicable. The routing broker could determine to liquidate the position itself or have a third party broker-dealer liquidate the position on the routing broker's behalf. Paragraph (d) also provides that the routing broker establish and enforce policies and procedures reasonably designed to (i) adequately restrict the flow confidential and proprietary information associated with the liquidation of the error position

American Stock Exchange LLC, Chicago Board Options Exchange, Inc., and International Securities Exchange LLC) and 57238 (January 30, 2008), 73 FR 6748 (February 5, 2008)(order approving joint amendment no. 25 to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage Relating to Response Time for Certain Orders Sent Through the Linkage). The Old Linkage Plan was replaced by the Options Order Protection and Locked/Crossed Markets Plan (the ''Distributive Options Linkage Plan'') in 2009. *See* Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009)(order approving the National Market System Plan relating to Options Order Protection and Locked/Crossed Markets submitted by the Chicago Board Options Exchange, Incorporated, International Securities Exchange, LLC, The NASDAQ Stock Market LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX, Inc., NYSE Amex LLC, and NYSE Arca, Inc.). Although there is no longer a similar provision for P/A Orders and away exchange response times under the Distributive Options Linkage Plan, the Exchange has system functionality that tracks response times for orders routed to away exchanges. The primary distinction between the process under the Old Linkage Plan and the process described in the current proposed rule change is that, instead of rejecting an execution report back to the away exchange, an execution report received after the TPH's order is released would be considered an error and subject to the Exchange Error Account procedures discussed below. The Exchange views having this ability to release orders that are queued waiting for a responsive execution/cancel report for a corresponding order from an away exchange as an important risk management feature. Because the markets are highly automated, the Exchange would normally expect to receive a response to an order routed through the routing service within milliseconds after it is sent. If a response is not received in a timely manner, it generally is an indication of a system problem with the other exchange, the routing broker(s) or the Exchange. In addition, especially in fast-moving markets like the options market, the Exchange believes allowing for the release of a TPH's related original order due to an untimely response will provide an opportunity for the transmittal of responses while also allowing the Exchange's TPHs to address and execute orders pending on the Exchange in a timely manner. The Exchange believes this contributes to the Exchange's ability to maintain fair and orderly markets.

[14] It is possible that attempts to cancel the routed orders may not succeed. If the Exchange receives an execution report on the order that had been routed to an away exchange, then the unmatched execution would be considered an ''error position'' under proposed Rule 6.47.

[15] It is possible that attempts to cancel the routed orders may not succeed. If the Exchange receives an execution report on the order that had been routed to an away exchange, then the unmatched execution would be considered an ''error position'' under proposed Rule 6.47.

[16] The Exchange notes that, in connection with providing routing services, routing brokers currently may utilize their own error accounts to liquidate error positions. The Exchange believes it is reasonable and not inappropriate to address routing errors through the error account of a routing broker because, among other reasons, it is the executing broker associated with these transactions.

[17] The Exchange notes that any profit/loss from liquidating the error positions would belong to the Exchange (when an Exchange Error Account is utilized) or the routing broker (when the routing broker's error account is utilized). However, all or any portion of such profits/losses may be subject to certain contractual obligations pursuant to the routing service agreement between the Exchange and the routing broker (*e.g.,* used to offset certain contractual obligations).

[18] The Exchange may address error positions under the proposed rule that are caused by the errors noted above, but the Exchange may not accept from a TPH positions that are delivered to the TPH through the clearance and settlement process, even if those positions may have been the result of an error. This would not apply, however, to situations like the one described below in which the Exchange incurred a position to settle a TPH purchase, as the TPH did not yet have a position in its account as a result of the purchase at the time of the Exchange's action, *i.e.,* the Exchange's action was necessary for the purchase to settle into the TPH's account. Moreover, to the extent a TPH receives positions in connection with an error or other technical or systems issue, the TPH may seek to rely on other Exchange Rules such as Rule 6.42, *Exchange Liability,* if it experiences a loss. For example, Rule 6.42 provides TPHs with the ability to file claims for negligent acts or omissions of Exchange employees or for the failure of its systems or facilities.

in accordance with Rule 6.36,[19] and (ii) prevent the use of information associated with other orders subject to the routing services when making determinations regarding the liquidation of error positions. In addition, paragraph (d) provides that the routing broker shall make and keep records associated with the liquidation of such routing broker error positions and shall maintain such records in accordance with Rule 17a–4 under the Act.[20]

Paragraph (e) of the proposed rule would provide that, to the extent an Exchange Error Account is utilized to liquidate error positions, the Exchange shall liquidate the error positions as soon as practicable. In liquidating error positions in an Exchange Error Account, the Exchange shall provide complete time and price discretion for the trading to liquidate error positions in an Exchange Error Account to a third-party broker-dealer and shall not attempt to exercise any influence or control over the timing or methods of such trading.[21] Such a third-party broker-dealer may include a routing broker not affiliated with the Exchange. Paragraph (e) would also provide that the Exchange shall establish and enforce policies and procedures reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange and the third-party broker-dealer associated with the liquidation of the error positions. Finally, paragraph (e) would provide that the Exchange shall make and keep records to document all determinations to treat positions as error positions under the rule (whether or not an Exchange Error Account is utilized to liquidate such error positions), as well as records associated with the liquidation of Exchange Error Account error positions through a third-party broker-dealer, and shall maintain such records in accordance with Rule 17a–1 under the Act.[22]

Examples of such error positions due to a routing error may include, without limitation, the following:

Example 4: Error positions may result from routed orders that the Exchange or a routing broker attempts to cancel but that are executed before the other exchange receives the cancellation message or that are executed because the other exchange is unable to process the cancellation message. Using the situation described in Example 1 above, assume the Exchange seeks to release the initial orders being held by the Exchange because it is not receiving timely execution or cancellation reports from another exchange. In such a situation, although the Exchange would attempt to direct the routing broker to cancel the routed corresponding orders, the routing broker may still receive executions from the other exchange after connectivity is restored, which would not then be allocated to TPHs because of the earlier decision to release the affected initial orders. Instead, the routing broker would post the positions into its account and resolve the positions in the manner described above. Alternatively, if the routing broker is unable to resolve the positions (or if the error position is due to a system or technical issue on the Exchange), the Exchange may determine to post the positions into an Exchange Error Account and resolve the positions in the manner described above.

Example 5: Error positions may result from an order processing issue at another exchange. For instance, if another exchange experienced a systems problem that affects its order processing, it may transmit back a message purporting to cancel a routed order, but then subsequently submit an execution of that same order for clearance and settlement. In such a situation, the Exchange would not then allocate the execution to the TPH because of the earlier cancellation message from the other exchange. Instead, the routing broker would post the positions into its account and resolve the positions in the manner described above. Alternatively, if the routing broker is unable to resolve the positions, the Exchange may determine to post the positions into an Exchange Error Account and resolve the positions in the manner described above.

Example 6: Error positions may result if a routing broker receives an execution report from another exchange but does not receive clearing instructions for the execution from the other exchange. For instance, assume that a TPH sends the Exchange an order to buy 10 ABC option contracts, which causes the routing broker to send an order to another exchange that is subsequently executed, cleared and closed out by that other exchange, and the execution is ultimately communicated back to the TPH. On the next trading day (T+1), if the other exchange does not providing clearing instructions for that execution, the Exchange/routing broker would still be responsible for settling that TPH's purchase and therefore would be left with open positions.[23] Instead, the routing broker would post the positions into its account and resolve the positions in the manner described above. Alternatively, if the routing broker is unable to resolve the positions, the Exchange may determine to post the positions into an Exchange Error Account and resolve the positions in the manner described above.

Example 7: Error positions may result from a technical or systems issue that causes orders to be executed in the name of a routing broker in connection with its routing services function that are not related to any corresponding initial orders of TPHs. As a result, the Exchange would not be able to assign any positions resulting from such an issue to TPHs. Instead, the routing broker would post the positions into its account and resolve the positions in the manner described above. Alternatively, if the routing broker is unable to resolve the positions, the Exchange may determine to post the positions into an Exchange Error Account and resolve the positions in the manner described above.[24]

In each of the circumstances described above, the Exchange and its routing broker may not learn about an error position until T+1. For instance, the Exchange and its routing broker may not learn about an error position until either (i) during the clearing process when a routing destination has submitted to The Options Clearing Corporation (''OCC'') a transaction for clearance and settlement for which the Exchange/routing broker never received an execution confirmation, or (ii) when another exchange does not recognize a transaction submitted by a routing broker to OCC for clearance and settlement. Moreover, the affected TPHs' trade may not be nullified absent express authority under Exchange Rules.[25] As such, the Exchange believes that use of a routing broker error account (or an Exchange Error Account, as applicable) to liquidate the error positions that may occur in these circumstances is reasonable and appropriate in these circumstances.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act[26] in general and furthers the objectives of Section 6(b)(5) of the Act[27] in particular, which requires that the rules of an exchange be designed to promote

[19] Rule 6.36(b) provides that the Exchange shall establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange and the routing broker, and any other entity, including any affiliate of the routing broker, and, if the routing broker or any of its affiliates engages in any other business activities other than providing routing services to the Exchange, between the segment of the routing broker or affiliate that provides the other business activities and the segment of the routing broker that provides the routing services.

[20] 17 CFR 240.17a–4.

[21] This provision is not intended to preclude the Exchange from providing the third-party broker with standing instructions with respect to the manner in which it should handle all error account transactions. For example, the Exchange might instruct the broker to treat all orders as ''not held'' and to attempt to minimize any market impact on the price of the option being traded.

[22] 17 CFR 240.17a–1.

[23] To the extent that a loss is incurred in covering the position, the routing broker (on behalf of the Exchange or itself) may submit a reimbursement claim to that other exchange.

[24] To the extent such positions are not related to the routing broker's function as an Exchange routing broker (*i.e.,* originating with the Exchange), the Exchange would not post such positions to an Exchange Error Account. The routing broker would resolve the error positions itself.

[25] *See, e.g.,* Rule 6.15, *Obvious Error and Catastrophic Errors.*

[26] 15 U.S.C. 78f(b).

[27] 15 U.S.C. 78f(b)(5).

just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that this proposed rule change is in keeping with those principles since the Exchange's ability to cancel and release orders during a technical or systems issue and to maintain an Exchange Error Account facilitates the smooth and efficient operation of the market. Specifically, the Exchange believes that allowing the Exchange to cancel and release orders during a technical or systems issue (and permitting its routing brokers to cancel orders pursuant to standing or specific instructions or as otherwise permitted under Exchange Rules) would allow the Exchange to maintain fair and orderly markets. Moreover, the Exchange believes that allowing a routing broker to assume error positions in its own account(s) to liquidate those positions (or allowing the Exchange to assume error positions in an Exchange Error Account to liquidate those positions in instances where a routing broker is unable to do so or where the routing error is due to a technical or systems issue at the Exchange) subject to the conditions set forth in proposed Rule 6.37 would be the least disruptive means to address these errors. Overall, the proposed new rule is designed to ensure full trade certainty to market participants and to avoid disrupting the clearance and settlement process. The proposed new rule is also designed to provide a consistent methodology for handling error positions in a manner that does not discriminate among TPHs. The proposed new rule is also consistent with Section 6 of the Act insofar as it would require the Exchange (and its routing brokers, as applicable) to establish controls to restrict the flow of any confidential information associated with the liquidation of error positions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–C2–2012–038 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–C2–2012–038. 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, on business days between the hours of 10 a.m. and 3 p.m., located at 100 F Street NE., Washington, DC 20549–1090. Copies of the 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–C2–2012–038 and should be submitted on or before December 17, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Kevin M. O'Neill,

Deputy Secretary.

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[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68257; File No. SR–BATS–2012–044]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of Proposed Rule Change To Amend BATS Rule 14.11, Entitled ''Other Securities,'' and To List and Trade Shares of Certain ProShares Products

November 19, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 5, 2012, BATS Exchange, Inc. (''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 14.11, entitled ''Other Securities,'' to adopt new criteria for certain securities to be listed on the Exchange as Trust Issued Receipts (''TIRs''), as well as to list and trade shares of the following: ProShares Managed Futures Strategy; ProShares Commodity Managed Futures Strategy; and ProShares Financial Managed Futures

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Strategy. The Exchange has also proposed to correct a reference stating that TIRs will trade on the Exchange until 4:00 p.m. Eastern Time (''E.T.'') to allow TIRs to trade until the end of the Exchange's after market session, which ends at 5:00 p.m. E.T. The Exchange has also proposed to make certain changes to conform to the listing rules of certain other exchanges and to make certain non-substantive changes and corrections to existing rule text.

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 changes proposed in this filing will modify the Exchange's rules in order to allow listing of certain exchange traded products (''ETPs'') by adopting criteria based on existing criteria applicable to ETPs listed on NYSE MKT LLC (formerly the American Stock Exchange or ''AMEX'') and NYSE Arca Equities, Inc. (''NYSE Arca''). Specifically, the Exchange proposes to modify Rule 14.11(f), which governs the listing of TIRs that are issued by a trust on the Exchange, in order to adopt new criteria for the listing of TIRs that invest in ''Investment Shares'' or ''Financial Instruments,'' as proposed to be defined herein. The addition of sub-paragraph (4) to Rule 14.11(f) is based on Commentary .07 of AMEX Rule 1202 and Commentary .02 of NYSE Arca Rule 8.200 and is intended to accommodate possible future listing and trading of TIRs that invest in Investment Shares or Financial Instruments. Any new listing or trading of an issue of such TIRs will be subject to the approval of a proposed rule change by the Commission pursuant to Section 19(b)(2) of the Act and Rule 19b–4 thereunder. Capitalized terms that are otherwise undefined have the same meaning as those set forth under the Rules of the Exchange. The Exchange has also proposed to correct a reference stating that TIRs will trade on the Exchange until 4:00 p.m. E.T. to allow TIRs to trade until the end of the Exchange's after market session, which ends at 5:00 p.m. E.T. The Exchange has also proposed to make certain changes to conform to the listing rules of certain other exchanges and to make certain non-substantive changes and corrections to existing rule text.

Pursuant to this proposed rule change, the Exchange also proposes to list and trade shares (''Shares'') of the following: ProShares Managed Futures Strategy; ProShares Commodity Managed Futures Strategy; and ProShares Financial Managed Futures Strategy (each a ''Fund,'' and together, ''Funds'').[3] Each Fund is a series of the ProShares Trust II (''Trust''), a Delaware statutory trust. ProShare Capital Management LLC (''Sponsor'') is the Trust's Sponsor and Wilmington Trust Company is the Trust's trustee. Brown Brothers Harriman & Co. serves as the administrator (''Administrator''), custodian, and transfer agent of the Funds. SEI Investments Distribution Co. serves as distributor of the Shares (''Distributor'').

The Exchange notes that the Commission has previously approved the listing and trading of shares of the Funds on NYSE Arca.[4] In addition, the Commission has approved other exchange-traded investment products linked to the performance of underlying commodities and currencies.[5]

Proposed Listing Rules

The Exchange proposes to adopt the following definitions for purposes of sub-paragraph (f)(4) of Rule 14.11:

- The term ''Investment Shares'' will mean a security (a) that is issued by a trust, partnership, commodity pool or other similar entity that invests in any combination of futures contracts, options on futures contracts, forward contracts, commodities, swaps or high credit quality short-term fixed income securities or other securities; and (b) issued and redeemed daily at net asset value in amounts correlating to the number of receipts created and redeemed in a specified aggregate minimum number.
- The term ''futures contract'' is commonly known as a ''contract of sale of a commodity for future delivery'' set forth in Section 2(a) of the Commodity Exchange Act.
- A ''forward contract'' is a contract between two parties to purchase and sell a specific quantity of a commodity at a specified price with delivery and settlement at a future date. Forward contracts are traded over-the-counter (''OTC'') and not listed on a futures exchange.
- The term ''Financial Instruments'' will mean any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars and floors; and swap agreements.

The proposed listing requirements include a designation requirement. Specifically, the proposed Rules provide that the Exchange may list and trade TIRs investing in Investment Shares or Financial Instruments and that each issue of a TIR based on a particular Investment Share or Financial Instrument shall be designated as a separate series and identified by a unique symbol.

When the Exchange is the primary listing exchange for a trust that issues TIRs that invest in Investment Shares or Financial Instruments, the trust will be subject to the initial and continued listing criteria under proposed Rule 14.11(f)(4), as well as Rules 14.11(f)(1) and (2), as proposed to be amended. In particular, the proposed initial listing criteria provide that the Exchange will establish a minimum number of receipts required to be outstanding at the time of commencement of trading on the Exchange. The proposed continued listing criteria provide that the Exchange may consider delisting or removal from listing of such TIRs under any of the following circumstances:

[3] *See* the Trust's Registration Statement on Form S–1, dated November 29, 2011, as amended (File No. 333–178212 (''Registration Statement'')). The description of the Funds and the Shares contained herein is based, in part, on the Registration Statement.

[4] *See* Securities Exchange Act Release No. 66334 (February 6, 2012), 77 FR 7219 (February 10, 2012) (SR–NYSEArca–2011–94) (order approving NYSE Arca listing and trading of the Funds). Although the Funds were approved for listing and trading on NYSE Arca, the Funds' Shares have never been traded on any national securities exchange.

[5] *See, e.g.,* Securities Exchange Act Release Nos. 57456 (March 7, 2008), 73 FR 13599 (March 13, 2008) (SR–NYSEArca–2007–91) (order granting accelerated approval for NYSE Arca listing the iShares GS Commodity Trusts); 59895 (May 8, 2009), 74 FR 22993 (May 15, 2009) (SR–NYSEArca–2009–40) (order granting accelerated approval for NYSE Arca listing the ETFS Gold Trust); 58365 (August 14, 2008), 73 FR 49522 (August 21, 2008) (order granting accelerated approval for NYSE Arca listing of four CurrencyShares Trusts); 63598 (December 22, 2010), 75 FR 82106 (December 29, 2010) (SR–NYSEArca–2010–98) (order approving listing and trading on the NYSE Arca of WisdomTree Managed Futures Strategy Fund).

• If following the initial twelve month period following the commencement of trading of the receipts, (1) the trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of TIRs for 30 or more consecutive trading days; (2) the trust has fewer than 50,000 receipts issued and outstanding; or (3) the market value of all receipts issued and outstanding is less than $1 million.

• If the level or value of an underlying index or portfolio is no longer calculated or available on at least a 15-second delayed basis or the Exchange stops providing a hyperlink on its Web site to any such asset or investment value.

• If the Intraday Indicative Value is no longer made available on at least a 15-second delayed basis.

• If such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

In addition, the Exchange will remove TIRs from listing and trading upon termination of the trust. A trust may terminate in accordance with the provisions of the trust prospectus, which may provide for termination if the value of securities in the trust falls below a specified amount. The Exchange represents that it prohibits the initial and/or continued listing of any security that is not in compliance with Rule 10A–3 under the Exchange Act.[6]

Further, the Exchange proposes to require that the term of a trust shall be as stated in the prospectus, however, such entity may be terminated earlier under such circumstances as may be specified in the prospectus.

The Exchange also proposes to add the defined term ''Trustee'' to Rule 14.11(f)(1), along with applying the following requirements to the Trustee:

• The Trustee of a trust must be a trust company or banking institution having substantial capital and surplus and the experience and facilities for handling corporate trust business. In cases where, for any reason, an individual has been appointed as Trustee, a qualified trust company or banking institution must be appointed co-trustee.

• No change is to be made in the Trustee of a listed issue without prior notice to and approval of the Exchange.

The Exchange is also proposing to add new sub-paragraph (f)(4)(C)(v), which states that voting rights shall be as set forth in the applicable trust prospectus.

In addition, the Exchange has proposed new sub-paragraph (D) to Rule 14.11(f)(4), which sets forth certain restrictions on Members acting as registered Market Makers in TIRs that invest in Investment Shares or Financial Instruments to facilitate surveillance. Rule 14.11(f)(4)(D)(i) will require that any Member acting as a registered Market Maker in TIRs must file, with the Exchange, in a manner prescribed by the Exchange, and keep current a list identifying all accounts for trading the underlying physical asset or commodity, related futures or options on futures, or any other related derivatives, which the Member acting as registered Market Maker may have or over which it may exercise investment discretion. Rule 14.11(f)(4)(D)(i) will prohibit any Member acting as registered Market Maker in the Trust Issued Receipts from trading in the underlying physical asset or commodity, related futures or options on futures, or any other related derivatives, in an account in which a Member acting as a registered Market Maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange as required by the Rule.

Adoption of Rule 14.11(f)(4)(D)(ii) will also ensure that Market Makers handling shares of TIRs provide the Exchange with such books, records, or other information pertaining to transactions by such entity or registered or non-registered employee affiliated with such entity for its or their own accounts in the underlying physical asset or commodity, related futures or options on futures, or any other related derivatives, as may be requested by the Exchange.

As a general matter, the Exchange has regulatory jurisdiction over its Members and their associated persons, which includes any person or entity controlling a Member, as well as a subsidiary or affiliate of a Member that is in the securities business. A subsidiary or affiliate of a Member that does business only in commodities or futures contracts would not be subject to Exchange jurisdiction, but the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

The Exchange has also proposed the adoption of Rule 14.11(f)(4)(E) related to limitation of liability. Specifically, neither the Exchange nor any agent of the Exchange shall have any liability for damages, claims, losses, or expenses caused by any errors, omissions, or delays in calculating or disseminating any applicable underlying asset or commodity value, the current value of the underlying asset or commodity if required to be deposited to the trust in connection with issuance of TIRs, net asset value, or other information relating to the purchase, redemption, or trading of TIRs, resulting from any negligent act or omission by the Exchange or any agent of the Exchange, or any act, condition, or cause beyond the reasonable control of the Exchange or its agent, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission, or delay in the reports of transactions in an underlying asset or commodity.

The Exchange has also proposed the adoption of Rule 14.11(f)(4)(F), which would require the Exchange to file separate proposals under Section 19(b) of the Act before listing and trading TIRs based on separate Investment Shares or Financial Instruments.

In addition to the adoption of new sub-paragraph (f)(4) to Rule 14.11, the Exchange proposes to make additional substantive modifications to Rule 14.11(f) in order to conform to AMEX and NYSE Arca rules related to TIRs, as described below.

First, the Exchange proposes to delete current sub-paragraph (f)(2)(B) of Rule 14.11, which sets forth criteria that are not included in the equivalent TIRs rules of AMEX (AMEX Rule 1202) and NYSE Arca (NYSE Arca Rule 8.200). Sub-paragraph (f)(2)(B) of Exchange Rule 14.11 governs eligibility of certain component securities that are issued by a company that has already been included as a component security in the applicable series of TIRs or has been received as part of a merger, consolidation, corporate combination, or other event. Rather than apply different criteria to such securities, the Exchange proposes to apply the criteria of sub-paragraph (f)(2)(G) of Rule 14.11 (to be re-numbered as (f)(3)) to all component securities of a TIR listed on the Exchange. Further, as noted above, this change will help to align the Exchange's rules applicable to TIRs with the rules of AMEX and NYSE Arca, which should help to alleviate confusion amongst issuers.

The Exchange also proposes to eliminate the requirement of current Rule 14.11(f)(2)(E)(iv) that the Exchange receive prior notice and provide approval before a change can be made to the trustee of a listed TIR. The Exchange is proposing this change in order to align the Exchange's rules with NYSE Arca Rule 8.200.

[6] 17 CFR 240.10A–3.

Third, the Exchange proposes to eliminate the requirement in Rule 14.11(f)(2)(F) that transactions in Trust Issued Receipts may only be made in round lots of 100 receipts or round lot multiples. As with the proposed changes above, this change will align the Exchange's rules with AMEX Rule 1202 and NYSE Arca Rule 8.200, which do not limit transactions in Trust Issued Receipts to round lots. Further, to the extent a specific Trust Issued Receipt should be limited to trading in round lots, the Exchange has general authority pursuant to Exchange Rule 11.2 to limit transactions accordingly.[7]

The Exchange also proposes to:

- Capitalize ''Trust'' several times throughout Rule 14.11(f) in order to make clear which references to Trust are a reference to the term defined in Rule 14.11(f)(1);
- Add a defined term ''Trustee'' to Rule 14.11(f)(1) and to capitalize the term Trustee throughout Rule 14.11(f) in order to make clear which references to Trustee are intended to refer to the defined term in Rule 14.11(f)(1);
- Add titles to Rules 14.11(f)(2)(C) and (D) in order to make the rules more clear;
- Remove the words ''a Trust upon which'' and ''is based'' from Rule 14.11(f)(2)(D)(ii) in order to clarify that the Exchange will consider the suspension of trading in or removal from listing of a series of TIRs rather than the Trust upon which a series of TIRs is based;
- Remove the words ''following requirements apply: (a) the'' from Rule 14.11(f)(2)(D)(iv) because they would be unnecessary as a result of the proposed deletion of subparagraph (b) from this section; and
- Add the word ''additional'' to Rule 14.11(f)(3) to clarify that the Exchange may approve a series of TIRs for listing and trading pursuant to Rule 19b–4(e) under the Act, provided that such TIRs satisfy the requirements in Rules 14.11(f)(1) and (2), as proposed to be amended, in addition to the requirements under subparagraph (f)(3) relating to component securities underlying such TIRs.

Trading Rules

The Exchange deems the TIRs to be equity securities, thus rendering trading in the securities subject to the Exchange's existing rules governing the trading of equity securities. The TIRs will trade on the Exchange from 8:00 a.m. to 5:00 p.m. E.T. (Pre-Opening Session, Regular Trading Hours, and After Hours Trading Session). The Exchange has appropriate rules to facilitate transactions in the TIRs during all trading sessions. The minimum price increment for quoting and entry of orders in equity securities traded on the Exchange is $0.01, with the exception of securities that are priced less than $1.00, for which the minimum price increment for order entry is $0.0001.[8]

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the TIRs. The Exchange will halt trading in the TIRs under the conditions specified in BATS Rule 11.18. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the TIRs inadvisable. These may include: (1) The extent to which trading is not occurring in the TIRs and/or the underlying asset or assets; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. If any of the Intraday Indicative Value, the level of the underlying index, or the value of the underlying assets of the TIRs is not disseminated as required, the Exchange may halt trading during the day in which such interruption to the dissemination occurs. If an interruption to the dissemination of the Intraday Indicative Value, the level of the underlying index, or the value of the underlying assets of the TIRs persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. In addition, if the Exchange becomes aware that the NAV with respect to a series of the TIRs is not disseminated to all market participants at the same time, it will halt trading in such series until such time as the NAV is available to all market participants.

Surveillance

The Exchange believes that its surveillance procedures are adequate to address any concerns about the trading of the TIRs on the Exchange. Trading of the TIRs on the Exchange will be subject to the Exchange's surveillance procedures for derivative products. The Exchange may obtain information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members or affiliates of the ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement.[9] The Exchange prohibits the distribution of material, non-public information by its employees.

Suitability

Currently, BATS Rule 3.7 governs Recommendations to Customers, and Chapter III generally governs Rules of Fair Practice. Prior to the commencement of trading of any TIRs, the Exchange will remind its Members of the suitability requirements of BATS Rule 3.7 in an Information Circular. Specifically, Rule 3.7 provides that, in recommending transactions in these securities, a Member must have reasonable grounds for believing that (1) the recommendation is suitable for a customer given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such Member, and (2) the customer can evaluate the special characteristics, and is able to bear the financial risks, of an investment in the securities. In connection with the suitability obligation, the Information Circular will also provide that Members must make reasonable efforts to obtain the following information: (1) The customer's other securities holdings; (2) the customer's financial situation and needs; (3) the customer's investment objectives; and (4) such other information used or considered to be reasonable by such Member or registered representative in making recommendations to the customer.

In addition, FINRA has implemented increased sales practice and customer margin requirements for FINRA members applicable to inverse, leveraged, and inverse leveraged securities and options on such securities, as described in FINRA Regulatory Notices 09–31 (June 2009), 09–53 (August 2009) and 09–65 (November 2009) (together, ''FINRA Regulatory Notices''). Members that carry customer accounts will be required to follow the FINRA guidance set forth in the FINRA Regulatory Notices. The Information Circular will reference the FINRA Regulatory Notices regarding sales practice and customer margin requirements for FINRA members applicable to inverse, leveraged, and inverse leveraged securities and options on such securities.

The Exchange notes that, for inverse, leveraged, and inverse leveraged securities, the corresponding funds seek leveraged, inverse, or leveraged inverse

[7] As set forth in Exchange Rule 11.2, ''[a]ll securities designated for trading are eligible for odd-lot, round-lot and mixed-lot executions, unless otherwise indicated by the Exchange or limited pursuant to [the Exchange's] Rules.''

[8] *See* Rule 11.11(a).

[9] For a list of the current members and affiliate members of ISG, *see www.isgportal.com.*

returns on a daily basis, and do not seek to achieve their stated investment objective over a period of time greater than one day because compounding prevents the funds from perfectly achieving such results. Accordingly, results over periods of time greater than one day typically will not be a leveraged multiple (+200%), the inverse (-100%) or a leveraged inverse multiple (-200%) of the period return of the applicable benchmark and may differ significantly from these multiples. The Exchange's Information Circular, as well as the applicable registration statement, will provide information regarding the suitability of an investment in such securities.

Description of the Shares and the Funds

According to the Registration Statement, the Funds will seek to provide investment results (before fees and expenses) that correspond to the performance of the S&P Dynamic Futures Index (''DFI'' or ''Index'') or to a sub-index of the Index (''Sub-Index''). The ProShares Managed Futures Strategy will seek to provide investment results (before fees and expenses) that correspond to the performance of the DFI. The ProShares Commodity Managed Futures Strategy will seek to provide investment results (before fees and expenses) that correspond to the performance of the S&P Dynamic Commodities Futures Index (''DCFI''), a Sub-Index of the DFI. The ProShares Financial Managed Futures Strategy will seek to provide investment results (before fees and expenses) that correspond to the performance of the S&P Dynamic Financial Futures Index (''DFFI''), another Sub-Index of the DFI.

As mentioned above, the Commission has previously approved the listing and trading of the Funds on the NYSE Arca.[10] Since approving the listing and trading of the Funds on NYSE Arca, the structure of the Index and its Sub-Indexes have not changed and the underlying components remain the same, however, the following changes in administering the Index have occurred:

- Rebalancing and positioning now occur on a component by component basis, rather than by sector;
- energy components can now be held in long or short positions, rather than just long or flat (as further described herein);[11] and
- components are set to their annual weights on a monthly basis, as opposed to the previous sector structure in which the component weights floated throughout the year within the sector weights, which were reset monthly. Other than the foregoing changes, no other aspect of the Index or Sub-Indexes is changing.

The Index and each Sub-Index were developed by Standard & Poor's and are long/short rules-based investable indexes designed to attempt to capture the economic benefit derived from both rising and declining trends in futures prices.[12] The Index is composed of unleveraged positions in U.S. exchange-traded futures contracts on sixteen different tangible commodities (''Commodity Futures Contracts''), as well as U.S. exchange-traded futures contracts on eight different financials, such as major currencies and U.S. Treasury securities (''Financial Futures Contracts'' and together with the Commodity Futures Contracts, ''Index Components'').[13] Commodity Futures Contracts and Financial Futures Contracts each comprise a Sub-Index of the Index: the DCFI and the DFFI, respectively (together, ''Sub-Indexes'').

Previously, the Index and the DCFI were designed such that the energy components would only be set long or flat (*i.e.,* zero weight), rather than long or short. The rationale for this rule was the heightened potential for significant losses in the event of a supply disruption of certain energy markets. The Index and the DCFI have been redesigned to allow energy components to be set long or short. The primary considerations in this determination were:

- Potential losses are mitigated by the limited weight attributable to any single energy component.
- The magnitude of energy market price movements during previous major market supply disruptions (*e.g.,* the Gulf Wars) does not support restricting short energy positions.

In order to achieve the investment objective of the Funds, the Sponsor will invest in: (i) Exchange-traded futures contracts of the type comprising the Index or Sub-Indexes, as applicable (''Futures Contracts'');[14] and/or (ii) under limited circumstances (as further described herein), swap agreements whose value is derived from the level of the Index, a Sub-Index, one or more Index Components, or, in the case of currency-based Financial Futures Contracts, the exchange rates underlying such Financial Futures Contracts, or invest in other futures contracts or swaps if such instruments tend to exhibit trading prices or returns that correlate with the Index or Sub-Indexes or any Index Component and will further the investment objective of the Fund.[15] Each Fund may also invest in cash or cash equivalents such as U.S. Treasury securities or other high credit quality short-term fixed-income or similar securities (including shares of money market funds, bank deposits, bank money market accounts, certain variable rate-demand notes, and repurchase agreements collateralized by government securities) for direct investment or as collateral for the Futures Contracts or swap agreements. The Sponsor does not expect that the Funds will be invested directly in any commodity or currency.

According to the Registration Statement, each Fund will seek to achieve its investment objective by investing, under normal market circumstances,[16] in exchange-traded Futures Contracts. In the event position accountability rules or position limits with respect to a Futures Contract are reached with respect to a Fund, the Sponsor may, in its commercially reasonable judgment, cause such Fund to obtain exposure through swaps whose value is derived from the level of the Index, a Sub-Index, one or more Index Components, or, in the case of currency-based Financial Futures Contracts, the exchange rates underlying such Financial Futures Contracts or invest in other futures contracts or swaps if such instruments tend to exhibit trading prices or returns that correlate with the Index, the Sub-Indexes, or any Index Component and will further the investment objective of

[10] *See* Securities Exchange Act Release No. 66334 (February 6, 2012), 77 FR 7219 (February 10, 2012) (SR–NYSEArca–2011–94) (order approving NYSE Arca listing and trading of the Funds).

[11] As previously approved, all sectors other than energy could go long and short.

[12] Standard & Poor's is not a broker-dealer, is not affiliated with a broker-dealer, and has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Index and Sub-Indexes.

[13] The Index Components are traded on the Chicago Mercantile Exchange, Inc. (''CME''), COMEX (a division of CME), Chicago Board of Trade (''CBOT,'' a division of CME), NYMEX (a division of CME), and ICE Futures US (''ICE'') (collectively, ''Futures Exchanges'').

[14] Futures Contracts will be the same type of contracts as the Index Components, but the expiration dates of such Futures Contracts may differ from the expiration dates of the Index Components at any given point in time.

[15] Terms relating to the Funds and the Shares that are referred to, but not defined herein, are defined in the Registration Statement.

[16] The term ''under normal market circumstances'' includes, but is not limited to, the absence of extreme volatility or trading halts in the futures markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

the Funds.[17] The Funds may also invest in swaps if the market for a specific Futures Contract experiences emergencies (*e.g.,* natural disaster, terrorist attack, or an act of God) or disruptions (*e.g.,* a trading halt or a flash crash) that would prevent the Funds from obtaining the appropriate amount of investment exposure to the affected Futures Contracts or other futures contracts directly.[18]

The Index and the Sub-Indexes

The Index is composed of the Index Components, representing unleveraged long or short positions in U.S. exchange-traded futures contracts in the commodity and financial markets.[19] Index Components are chosen based on fundamental characteristics and liquidity. The Commodity Futures Contracts comprise the DCFI as described below, and the Financial Futures Contracts comprise the DFFI, as described below.

Weightings of the Commodity Futures Contracts are based on generally known world production levels, as adjusted to limit the impact of the energy-related Index Components. Weightings of the Financial Futures Contracts are based on, but not directly proportional to, gross domestic product (''GDP'').

The positions the Index (and accordingly, each Sub-Index) takes in the Index Components are not long-only, but are set by component, long or short based on the relation of the current price input of each Index Component with a seven-month weighted moving average of the price inputs of the same Index Component.

The following charts reflect the initial 2012 weighting schemes for the Index and each Sub-Index. For the Index, the initial Index weights, together with information about the exchange and trading hours for each Futures Contract, are as follows:

INDEX WEIGHTS

Sub-Index	Weight (percent)	Sector	Weight (percent)	Component	Weight (percent)	Exchange	Trading Hours[20]
DCFI	50	Energy	15.06	Light Crude	10.93	NYMEX (CME)	6:00 p.m.–5:15 p.m. next day.
				Heating Oil	1.79	NYMEX (CME)	6:00 p.m.–5:15 p.m. next day.
				RBOB Gasoline	1.74	NYMEX (CME)	6:00 p.m.–5:15 p.m. next day.
				Natural Gas	0.59	NYMEX (CME)	6:00 p.m.–5:15 p.m. next day.
		Industrial Metals	4.67	Copper	4.67	COMEX (CME)	6:00 p.m.–5:15 p.m. next day.
		Precious Metals	5.09	Gold	4.36	COMEX (CME)	6:00 p.m.–5:15 p.m. next day.
				Silver	0.72	COMEX (CME)	6:00 p.m.–5:15 p.m. next day.
		Livestock	6.02	Lean Hogs	2.12	CME	**[21]
				Live Cattle	3.90	CME	**[22]
		Grains	13.33	Corn	6.20	CBOT (CME)	6:00 p.m.–3:00 p.m. next day.
				Soybeans	3.16	CBOT (CME)	6:00 p.m.–3:00 p.m. next day.
				Wheat	3.97	CBOT (CME)	6:00 p.m.–3:00 p.m. next day.
		Softs	5.83	Coffee	1.23	ICE	3:30 am–2:00 p.m.
				Cocoa	0.31	ICE	4:00 am–2:00 p.m.
				Sugar	2.67	ICE	2:30 am–2:00 p.m.
				Cotton	1.63	ICE	9:00 p.m.–2:30 p.m. next day.
DFFI	50	Australian Dollar	1.61	Australian Dollar		CME	6:00 p.m.–5:15 p.m. next day.
		British Pound	3.01	British Pound		CME	6:00 p.m.–5:15 p.m. next day.
		Canadian Dollar	2.05	Canadian Dollar		CME	6:00 p.m.–5:15 p.m. Next day.
		Euro	16.49	Euro		CME	6:00 p.m.–5:15 p.m. Next day.
		Japanese Yen	7.09	Japanese Yen		CME	6:00 p.m.–5:15 p.m. Next day.
		Swiss Franc	0.66	Swiss Franc		CME	6:00 p.m.–5:15 p.m. Next day.
		U.S. Treasury Notes[23].	9.54	U.S. Treasury Notes.		CBOT (CME)	6:00 p.m.–5:00 p.m. Next day.
		U.S. Treasury Bonds[24].	9.54	U.S. Treasury Bonds.		CBOT (CME)	6:00 p.m.–5:00 p.m. Next day.

[17] To the extent practicable, the Funds will invest in swaps cleared through the facilities of a centralized clearing house.

[18] According to the Registration Statement, the Sponsor will also attempt to mitigate the Funds' credit risk by transacting only with large, well-capitalized institutions using measures designed to determine the creditworthiness of a counterparty. The Sponsor will take various steps to limit counterparty credit risk, as described in the Registration Statement.

[19] As set forth in the Index weighting scheme example below, the commodity portion of the Index consists of multiple commodities (*e.g.,* Energy, Industrial Metals) and each commodity is assigned a percentage weight. Similarly, the financial markets portion of the Index consists of multiple foreign currency and U.S. Treasury sectors (*e.g.,* Australian dollar, U.S. Treasury Notes), each with an assigned component weight.

INDEX WEIGHTS—Continued

Sub-Index	Weight (percent)	Sector	Weight (percent)	Component	Weight (percent)	Exchange	Trading Hours [20]
Totals	100	.....	100	.....	100		

[20] All times are E.T., inclusive of electronic and open outcry trading sessions, as applicable.
[21] Lean Hogs trade from 10:05 a.m. Monday to 2:55 p.m. Friday, with daily trading halts from 5:00 p.m. to 6:00 p.m.
[22] Live Cattle trade from 10:05 a.m. Monday to 2:55 p.m. Friday, with daily trading halts from 5:00 p.m. to 6:00 p.m.
[23] "U.S. Treasury Notes" refer to 10 year U.S. Treasury Note futures.
[24] "U.S. Treasury Bonds" refer to those futures with underlying bonds of a remaining term to call or maturity of 15–25 years.

For the DCFI, the initial Sub-Index weightings would be as follows:

DCFI WEIGHTS

Sector	Weight (percent)	Component	Weight (percent)
Energy	30.12	Light Crude	21.86
		Heating Oil	3.58
		RBOB Gasoline	3.49
		Natural Gas	1.19
Industrial Metals	9.34	Copper	9.34
Precious Metals	10.18	Gold	8.73
		Silver	1.45
Livestock	12.04	Lean Hogs	4.24%
		Live Cattle	7.80
Grains	26.67	Corn	12.41
		Soybeans	6.31
		Wheat	7.95
Softs	11.67	Coffee	2.45
		Cocoa	0.62
		Sugar	5.34
		Cotton	3.26
Total	100		100

Finally, for the DFFI, the initial Sub-Index weightings would be as follows:

DFFI WEIGHTS

Sector	Weight (percent)	Component	Weight (percent)
Australian Dollar	3.23	Australian Dollar	3.23
British Pound	6.02	British Pound	6.02
Canadian Dollar	4.10	Canadian Dollar	4.10
Euro	32.99	Euro	32.99
Japanese Yen	14.17	Japanese Yen	14.17
Swiss Franc	1.33	Swiss Franc	1.33
U.S. Treasury Notes	19.08	U.S. Treasury Notes	19.08
U.S. Treasury Bonds	19.08	U.S. Treasury Bonds	19.08
Total	100		100

Index Components are rebalanced each month to their annually determined weights.

Determining the Long/Short Positioning of the Index Components

The rules for the Index and each Sub-Index regarding long or short positions are summarized as follows:

• Long positions are tracked when an Index Component's current one-month price change is greater than or equal to the exponential weighted average of the past seven monthly price inputs; and

• Short positions are tracked when an Index Component's current one-month price change is less than the exponential weighted average of the past seven monthly price inputs.

Monthly long or short positions are determined on the second to last DFI business day of the month (defined as the position determination date, or PDD) when the monthly percentage change of an Index Component's price is compared to past monthly price changes, exponentially weighted to give greatest weight to the most recent return and least weight to the return seven months prior. The weighted sum of the percentage changes of all the Index Component prices equals the daily movement of the Index.

To create an exponential average for comparison, price inputs (percentage change from current and previous PDDs)

are weighted per the schedule below. Due to this weighting methodology, current price movements are more important than those of the more distant past.

Number of Months	Weight (percent)
7	2.32
6	3.71
5	5.94
4	9.51
3	15.22
2	24.34
1	38.95
Total	100.00

All the Index Components will be set long or short upon each monthly rebalancing.

Index Component Rebalancing

Index Component weights are fixed each year and rebalanced back to their annual base weight monthly.

During this monthly rebalancing, the Index will also ''roll'' certain of its positions from the current contract to a contract further from settlement.[25]

Net Asset Value

The NAV in respect of each Fund means the total assets of such Fund including, but not limited to, all cash and cash equivalents or other debt securities less total liabilities of such Fund, each determined on the basis of generally accepted accounting principles in the United States, consistently applied under the accrual method of accounting. In particular, NAV will include any unrealized profit or loss on open Futures Contracts and other holdings, if any, and any other credit or debit accruing to a Fund but unpaid or not received by such Fund. The NAV per Share of each Fund will be computed by dividing the value of the net assets of such Fund (*i.e.,* the value of its total assets less total liabilities) by its total number of Shares outstanding. Expenses and fees will be accrued daily and taken into account for purposes of determining NAV. The NAV for the Funds will be calculated daily by the Administrator at 3:00 p.m. E.T. and will be disseminated daily to market participants.

In calculating the NAV of each Fund, all open Futures Contracts will be calculated at their then current market value, as described in the Registration Statement. The current market value of all open Futures Contracts, to the extent applicable, will be based upon the settlement price for that particular Futures Contract on the date with respect to which NAV is being determined, as described in the Registration Statement.

The settlement value of a Fund's swap agreements, as applicable, will be determined by applying the then-current disseminated value for the applicable Index Components to the terms of the Funds' swap agreements.

In the event that an underlying Index Component is not trading due to the operation of daily limits or otherwise, the Sponsor may in its sole discretion choose to fair value the applicable Index or Sub-Index level in order to value a Fund's futures contracts and, if applicable, swap agreements for purposes of NAV calculation.

The Exchange will obtain a representation (prior to listing of each Fund) from the Trust that the NAV per Share will be calculated daily and made available to all market participants at the same time.

Intraday Indicative Value

An estimated value, defined in BATS Rule 14.11(i)(3)(C) as the ''Intraday Indicative Value'' or ''IIV'' that reflects a current estimated intraday value of Futures Contracts and other applicable holdings, cash and receivables, less liabilities of each Fund, will be disseminated.

For each Fund, the IIV will be widely disseminated on a per Share basis by one or more major market data vendors every 15 seconds during ''Regular Trading Hours'' (9:30 a.m. to 4:00 p.m. E.T.).[26] The value of a Share may be influenced by non-concurrent trading hours between the Exchange and the applicable Futures Exchanges trading Futures Contracts when the Shares are traded on the Exchange after normal trading hours of such Futures Exchanges. The IIV will be updated during Regular Trading Hours when applicable Futures Exchanges are trading any Futures Contracts held by the Funds. However, the IIV that will be disseminated between 11:50 a.m. E.T. and the end of Regular Trading Hours will be impacted by static values for certain Futures Contracts.[27] For each Fund, the IIV will be calculated throughout Regular Trading Hours using the prior day's closing NAV of such Fund as a base and updating throughout the trading day changes in the value of each Fund's Futures Contracts, cash equivalents, swap agreements, if applicable, and other applicable holdings. The IIV should not be viewed as an actual real-time update of the NAV because NAV is calculated only once each trading day at 3:00 p.m. E.T. The IIV also should not be viewed as a precise value of the Shares.

According to the Registration Statement, dissemination of the IIV provides additional information that is not otherwise available to the public in such form and may be useful to investors and market professionals in connection with the trading of Shares.

Creation and Redemption of Shares

According to the Registration Statement, each Fund will create and redeem Shares from time to time, but only in one or more Creation Units. A Creation Unit is a block of 50,000 Shares. Creation Units may be created or redeemed only by authorized participants, as described in the Registration Statement. Except when aggregated in Creation Units, the Shares will not be redeemable securities. The Sponsor will make available on a daily basis the total cash payment required to create each Creation Unit of a Fund on the purchase order date in connection with the issuance of the respective Shares. Authorized participants may pay a fixed and/or variable transaction fee in connection with each order to create or redeem a Creation Unit. Authorized participants may sell the Shares included in the Creation Units they purchase from the Funds to other investors. On any business day, an authorized participant may place an order prior to 10:45 a.m. E.T. with the Distributor to create one or more Creation Units. The total payment required to create each Creation Unit will be equal to the NAV of 50,000 Shares of the applicable Fund on the purchase order date plus the applicable transaction fee.

According to the Registration Statement, the procedures by which an authorized participant can redeem one

[25] The Index is composed of Index Components, which are futures contracts. In order to maintain consistent exposure to the Index Components, each Index Component contract must be sold prior to its expiration date and replaced by a contract maturing at a specified date in the future. This process is known as rolling. Index Component contracts are rolled periodically. The rolls are implemented pursuant to a roll schedule over a five-day period from the first through the fifth Index business days of the month. An Index business day is any day on which the majority of the Index Components are open for official trading and official settlement prices are provided, excluding holidays and weekends.

[26] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available IIVs published on CTA or other data feeds.

[27] The value of the IIV will be based on the underlying Futures Contracts. Once a particular Futures Contract settles, a static closing value for that Futures Contract will be used to calculate the IIV, which will continue to update based on any other futures contracts that have not reached their settlement time.

or more Creation Units will mirror the procedures for the creation of Creation Units. On any business day, an authorized participant may place an order prior to 10:45 a.m. E.T. with the Distributor to redeem one or more Creation Units. Individual shareholders may not redeem directly from a Fund.

By placing a redemption order, an authorized participant agrees to deliver the Creation Units to be redeemed through the Depository Trust Company's book-entry system to a Fund not later than noon E.T., on the first business day immediately following the redemption order date (T+1). The Sponsor reserves the right to extend the deadline for the Fund to receive the Creation Units up to the third business day following the redemption order date (T+3). The redemption proceeds from a Fund will consist of the cash redemption amount. The cash redemption amount is an amount equal to the NAV of the number of Creation Unit(s) of a Fund requested in the authorized participant's redemption order as of the time of the calculation of the Fund's NAV on the redemption order date, less transaction fees, as described in the Registration Statement.

Availability of Information Regarding the Shares

The Web site for the Funds (*www.ProShares.com*) and/or the Exchange, which are publicly accessible at no charge, will contain the following information: (a) The current NAV per Share daily and the prior business day's NAV per Share; (b) calculation of the premium or discount between the NAV per Share and the price or mid-point of the Bid/Ask Price of the Funds as of the time the NAV is calculated or as of the official market close; (c) the prospectus; and (d) other applicable quantitative information.

The Exchange also will disseminate on a daily basis via the Consolidated Tape Association (''CTA'') information with respect to the recent NAV and Shares outstanding. The Exchange will also make available on its Web site (*www.batstrading.com*) daily trading volume of the Shares. Daily trading volume information will also be available in the financial section of newspapers, their related Web sites or other financial Web sites, through subscription services such as Bloomberg, Thomson Reuters, and International Data Corporation, which can be accessed by authorized participants and other investors, as well as through other electronic services, including major public Web sites. The intra-day, closing, and settlement prices of the Futures Contracts are also readily available, as applicable, from the respective Futures Exchanges. Quotation and last-sale information for the Shares will be available via the CTA high-speed line.

Portfolio Disclosure

Each Fund's total portfolio composition will be disclosed on such Fund's Web site or another relevant Web site as determined by the Trust and/or the Exchange. The Trust will provide Web site disclosure of portfolio holdings daily and will include, as applicable, the names, notional value (in U.S. dollars) and number of Futures Contracts or units of swaps held by a Fund, if any, cash equivalents, and the amount of cash held in the portfolio of each Fund. This public Web site disclosure of the portfolio composition of the Funds will occur at the same time as the disclosure by the Sponsor of the portfolio composition to authorized participants, so that all market participants are provided portfolio composition information at the same time. Therefore, the same portfolio information will be provided on the public Web site as well as in electronic files provided to authorized participants. Accordingly, each investor will have access to the current portfolio composition of the Funds through the Funds' Web site, and/or at the Exchange's Web site.

Availability of Information About the Index and Sub-Indexes

The daily closing Index level and the percentage change in the daily closing Index level for the Index and each Sub-Index will be publicly available from one or more major market data vendors. Data regarding the Index and each Sub-Index, updated every 15 seconds during Regular Trading Hours, is also available from Standard & Poor's on a subscription basis. Several independent data vendors also package and disseminate Index and Sub-Index data in various value-added formats (including vendors displaying both Index constituents and Index levels and vendors displaying Index levels only). Data regarding the Index Components is also available from the Web sites of the Futures Exchanges. Data regarding the commodities, currencies, and Treasury securities underlying the Index Components is publicly available from various financial information service providers.

Criteria for Initial and Continued Listing

The Funds will be subject to the criteria proposed above in BATS Rule 14.11(f)(4) for initial and continued listing of the Shares.

The anticipated minimum number of Shares for each Fund to be outstanding at the start of trading will be 100,000 Shares. The Exchange believes that this anticipated minimum number of Shares for each Fund to be outstanding at the start of trading is sufficient to provide adequate market liquidity and to further the objectives of each Fund. The Exchange represents that, for the initial and continued listing of the Shares, the Funds must be in compliance with Rule 14.11(f)(4) as well as Rule 10A–3 under the Act.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. The Exchange will halt trading in the Shares under the conditions specified in BATS Rule 11.18. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the futures contracts and/or the financial instruments comprising the Funds; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. If any of the Intraday Indicative Value, the level of the underlying index, or the value of the underlying assets of the TIRs is not being disseminated as required, the Exchange may halt trading during the day in which such interruption to the dissemination occurs. If an interruption to the dissemination of the Intraday Indicative Value, the value of the underlying index, or the value of the underlying assets of the TIRs persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. In addition, if the Exchange becomes aware that the NAV is not disseminated to all market participants at the same time, it will halt trading until such time as the NAV is available to all market participants.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. BATS will allow trading in the Shares during Regular Trading Hours, as well as during the Pre-Opening Session [28] and the After

[28] The Pre-Opening Session is from 8:00 a.m. to 9:30 a.m. E.T.

Hours Trading Session.[29] The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in BATS Rule 11.11(a), the minimum price variation for quoting and entry of orders in TIRs traded on the Exchange is $0.01, with the exception of securities that are priced less than $1.00 for which the minimum price variation for order entry is $0.0001. Trading of the Shares will also be subject to proposed BATS Rule 14.11(f)(4)(D), which sets forth certain restrictions on Members acting as market makers.

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including TIRs. The Exchange can obtain market surveillance information, including customer identity information, with respect to transactions occurring on the Futures Exchanges, all of which are currently members of ISG.[30] In addition, for components traded on exchanges, not more than 10% of the weight of a Fund's portfolio in the aggregate shall consist of components whose principal trading market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. Finally, all Futures Contracts will be traded on a trading market that is a member of ISG or is a market with which the Exchange has a comprehensive surveillance sharing agreement. The Exchange also prohibits the distribution of material, non-public information by its employees.

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) BATS Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (3) how information regarding the Intraday Indicative Value is disseminated; (4) the risks involved in trading the Shares during the Pre-Opening and After Hours Trading Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (5) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Funds. Members purchasing Shares from the Funds for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act.

In addition, the Information Circular will reference that the Funds are subject to various fees and expenses described in the Registration Statement. The Information Circular will also disclose the trading hours of the Shares and the applicable NAV calculation time for the Shares. The Information Circular will disclose that information about the Shares of the Funds will be publicly available on the Funds' Web site.

2. Statutory Basis

The rule change proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[31] Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,[32] because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to, and perfect the mechanism of, a free and open market and a national market system. The Exchange believes that the proposed rules will facilitate the listing and trading of additional types of exchange-traded products on the Exchange that will enhance competition among market participants, to the benefit of investors and the marketplace. In addition, the listing and trading criteria set forth in the proposed rules are intended to protect investors and the public interest.

The Exchange's listing requirements as proposed herein are at least as stringent as those of AMEX and NYSE Arca and, consequently, the proposed rule change is consistent with the protection of investors and the public interest. Additionally, the proposal is designed to prevent fraudulent and manipulative acts and practices, as all of the proposed new products are subject to existing Exchange trading rules, together with specific requirements for registered market makers, books and record production, surveillance procedures, suitability and prospectus requirements, and requisite Exchange approvals, all set forth above.

The proposal is also designed to promote just and equitable principles of trade by way of initial and continued listing standards which, if not maintained, will result in the discontinuation of trading in the affected products. These requirements, together with the applicable Exchange equity trading rules (which will apply to products listed under the proposed criteria), ensure that no investor would have an unfair advantage over another respecting the trading of the subject products. On the contrary, all investors will have the same access to, and use of, information concerning the specific products and trading in the specific products, all to the benefit of public customers and the marketplace as a whole.

Furthermore, the proposal is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system by adopting listing standards that will lead ultimately to the trading of the proposed new products on the Exchange, just as they are currently traded on other exchanges. The Exchange believes that individuals and entities permitted to make markets on the Exchange in the proposed new products should enhance competition within the mechanism of a free and open market and a national market system, and customers and other investors in the national market system should benefit from more depth and liquidity in the market for the proposed new products.

As it relates to the Funds, the Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued

[29] The After Hours Trading Session is from 4:00 p.m. to 5:00 p.m. E.T.

[30] The Exchange notes that certain components of the portfolio for the Funds may not trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[31] 15 U.S.C. 78f(b).

[32] 15 U.S.C. 78f(b)(5).

listing criteria proposed in Rule 14.11(f)(4). The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange can obtain market surveillance information, including customer identity information, with respect to transactions occurring on the Futures Exchanges, all of which are currently members of ISG, as noted above. In addition, for components traded on exchanges, not more than 10% of the weight of a Fund's portfolio in the aggregate shall consist of components whose principal trading market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. The Futures Contracts are traded on the Futures Exchanges, each of which is an ISG member, and information regarding trading in the Index Components is available from the Web sites of the respective Futures Exchanges and from major market data vendors. The daily closing Index level and the percentage change in the daily closing Index level for the Index and each Sub-Index will be publicly available from one or more major market data vendors. Data regarding the Index and each Sub-Index, updated every 15 seconds during Regular Trading Hours, is also available from Standard & Poor's on a subscription basis. Standard & Poor's has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Index and Sub-Indexes. Data regarding the commodities, currencies, and Treasury securities underlying the Index Components is publicly available from various financial information service providers. The Exchange may halt trading during the day in which an interruption to the dissemination of the IIV, the level of the Index (or Sub-Index) or the value of the underlying Futures Contracts occurs. If an interruption to the dissemination of the IIV, the level of the Index (or Sub-Index), or the value of the underlying Futures Contracts persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. As mentioned above, energy components are now set long or short because: (i) Potential losses are mitigated by the limited weight attributable to any single energy component; and (ii) the magnitude of energy market price movements during previous major market supply disruptions (*e.g.,* the Gulf Wars) does not support restricting short energy positions.

The proposed rule change is also designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Funds and the Shares, thereby promoting market transparency. On each business day, before commencement of trading in Shares on the Exchange, the Funds will disclose the identities and quantities of the futures contracts and other assets held by the Funds that will form the basis for the calculation of NAV at the end of the business day. Moreover, the Intraday Indicative Value will be disseminated by one or more major market data vendors at least every 15 seconds during Regular Trading Hours. Pricing information will be available on the Trust's Web site including: (1) The current NAV per Share daily and the prior business day's NAV per Share; (2) calculation of the premium or discount between the NAV per Share and the price or mid-point of the Bid/Ask Price of the Funds as of the time the NAV is calculated or as of the official market close; (3) the prospectus; and (4) other applicable quantitative information. Additionally, information regarding market price and trading of the Shares is and will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last-sale information for the Shares will be available on the relevant Exchange data feeds, which contain information for widely followed indexes and securities traded on the Exchange. The Web site for the Funds will include a form of the prospectus for the Funds and additional data relating to NAV and other applicable quantitative information. Trading in the Shares will be halted under the conditions specified in BATS Rule 11.18. Trading may also be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. In addition, as noted above, investors will have ready access to information regarding the Funds' holdings, the Intraday Indicative Value, and quotation and last-sale information for the Shares.

On the whole, the proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. The Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

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 Changes and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. by order approve or disapprove such proposed rule change; or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BATS–2012–044 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BATS–2012–044. 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 Section, 100 F Street NE., Washington, DC 20549, on official business days between 10:00 a.m. and 3:00 p.m. Copies of the 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–2012–044 and should be submitted on or before December 17, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–28525 Filed 11–23–12; 8:45 am]

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[33] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68265; File No. SR–CBOE–2012–109]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Proposed Rule Change Related to CBSX To Address Authority To Cancel Orders When a Technical or Systems Issue Occurs and To Describe the Operation of Routing Service Error Accounts

November 19, 2012.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 16, 2012, the Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend its rules to (i) address the authority of CBOE Stock Exchange, LLC (''CBSX,'' CBOE's stock execution facility) to cancel orders (or release routing-related orders) when a technical or systems issue occurs; and (ii) describe the operation of a CBSX error account(s) and routing broker error account(s), which may be used to liquidate unmatched executions that may occur in the provision of CBSX's routing service. The text of the rule proposal is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to adopt new Rule 52.3A to address the authority of CBSX to cancel orders (or release routing-related orders) when a technical or systems issue occurs and to adopt new Rule 52.10A to describe the operation of a CBSX Error Account(s) (''CBSX Error Account(s)'') and routing broker error account(s), which may be used to liquidate unmatched executions that may occur in the provision of CBSX's routing service.

By way of background, CBSX operates a system of trading that allows automatic executions to occur electronically. As part of this infrastructure, CBSX also automatically routes orders to other trading centers under certain circumstances. These routing services are provided in conjunction with one or more routing brokers that are not affiliated with CBSX.[4] Mechanically, when CBSX receives an order from a Trading Permit Holder (''TPH'') that is held in CBSX system and determines to route an order to another trading center, CBSX provides the routing broker with a corresponding order and instructions to route the order to another trading center(s). The routing broker then sends the corresponding order to the other trading center.[5]

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See, e.g.,* Rule 52.10, *Order Routing to Other Trading Centers.*

[5] Generally, the routing brokers route the orders directly to other trading centers. However, it is possible that a routing broker may route orders to another trading center through a third-party broker-dealer. In those cases, the third-party broker-dealer would route the orders to the other trading center in its name, and any executions would be submitted for clearance and settlement in the name of the routing broker so that any resulting positions are delivered to the routing broker upon settlement. As described above, normally the routing broker would then coordinate with CBSX to arrange for any resulting securities positions to be delivered to the TPH that submitted the corresponding order to CBSX. If error positions (as defined in proposed Rule 52.10A) result in connection with the routing broker's use of a third-party broker-dealer for outbound routing, and those positions are delivered to the routing broker through the clearance and settlement process, those positions would be permitted to be resolved in accordance with proposed Rule 52.10A. If the third-party broker-dealer received error positions and the positions were not delivered to the routing broker through the clearance and settlement process, then the third-party broker-dealer would resolve those position

Continued

In the normal course, the routing broker reports an execution or cancellation of the routed order back to CBSX. Routed orders that are executed at another trading center are submitted for clearance and settlement in the name of the routing broker. The routing broker then coordinates with CBSX to arrange for any resulting securities positions to be delivered to the TPH that submitted the original order to CBSX (*i.e.,* upon receipt of a filled execution report for the routed order, the CBSX system pairs the execution against the TPH's original order being held in the CBSX system and reports the pairing for clearance and settlement purposes by submitting a non-tape, clearing only transaction).

From time to time, CBSX encounters situations in which it becomes necessary to cancel orders (or release routing-related orders) and resolve error positions that result from errors of CBSX, routing brokers, or another trading center.[6]

Proposed Rule 52.3A (Order Cancellation/Release)

The Exchange proposes to adopt new Rule 52.3A to address the authority of CBSX to cancel orders when a technical or systems issue occurs. Specifically, paragraph (a) of the proposed rule would expressly authorize CBSX to cancel orders as it deems to be necessary to maintain fair and orderly markets if a technical or systems issue occurs at CBSX,[7] the routing broker, or another trading center to which a CBSX order has been routed. Paragraph (a) would also provide that a routing broker may only cancel orders being routed to another trading center based on CBSX's standing or specific instructions or as otherwise provided in the Exchange Rules.[8] Paragraph (a) would also provide that CBSX shall provide notice of the cancellation to affected Trading Permit Holders as soon as practicable.

Paragraph (b) of the proposed rule provides that CBSX may also determine to release orders being held on CBSX awaiting another trading center execution as it deems to be necessary to maintain fair and orderly markets if a technical or systems issues occurs at CBSX, a routing broker, or another trading center to which an order has been routed (the process for ''releasing'' orders is illustrated in more detail below). Paragraph (c) of the proposed rule would provide that, for purposes of Rule 52.10A, technical or system issues would include, without limitation, instances where CBSX has not received confirmation of an execution (or cancellation) on another trading center from a routing broker within a response time interval designated by CBSX, which interval may not be less than three (3) seconds.[9]

The examples set forth below describe some of the circumstances in which CBSX may decide to cancel (or release) orders.

Example 1: If a routing broker or another trading center experiences a technical or systems issue that results in CBSX or routing broker not receiving responses to immediate-or-cancel (''IOC'') orders sent to the other trading center, and that issue is not resolved in a timely manner, then CBSX may seek to cancel the routed orders affected by the issue.[10] For instance, if a routing broker experiences a connectivity issue affecting the manner in which it sends and receives order messages to or from another trading center, it may be unable to receive timely execution or cancellation reports from the other trading center, and CBSX may consequently seek to cancel the affected routed orders (*e.g.,* by calling the routing broker and instructing the routing broker to attempt to cancel the orders) or perhaps the routing broker may initiate the cancellation of the affected routed orders pursuant to a standing or specific instruction from CBSX. In these circumstances, CBSX would also attempt to release the initial orders submitted by TPHs.[11]

Example 2: If CBSX does not receive confirmation of an execution (or cancellation) of an IOC order sent to another trading center from a routing broker within a designated response time interval of three (3) seconds, then an automated system feature will release the initial order being held by CBSX.[12] CBSX would also attempt to cancel the routed order in these circumstances.[13]

itself, and the positions would not be permitted to be resolved as set forth in proposed Rule 52.10A.

[6] The examples described in this filing are not intended to be exclusive. Proposed Rule 52.3A would provide general authority for CBSX to cancel orders (or release routing-related orders) in order to maintain fair and orderly markets when technical or systems issues are occurring, and proposed Rule 52.10A also would set forth the manner in which error positions (which may occur in the provision of CBSX's routing service) may be handled by CBSX. The proposed rule change is not limited to addressing order cancellation (release) or error positions resulting only from the specific examples described in this filing.

[7] To confirm, the authority to cancel orders to maintain fair and orderly markets under proposed Rule 52.3A would apply to any technical or systems issue at CBSX and would include orders at CBSX (*i.e.,* the authority to cancel orders would apply to any orders that are subject to CBSX's routing service and any orders that are not subject to CBSX's routing service). By comparison, the routing service error account provisions under proposed Rule 52.10A (discussed below) would apply only to original and corresponding orders that are subject to CBSX's routing service.

[8] As discussed above, CBSX uses non-affiliated routing brokers to provide the routing services. These routing brokers are also not facilities of CBSX. As provider of the routing services, CBSX determines the logic that determines when, how and where orders are routed away to other trading centers. *See* Rule 52.10.01(b). Under paragraph (a) to proposed Rule 52.10A, the decision to take action with respect to orders affected by a technical or systems issue shall be made by CBSX. Depending on where those orders are located, a routing broker would be permitted to initiate a cancellation of an order(s) pursuant to CBSX's standing or specific instructions or as otherwise provided in the Exchange Rules (*e.g.,* CBSX's standing instructions might provide, among other things, that the routing broker could initiate the cancellation of orders if the routing broker is experiencing technical or systems issues routing orders to an away trading center).

[9] Such a situation may not cause CBSX to declare self-help against the other trading center pursuant to Rule 611 of Regulation NMS. If CBSX determines to cancel or release orders, as applicable, under proposed Rule 52.3A(a) but does not declare self-help against that other trading center, CBSX would continue to be subject to the trade-through requirements in Rule 611 with respect to that trading center.

[10] In a normal situation (*i.e.,* one in which a technical or systems issue does not exist), CBSX should receive an immediate response back from the routing broker reporting any executions or cancellations from the other trading center, and would then pass the resulting fill or cancellation onto the TPH. If, after submitting an order for which a corresponding order has been routed to another trading center, a TPH sends an instruction to cancel the original order, the cancellation is held by CBSX until a response is received from the routing broker on the corresponding order. For instance, if the other trading center executes the corresponding order, the execution would be passed onto the TPH and the cancellation instruction on the TPH's original order would be disregarded.

[11] Once an initial order is released, any cancellation that a TPH submitted to CBSX on the initial order during such a situation would be honored. If a TPH did not submit a cancellation to CBSX, however, that initial order would remain ''live'' and thus be eligible for execution or posting on CBSX, and CBSX would not treat any execution of the initial order or any subsequent routed order related to that initial order as an error (unless, of course, the order was itself subject to another technical or systems issue or any other trading center processing exceeded the applicable response time interval).

[12] *See* existing paragraph (a) to Rule 52.7, *Sweeping and Trading Through Away Markets,* which provides, in relevant part, that ''[i]n the event that CBSX does not receive any response at all to an outbound Intermarket Sweep Order, and assuming that no system errors have been detected, CBSX will issue a cancellation at the expiration of the expiration delay timer on the Intermarket Sweep Order. This action will release the corresponding order that had been suspended on the CBSX Book pending the response to the Intermarket Sweep Order, and the released order will re-aggress the CBSX Book (including the generation of Intermarket Sweep Orders to other away markets, if necessary).''

In conjunction with this rule change, CBSX is proposing to amend Rule 52.7 to provide that, ''[in] the event that CBSX does not receive any response at all to an outbound Intermarket Sweep Order, at the expiration of the response time interval, CBSX will release the corresponding order that had been suspended on the CBSX Book pending the response to the Intermarket Sweep Order in accordance with Rule 52.3A, and the released order will re-aggress the CBSX Book (including the generation of Intermarket Sweep Orders to other away markets, if necessary).'' *See* proposed changes to Rule 52.7(a).

As noted in Example 2 above, if the corresponding initial order is released, CBSX would also attempt to cancel the routed order (*e.g.,* by calling the routing broker and instructing the routing broker to attempt to cancel the orders).

[13] It is possible that attempts to cancel the routed orders may not succeed. If CBSX receives an

Example 3: If CBSX experiences a systems issue, CBSX may take steps to cancel and/or release all outstanding orders affected by the issue (which orders may include orders that may or may not be subject to routing services). CBSX would also attempt to cancel any routed orders related to the TPHs' initial orders, if applicable, in these circumstances.[14]

Proposed Rule 52.10A (Routing Service Error Accounts)

Proposed Rule 52.10A would provide that each routing broker shall maintain, in the name of the routing broker, one or more accounts for the purpose of liquidating unmatched trade positions that may occur in connection with the another trading center routing service provided under Rule 52.10 (''error positions'').[15] In addition, CBSX may also maintain, in the name of CBSX, one or more CBSX Error Accounts for the purpose of liquidating error positions in the circumstances described below.

Paragraph (a) of the proposed rule would provide that errors to which the rule would apply include any action or omission by CBSX, a routing broker, or another trading center to which a CBSX order has been routed, either of which result in an unmatched trade position due to the execution of an order that is subject to the away market routing service and for which there is no corresponding order to pair with the execution (each a ''routing error''). Such routing errors would include, without limitation, positions resulting from determinations by CBSX to cancel or release an order pursuant to proposed Rule 52.3A (as described above).

Paragraph (b) of the proposed rule would provide that, generally, each routing broker will utilize its own error account to liquidate error positions. However, in certain circumstances, CBSX may utilize a CBSX Error Account. In particular, in instances where the routing broker is unable to utilize its own error account (*e.g.,* due to a technical, systems or other issue that prevents the routing broker from doing so) or where the an [sic] error is due to a technical or systems issue at CBSX, CBSX may (but would not be required to) determine it is appropriate to utilize a CBSX Error Account. In making such a determination to utilize a CBSX Error Account, CBSX would consider whether is [sic] has sufficient time, information and capabilities considering the market circumstances to determine that an error is due to such circumstances and whether CBSX can address the error.

CBSX believes it is reasonable and appropriate to address routing errors through the error account of a routing broker in the manner proposed because, among other reasons, it is the executing broker associated with these transactions. CBSX also believes that having the flexibility to determine to utilize a CBSX Error Account in the limited circumstances described above allows for administrative convenience and contributes to CBSX's ability to maintain a fair and orderly market.[16] From a TPH perspective, there would be no impact resulting from the decision to use a CBSX Error Account or the routing broker's error account to liquidate the error position in these circumstances.

By definition, an error position in a CBSX Error Account would only include unmatched trades due to a routing error. In that regard, paragraph (c) of the proposed rule would provide that CBSX shall not accept any positions in a CBSX Error Account from an account of a Trading Permit Holder or permit any Trading Permit Holder to transfer any positions from the Trading Permit Holder's account to a CBSX Error Account.[17]

To the extent a routing broker utilizes its own account to liquidate error positions, paragraph (d) of the proposed rule provides that the routing broker shall liquidate the error positions as soon as practicable. The routing broker could determine to liquidate the position itself or have a third party broker-dealer liquidate the position on the routing broker's behalf. Paragraph (d) also provides that the routing broker establish and enforce policies and procedures reasonably designed to (i) adequately restrict the flow confidential and proprietary information associated with the liquidation of the error position in accordance with Rule 52.10,[18] and (ii) prevent the use of information associated with other orders subject to the routing services when making determinations regarding the liquidation of error positions. In addition, paragraph (d) provides that the routing broker shall make and keep records associated with the liquidation of such routing broker error positions and shall maintain such records in accordance with Rule 17a–4 under the Act.[19]

Paragraph (e) of the proposed rule would provide that, to the extent a CBSX Error Account is utilized to liquidate error positions, CBSX shall liquidate the error positions as soon as practicable. In liquidating error positions in a CBSX Error Account, CBSX shall provide complete time and price discretion for the trading to liquidate error positions in a CBSX Error Account to a third-party broker-dealer and shall not attempt to exercise any influence or control over the timing or methods of such trading.[20] Such a third-party broker-dealer may include a routing broker not affiliated with CBSX. Paragraph (e) would also provide that CBSX shall establish and enforce policies and procedures reasonably designed to adequately restrict the flow of confidential and proprietary information between CBSX and the third-party broker-dealer associated

execution report on the order that had been routed to another trading center, then the unmatched execution would be considered an ''error position'' under proposed Rule 52.10A.

[14] It is possible that attempts to cancel the routed orders may not succeed. If CBSX receives an execution report on the order that had been routed to another trading center, then the unmatched execution would be considered an ''error position'' under proposed Rule 52.10A.

[15] CBSX notes that, in connection with providing routing services, routing brokers currently may utilize their own error accounts to liquidate error positions. CBSX believes it is reasonable and not inappropriate to address routing errors through the error account of a routing broker because, among other reasons, it is the executing broker associated with these transactions.

[16] The Exchange notes that any profit/loss from liquidating the error positions would belong to CBSX (when a CBSX Error Account is utilized) or the routing broker (when the routing broker's error account is utilized). However, all or any portion of such profits/losses may be subject to certain contractual obligations pursuant to the routing service agreement between CBSX and the routing broker (*e.g.,* used to offset certain contractual obligations).

[17] CBSX may address error positions under the proposed rule that are caused by the errors noted above, but CBSX may not accept from a TPH positions that are delivered to the TPH through the clearance and settlement process, even if those positions may have been the result of an error. This would not apply, however, to situations like the one described below in which CBSX incurred a position to settle a TPH purchase, as the TPH did not yet have a position in its account as a result of the purchase at the time of CBSX's action, *i.e.,* CBSX's action was necessary for the purchase to settle into the TPH's account. Moreover, to the extent a TPH receives positions in connection with an error or other technical or systems issue, the TPH may seek to rely on other Exchange Rules such as Rule 50.6, *Liability and Legal Proceedings,* if it experiences a loss. For example, Rule 50.6, which cross-references Rule 6.7, *Exchange Liability,* provides TPHs with the ability to file claims for negligent acts or omissions of CBSX employees or for the failure of its systems or facilities.

[18] Rule 52.10.01(c) provides that CBSX will establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between CBSX and the routing broker (referred to in the rule as the ''Technology Provider''), and, to the extent the routing broker reasonably receives confidential and proprietary information, that adequately restrict the use of such information by the routing broker to legitimate business purposes necessary for the licensing of routing technology.

[19] 17 CFR 240.17a–4.

[20] This provision is not intended to preclude CBSX from providing the third-party broker with standing instructions with respect to the manner in which it should handle all error account transactions. For example, CBSX might instruct the broker to treat all orders as ''not held'' and to attempt to minimize any market impact on the price of the stock being traded.

with the liquidation of the error positions. Finally, paragraph (e) would provide that CBSX shall make and keep records to document all determinations to treat positions as error positions under the rule (whether or not a CBSX Error Account is utilized to liquidate such error positions), as well as records associated with the liquidation of CBSX Error Account error positions through a third-party broker-dealer, and shall maintain such records in accordance with Rule 17a–1 under the Act.[21]

Examples of such error positions due to a routing error may include, without limitation, the following:

Example 4: Error positions may result from routed orders that CBSX or a routing broker attempts to cancel but that are executed before the other trading center receives the cancellation message or that are executed because the other trading center is unable to process the cancellation message. Using the situation described in Example 1 above, assume CBSX seeks to release the initial orders being held by CBSX because it is not receiving timely execution or cancellation reports from another trading center. In such a situation, although CBSX would attempt to direct the routing broker to cancel the routed orders, the routing broker may still receive executions from the other trading center after connectivity is restored, which would not then be allocated to TPHs because of the earlier decision to release the affected initial orders. Instead, the routing broker would post the positions into its account and resolve the positions in the manner described above. Alternatively, if the routing broker is unable to resolve the positions (or if the error position is due to a system or technical issue on CBSX), CBSX may determine to post the positions into a CBSX Error Account and resolve the positions in the manner described above.

Example 5: Error positions may result from an order processing issue at another trading center. For instance, if another trading center experienced a systems problem that affects its order processing, it may transmit back a message purporting to cancel a routed order, but then subsequently submit an execution of that same order for clearance and settlement. In such a situation, CBSX would not then allocate the execution to the TPH because of the earlier cancellation message from the other trading center. Instead, the routing broker would post the positions into its account and resolve the positions in the manner described above. Alternatively, if the routing broker is unable to resolve the positions, CBSX may determine to post the positions into a CBSX Error Account and resolve the positions in the manner described above.

Example 6: Error positions may result if a routing broker receives an execution report from another trading center but does not receive clearing instructions for the execution from the other trading center. For instance, assume that a TPH sends CBSX an order to buy 100 shares of ABC stock, which causes the routing broker to send an order to another trading center that is subsequently executed, cleared and closed out by that other trading center, and the execution is ultimately communicated back to the TPH. On the next trading day (T+1), if the other trading center does not providing clearing instructions for that execution, CBSX/routing broker would still be responsible for settling that TPH's purchase and therefore would be left with open positions.[22] Instead, the routing broker would post the positions into its account and resolve the positions in the manner described above. Alternatively, if the routing broker is unable to resolve the positions, CBSX may determine to post the positions into a CBSX Error Account and resolve the positions in the manner described above.

Example 7: Error positions may result from a technical or systems issue that causes orders to be executed in the name of a routing broker in connection with its routing services function that are not related to any corresponding initial orders of TPHs. As a result, CBSX would not be able to assign any positions resulting from such an issue to TPHs. Instead, the routing broker would post the positions into its account and resolve the positions in the manner described above. Alternatively, if the routing broker is unable to resolve the positions, CBSX may determine to post the positions into a CBSX Error Account and resolve the positions in the manner described above.[23]

In each of the circumstances described above, CBSX and its routing broker may not learn about an error position until T+1. For instance, CBSX and its routing broker may not learn about an error position until either (i) during the clearing process when a routing destination has submitted to DTCC a transaction for clearance and settlement for which CBSX/routing broker never received an execution confirmation, or (ii) when another trading center does not recognize a transaction submitted by a routing broker to DTCC for clearance and settlement. Moreover, the affected TPHs' trade may not be nullified absent express authority under Exchange Rules.[24] As such, CBSX believes that use of a routing broker error account (or a CBSX Error Account, as applicable), to liquidate the error positions that may occur in these circumstances is reasonable and appropriate in these circumstances.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act[25] in general and furthers the objectives of Section 6(b)(5) of the Act[26] in particular, which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. CBSX believes that this proposed rule change is in keeping with those principles since CBSX's ability to cancel and release orders during a technical or systems issue and to maintain a CBSX Error Account facilitates the smooth and efficient operation of the market. Specifically, CBSX believes that allowing CBSX to cancel and release orders during a technical or systems issue (and permitting its routing brokers to cancel orders pursuant to standing or specific instructions or as otherwise permitted under Exchange Rules) would allow CBSX to maintain fair and orderly markets. Moreover, CBSX believes that allowing a routing broker to assume error positions in its own account(s) to liquidate those positions (and allowing CBSX to assume error positions in a CBSX Error Account to liquidate those positions in instances where a routing broker is unable to do so or where the routing error is due to a technical or systems issue at CBSX) subject to the conditions set forth in proposed Rule 52.10A would be the least disruptive means to address these errors. Overall, the proposed new rule is designed to ensure full trade certainty to market participants and to avoid disrupting the clearance and settlement process. The proposed new rule is also designed to provide a consistent methodology for handling error positions in a manner that does not discriminate among TPHs. The proposed new rule is also consistent with Section 6 of the Act insofar as it would require CBSX (and its routing brokers, as applicable) to establish controls to restrict the flow of any confidential information associated with the liquidation of error positions.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

[21] 17 CFR 240.17a–1.

[22] To the extent that a loss is incurred in covering the position, the routing broker (on behalf of CBSX or itself) may submit a reimbursement claim to that other trading center.

[23] To the extent such positions are not related to the routing broker's function as a CBSX routing broker (*i.e.,* originating with CBSX), CBSX would not post such positions to a CBSX Error Account. The routing broker would resolve the error positions itself.

[24] *See, e.g.,* Rule 52.4, *Clearly Erroneous Policy.*

[25] 15 U.S.C. 78f(b).

[26] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2012–109 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2012–109. 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, on business days between the hours of 10 a.m. and 3 p.m., located at 100 F Street NE., Washington, DC 20549–1090. Copies of the 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–CBOE–2012–109 and should be submitted on or before December 17, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–28595 Filed 11–23–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68255; File No. SR–FINRA–2012–049]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish a Limited Waiver of the TRACE Professional Real-Time Data Display Fee on a Pilot Basis

November 19, 2012.

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 November 7, 2012, 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 ''establishing or changing a due, fee or other charge'' under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 7730(c) to establish a pilot program to provide a limited waiver of the Professional Real-Time Data Display Fee of $60 to access Real-Time Trade Reporting and Compliance Engine (''TRACE'') transaction data in connection with certain free trials of data products. In addition, FINRA proposes technical amendments to Rule 7730(c) and related statements in the fee chart to use a single term, ''display application,'' to describe uniformly a software program that interrogates and displays TRACE data and allows a person to access TRACE data.

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

Pursuant to FINRA Rule 7730(c)(1)(A), FINRA charges a Professional $60 per month, per display application per Data Set[5] (''display

[27] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] A Data Set is each of the FINRA databases, which currently include the Real-Time TRACE transaction data disseminated by FINRA for corporate bonds and Agency Debt Securities (as defined in Rule 6710(l)). Effective November 12, 2012, FINRA will add the Data Set for Asset-Backed Securities, when dissemination of Agency-Pass Through Mortgage-Backed Securities traded To Be Announced begins. *See* Securities Exchange Act Release No. 66829 (April 18, 2012), 77 FR 24748 (April 25, 2012) (SEC Approval Order regarding dissemination of Agency-Pass Through Mortgage-Backed Securities traded To Be Announced (TBA)), *Regulatory Notice* 12–26 (May 2012) and *Regulatory Notice* 12–48 (November 2012).

application'') of Real-Time[6] TRACE transaction data.[7] The term display application refers to any software program that interrogates and displays TRACE data. In general, Real-Time TRACE transaction data is accessed not directly from FINRA but through a vendor, such as Bloomberg, L.P. and its Bloomberg display application, or other redistributors (collectively, ''vendors'') of financial market data. Under this arrangement, a Professional pays the vendor for the license to use the vendor's display application and if the display application displays Real-Time TRACE transaction data, the payment must include the applicable TRACE fee, which the vendor remits to FINRA.

FINRA understands that vendors are continually developing new products that, among other data, may display Real-Time TRACE transaction data. Often a vendor will make its new products available to members and other Professional end-users of Real-Time TRACE transaction data to test on a free trial basis. In these cases, FINRA believes it would be beneficial also to permit Professionals to access Real-Time TRACE transaction data on a free trial basis in connection, and concurrently, with the free trial of the vendor's product. Accordingly, FINRA proposes to amend FINRA Rule 7730(c) to establish a pilot program to waive the $60 fee for one month for a Professional to access Real-Time TRACE transaction data in connection with a vendor's offer of a free trial.

The pilot program would operate for approximately one year until November 8, 2013 to allow FINRA sufficient time to assess the efficacy and operation of the program.[8] In the event FINRA determines to extend the pilot program or make the program permanent, FINRA will file a proposed rule change in accordance with the Act. Specifically, the FINRA fee waiver would be limited to one month (i.e., a period not longer than 31 days), and would be available only if the fee waiver is provided in conjunction and concurrently with a vendor's offer of a free trial to a Professional to test a data product that included Real-Time TRACE transaction data. In addition, the FINRA fee waiver would be available to not more than four Professionals associated with, employed by, or otherwise affiliated with a member, employer or other person during one free trial period. Once the Real-Time Data Display Fee had been waived, a Professional and the member, employer or other person with whom the Professional is associated with, employed by, or otherwise affiliated with would not be eligible for the FINRA fee waiver again in connection with another free trial offered by the same vendor until 12 months had lapsed from the last day of the prior fee waiver.[9] However, a Professional and the member, employer or other person with whom the Professional is associated or otherwise affiliated with would be eligible for a fee waiver in connection with a free trial offered by a different vendor regarding its data products.

FINRA also proposes technical amendments to Rule 7730(c) and related statements in the fee chart to use a single term, ''display application,'' to describe uniformly a software program that interrogates and displays TRACE data and allows a person to access TRACE data.

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date will be November 7, 2012.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[10] 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 and Section 15A(b)(5) of the Act,[11] which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. FINRA believes that the proposed amendment, which is designed to encourage additional Professionals to test and use Real-Time TRACE transaction data, may promote more accurate and timely pricing and valuations of debt securities by members, and may prevent fraudulent and manipulative acts and practices regarding pricing and valuations, for the protection of investors and the public interest.

FINRA believes that the pilot program providing for a limited waiver of the monthly fee per display application for access to Real-Time TRACE transaction data also results in reasonable fees and financial benefits from fee waivers that are equitably allocated. The financial benefit of the fee waiver would be available to all Professionals that accept an offer to test a vendor data product that includes Real-Time TRACE transaction data on a free trial basis. Any Professional that tests data products during a free trial would be eligible for and would benefit from the concurrent FINRA fee waiver, subject to the proscriptions against a Professional obtaining multiple free trials as previously described. In addition, the financial benefit of the fee waiver would be available for a very limited period (i.e., 31 days or less), such that Professionals not eligible for the fee waiver are not unfairly or inequitably affected. The proposed amendment is reasonable because the waiver of a standard FINRA fee, and the financial benefit from such waiver, is of limited amount, duration (i.e., one month) and application (i.e., only four Professionals per member (or other end-user)), limited to concurrent free trials of data products offered by vendors, and subject to restrictions on re-use, and is being proposed to enhance a member's ability to access and test, among other things, the uses of Real-Time TRACE transaction data to determine if access to such Real-Time TRACE transaction data would further its business needs. Finally, the proposed amendment does not unfairly discriminate between or among Professionals and members (or other end-users) in that the waiver would be available to any of such persons that accepts an offer to test a vendor data product that includes Real-Time TRACE transaction data on a free trial basis, subject to the limitations described above. The data vendor, rather than FINRA, would decide initially whether to offer a free trial of its data product to a particular Professional, member, or other end-user. FINRA's role would be limited to refusing to extend a fee waiver to a particular person previously identified by the data vendor, due to the prohibition against extending multiple fee waivers to the same person. FINRA believes that establishing such a

[6] Real-Time is defined in FINRA Rule 7730(f)(3).

[7] Real-Time TRACE transaction data is also available for a flat fee of $7,500 per month per Data Set for Professionals to make unlimited internal use of such data as provided in Rule 7730(c)(1)(A). Professionals associated with enterprises that pay the $7,500 flat rate per month are not eligible for the fee waiver set forth in the proposed rule change because, as further described herein, the waiver is limited to four Professionals during one free trial period.

[8] A fee waiver granted less than one month prior to the expiration of the pilot period would continue to be valid and the $60 fee would be waived for the full month notwithstanding the pilot expiration date.

[9] For example, if a Professional were granted a waiver for one month beginning on November 1, 2012, the individual would not be eligible for another waiver in connection with another free trial offered by the same vendor until December 1, 2013. This example assumes that the pilot program is extended or adopted on a permanent basis.

[10] 15 U.S.C. 78*o*–3(b)(6).

[11] 15 U.S.C. 78*o*–3(b)(5).

program on a pilot basis for approximately one year will provide FINRA sufficient time to assess the efficacy and utility of the program.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. FINRA believes that the proposed amendment, which is designed to encourage additional Professionals to test and use Real-Time TRACE transaction data, may promote more accurate and timely pricing and valuations of debt securities by members. Moreover, the pilot program providing for a limited waiver of the monthly fee per display application for access to Real-Time TRACE transaction data would not place an unreasonable fee burden on members and other persons (i.e., Professionals) that currently subscribe to receive Real-Time TRACE transaction data, nor confer an uncompetitive benefit to Professionals taking advantage of the pilot program, in that the fee waiver would be available for a very limited period (i.e, 31 days or less), and the financial impact of such a pilot program on Professionals would be de minimis. In addition, the proposed rule change does not place a burden on competition in that the financial benefit of the fee waiver would be available in general to all Professionals. Any Professional that tests data products during a free trial would be eligible for and would benefit from the concurrent FINRA fee waiver, subject to the proscriptions against a Professional obtaining multiple free trials previously described.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and paragraph (f)(2) of Rule 19b–4 thereunder.[13] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2012–049 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2012–049. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of 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–2012–049 and should be submitted on or before December 17, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–28524 Filed 11–23–12; 8:45 am]

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[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68262; File No. SR–CBOE–2012–108]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Proposed Rule Change To Address Authority To Cancel Orders When a Technical or Systems Issue Occurs and To Describe the Operation of Routing Service Error Accounts

November 19, 2012.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 8, 2012, the Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend its rules to (i) address the authority of the Exchange to cancel orders (or release routing-related orders) when a technical or systems issue occurs; and (ii) describe the operation of an Exchange error account(s) and routing broker error account(s), which may be used to liquidate unmatched executions that may occur in the provision of the Exchange's routing service. The text of the rule proposal is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to adopt new Rule 6.6A to address the authority of the Exchange to cancel orders (or release routing-related orders) when a technical or systems issue occurs and to adopt new Rule 6.14C to describe the operation of an Exchange error account(s)(''Exchange Error Account(s)'') and routing broker error account(s), which may be used to liquidate unmatched executions that may occur in the provision of the Exchange's routing service.

By way of background, the Exchange operates a ''hybrid'' style system of trading that allows automatic executions to occur electronically and open outcry trades to occur on the floor of the Exchange. As part of this infrastructure, the Exchange also automatically routes orders to other exchanges under certain circumstances. These routing services are provided in conjunction with one or more routing brokers that are not affiliated with the Exchange.[4] Mechanically, when the Exchange receives an order from a Trading Permit Holder (''TPH'') that is held in the Exchange system and determines to route an order to another exchange, the Exchange provides the routing broker with a corresponding order and instructions to route the order to another exchange(s). The routing broker then sends the corresponding order to the other exchange.[5]

In the normal course, the routing broker reports an execution or cancellation of the routed order back to the Exchange. Routed orders that are executed at another exchange are submitted for clearance and settlement in the name of the routing broker. The routing broker then coordinates with the Exchange to arrange for any resulting securities positions to be delivered to the TPH that submitted the original order to the Exchange (*i.e.,* upon receipt of a filled execution report for the routed order, the Exchange system pairs the execution against the TPH's original order being held in the Exchange system and reports the pairing for clearance and settlement purposes by submitting a non-tape, clearing only transaction).

From time to time, the Exchange encounters situations in which it becomes necessary to cancel orders (or release routing-related orders) and resolve error positions that result from errors of the Exchange, routing brokers, or another exchange.[6]

Proposed Rule 6.6A (Order Cancellation/Release)

The Exchange proposes to adopt new CBOE Rule 6.6A to address the authority of the Exchange to cancel orders when a technical or systems issue occurs. Specifically, paragraph (a) of the proposed rule would expressly authorize the Exchange to cancel orders as it deems to be necessary to maintain fair and orderly markets if a technical or systems issue occurs at the Exchange,[7] the routing broker, or another exchange to which an Exchange order has been routed. Paragraph (a) would also provide that a routing broker may only cancel orders being routed to another exchange based on the Exchange's standing or specific instructions or as otherwise provided in the Exchange Rules.[8] Paragraph (a) would also provide that the Exchange shall provide notice of the cancellation to affected Trading Permit Holders as soon as practicable.

Paragraph (b) of the proposed rule provides that the Exchange may also determine to release orders being held on the Exchange awaiting an away exchange execution as it deems to be necessary to maintain fair and orderly markets if a technical or systems issues occurs at the Exchange, a routing broker, or another exchange to which an order has been routed (the process for ''releasing'' orders is illustrated in more detail below). Paragraph (c) of the proposed rule would provide that, for purposes of Rule 6.6A, technical or system issues would include, without limitation, instances where the Exchange has not received confirmation of an execution (or cancellation) on another exchange from a routing broker within a response time interval designated by the Exchange, which interval may not be less than three (3) seconds.[9]

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[4] *See, e.g.,* Rule 6.14B, *Order Routing to Other Exchanges.*

[5] Generally, the routing brokers route the orders directly to other exchanges. However, it is possible that a routing broker may route orders to another exchange through a third-party broker-dealer. In those cases, the third-party broker-dealer would route the orders to the other exchange in its name, and any executions would be submitted for clearance and settlement in the name of the routing broker so that any resulting positions are delivered to the routing broker upon settlement. As described above, normally the routing broker would then coordinate with the Exchange to arrange for any resulting securities positions to be delivered to the TPH that submitted the corresponding order to the Exchange. If error positions (as defined in proposed Rule 6.14C) result in connection with the routing broker's use of a third-party broker-dealer for outbound routing, and those positions are delivered to the routing broker through the clearance and settlement process, those positions would be permitted to be resolved in accordance with proposed Rule 6.14C. If the third-party broker-dealer received error positions and the positions were not delivered to the routing broker through the clearance and settlement process, then the third-party broker-dealer would resolve those positions itself, and the positions would not be permitted to be resolved as set forth in proposed Rule 6.14C.

[6] The examples described in this filing are not intended to be exclusive. Proposed Rule 6.6A would provide general authority for the Exchange to cancel orders (or release routing-related orders) in order to maintain fair and orderly markets when technical or systems issues are occurring, and proposed Rule 6.14C also would set forth the manner in which error positions (which may occur in the provision of the Exchange's routing service) may be handled by the Exchange. The proposed rule change is not limited to addressing order cancellation (release) or error positions resulting only from the specific examples described in this filing.

[7] To confirm, the authority to cancel orders to maintain fair and orderly markets under proposed Rule 6.6A would apply to any technical or systems issue at the Exchange and would include any orders at the Exchange (*i.e.,* the authority to cancel orders would apply to any orders that are subject to the Exchange's routing service and any orders that are not subject to the Exchange's routing service). By comparison, the routing service error account provisions under proposed Rule 6.14C (discussed below) would apply only to original and corresponding orders that are subject to the Exchange routing service.

[8] As discussed above, the Exchange uses non-affiliated routing brokers to provide the routing services. These routing brokers are also not facilities of the Exchange. For all routing services, the Exchange determines the logic that provides when, how and where orders are routed away to other exchanges. The routing broker receives the routing instructions from the Exchange to route orders to other exchanges and to report executions back to the Exchange. The routing broker cannot change the terms of an order or the routing instructions, nor does the routing broker have any discretion about where to route an order. *See* Rule 6.14B(c), (e) and (f). Under paragraph (a) to proposed Rule 6.6A, the decision to take action with respect to orders affected by a technical or systems issue shall be made by the Exchange. Depending on where those orders are located, a routing broker would be permitted to initiate a cancellation of an order(s) pursuant to the Exchange's standing or specific instructions or as otherwise provided in the Exchange Rules (*e.g.,* the Exchange's standing instructions might provide, among other things, that the routing broker could initiate the cancellation of orders if the routing broker is experiencing technical or systems issues routing orders to an away exchange).

[9] A determination by the Exchange to cancel or release orders may not cause the Exchange to

The examples set forth below describe some of the circumstances in which the Exchange may decide to cancel (or release) orders.

Example 1: If a routing broker or another exchange experiences a technical or systems issue that results in the Exchange or routing broker not receiving responses to immediate-or-cancel (''IOC'') orders sent to the other exchange, and that issue is not resolved in a timely manner, then the Exchange may seek to cancel the routed orders affected by the issue.[10] For instance, if a routing broker experiences a connectivity issue affecting the manner in which it sends and receives order messages to or from another exchange, it may be unable to receive timely execution or cancellation reports from the other exchange, and Exchange may consequently seek to cancel the affected routed orders (*e.g.,* by calling the routing broker and instructing the routing broker to attempt to cancel the orders) or perhaps the routing broker may initiate the cancellation of the affected routed orders pursuant to a standing or specific instruction from the Exchange. In these circumstances, the Exchange would also attempt to release the initial orders submitted by TPHs.[11]

Example 2: If the Exchange does not receive confirmation of an execution (or cancellation) of an IOC order sent to another exchange from a routing broker within a designated response time interval of three (3) seconds, then an automated system feature will release the initial order being held by the Exchange.[12] The Exchange would also attempt to cancel the routed order in these circumstances.[13]

Example 3: If the Exchange experiences a systems issue, the Exchange may take steps to cancel and/or release all outstanding orders affected by the issue (which orders may include orders that may or may not be subject to routing services). The Exchange would also attempt to cancel any routed orders related to the TPHs' initial orders, if applicable, in these circumstances.[14]

Proposed Rule 6.14C (Routing Service Error Accounts)

Proposed Rule 6.14C would provide that each routing broker shall maintain, in the name of the routing broker, one or more accounts for the purpose of liquidating unmatched trade positions that may occur in connection with the away exchange routing service provided under Rule 6.14B (''error positions'').[15] In addition, the Exchange may also maintain, in the name of the Exchange, one or more Exchange Error Accounts for the purpose of liquidating error positions in the circumstances described below.

Paragraph (a) of the proposed rule would provide that errors to which the rule would apply include any action or omission by the Exchange, a routing broker, or another exchange to which an Exchange order has been routed, either of which result in an unmatched trade position due to the execution of an original or corresponding order that is subject to the away market routing service and for which there is no corresponding order to pair with the execution (each a ''routing error''). Such routing errors would include, without limitation, positions resulting from determinations by the Exchange to cancel or release an order pursuant to proposed Rule 6.6A (as described above).

Paragraph (b) of the proposed rule would provide that, generally, each routing broker will utilize its own error account to liquidate error positions. However, in certain circumstances, the Exchange may utilize an Exchange Error Account. In particular, in instances where the routing broker is unable to utilize its own error account (*e.g.,* due to a technical, systems or other issue that prevents the routing broker from doing so) or where the an error is due to a technical or systems issue at the Exchange, the Exchange may (but would not be required to) determine it is appropriate to utilize an Exchange Error

declare self-help against the other exchange pursuant to paragraph (b)(1) of Rule 6.81, *Order Protection.* If the Exchange determines to cancel or release orders, as applicable, under proposed Rule 6.6A but does not declare self-help against that other exchange, the Exchange would continue to be subject to the trade-through requirements in Rule 6.81 with respect to that exchange.

[10] In a normal situation (*i.e.,* one in which a technical or systems issue does not exist), the Exchange should receive an immediate response back from the routing broker reporting any executions or cancellations from the other exchange, and would then pass the resulting fill or cancellation onto the TPH. If, after submitting an order for which a corresponding order has been routed to another exchange, a TPH sends an instruction to cancel the original order, the cancellation is held by the Exchange until a response is received from the routing broker on the corresponding order. For instance, if the other exchange executes the corresponding order, the execution would be passed onto the TPH and the cancellation instruction on the TPH's original order would be disregarded.

[11] Once an initial order is released, any cancellation that a TPH submitted to the Exchange on the initial order during such a situation would be honored. If a TPH did not submit a cancellation to the Exchange, however, that initial order would remain ''live'' and thus be eligible for execution or posting on the Exchange, and the Exchange would not treat any execution of the initial order or any subsequent routed order related to that initial order as an error (unless, of course, the order was itself subject to another technical or systems issue or any away exchange processing exceeded the applicable response time interval).

[12] This routing risk management feature would serve as one means for the Exchange to efficiently determine if there is a technical or system issue occurring. The feature, and the system functionality used to operate the feature, is generally modeled after a process that was utilized by the Exchange under the former Options Intermarket Linkage Plan (the ''Old Linkage Plan''). Under the Old Linkage Plan, an eligible market maker that sent a ''principal acting as agent order'' (referred to as a ''P/A Order'') through the linkage and who did not receive a reply from the away exchange within 30 seconds was able to reject any response received thereafter purporting to report a total or partial execution of that order. Over time, the time frame in which an away exchange was required to respond was ultimately reduced to 3 seconds. *See, e.g.,* Securities Exchange Act Release Nos. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000)(order approving Options Intermarket Linkage Plan submitted by the American Stock Exchange LLC, Chicago Board Options Exchange, Inc., and International Securities Exchange LLC) and 57238 (January 30, 2008), 73 FR 6748 (February 5, 2008) (order approving joint amendment no. 25 to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage Relating to Response Time for Certain Orders Sent Through the Linkage). The Old Linkage Plan was replaced by the Options Order Protection and Locked/Crossed Markets Plan (the ''Distributive Options Linkage Plan'') in 2009. *See* Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009)(order approving the National Market System Plan relating to Options Order Protection and Locked/Crossed Markets submitted by the Chicago Board Options Exchange, Incorporated, International Securities Exchange, LLC, The NASDAQ Stock Market LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX, Inc., NYSE Amex LLC, and NYSE Arca, Inc.). Although there is no longer a similar provision for P/A Orders and away exchange response times under the Distributive Options Linkage Plan, the Exchange still has system functionality that tracks response times for orders routed to away exchanges. The primary distinction between the process under the Old Linkage Plan and the process described in the current proposed rule change is that, instead of rejecting an execution report back to the away exchange, an execution report received after the TPH's order is released would be considered an error and subject to the Exchange Error Account procedures discussed below. The Exchange views having this ability to release orders that are queued waiting for a responsive execution/cancel report for a corresponding order from an away exchange as an important risk management feature. Because the markets are highly automated, the Exchange would normally expect to receive a response to an order routed through the routing service within milliseconds after it is sent. If a response is not received in a timely manner, it generally is an indication of a system problem with the other exchange, the routing broker(s) or the Exchange. In addition, especially in fast-moving markets like the options market, the Exchange believes allowing for the release of a TPH's related original order due to an untimely response will provide an opportunity for the transmittal of responses while also allowing the Exchange's TPHs to address and execute orders pending on the Exchange in a timely manner. The Exchange believes this contributes to the Exchange's ability to maintain fair and orderly markets.

[13] It is possible that attempts to cancel the routed orders may not succeed. If the Exchange receives an execution report on the order that had been routed to an away exchange, then the unmatched execution would be considered an ''error position'' under proposed Rule 6.14C.

[14] It is possible that attempts to cancel the routed orders may not succeed. If the Exchange receives an execution report on the order that had been routed to an away exchange, then the unmatched execution would be considered an ''error position'' under proposed Rule 6.14C.

[15] The Exchange notes that, in connection with providing routing services, routing brokers currently may utilize their own error accounts to liquidate error positions. The Exchange believes it is reasonable and not inappropriate to address routing errors through the error account of a routing broker because, among other reasons, it is the executing broker associated with these transactions.

Account. In making such a determination to utilize an Exchange Error Account, the Exchange would consider whether is has sufficient time, information and capabilities considering the market circumstances to determine that an error is due to such circumstances and whether the Exchange can address the error.

The Exchange believes it is reasonable and appropriate to address routing errors through the error account of a routing broker in the manner proposed because, among other reasons, it is the executing broker associated with these transactions. The Exchange also believes that having the flexibility to determine to utilize an Exchange Error Account in the limited circumstances described above allows for administrative convenience and contributes to the Exchange's ability to maintain a fair and orderly market.[16] From a TPH perspective, there would be no impact resulting from the decision to use an Exchange Error Account or the routing broker's error account to liquidate the error position in these circumstances.

By definition, an error position in an Exchange Error Account would only include unmatched trades due to a routing error. In that regard, paragraph (c) of the proposed rule would provide that the Exchange shall not accept any positions in an Exchange Error Account from an account of a Trading Permit Holder or permit any Trading Permit Holder to transfer any positions from the Trading Permit Holder's account to an Exchange Error Account.[17]

To the extent a routing broker utilizes its own account to liquidate error positions, paragraph (d) of the proposed rule provides that the routing broker shall liquidate the error positions as soon as practicable. The routing broker could determine to liquidate the position itself or have a third party broker-dealer liquidate the position on the routing broker's behalf. Paragraph (d) also provides that the routing broker establish and enforce policies and procedures reasonably designed to (i) adequately restrict the flow confidential and proprietary information associated with the liquidation of the error position in accordance with Rule 6.14B,[18] and (ii) prevent the use of information associated with other orders subject to the routing services when making determinations regarding the liquidation of error positions. In addition, paragraph (d) provides that the routing broker shall make and keep records associated with the liquidation of such routing broker error positions and shall maintain such records in accordance with Rule 17a–4 under the Act.[19]

Paragraph (e) of the proposed rule would provide that, to the extent an Exchange Error Account is utilized to liquidate error positions, the Exchange shall liquidate the error positions as soon as practicable. In liquidating error positions in an Exchange Error Account, the Exchange shall provide complete time and price discretion for the trading to liquidate error positions in an Exchange Error Account to a third-party broker-dealer and shall not attempt to exercise any influence or control over the timing or methods of such trading.[20] Such a third-party broker-dealer may include a routing broker not affiliated with the Exchange. Paragraph (e) would also provide that the Exchange shall establish and enforce policies and procedures reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange and the third-party broker-dealer associated with the liquidation of the error positions. Finally, paragraph (e) would provide that the Exchange shall make and keep records to document all determinations to treat positions as error positions under the rule (whether or not an Exchange Error Account is utilized to liquidate such error positions), as well as records associated with the liquidation of Exchange Error Account error positions through a third-party broker-dealer, and shall maintain such records in accordance with Rule 17a–1 under the Act.[21]

Examples of such error positions due to a routing error may include, without limitation, the following:

Example 4: Error positions may result from routed orders that the Exchange or a routing broker attempts to cancel but that are executed before the other exchange receives the cancellation message or that are executed because the other exchange is unable to process the cancellation message. Using the situation described in Example 1 above, assume the Exchange seeks to release the initial orders being held by the Exchange because it is not receiving timely execution or cancellation reports from another exchange. In such a situation, although the Exchange would attempt to direct the routing broker to cancel the routed corresponding orders, the routing broker may still receive executions from the other exchange after connectivity is restored, which would not then be allocated to TPHs because of the earlier decision to release the affected initial orders. Instead, the routing broker would post the positions into its account and resolve the positions in the manner described above. Alternatively, if the routing broker is unable to resolve the positions (or if the error position is due to a system or technical issue on the Exchange), the Exchange may determine to post the positions into an Exchange Error Account and resolve the positions in the manner described above.

Example 5: Error positions may result from an order processing issue at another exchange. For instance, if another exchange experienced a systems problem that affects its order processing, it may transmit back a message purporting to cancel a routed order, but then subsequently submit an execution of that same order for clearance and settlement. In such a situation, the Exchange would not then allocate the execution to the TPH because of the earlier cancellation message from the other exchange. Instead, the routing broker would post the positions into its account and resolve the positions in the manner described above. Alternatively, if the routing broker is unable to resolve the positions, the Exchange may determine to post the positions into an Exchange Error Account and resolve the positions in the manner described above.

Example 6: Error positions may result if a routing broker receives an execution report from another exchange but does not receive clearing instructions for the execution from the other exchange. For instance, assume that

[16] The Exchange notes that any profit/loss from liquidating the error positions would belong to the Exchange (when an Exchange Error Account is utilized) or the routing broker (when the routing broker's error account is utilized). However, all or any portion of such profits/losses may be subject to certain contractual obligations pursuant to the routing service agreement between the Exchange and the routing broker (*e.g.,* used to offset certain contractual obligations).

[17] The Exchange may address error positions under the proposed rule that are caused by the errors noted above, but the Exchange may not accept from a TPH positions that are delivered to the TPH through the clearance and settlement process, even if those positions may have been the result of an error. This would not apply, however, to situations like the one described below in which the Exchange incurred a position to settle a TPH purchase, as the TPH did not yet have a position in its account as a result of the purchase at the time of the Exchange's action, *i.e.,* the Exchange's action was necessary for the purchase to settle into the TPH's account. Moreover, to the extent a TPH receives positions in connection with an error or other technical or systems issue, the TPH may seek to rely on other Exchange Rules such as Rule 6.7, *Exchange Liability,* if it experiences a loss. For example, Rule 6.7 provides TPHs with the ability to file claims for negligent acts or omissions of Exchange employees or for the failure of its systems or facilities.

[18] Rule 6.14B(b) provides that the Exchange shall establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange and the routing broker, and any other entity, including any affiliate of the routing broker, and, if the routing broker or any of its affiliates engages in any other business activities other than providing routing services to the Exchange, between the segment of the routing broker or affiliate that provides the other business activities and the segment of the routing broker that provides the routing services.

[19] 17 CFR 240.17a–4.

[20] This provision is not intended to preclude the Exchange from providing the third-party broker with standing instructions with respect to the manner in which it should handle all error account transactions. For example, the Exchange might instruct the broker to treat all orders as ''not held'' and to attempt to minimize any market impact on the price of the option being traded.

[21] 17 CFR 240.17a–1.

a TPH sends the Exchange an order to buy 10 ABC option contracts, which causes the routing broker to send an order to another exchange that is subsequently executed, cleared and closed out by that other exchange, and the execution is ultimately communicated back to the TPH. On the next trading day (T+1), if the other exchange does not providing clearing instructions for that execution, the Exchange/routing broker would still be responsible for settling that TPH's purchase and therefore would be left with open positions.[22] Instead, the routing broker would post the positions into its account and resolve the positions in the manner described above. Alternatively, if the routing broker is unable to resolve the positions, the Exchange may determine to post the positions into an Exchange Error Account and resolve the positions in the manner described above.

Example 7: Error positions may result from a technical or systems issue that causes orders to be executed in the name of a routing broker in connection with its routing services function that are not related to any corresponding initial orders of TPHs. As a result, the Exchange would not be able to assign any positions resulting from such an issue to TPHs. Instead, the routing broker would post the positions into its account and resolve the positions in the manner described above. Alternatively, if the routing broker is unable to resolve the positions, the Exchange may determine to post the positions into an Exchange Error Account and resolve the positions in the manner described above.[23]

In each of the circumstances described above, the Exchange and its routing broker may not learn about an error position until T+1. For instance, the Exchange and its routing broker may not learn about an error position until either (i) during the clearing process when a routing destination has submitted to The Options Clearing Corporation (''OCC'') a transaction for clearance and settlement for which the Exchange/routing broker never received an execution confirmation, or (ii) when another exchange does not recognize a transaction submitted by a routing broker to OCC for clearance and settlement. Moreover, the affected TPHs' trade may not be nullified absent express authority under Exchange Rules.[24] As such, the Exchange believes that use of a routing broker error account (or an Exchange Error Account, as applicable) to liquidate the error positions that may occur in these circumstances is reasonable and appropriate in these circumstances.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act[25] in general and furthers the objectives of Section 6(b)(5) of the Act[26] in particular, which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that this proposed rule change is in keeping with those principles since the Exchange's ability to cancel and release orders during a technical or systems issue and to maintain an Exchange Error Account facilitates the smooth and efficient operation of the market. Specifically, the Exchange believes that allowing the Exchange to cancel and release orders during a technical or systems issue (and permitting its routing brokers to cancel orders pursuant to standing or specific instructions or as otherwise permitted under Exchange Rules) would allow the Exchange to maintain fair and orderly markets. Moreover, the Exchange believes that allowing a routing broker to assume error positions in its own account(s) to liquidate those positions (or allowing the Exchange to assume error positions in an Exchange Error Account to liquidate those positions in instances where a routing broker is unable to do so or where the routing error is due to a technical or systems issue at Exchange) subject to the conditions set forth in proposed Rule 6.14C would be the least disruptive means to address these errors. Overall, the proposed new rule is designed to ensure full trade certainty to market participants and to avoid disrupting the clearance and settlement process. The proposed new rule is also designed to provide a consistent methodology for handling error positions in a manner that does not discriminate among TPHs. The proposed new rule is also consistent with Section 6 of the Act insofar as it would require the Exchange (and its routing brokers, as applicable) to establish controls to restrict the flow of any confidential information associated with the liquidation of error positions.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2012–108 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2012–108. 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

[22] To the extent that a loss is incurred in covering the position, the routing broker (on behalf of the Exchange or itself) may submit a reimbursement claim to that other exchange.

[23] To the extent such positions are not related to the routing broker's function as an Exchange routing broker (*i.e.,* originating with the Exchange), the Exchange would not post such positions to an Exchange Error Account. The routing broker would resolve the error positions itself.

[24] *See, e.g.,* Rule 6.25, *Nullification and Adjustment of Options Transactions.*

[25] 15 U.S.C. 78f(b).

[26] 15 U.S.C. 78f(b)(5).

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, on business days between the hours of 10 a.m. and 3 p.m., located at 100 F Street NE., Washington, DC 20549–1090. Copies of the 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–CBOE–2012–108 and should be submitted on or before December 17, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–28594 Filed 11–23–12; 8:45 am]

BILLING CODE 8011–01–P

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68261; File No. SR–NYSEMKT–2012–64]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Change the Monthly Fees for the Use of Ports

November 19, 2012.

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 November 6, 2012, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Price List to change the monthly fees for the use of ports. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List to change the monthly fees for the use of ports that provide connectivity to the Exchange's trading systems (*i.e.,* ports for entry of orders and/or quotes (''order/quote entry ports'')) and to implement a fee for ports that allow for the receipt of ''drop copies'' of order or transaction information (''drop copy ports'' and, together with order/quote entry ports, ''ports'').[3]

Order/Quote Entry Ports

The Exchange currently makes order/quote entry ports available for connectivity to its trading systems and charges $300 per port pair per month for up to five pairs of ports, then $1,500 per month for each additional five pairs of ports.[4]

The Exchange proposes to change the current methodology for order/quote entry port billing, such that order/quote entry ports would be charged on a per port basis, without billing in groups of five and without requiring that ports be in pairs.[5] More specifically, the Exchange proposes to charge $200 per port per month for order/quote entry ports, which are currently charged $300 per pair per month for activity on NYSE MKT;[6] provided, however, that (i) users of the Exchange's Risk Management Gateway service (''RMG'') would not be charged for order/quote entry ports if such ports are designated as being used for RMG purposes, and (ii) Designated Market Makers (''DMMs'') would not be charged for order/quote entry ports that connect to the Exchange via the DMM Gateway.[7]

Two methods are available to DMMs to connect to the Exchange: DMM Gateway and CCG. The two methods are quite distinct, however. Only DMMs may utilize the DMM Gateway, and they may only use DMM Gateway when

[3] Firms receive confirmations of their orders and receive execution reports via the order/quote entry port that is used to enter the order or quote. A ''drop copy'' contains redundant information that a firm chooses to have ''dropped'' to another destination (*e.g.,* to allow the firm's back office and/or compliance department, or another firm—typically the firm's clearing broker—to have immediate access to the information). Such drop copies can only be sent via a drop copy port. Drop copy ports cannot be used to enter orders and/or quotes.

[4] *See* Securities Exchange Act Release No. 63072 (October 7, 2010), 75 FR 64368 (October 19, 2010) (SR–NYSEAmex–2010–97) (the port fee ''Adopting Release''). *See also* Securities Exchange Act Release No. 66104 (January 5, 2012), 77 FR 1771 (January 11, 2012) (SR–NYSEAmex–2011–107) (the port fee ''Amending Release''). For example, the current fee for six pairs of ports would be $3,000 total per month (*i.e.,* $1,500 total for the first five pairs and $1,500 for the sixth pair). The fee would remain $3,000 for pairs seven through 10. The fee would increase by $1,500, to $4,500 total, for pairs 11 through 15.

[5] The Exchange stated in the Adopting Release that the port fee is charged per participant. The Exchange later clarified that ''per participant'' means per member organization for purposes of the port fees. *See* Amending Release, at 1772. The proposed fee change would change the current methodology such that ports would not be charged on a per member organization basis. Accordingly, reference to per member organization would be removed from the Price List related to port fees.

[6] The Exchange has a Common Customer Gateway (''CCG'') that accesses the equity trading systems that it shares with its affiliates, New York Stock Exchange LLC (''NYSE'') and NYSE Arca, Inc. (''NYSE Arca''), and all ports connect to the CCG. *See, e.g.,* Securities Exchange Act Release No. 64543 (May 25, 2011), 76 FR 31667 (June 1, 2011) (SR–NYSEAmex–2011–20). All NYSE MKT member organizations are also NYSE member organizations and, accordingly, a member organization utilizes its ports for activity on both NYSE and/or NYSE MKT and is charged port fees based on the total number of ports connected to the CCG, whether the ports are used to quote and trade on NYSE, NYSE MKT, and/or both, because those trading systems are integrated. The NYSE Arca trading platform is not integrated in the same manner. Therefore, it does not share its ports with NYSE or NYSE MKT.

[7] Since the Adopting Release, the Exchange has not charged DMMs for order/quote entry ports that have connected to the Exchange via the DMM Gateway. Since 2011, when DMMs first became able to enter orders through CCG, DMM order/quote entry ports connected to the Exchange via the CCG have been, and currently are, charged port fees in accordance with the Price List. DMMs can elect to use the DMM Gateway, the CCG, or both for their connectivity to the Exchange. However, the DMM Gateway must be used for certain DMM-specific functions that relate to the DMM's role on the Exchange and the obligations attendant therewith.

acting in their capacity as a DMM. DMMs are required to use the DMM Gateway for certain DMM-specific functions that relate to the DMM's role on the Exchange and the obligations attendant therewith, which are not applicable to other market participants on the Exchange. By contrast, non-DMMs as well as DMMs may use the CCG, use of the CCG by a DMM is optional, and a DMM that connects to the Exchange via CCG can use the relevant order/quote entry port for orders and quotes both in its capacity as a DMM and for orders and quotes in other securities. Accordingly, because DMMs are required to utilize DMM Gateway, but not CCG, to be able to fulfill their functions as DMMs, the Exchange proposes that DMMs not be charged for order/quote entry ports that connect to the Exchange via the DMM Gateway, but that DMMs, like other market participants, be charged for order/entry ports that connect to the Exchange via the CCG.

The Exchange proposes that users of RMG would not be charged for order/quote entry ports if such ports are designated as being used for RMG purposes. RMG enables Sponsoring member organizations to verify whether a Sponsored Participant's orders comply with order criteria established by the Sponsoring member organization for the Sponsored Participant, including, among other things, criteria related to order size (per order or daily quantity limits), credit limits (per order or daily value), specific symbols or end users.[8] Currently, users of RMG are required to pay the existing order/quote entry port fees for connectivity to the Exchange's trading systems, in addition to the RMG connection fees related to such ports.[9] The Exchange proposes that users of RMG would no longer be required to pay port fees for order/quote entry ports designated as being used for RMG because, in the Exchange's opinion, order/quote entry ports are an integral part of RMG and such users are already charged a fee for RMG, including additional connections related thereto, which the Exchange believes is sufficient to cover its costs related to making the order/quote entry ports available for RMG purposes. Accordingly, the Exchange proposes to specify that port fees are not applicable to order/quote entry ports designated as being used for RMG.

Drop Copy Ports

The Exchange proposes to implement a fee for drop copy ports,[10] for which the Exchange does not currently charge a fee, provided, however, that DMMs would not be charged for drop copy ports that utilize the DMM Gateway and users of RMG would not be charged for drop copy ports if such ports are designated as being used for RMG purposes. The Exchange proposes to charge $500 per port per month for drop copy ports.[11] Additionally, the Exchange proposes to specify that only one fee per drop copy port would apply, even if the port receives drop copies from multiple order/quote entry ports and/or drop copies for activity on both NYSE and NYSE MKT.[12]

DMMs that connect to the Exchange using the DMM Gateway are required to use drop copy ports that utilize the DMM Gateway for their drop copies. Accordingly, the Exchange proposes that DMMs not be charged for drop copy ports that utilize the DMM Gateway, but that DMMs, like other market participants, be charged for drop copy ports that connect to the Exchange via the CCG, as DMMs are not required to use CCG.

In addition, the Exchange proposes that users of RMG would not be charged for drop copy ports if such ports are designated as being used for RMG purposes. The Exchange proposes that users of RMG not be required to pay port fees for drop copy ports designated as being used for RMG because, in the Exchange's opinion, ports are an integral part of RMG and such users are already charged a fee for RMG, including additional connections related thereto, which the Exchange believes is sufficient to cover its costs related to making the ports available for RMG purposes. Accordingly, the Exchange proposes to specify that port fees are not applicable to drop copy ports designated as being used for RMG.

Overall, the Exchange believes that the changes proposed herein will result in the method of billing for ports more closely aligning with the needs of firms with ports. The proposed changes will also permit the Exchange to remain competitive with other exchanges with respect to fees charged for ports.[13] The Exchange notes that the proposed changes are not otherwise intended to address any other issues surrounding ports or port fees and that the Exchange is not aware of any problems that port users would have in complying with the proposed change.

The Exchange proposes to implement these changes immediately. In this regard, the Exchange notes that billing for ports would be based, as is currently on the case, on the number of ports on the third business day prior to the end of the month. In addition, the level of activity with respect to a particular port would still not affect the assessment of monthly fees, such that, except for ports that are not charged, even if a particular port is not used, a port fee would still apply.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[14] in general, and furthers the objectives of Section 6(b)(4) of the Act,[15] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

Overall, the Exchange believes that the proposed changes, including the rates proposed, are reasonable because the fees charged for order/quote entry ports and drop copy ports are expected to permit the exchange to offset, in part, its connectivity costs associated with making such ports available, including costs based on gateway software and hardware enhancements and resources dedicated to gateway development, quality assurance, and support. In this regard, the Exchange believes that its fees are competitive with those charged by other venues, and that in some cases its port fees are less expensive than many of its primary competitors.[16] The Exchange believes that the changes proposed herein will result in the method of billing for ports more closely aligning with the needs of firms with ports.

[8] *See* Securities Exchange Act Release No. 59353 (February 3, 2009), 74 FR 6935 (February 11, 2009) (SR–NYSEALTR–2008–12) (order approving RMG). *See also* Securities Exchange Act Release No. 59429 (February 20, 2009), 74 FR 9016 (February 27, 2009) (SR–NYSEALTR–2009–12) (establishing RMG fees).

[9] Currently, a $3,000 charge per month applies for an initial RMG connection and a $1,000 charge for every additional connection thereafter.

[10] *See supra* note 3.

[11] The Exchange proposes to add language to the Price List to differentiate between drop copy ports and order/quote entry ports.

[12] *See supra* note 6.

[13] For example, the charge for connectivity to the NASDAQ Stock Market LLC (''NASDAQ'') NY-Metro and Mid-Atlantic Datacenters is $500 and a separate charge for Pre-Trade Risk Management ports is applicable, which ranges from $400 to $600 and is capped at $25,000 per firm per month. Also, the BATS Exchange, Inc. (''BZX'') charges $400 per month per pair (primary and secondary data center) for logical ports. Additionally, EDGA Exchange, Inc. (''EDGA'') and EDGX Exchange, Inc. (''EDGX'') each charge $500 per port. EDGA and EDGX also provide the first five ports for free.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(4).

[16] *See supra* note 13.

The Exchange believes that the proposed change to the methodology for billing for order/quote entry ports is reasonable because it will simplify the fees for ports by eliminating the pair requirement and allowing a firm that requires more than five pairs of ports to request, and pay for, the specific number of ports that it requires, rather than requesting ports in pairs and in groups of five. This aspect of the proposed change is also equitable and not unfairly discriminatory because it will result in charges for order/entry ports being based on the number of ports utilized. This aspect of the proposed change is also equitable and not unfairly discriminatory because it will apply on an equal basis for all ports on the Exchange, except for order/quote entry ports related to RMG and ports utilized by DMMs to connect to the Exchange via the DMM Gateway.[17]

The Exchange believes that it is reasonable to charge $200 per port per month for order/quote entry ports because, when combined with the change to the methodology for billing for ports, it could result in a decrease in the overall cost to users of ports. The proposed rate is also reasonable because it is comparable to the rates of other exchanges.[18] The Exchange also believes that these changes to the fees are equitable and not unfairly discriminatory because they would apply to all users of order/quote entry ports on the Exchange, subject to the exceptions noted above.

The Exchange also believes that it is equitable and not unfairly discriminatory to not charge DMMs for order/quote entry ports that connect to the Exchange via the DMM Gateway but to charge DMMs for order/quote entry ports that connect to the Exchange via CCG, because DMMs are required to use the DMM Gateway for certain DMM-specific functions that relate to the DMM's role on the Exchange and the obligations attendant therewith, which are not applicable to other market participants on the Exchange. By contrast, non-DMMs as well as DMMs may use the CCG, use of the CCG by a DMM is optional, and a DMM that connects to the Exchange via CCG can use the relevant order/quote entry port for orders and quotes both in its capacity as a DMM and for orders and quotes in other securities. Accordingly, the Exchange believes that it is equitable and not unfairly discriminatory to charge DMMs for order/quote entry ports that connect to the Exchange via CCG, as use of the CCG is not necessary for DMMs to fulfill their role as DMMs. In addition, a single order/quote entry port that connects to the Exchange via CCG could be used by a DMM both in its capacity as a DMM and for other securities, for which other market participants would be charged port fees. Consequently, the Exchange believes that it is equitable and not unfairly discriminatory that a DMM that connects to the Exchange via CCG would continue to be charged applicable port fees, as is currently the case.

In addition, the Exchange notes that DMM Gateway, unlike CCG, was designed with functionality to help DMMs fulfill their obligations as DMMs efficiently, and so the Exchange believes that to the extent that exempting DMM Gateway from port fees for order/quote entry ports encourages DMMs to use the DMM Gateway to fulfill their obligations helps ensure that that they are in the best position to operate efficiently.

The Exchange believes that the proposed new fee for drop copy ports is reasonable because it will result in a fee being charged for the use of technology and infrastructure provided by the Exchange. In this regard, the Exchange believes that the rate is reasonable because it is comparable to the rate charged by other exchanges for drop copy ports.[19] Furthermore, the Exchange believes that the proposed rate for a drop copy port is reasonable because, when compared to the proposed rate for order/quote entry ports, it reflects the level of resources required of the Exchange to establish and maintain the port, including the various sources from which data comes (*i.e.,* establishing connections to order/quote entry ports as well as, in certain circumstances, to order/quote entry ports on both NYSE and NYSE MKT). The proposed rate is also reasonable in light of the functional/operational differences between a drop copy port and an order/quote entry port (*e.g.,* that configuration and monitoring of the drop copy port is more substantial and because drop copy ports capture cumulative activity).

The Exchange also believes that it is reasonable that only one fee per drop copy port would apply, even if the port receives drop copies from multiple order/quote entry ports and/or from both NYSE and NYSE MKT, because the purpose of drop copies is such that a trading unit's or a firm's entire order and execution activity is captured. This is also reflected in the rate of $500 that is proposed for drop copy ports, which is higher than the rate proposed for order/quote entry ports. The Exchange believes that the proposed new fee for drop copy ports is equitable and not unfairly discriminatory because it will apply on an equal basis to all users of drop copy ports and to all drop copy ports on the Exchange, except for those order/entry ports related to RMG and ports utilized by DMMs to connect to the Exchange via the DMM Gateway.[20] In this regard, all firms are able to request drop copy ports, as is the case with order/quote entry ports.

The Exchange believes that it is equitable and not unfairly discriminatory to not charge DMMs for drop copy ports that connect to the Exchange via the DMM Gateway for the reasons above regarding order/quote entry ports.

The Exchange believes that not charging for ports that are designated to be used for RMG is reasonable because ports are an integral part of RMG and such users are already charged a fee for RMG, including additional connections related thereto, which the Exchange believes is sufficient to cover its costs related to making the ports available for RMG purposes.[21] In this regard, ports not designated as being used for RMG purposes would remain subject to port fees. The Exchange also believes that this is equitable and not unfairly discriminatory because it would apply equally to all member organizations that utilize RMG, which is fully-voluntary and is available to any member organization.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[17] The Exchange describes below how the proposed changes regarding RMG and DMMs are consistent with the Act.

[18] *See supra* note 13.

[19] See *supra* note 13.

[20] *See supra* note 17.

[21] *See supra* note 8.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [22] of the Act and subparagraph (f)(2) of Rule 19b-4 [23] thereunder, because it establishes a due, fee, or other charge imposed by the NYSE MKT.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEMKT–2012–64 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2012–64. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2012–64 and should be submitted on or before December 17, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–28593 Filed 11–23–12; 8:45 am]

BILLING CODE 8011–01–P

[22] 15 U.S.C. 78s(b)(3)(A).

[23] 17 CFR 240.19b–(f)(2).

[24] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before December 26, 2012. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Curtis Rich, *Curtis.rich@sba.gov,* Small Business Administration, 409 3rd Street SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Curtis Rich, Agency Clearance Officer, (202) 205–7030.

SUPPLEMENTARY INFORMATION:

Title: ''Surety Bond Guarantee Assistance.''

Frequency: On occasion.

SBA Form Number: N/A.

Description of Respondents: Surety Bond Guarantee Companies.

Responses: 13,563.

Annual Burden: 1,658.

SUPPLEMENTARY INFORMATION: *Title:* ''Disaster Assistance.''

Frequency: On occasion.

SBA Form Number: N/A.

Description of Respondents: Surety Bond Guarantee Companies.

Responses: 2,400.

Annual Burden: 199.

Curtis Rich,

Management Analyst.

[FR Doc. 2012–28513 Filed 11–23–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF STATE

[Public Notice 8094]

Shipping Coordinating Committee; Notice of Committee Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 1 p.m., on Wednesday, January 23, 2013, in Room 5–1224 of the United States Coast Guard Headquarters Building, 2100 Second Street SW., Washington, DC 20593–0001. The primary purpose of the meeting is to prepare for the fifty-fifth Session of the International Maritime Organization's (IMO) Subcommittee on Stability and Load Lines and on Fishing Vessels Safety (SLF) to be held at the IMO Headquarters, United Kingdom, February 18–22, 2013.

The agenda items to be considered include:

—Adoption of the agenda
—Decisions of other IMO bodies
—Development of second generation intact stability criteria
—Development of guidelines on safe return to port for passenger ships
—Development of guidelines for verification of damage stability requirements for tankers

—Development of mandatory carriage requirements for stability instruments on board tankers
—Review of the damage stability regulations for ro-ro passenger ships
—Revision of SOLAS chapter II–1 subdivision and damage stability regulations
—Development of provisions to ensure the integrity and uniform implementation of the 1969 TM Convention
—Development of amendments to part B of the 2008 IS Code on towing and anchor handling operations
—Consideration of IACS unified interpretations
—Development of amendments to the criterion for maximum angle of heel in turns of the 2008 IS Code
—Development of a mandatory Code for ships operating in polar waters
—Biennial agenda and provisional agenda for SLF 56
—Election of Chairman and Vice-Chairman for 2014
—Any other business
—Report to the Maritime Safety Committee

Members of the public may attend this meeting up to the seating capacity of the room. To facilitate the building security process, and to request reasonable accommodation, those who plan to attend should contact the meeting coordinator, LCDR Catherine Phillips, by email at *Catherine.A.Phillips@uscg.mil,* by phone at (202) 372–1374, by fax at (202) 372–1925, or in writing at Commandant (CG–ENG–2), U.S. Coast Guard, 2100 2nd Street SW., Stop 7126, Washington, DC 20593–7126, not later than January 16, 2013, 7 days prior to the meeting. Requests made after January 16, 2013 might not be able to be accommodated. Please note that due to security considerations, two valid, government issued photo identifications must be presented to gain entrance to the Headquarters building. The Headquarters building is accessible by taxi and privately owned conveyance (public transportation is not generally available). However, parking in the vicinity of the building is extremely limited. Additional information regarding this and other IMO SHC public meetings may be found at: *www.uscg.mil/imo.*

Dated: November 14, 2012.

Brian Robinson,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 2012–28609 Filed 11–23–12; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 8093]

Shipping Coordinating Committee; Notice of Committee Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 10 a.m. on Tuesday December 18, 2012, at the offices of the Radio Technical Commission for Maritime Services (RTCM), 1611 N. Kent Street, Suite 605, Arlington, Va. 22209. The primary purpose of the meeting is to prepare for the 56th Session of the International Maritime Organization's (IMO) Sub-Committee on Fire Protection (FP 56) to be held at the IMO Headquarters, United Kingdom, January 7–11, 2013.

The agenda items to be considered include:

—Development of measures to prevent explosions on oil and chemical tankers transporting low flash point cargoes
—Development of requirements for the fire resistance of ventilation ducts
—Review of fire protection requirements for on-deck cargoes
—Review of the recommendations on evacuation analysis for new and existing passenger ships
—Development of requirements for additional means of escape from machinery spaces
—Development of requirements for ships carrying hydrogen and compressed natural gas vehicles
—Consideration of IACS unified interpretations
—Harmonization of the requirements for the location of entrances, air inlets and openings in the superstructures of tankers
—Development of unified interpretations for Chapter 7 of the 2000 HSC Code
—Development of guidelines for use of fibre reinforced plastic (FRP) within ships structures
—Analysis of fire casualty records
—Development of amendments to SOLAS chapter II–2, the FTP Code and MSC/Circ. 1120 to clarify the requirements for plastic pipes on ships
—Consideration of amendments to SOLAS chapter II–2 on location of EEBDs
—Development of amendments to the requirements for foam-type fire extinguishers in SOLAS regulation II–2/10.5
—Development of amendments to SOLAS regulation II–2/20 and associated guidance on air quality management for ventilation of closed vehicle spaces, closed ro-ro and special category spaces
—Review of general cargo ship safety
—Development of interpretation of SOLAS regulation II–2/13.6 on means of escape from ro-ro spaces
—Any other business

Members of the public may attend this meeting up to the seating capacity of the room. To facilitate the building security process, and to request reasonable accommodation, those who plan to attend should contact the meeting coordinator, Mr. Randall Eberly, by email at *randall.eberly@uscg.mil,* by phone at (202) 372–1393, by fax at (202) 372–1925, or in writing at Commandant (CG–ENG–4), U.S. Coast Guard, 2100 2nd Street SW., Stop 7126, Washington, DC 20593–7126 not later than December 11, 2012, 7 days prior to the meeting. Requests made after December 11, 2012 might not be able to be accommodated. RTCM Headquarters is adjacent to the Rosslyn Metro station. For further directions and lodging information, please see: *http://www.rtcm.org/visit.php.* Additional information regarding this and other IMO SHC public meetings may be found at: *www.uscg.mil/imo.*

Dated: November 14, 2012.

Brian Robinson,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 2012–28610 Filed 11–23–12; 8:45 am]

BILLING CODE 4710–09–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Trade Advisory Committee on Small and Minority Business (ITAC–11)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of a partially opened meeting.

SUMMARY: The Industry Trade Advisory Committee on Small and Minority Business (ITAC–11) will hold a meeting on Tuesday, December 4, 2012, from 1:00 p.m. to 4:00 p.m. The meeting will be opened to the public from 2:30 p.m. to 4:00 p.m.

DATES: The meeting is scheduled for December 4, 2012 unless otherwise notified.

ADDRESSES: The meeting will be held at the White House Conference Center, 726 Jackson Place NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Laura Hellstern, DFO for ITAC–11 at

(202) 482–3222, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: The Agenda topics to be discussed are:

—U.S. Export Controls Reform

—Metropolitan Export Initiative

Dated: November 19, 2012.

Rebecca Rosen,

Director for Intergovernmental Affairs and Public Engagement.

[FR Doc. 2012–28501 Filed 11–23–12; 8:45 am]

BILLING CODE 3290–F3–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Comments Concerning Compliance With Telecommunications Trade Agreements

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of request for public comment and reply comment.

SUMMARY: Pursuant to section 1377 of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 3106) ('Section 1377'), the Office of the United States Trade Representative (''USTR'') is reviewing and requests comments on the operation, effectiveness, and implementation of, and compliance with the following agreements regarding telecommunications products and services of the United States: The World Trade Organization (''WTO'') General Agreement on Trade in Services; The North American Free Trade Agreement (''NAFTA''); U.S. free trade agreements (''FTAs'') with Australia, Bahrain, Chile, Colombia, Korea, Morocco, Oman, Panama, Peru, and Singapore; the Dominican Republic–Central America–United States Free Trade Agreement (''CAFTA–DR''); and any other telecommunications trade agreements, such as Mutual Recognition Agreements (MRAs) for Conformity Assessment of Telecommunications Equipment. The USTR will conclude the review by March 31, 2013.

DATES: Comments are due on December 17, 2012 and reply comments on January 14, 2013.

ADDRESSES: Submissions should be made via the Internet at *www.regulations.gov* docket number USTR–2012–0035. For alternatives to on-line submissions please contact Yvonne Jamison (202–395–3475). The public is strongly encouraged to file submissions electronically rather than by facsimile or mail.

FOR FURTHER INFORMATION CONTACT: Jonathan McHale, Office of Services and Investment, (202) 395–9533; or Scott Pietan, Office of Market Access and Industrial Competitiveness, (202) 395–9646.

SUPPLEMENTARY INFORMATION: Section 1377 requires the USTR to review annually the operation and effectiveness of all U.S. trade agreements regarding telecommunications products and services that are in force with respect to the United States. The purpose of the review is to determine whether any act, policy, or practice of a country that has entered into a trade agreement or other telecommunications trade agreement with the United States is inconsistent with the terms of such agreement or otherwise denies U.S. firms, within the context of the terms of such agreements, mutually advantageous market opportunities for telecommunications products and services. For the current review, the USTR seeks comments on:

(1) Whether any WTO member is acting in a manner that is inconsistent with its obligations under WTO agreements affecting market opportunities for telecommunications products or services, *e.g.,* the WTO General Agreement on Trade in Services (''GATS''), including the Agreement on Basic Telecommunications Services, the Annex on Telecommunications, and any scheduled commitments including the Reference Paper on Pro-Competitive Regulatory Principles; the WTO Agreement on Subsidies and Countervailing Measures; the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights; or the plurilateral WTO Agreement on Government Procurement.

(2) Whether Canada or Mexico has failed to comply with its telecommunications obligations under the NAFTA;

(3) Whether Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras or Nicaragua has failed to comply with its telecommunications obligations under the CAFTA–DR;

(4) Whether Australia, Bahrain, Chile, Colombia, Korea, Morocco, Oman, Panama, Peru, or Singapore has failed to comply with its telecommunications obligations under its FTA with the United States (see *http://www.ustr.gov/trade-agreements/free-trade-agreements* for links to U.S. FTAs);

(5) Whether any country has failed to comply with its obligations under telecommunications trade agreements with the United States other than FTAs, *e.g.,* Mutual Recognition Agreements (MRAs) for Conformity Assessment of Telecommunications Equipment (see *http://ts.nist.gov/standards/conformity/mra/mra.cfm* for links to certain U.S. telecommunications MRAs);

(6) Whether any act, policy, or practice of a country cited in a previous section 1377 review remains unresolved (see *http://www.ustr.gov/trade-topics/services-investment/telecom-ecommerce/section-1377-review* for recent reviews); and

(7) Whether any measures or practices of a country that is a WTO member or for which an FTA or telecommunications trade agreement has entered into force with respect to the United States impede access to its telecommunications markets or otherwise deny market opportunities to telecommunications products and services of United Stares firms. Measures or practices of interest include, for example, efforts by a foreign government or a telecommunications service provider to block services delivered over the Internet (including, but not limited to voice over Internet protocol services, social networking, and search services); requirements for access to or use of networks that limit the products or services U.S. suppliers can offer in specific foreign markets; the imposition of excessively high licensing fees; unreasonable wholesale roaming rates that mobile telecommunications service suppliers in specific foreign markets charge U.S. suppliers that seek to supply international mobile roaming services to their U.S. customers; allocating access to spectrum or other scarce resources through discriminatory procedures or contingent on the purchase of locally-produced equipment; subsidies provided to equipment manufactures which are contingent upon exporting or local content, or have caused adverse effects to domestic equipment manufacturers and the imposition by foreign governments of unnecessary or discriminatory technical regulations or standards for telecommunications products or services. In all cases, commenters should provide any available documentary evidence, including relevant legal measures where available, translated into English where necessary, to facilitate evaluation.

Public Comment and Reply Comment: Requirements for Submission

Comments in response to this notice must be written in English, must identify (on the first page of the comments) the telecommunications trade agreement(s) discussed therein, and must be submitted no later than December 17, 2012. Any replies to comments submitted must also be in

English and must be submitted no later than January 14, 2013. Comments and reply comments must be submitted using *http://www.regulations.gov,* docket number USTR– 2012–0035. In the unusual case where submitters are unable to make submissions through *regulations.gov,* the submitter must contact Yvonne Jamison at (202) 395–3475 to make alternate arrangements. To submit comments using *http://www.regulations.gov,* enter docket number USTR– 2012–0035 under ''Key Word or ID'' on the home page and click ''Search''. The site will provide a search results page listing all documents associated with this docket. Locate the reference to this notice, and click on ''Comment Now!'' Follow the instructions given on the screen to submit a comment. The *http://www.regulations.gov* Web site offers the option of providing comments by filling in a ''Type Comment'' field or by attaching a document using the ''Upload File(s)'' option. While both options are acceptable, USTR prefers submissions in the form of an attachment. If you attach a comment, it is sufficient to type ''see attached'' in the comment section. Please do not attach separate cover letters to electronic submissions; rather, include any information that might appear in a cover letter in the comments themselves. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the submission itself, not as separate files. (For further information on using the *www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on the ''help'' tab.) Submitters should provide updated information on all issues they cite in their filings; USTR will not review submissions that are copies of earlier submissions.

Business Confidential Submissions

For any comments submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters ''BC''. The top of any page containing business confidential information must be clearly marked ''BUSINESS CONFIDENTIAL''. Any person filing comments that contain business confidential information must also file in a separate submission a public version of the comments. The file name of the public version of the comments should begin with the character ''P''. The ''BC'' and ''P'' should be followed by the name of the person or entity submitting the comments. The submitter must include in the comments a written explanation of why the information should be protected. The submission must indicate, with asterisks, where confidential information was redacted or deleted. The top and bottom of each page of the non-confidential version must be marked either ''PUBLIC VERSION'' or ''NON-CONFIDENTIAL''.

Public Inspection of Submissions

Comments will be placed in the docket and open to public inspection, except confidential business information. Comments may be viewed on the *http://www.regulations.gov* Web site by entering the relevant docket number in the search field on the home page.

Douglas M. Bell,

Chair, Trade Policy Staff Committee.

[FR Doc. 2012–28505 Filed 11–23–12; 8:45 am]

BILLING CODE 3290–F3–P

DEPARTMENT OF TRANSPORTATION

[Docket No. DOT–OST–2004–16951]

Request for Comments of a Previously Approved Information Collection

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comments. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on September 11, 2012 (77 FR 55893). No comments were received.

DATES: Comments must be submitted on or before December 26, 2012.

FOR FURTHER INFORMATION CONTACT: Vanessa R. Balgobin, (202) 366–9721, Office of Aviation Analysis, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Title: Exemptions for Air Taxi Operations.

OMB Control Number: 2105–0565.

Type of Request: Renewal of a Previously Approved Information Collection.

Abstract: Part 298 of Title 14 of the Code of Federal Regulations, Exemptions for Air Taxi Registration, establishes a classification of air carriers known as air taxi operators that offer on-demand passenger service. The regulation exempts these small operators from certain provisions of the Federal statute to permit them to obtain economic authority by filing a one-page, front and back, OST Form 4507, Air Taxi Operator Registration, and Amendments under Part 298 of DOT's Regulations.

DOT expects to receive 200 new air taxi registrations and 2,200 amended air taxi registrations each year, resulting in 2,400 total respondents. Further, DOT expects filers of new registrations to take 1 hour to complete the form, while it should only take 30 minutes to prepare amendments to the form. Thus, the total annual burden is expected to be 1,300 hours.

Affected Public: U.S. air taxi operators.

Number of Respondents: 2,400.

Frequency: On occasion.

Number of Responses: 2,400.

Total Annual Burden: 1,300 hours.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, 725 17th Street NW., Washington, DC 20503.

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1:48.

Issued in Washington, DC on Monday, November 19, 2011.

Habib Azarsina,

OST PRA Clearance Officer, Office of the Secretary.

[FR Doc. 2012–28571 Filed 11–23–12; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2012–0116]

Agency Information Collection Activities: Request for Comments for a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under **SUPPLEMENTARY INFORMATION**. We published a **Federal Register** Notice with a 60-day public comment period on this information collection on August 23, 2012. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by December 26, 2012.

ADDRESSES: You may send comments within 30 days to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. All comments should include the Docket number FHWA–2012–0116.

FOR FURTHER INFORMATION CONTACT: John Moulden, 202–493–3470, Turner-Fairbank Highway Research Center, Office of Corporate Research, Technology, and Innovation Management, Federal Highway Administration, Department of Transportation, 6300 Georgetown Pike, McLean, VA 22101. Office hours are from 8 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Federal Highway Administration Research, Development and Technology Agenda Web site.

Background: Title 23, United States Code, Section 502(a)(5) requires that Federal surface transportation research and development activities address the needs of stakeholders, including ''States, metropolitan planning organizations, local governments, the private sector, researchers, research sponsors, and other affected parties, including public interest groups.'' As part of its effort to ensure that Federal research, development and technology (RD&T) activities are addressing the most critical national challenges, the Federal Highway Administration (FHWA) is developing the RD&T Agenda Web site. This Web site will communicate FHWA's RD&T goals, objectives and strategies to its stakeholders and highlight notable initiatives or projects that illustrate FHWA's RD&T approach. The Web site will include an electronic mechanism for stakeholders to provide feedback on the overall RD&T Agenda, FHWA's approach to addressing national transportation challenges, and potential opportunities for FHWA to collaborate with stakeholders to address them.

Respondents: Approximately 1,000 annual respondents.

Frequency: Annually.

Estimated Average Burden per Response: Approximately 10 minutes per respondent per year.

Estimated Total Annual Burden Hours: Approximately 167 hours per year.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: November 19, 2012.

Victoria Scott,

Business Operations Group Manager, Information Technology Division.

[FR Doc. 2012–28449 Filed 11–23–12; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Sunshine Act Meetings; Unified Carrier Registration Plan Board of Directors

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

ACTION: Notice of Unified Carrier Registration Plan Board of Directors Meeting.

TIME AND DATE: The meeting will be held on December 6, 2012, from 12:00 noon to 3:00 p.m., Eastern Standard Time.

PLACE: This meeting will be open to the public via conference call. Any interested person may call 1–877–820–7831, passcode, 908048 to listen and participate in this meeting.

STATUS: Open to the public.

Matters To Be Considered: The Unified Carrier Registration Plan Board of Directors (the Board) will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement and to that end, may consider matters properly before the Board.

FOR FURTHER INFORMATION CONTACT: Mr. Avelino Gutierrez, Chair, Unified Carrier Registration Board of Directors at (505) 827–4565.

Issued on: November 14, 2012.

Larry W. Minor,

Associate Administrator, Office of Policy, Federal Motor Carrier Safety Administration.

[FR Doc. 2012–28697 Filed 11–21–12; 11:15 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2012–0281]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

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

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 18 individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions will enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions are effective November 26, 2012. The exemptions expire on November 26, 2014.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's Privacy Act Statement for the Federal

Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

Background

On September 27, 2012, FMCSA published a notice of receipt of Federal diabetes exemption applications from 18 individuals and requested comments from the public (77 FR 59447). The public comment period closed on October 29, 2012, and no comments were received.

FMCSA has evaluated the eligibility of the 18 applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current requirement for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population. The diabetes rule provides that ''A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control'' (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled ''A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century.'' The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441), **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777), **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These 18 applicants have had ITDM over a range of 1 to 24 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the past 5 years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision requirement at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the September 27, 2012, **Federal Register** notice and they will not be repeated in this notice.

Discussion of Comments

FMCSA received no comments in this proceeding.

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes requirement in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes requirement in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Conclusion

Based upon its evaluation of the 18 exemption applications, FMCSA exempts Charles E. Castle (OH), Robert R. Coscio (NY), Larry W. Dearing (IN), Bradley E. DeWitt (OR), Leonard R. Dobosenski (MN), Rodney L. Fife (OH), Patrick J. Flynn (IA), Thomas K. Galford (WV), Laurence S. Goldstein (NY), Michael L. Kiefer (SD), Marcus J. Kyle (IA), Kevin K. Leavey (NJ), Sharon K. Locke (IN), David J. Maxwell (ND), Robert C. Moore (PA), Jedediaha C. Record (WY), Jessie L. Webster (KY), Robert F. Zitoli (MA) from the ITDM requirement in 49 CFR 391.41(b)(3), subject to the conditions listed under ''Conditions and Requirements'' above.

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption will be valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: November 14, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–28576 Filed 11–23–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0348]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

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

ACTION: Notice of applications for exemption from the diabetes mellitus requirement; request for comments.

SUMMARY: FMCSA announces receipt of applications from 27 individuals for exemption from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

DATES: Comments must be received on or before December 26, 2012.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2012–0348 using any of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- Hand Delivery: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Fax: 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. The 27 individuals listed in this notice have recently requested such an exemption from the diabetes prohibition in 49 CFR 391.41(b)(3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by the statutes.

Qualifications of Applicants

Kenneth R. Anderson

Mr. Anderson, 59, has had ITDM since 2012. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Anderson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Anderson meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Alabama.

Randle A. Badertscher

Mr. Badertscher, 32, has had ITDM since 1988. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Badertscher understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Badertscher meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Wyoming.

Gerald R. Bryson

Mr. Bryson, 26, has had ITDM since 1995. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Bryson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bryson meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class D operator's license from Montana.

Matthew J. Burris

Mr. Burris, 29, has had ITDM since 1997. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Burris understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Burris meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Minnesota.

Samuel F. Dyer

Mr. Dyer, 46, has had ITDM since 2008. His endocrinologist examined him

in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Dyer understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Dyer meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Nevada.

Jerol G. Fox

Mr. Fox, 67, has had ITDM since 2010. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Fox understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Fox meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Delaware.

Michael S. Freeman

Mr. Freeman, 59, has had ITDM since approximately 2009. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Freeman understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Freeman meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class C CDL from Oregon.

Harold D. Grimes

Mr. Grimes, 68, has had ITDM since 2011. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Grimes understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Grimes meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class C Chauffeur license from Michigan.

Daniel L. Helton

Mr. Helton, 44, has had ITDM since 2005. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Helton understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Helton meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class B operator's license from Illinois.

Douglas W. Hunderman

Mr. Hunderman, 48, has had ITDM since 2011. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Hunderman understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hunderman meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Michigan.

Robert L. Johnson

Mr. Johnson, 58, has had ITDM since 2010. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Johnson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Johnson meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Virginia.

Kevin R. Martin

Mr. Martin, 44, has had ITDM since 1989. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Martin understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Martin meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class B CDL from Missouri.

George R. Miller, III

Mr. Miller, 65, has had ITDM since 1988. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Miller understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Miller meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he has stable

nonproliferative diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Ronald G. Monroe

Mr. Monroe, 62, has had ITDM since 2011. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Monroe understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Monroe meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Indiana.

Ronald D. Norton

Mr. Norton, 60, has had ITDM since 2009. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Norton understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Norton meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Wisconsin.

Lawrence E. Olson

Mr. Olson, 64, has had ITDM since 2005. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Olson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Olson meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Washington.

Israel Ramos

Mr. Ramos, 46, has had ITDM since 2009. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Ramos understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ramos meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from NewYork.

Jed Ramsey

Mr. Ramsey, 36, has had ITDM since 2012. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Ramsey understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ramsey meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Idaho.

Raymond E. Richardson

Mr. Richardson, 48, has had ITDM since 1998. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Richardson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Richardson meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from Maryland.

Craig W. Schafer

Mr. Schafer, 59, has had ITDM since 2012. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Schafer understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Schafer meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Delaware.

Stephen L. Schug

Mr. Schug, 26, has had ITDM since 2001. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Schug understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Schug meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class E operator's license from Florida.

Shawn M. Seeley

Mr. Seeley, 48, has had ITDM since 2011. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Seeley understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Seeley meets the vision requirements of 49 CFR 391.41(b)(10).

His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Connecticut.

Mark S. Shepherd

Mr. Shepherd, 55, has had ITDM since 1993. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Shepherd understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Shepherd meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Massachusetts.

L. Everett Stamper

Mr. Stamper, 70, has had ITDM since 2010. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Stamper understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Stamper meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds an operator's license from Indiana.

Daniel C. Tow

Mr. Tow, 41, has had ITDM since 1986. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Tow understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Tow meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he has stable proliferative diabetic retinopathy. He holds a Class A CDL from Washington.

Vernon F. Walters

Mr. Walters, 57, has had ITDM since 2011. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Walters understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Walters meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Idaho.

Christopher M. Young

Mr. Young, 26, has had ITDM since 1990. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Young understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Young meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Oklahoma.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the date section of the notice.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).[1] The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) Elimination of the requirement for 3 years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 U.S.C. 31136(e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary.

The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 notice, except as modified by the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

Issued on: November 14, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–28572 Filed 11–23–12; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0337]

Qualification of Drivers; Exemption Applications; Vision

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

ACTION: Notice of applications for exemptions; request for comments.

[1] Section 4129(a) refers to the 2003 notice as a ''final rule.'' However, the 2003 notice did not issue a ''final rule'' but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

SUMMARY: FMCSA announces receipt of applications from 18 individuals for exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. They are unable to meet the vision requirement in one eye for various reasons. The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement in one eye. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce.

DATES: Comments must be received on or before December 26, 2012.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2012–0337 using any of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- Hand Delivery: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Fax: 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' FMCSA can renew exemptions at the end of each 2-year period. The 18 individuals listed in this notice have each requested such an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

Qualifications of Applicants

Joseph Colecchi

Mr. Colecchi, age 27, has had amblyopia in his right eye since birth. The best corrected visual acuity in his right eye is 20/50, and in his left eye, 20/20. Following an examination in 2012, his optometrist noted, ''In my opinion, Mr. Colecchi has more than adequate vision required to operate a commercial vehicle and there is no reason that he should not continue to receive his CDL.'' Mr. Colecchi reported that he has driven straight trucks for 8 years, accumulating 80,000 miles, and tractor-trailer combinations for 8 years, accumulating 80,000 miles. He holds a Class AM Commercial Driver's License (CDL) from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

William A. Donovan

Mr. Donovan, 54, has had a cataract in his left eye since childhood due to a traumatic incident. The visual acuity in his right eye is 20/20, and in his left eye, 20/200. Following an examination in 2012, his optometrist noted, ''In my medical opinion, Mr. Donovan has sufficient vision to perform the driving tasks required to drive a vehicle while on the job.'' Mr. Donovan reported that he has driven straight trucks for 17 years, accumulating 142,800 miles. He holds an operator's license from Washington. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Douglas Eamens

Mr. Eamens, 51, has had no light perception in his left eye since childhood due to a traumatic incident. The best corrected visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2012, his optometrist noted, ''In my medical opinion, I feel that Mr. Eamens has sufficient vision to operate a commercial vehicle.'' Mr. Eamens reported that he has driven straight trucks for 5 years, accumulating 300,000 miles. He holds a Class A CDL from New York. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Brian Knust

Mr. Knust, 47, has had a retinal detachment in his right eye since February 2004. The best corrected visual acuity in his right eye is 20/400, and in his left eye, 20/20. Following an examination in 2012, his optometrist noted, ''Brian Knust, in my medical opinion, has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Knust reported that he has driven straight trucks for 17 years, accumulating 637,500 miles. He holds a Class D operator's license from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Scott A. Lambertson

Mr. Lambertson, 48, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/15, and in his left eye, 20/60. Following an examination in 2011, his optometrist noted, ''There is no reason for me to believe that this patient would have any difficulty performing the driving tasks required to operate a commercial motor vehicle.'' Mr. Lambertson reported that he has driven

straight trucks for 3 years, accumulating 18,000 miles, and tractor-trailer combinations for 4 years, accumulating 8,000 miles. He holds a Class A CDL from Minnesota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

James W. Long

Mr. Long, 57, has had a traumatic cataract in his right eye since 1967. The best corrected visual acuity in his right eye is counting fingers, and in his left eye, 20/15. Following an examination in 2012, his optometrist noted, ''Patient has sufficient vision for commercial vehicle operation.'' Mr. Long reported that he has driven straight trucks for 35 years, accumulating 875,000 miles, and tractor-trailer combinations for 3 years, accumulating 90,000 miles. He holds a Class D operator's license from Arkansas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Dean L. Price

Mr. Price, 45, has had amblyopia in his right eye since birth. The best corrected visual acuity in his right eye is 20/400, and in his left eye, 20/20. Following an examination in 2012, his optometrist noted, ''In my opinion, I believe that Dean has the sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Price reported that he has driven straight trucks for 10 years, accumulating 25,000 miles, and tractor-trailer combinations for 4 years, averaging 216,000 miles. He holds a Class A CDL from Washington. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Roberto Ramos

Mr. Ramos, 50, has had amblyopia in his left eye since birth. The best corrected visual acuity in his right eye is 20/20, and in his left eye, 20/100. Following an examination in 2012, his optometrist noted, ''In my opinion, and by DPS state standards, Mr. Ramos has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Ramos reported that he has driven buses for 14 years, accumulating 909,538 miles. He holds a Class B CDL from Texas. His driving record for the last 3 years shows no crashes and one conviction for speeding in a CMV; he exceeded the speed limit by 5 mph.

Johnie Reed

Mr. Reed, 54, has had open angle glaucoma in his right eye since 2008. The best corrected visual acuity in his right eye is 20/150, and in his left eye, 20/20. Following an examination in 2012, his ophthalmologist noted, ''The patient has sufficient vision to drive a commercial vehicle.'' Mr. Reed reported that he has driven tractor-trailer combinations for 24 years, accumulating 1.2 million miles. He holds a Class A CDL from Virginia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Charles Roudebush

Mr. Roudebush, 36, has had a macular scar and amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/200, and in his left eye, 20/25. Following an examination in 2012, his ophthalmologist noted, ''In my opinion, Mr. Roudebush's retina shows scarring of macula and periphery of right eye. This correlates with longstanding amblyopia. The left was clear of any retinopathy. I feel based on this information that he is able to perform driving tasks to operate a commercial vehicle.'' Mr. Roudebush reported that he has driven straight trucks for 3 years, accumulating 72,000 miles. He holds Class D operator's license from New Jersey. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Mario G. Sanseverino

Mr. Sanseverino, 59, has complete loss of vision in his left eye due to a traumatic incident in 2008. The best corrected visual acuity in his right eye is 20/20. Following an examination in 2012, his optometrist noted, ''Mr. Sanseverino has been operating a commercial vehicle for 3 years post injury to his left eye. He has been accident free during this time. Therefore, I feel he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Sanseverino reported that he has driven straight trucks for 33 years, accumulating 330,000 miles, and tractor-trailer combinations for 33 years, accumulating 1.32 million miles. He holds a Class A CDL from Oklahoma. His driving record for the last 3 years shows no crashes and one conviction for speeding in a CMV; he exceeded the speed limit by 10 mph.

Samuel Soles

Mr. Soles, 29, has had aphakia and a corneal scar in his right eye since childhood due to a traumatic incident. The best corrected visual acuity in his right eye is light perception only, and in his left eye, 20/20. Following an examination in 2012, his ophthalmologist noted that Mr. Soles ''has full field OS and has the ability to recognize the colors of traffic control signals and devices showing red, green, and amber, and in my opinion has sufficient vision in the left eye to operate a commercial vehicle.'' Mr. Soles reported that he has driven straight trucks for 4.5 years, accumulating 64,800 miles. He holds a Class C chauffeur license from Michigan. His driving record for the last 3 years shows no crashes and one conviction for speeding in a CMV; he exceeded the speed limit by 5 mph.

Joseph Stenberg

Mr. Stenberg, 34, has had complete loss of vision in his left eye since 2008 due to a traumatic incident. The best corrected visual acuity in his right eye 20/20. Following an examination in 2012, his optometrist noted, ''In my opinion, Joe has sufficient vision to perform many tasks including driving a commercial motor vehicle.'' Mr. Stenberg reported that he has driven straight trucks for 16 years, accumulating 720,000 miles, tractor-trailer combinations for 11 years, accumulating 770,000 miles, and buses for 4 months, accumulating 8,000 miles. He holds a Class A CDL from Montana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Karl H. Strangfeld

Mr. Strangfeld, 58, has had amblyopia in his left eye since birth. The best corrected visual acuity in his right eye is 20/20, and in his left eye, 20/70. Following an examination in 2012, his optometrist noted, ''In my medical opinion, he has sufficient vision to perform the driving tasks necessary to operate a commercial vehicle.'' Mr. Strangfeld reported that he has driven straight trucks for 6 years, accumulating 18,000 miles, and tractor-trailer combinations for 6 years, accumulating 90,000 miles. He holds a Class A CDL from Utah. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Grover C. Taylor

Mr. Taylor, 57, has had refractive amblyopia in his left eye since birth. The best corrected visual acuity in his right eye is 20/20, and in his left eye, 20/100. Following an examination in 2012, his optometrist noted, ''In my

opinion and without reservation I believe Mr. Taylor is able to visually perform the task of operating a commercial vehicle.'' Mr. Taylor reported that he has driven tractor-trailer combinations for 3 years, accumulating 111,000 miles. He holds a Class A CDL from Virginia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Jimmy Van Meter

Mr. Van Meter, 63, has had a traumatic cataract and glaucoma since age 15, causing a field defect in his right eye. The best corrected visual acuity in his right eye is 20/25, and in his left eye, 20/30. Following an examination in 2012, his ophthalmologist noted, ''There have been no changes in your visual acuity or visual fields since 2007. It is my opinion that if you have been able to operate a commercial vehicle since that time, then there is no reason to make a change at this time.'' Mr. Van Meter reported that he has driven tractor-trailer combinations for 44 years, accumulating 5.5 million miles. He holds a Class A CDL from Arkansas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Keith Washington

Mr. Washington, 55, has had a branch retinal artery occlusion in his right eye since 1985 due to a traumatic incident. The best corrected visual acuity in his right eye is 20/50, and in his left eye, 20/20. Following an examination in 2012, his ophthalmologist noted, ''Patient has sufficient vision to drive and operate a commercial vehicle.'' Mr. Washington reported that he has driven straight trucks for 6 years, accumulating 366,000 miles, and tractor-trailer combinations for 19 years, accumulating 1.08 million miles. He holds a Class A CDL from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Donald L. Weston

Mr. Weston, 39, has had medullated nerve fibers in his right eye since birth. The best corrected visual acuity in his right eye is counting fingers, and in his left eye, 20/20. Following an examination in 2012, his optometrist noted, ''Donald's right eye alone has about 65% intact visual field and along with the normal vision and full field of his left eye, again I have no concern that Donald will be more than capable of operating a commercial vehicle.'' Mr. Weston reported that he has driven straight trucks for 7 years, accumulating 77,000 miles, and buses for 7 months, accumulating 9000 miles. He holds an operator's license from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. The Agency will consider all comments received before the close of business December 26, 2012. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable.

In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: November 14, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–28574 Filed 11–23–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2008–0106; FMCSA–2008–0174; FMCSA–2008–0292; FMCSA–2010–0114; FMCSA–2010–0327]

Qualification of Drivers; Exemption Applications; Vision

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

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 16 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective December 17, 2012. Comments must be received on or before December 26, 2012.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: Docket No. [FMCSA–2008–0106; FMCSA–2008–0174; FMCSA–2008–0292; FMCSA–2010–0114; FMCSA–2010–0327], using any of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- Hand Delivery or Courier: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Fax: 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to http://www.regulations.gov, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 16 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 16 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Charlene F. Brown (KS)
Nathan A. Buckles (IN)
Dale H. Dattler (NY)
Paul A. Giarrusso (FL)
Benjamin P. Hall (NY)
John N. Lanning (CA)
Bruce J. Lewis (RI)
John L. Lolley (AL)
Charles M. McDaris (GA)
Tommy L. McKnight (OH)
Calvin J. Schaap (MN)
Frederick C. Schultz, Jr. (NY)
Steve C. Sinclair (IA)
Eugene J. Smith (WI)
Charles R. Sylvester (NC)
Daniel M. Veselitza (NV)

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 16 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (73 FR 35194; 73 FR 38497; 73 FR 48271; 73 FR 48273; 73 FR 61922; 73 FR 74563; 75 FR 34209; 75 FR 47886; 75 FR 65057; 75 FR 77590; 75 FR 79081). Each of these 16 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements.

These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by December 26, 2012.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 16 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: November 14, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–28582 Filed 11–23–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2012–0119; Notice 2]

Final Decision That Certain Canadian-Certified Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final decision that certain nonconforming vehicles are eligible for importation.

SUMMARY: This document announces a final decision by the National Highway Traffic Safety Administration (NHTSA) that certain vehicles that do not comply with all applicable Federal motor

vehicle safety standards (FMVSS), but that are certified by their original manufacturer as complying with all applicable Canadian motor vehicle safety standards (CMVSS), are nevertheless eligible for importation into the United States. The vehicles in question either (1) are substantially similar to vehicles that were certified by their manufacturers as complying with the U.S. safety standards and are capable of being readily altered to conform to those standards, or (2) have safety features that comply with, or are capable of being altered to comply with, all U.S. safety standards.

DATES: This decision is effective on November 26, 2012.

FOR FURTHER INFORMATION CONTACT: Mr. Coleman Sachs, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: (202) 366–3151.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided, either pursuant to a petition from the manufacturer or registered importer or on its own initiative, (1) that the nonconforming motor vehicle is substantially similar to a motor vehicle of the same model year that was originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with all applicable FMVSS, and (2) that the nonconforming motor vehicle is capable of being readily altered to conform to all applicable FMVSS. Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) permits a nonconforming motor vehicle to be admitted into the United States if NHTSA decides that its safety features comply with, or are capable of being altered to comply with, all applicable FMVSS based on destructive test data or such other evidence as NHTSA decides to be adequate.

Tentative Decision

On September 18, 2012, NHTSA published a notice in the **Federal Register** announcing that it had made a tentative decision that certain motor vehicles that are not certified by their original manufacturer as complying with all applicable FMVSS, but that are certified as complying with all applicable CMVSS are eligible for importation into the United States (77 FR 57641). The notice identified these vehicles as:

(a) All passenger cars manufactured on or after September 1, 2012 and before September 1, 2017 that, as originally manufactured, comply with FMVSS Nos. 138, 201, 206, 208, 213, 214, and 225; and

(b) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less manufactured on or after September 1, 2012 and before September 1, 2017, that, as originally manufactured, comply with FMVSS Nos. 201, 206, 208, 213, 214, and 216, and insofar as they are applicable, with FMVSS Nos. 138, 222, and 225.

The notice stated that the agency also tentatively decided to revise its prior import eligibility decisions to eliminate references to the following standards that have been harmonized to their Canadian counterparts for the vehicles identified below:

- FMVSS No. 110 for all passenger cars and all multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less manufactured on or after September 1, 2009;
- FMVSS No. 118 for all passenger cars and all multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less manufactured on or after September 1, 2011;
- FMVSS No. 126 for all passenger cars and all multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less manufactured on or after September 1, 2011; and
- FMVSS No. 401 for all passenger cars manufactured on or after September 1, 2010.

The reader is referred to the September 18 notice for a full discussion of the factors leading to the tentative decision. The notice of tentative decision included tables that summarize the current state of harmonization between the CMVSS and the FMVSS. For the convenience of the reader, those tables are set out below. Table 1 is a list of all FMVSS that are harmonized to the CMVSS, or for which the differences are such that compliance with the U.S. standard can be readily achieved. Table 2 is a list of all FMVSS which are not harmonized. Table 3 is a list of FMVSS that have been adopted and are not yet effective, but will be in the future. Table 2 has been revised from the version provided in the notice of tentative decision to show that FMVSS 225 *Child Restraint Anchorage Systems* has two Canadian equivalents, CMVSS 210.1 *Tether Anchorage* and CMVSS 210.2 *Lower Anchorage.*

TABLE 1—HARMONIZED STANDARDS

FMVSS	Canadian equivalent	Date harmonized since last determination
102—Transmission Shift Position Sequence, Starter Interlock, and Transmission Braking Effect.	CMVSS 102—Transmission Control Functions	
103—Windshield Defrosting and Defogging Systems	CMVSS 103—Windshield Defrost and Defog	
104—Windshield Wiping and Washing Systems	CMVSS 104—Windshield Wiping and Wash	
105—Hydraulic and Electric Brake Systems	CMVSS 105—Hydraulic and Electric Brakes; TSD 105	
106—Brake Hoses	CMVSS 106—Brake Hoses; TSD 106	
108—Lamps, Reflective Devices and Associated Equipment	CMVSS 108—Lighting Systems and Retroreflective Devices; TSD 108.	
110—Tire Selection and Rims for Motor Vehicles with a GVWR of 4,536 kg (10,000) lb) or Less.	CMVSS 110—Tire Selection and Rims; TSD 110	September 1, 2009.
111—Rearview Mirrors	CMVSS 111—Mirrors	
113—Hood Latch Systems	CMVSS 113—Hood Latch System	
114—Theft Protection and Rollaway Prevention	CMVSS 114—Locking and Immobilization; TSD 114	
116—Motor Vehicle Brake Fluids	CMVSS 116—Hydraulic Brake Fluids; TSD 116	
118—Power-Operated Window, Partition, and Roof Panel Systems.	CMVSS 118—Power-operated Windows; TSD 118	September 1, 2011.

TABLE 1—HARMONIZED STANDARDS—Continued

FMVSS	Canadian equivalent	Date harmonized since last determination
120—Tire Selection and Rims and Motor Home/Recreation Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles with a GVWR of More Than 4,536 Kilograms (10,000 pounds).	CMVSS 120—Tire Selection and Rims for Vehicles Other Than Passenger Cars; TSD 120.	
121—Air Brake Systems	CMVSS 121—Air Brakes for Trucks; TSD 121	
122—Motorcycle Brake Systems	CMVSS 122—Motorcycle Brake Systems; TSD 122	
123—Motorcycle Controls and Displays	CMVSS 123—Motorcycle Control & Displays; TSD 123	
124—Accelerator Control Systems	CMVSS 124—Accelerator Control Systems; TSD 124	
126—Electronic Stability Control Systems	CMVSS 126—Electronic Stability Control; TSD 126	September 1, 2011.
131—School Bus Pedestrian Safety Devices	CMVSS 131—School Bus Pedestrian Safety Devices; TSD 131.	
135—Light Vehicle Brake Systems	CMVSS 135—Light Vehicle Brake Systems; TSD 135	
202—Head Restraints; Applicable unless a vehicle is certified to § 571.202a.	CMVSS 202—Head Restraints; TSD 202	
202a—Head Restraints	CMVSS 202—Head Restraints; TSD 202	September 1, 2012.
203—Impact protection for the driver from the steering control system.	CMVSS 203—Driver Impact Protection	
204—Steering control rearward displacement	CMVSS 204—Steering Column Rearward Displacement	
205—Glazing materials	CMVSS 205—Glazing Materials	
205a—Glazing materials before September 1, 2006 and glazing materials used in vehicles manufactured before November 1, 2006.	CMVSS 205—Glazing Materials	
207—Seating systems	CMVSS 207—Anchorage of Seats	
210—Seat belt assembly anchorages	CMVSS 210—Seat Belt Assembly Anchorages	
212—Windshield mounting	CMVSS 212—Windshield Mounting	
216—Roof crush resistance; Applicable unless a vehicle is certified to § 571.216a.	CMVSS 216—Roof Intrusion Protection; TSD 216	
216a—Roof crush resistance; Upgraded standard	CMVSS 216—Roof Intrusion Protection; TSD 216	
217—Bus emergency exits and window retention and release.	CMVSS 217—Bus Window Retention and Emergency Exits.	
219—Windshield zone intrusion	CMVSS 219—Windshield Zone Intrusion	
220—School bus rollover protection	CMVSS 220—Rollover Protection; TSD 220	
221—School bus body joint strength	CMVSS 221—School Bus Body Joint Strength	
224—Rear impact protection	CMVSS 223—Rear Impact Guards	
301—Fuel system integrity	CMVSS 301—Fuel System Integrity; TSD 301	
302—Flammability of interior materials	CMVSS 302—Flammability; TSD 302	
303—Fuel system integrity of compressed natural gas vehicles.	CMVSS 301.2—CNG Fuel System Integrity	
304—Compressed natural gas fuel container integrity	CMVSS 301.2—CNG Fuel System Integrity	
305—Electric-powered vehicles: electrolyte spillage and electrical shock protection.	CMVSS 305—Electrolyte Spillage and Electrical Shock Protection; TSD 305.	
401—Internal trunk release	CMVSS 401—Interior Trunk Release; TSD 401	September 1, 2010
500—Low-speed vehicles	CMVSS 500—Low-speed Vehicles; TSD 500	

TABLE 2—STANDARDS THAT HAVE NOT BEEN HARMONIZED

U.S. Standard	Canadian standard	Passenger cars	Multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less
FMVSS 101—Controls and Displays	CMVSS 101—Controls and Displays	X	X
FMVSS 138—Tire Pressure Monitoring Systems		X	X
FMVSS 201—Occupant Protection in Interior Impact.	CMVSS 201—Occupant Protection	X	X
206—Door locks and door retention components	CMVSS 206—Door Locks and Door Retention Components.	X	X
FMVSS 208—Occupant Crash Protection	CMVSS 208—Occupant Restraint Frontal Impact.	X	X
FMVSS 213—Child Restraint Systems	CMVSS 213.4—Built-in Child Restraint Systems	X	X
FMVSS 214—Side Impact Protection	CMVSS 214—Side Door Strength	X	X
FMVSS 222—School Bus Passenger Seating And Crash Protection.	CMVSS 222—School Bus Passenger Seating and Crash Protection.		School buses only
FMVSS 225—Child restraint anchorage systems	CMVSS 210.1 Tether Anchorage and 210.2 Lower Anchorage.	X	X

TABLE 3—FMVSS THAT HAVE BEEN ADOPTED BUT ARE NOT YET EFFECTIVE

FMVSS	Federal Register Notice	Description	Effective date
226—Ejection Mitigation	76 FR 3212; 1/19/2011	New standard to mitigate occupant ejection from side windows in roll-overs and side impacts.	9/1/17, except for altered and multi-stage vehicles 9/1/18.

In accordance with 49 U.S.C. 30141(b), the September 18 notice solicited public comments on the tentative decision. No comments were submitted in response to the notice. Accordingly, we are adopting the tentative decision as a final decision.

Final Decision

In consideration of the foregoing, NHTSA hereby decides that—

(a) All passenger cars manufactured on or after September 1, 2009 and before September 1, 2010 that, as originally manufactured, comply with FMVSS Nos. 118, 138, 201, 202a, 206, 208, 213, 214, 225, and 401;

(b) All passenger cars manufactured on or after September 1, 2010 and before September 1, 2011 that, as originally manufactured, comply with FMVSS Nos. 118, 138, 201, 202a, 206, 208, 213, 214, and 225;

(c) All passenger cars manufactured on or after September 1, 2011 and before September 1, 2017 that, as originally manufactured, comply with FMVSS Nos. 138, 201, 206, 208, 213, 214, and 225;

(d) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less manufactured on or after September 1, 2011 and before September 1, 2012, that, as originally manufactured, comply with FMVSS Nos. 201, 202a, 206, 208, 213, 214, and 216, and insofar as they are applicable, with FMVSS Nos. 138 and 225; and

(e) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less manufactured on or after September 1, 2012 and before September 1, 2017, that, as originally manufactured, comply with FMVSS Nos. 201, 206, 208, 213, 214, and 216, and insofar as they are applicable, with FMVSS Nos. 138, 222, and 225;

that are certified by their original manufacturer as complying with all applicable Canadian motor vehicle safety standards, are eligible for importation into the United States on the basis that either:

1. They are substantially similar to vehicles of the same make, model, and model year originally manufactured for importation into and sale in the United States, or originally manufactured in the United States for sale therein, and certified as complying with all applicable FMVSS, and are capable of being readily altered to conform to all applicable FMVSS, or

2. They have safety features that comply with, or are capable of being altered to comply with, all applicable FMVSS.

Vehicle Eligibility Number

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. Vehicle Eligibility Number VSA–80 is currently assigned to Canadian-certified passenger cars and Vehicle Eligibility Number VSA–81 is currently assigned to Canadian-certified multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less. All passenger cars admissible under this decision will be assigned vehicle eligibility number VSA–80, and all multipurpose passenger vehicles, trucks, and buses admissible under this decision will be assigned vehicle eligibility number VSA–81.

Authority: 49 U.S.C. 30141(a)(1)(A), (a)(1)(B), and (b)(1); 49 CFR 593.8; delegation of authority at 49 CFR 1.95.

Issued on: November 15, 2012.

Daniel C. Smith,

Senior Associate Administrator for Vehicle Safety.

[FR Doc. 2012–28626 Filed 11–23–12; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2012–0160, Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 2009 Porsche 911 (997) Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that nonconforming 2009 Porsche 911 (997) passenger cars that were not originally manufactured to comply with all applicable Federal Motor Vehicle Safety Standards (FMVSS), are eligible for importation into the United States because they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards (the U.S.-certified version of the 2009 Porsche 911 (997) passenger cars) and they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is December 26, 2012.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Instructions: Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the

comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

How to Read Comments submitted to the Docket: You may read the comments received by Docket Management at the address and times given above. You may also view the documents from the Internet at *http://www.regulations.gov*. Follow the online instructions for accessing the dockets. The docket ID number and title of this notice are shown at the heading of this document notice. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

FOR FURTHER INFORMATION CONTACT: George Stevens, Office of Vehicle Safety Compliance, NHTSA (202–366–5308).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Wallace Environmental Testing Laboratories, Inc. of Houston, Texas (WETL) (Registered Importer 90–005) has petitioned NHTSA to decide whether nonconforming 2009 Porsche 911 (997) passenger cars are eligible for importation into the United States. The vehicles which WETL believes are substantially similar are 2009 Porsche 911 (997) passenger cars that were manufactured for sale in the United States and certified by their manufacturer as conforming to all applicable FMVSS.

The petitioner claims that it compared non-U.S. certified nonconforming 2009 Porsche 911 (997) passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most FMVSS.

WETL submitted information with its petition intended to demonstrate that non-U.S. certified nonconforming 2009 Porsche 911 (997) passenger cars as originally manufactured, conform to many FMVSS in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards. Specifically, the petitioner claims that non-U.S. certified 2009 Porsche 911 (997) passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect,* 103 *Windshield Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 106 *Brake Hoses,* 113 *Hood Latch System,* 111 *Rearview Mirrors,* 114 *Theft Protection,* 116 *Motor Vehicle Brake Fluids,* 118 *Power-Operated Window, Partition, and Roof Panel Systems,* 124 *Accelerator Control Systems,* 135 *Light Vehicle Brake Systems,* 138 *Tire Pressure Monitoring Systems,* 139 *New Pneumatic radial tires for light vehicles,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Mounting,* 214 *Side Impact Protection,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 225 *Child Restraint Anchorage Systems,* and 302 *Flammability of Interior Materials.*

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls Telltales, and Indicators:* (a) Inscription of the word ''brake'' on the brake failure indicator lamp in place of the international ECE warning symbol; and (b) replacement of the speedometer with a unit reading in miles per hour, or modification of the existing speedometer so that it reads in miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* Replacement of the headlamps and tail lamps with U.S.-model components.

Standard No. 110 *Tire Selection and Rims for Motor Vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or Less:* installation of a tire information placard.

Standard No. 208 *Occupant Crash Protection:* Petitioner claims that the passive restraint system hardware in the nonconforming 2009 Porsche 911 (997) is identical to that found on the U.S.-certified 2009 Porsche 911 (997), and has included a listing of the advanced air bag component part numbers in its petition as proof. The petitioner also states that the software and firmware associated with the occupant protection system must be verified and updated with U.S.-version software as necessary to ensure that the system conforms to the standard. This may require the replacement of system components. The petitioner additionally states that the installation of U.S.-model knee bolster components is necessary.

Standard No. 301 *Fuel System Integrity:* installation of U.S.-model rollover valve in the fuel tank vent line.

Standard No. 401 *Interior Trunk Release:* installation of U.S.-model interior trunk release components.

The petitioner additionally states that a vehicle identification plate must be affixed to the vehicles near the left windshield post to meet the requirements of 49 CFR part 565.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above addresses both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A), (a)(1)(B), and (b)(1); 49 CFR 593.7; delegation of authority at 49 CFR 1.95 and 501.8.

Issued on: November 16, 2012.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2012–28628 Filed 11–23–12; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2009–0203]

Pipeline Safety: Meeting of the Gas Pipeline Advisory Committee and the Liquid Pipeline Advisory Committee

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of advisory committee meeting.

SUMMARY: This notice announces a public meeting of the Gas Pipeline Advisory Committee (GPAC), also known as the Technical Pipeline Safety Standards Committee, and the Liquid Pipeline Advisory Committee (LPAC), also known as the Technical Hazardous Liquid Pipeline Safety Standards Committee. The committees will meet to discuss two proposed rules, the first to implement changes to the administrative procedures in Part 190 Enforcement Procedures, and the second to establish criteria and procedures for determining the adequacy of state pipeline excavation damage prevention law enforcement programs; to establish an administrative process for making adequacy determinations and Federal requirements PHMSA will enforce in states with inadequate programs; and to establish the adjudication process for administrative enforcement proceedings against excavators where Federal authority is exercised.

DATES: The meeting schedule follows:

1. Tuesday, December 11, 2012, 1:00 p.m. to 4:00 p.m., LPAC Meeting.
2. Wednesday, December 12, 2012, 9:00 a.m. to 5:00 p.m., Joint Meeting (LPAC and GPAC).
3. Thursday, December 13, 2012, 9:00 a.m. to 1:00 p.m., GPAC Meeting.

The meetings will not be Web cast; however, presentations will be available on the meeting Web site and posted in the E-Gov Web Site: *http://www.regulations.gov* under docket number PHMSA–2009–0203 within 30 days following the meeting.

ADDRESSES: The meeting will take place at the Westin Alexandria, 400 Courthouse Square, Alexandria, VA 22314, Phone: 703–253–8600, Web Site: *http://www.westinalexandria.com/*. Any additional information will be published on the PHMSA Web site (*http://www.phmsa.dot.gov/public*), under ''Latest News'' on the homepage. Comments on the meeting may be submitted to the docket in the following ways:

E-Gov Web Site: http://www.regulations.gov. This site allows the public to enter comments on any **Federal Register** notice issued by any agency.

Fax: 1–202–493–2251.

Mail: Docket Management Facility; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590–001.

Hand Delivery: Room W12–140 on the ground level of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Instructions: Identify the docket number PHMSA–2009–0203 at the beginning of your comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. You should know that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). Therefore, you may want to review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or view the Privacy Notice at *http://www.regulations.gov* before submitting any such comments.

Docket: For access to the docket or to read background documents or comments, go to *http://www.regulations.gov* at any time or to Room W12–140 on the ground level of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard with the following statement: ''Comments on PHMSA–2009–0203.'' The Docket Clerk will date-stamp the postcard prior to returning it to you via the U.S. mail. Please note that due to delays in the delivery of U.S. mail to Federal offices in Washington, DC, we recommend that persons consider an alternative method (internet, fax, or professional delivery service) of submitting comments to the docket and ensuring their timely receipt at DOT.

Privacy Act Statement

Anyone may search the electronic form of comments received in response to any of our dockets by the name of the individual who submitted the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). DOT's complete Privacy Act Statement was published in the **Federal Register** on April 11, 2000 (65 FR 19477).

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to seek special assistance at the meeting, please contact Cheryl Whetsel at 202–366–4431 by December 5, 2012.

FOR FURTHER INFORMATION CONTACT: For information about the meeting, contact Cheryl Whetsel by phone at 202–366–4431 or by email at *cheryl.whetsel@dot.gov*.

SUPPLEMENTARY INFORMATION:

I. Meeting Details

Members of the public may attend and make a statement during the advisory committee meeting. If you intend to make a statement, please notify PHMSA in advance by forwarding an email to *cheryl.whetsel@dot.gov* by December 5, 2012.

II. Committee Background

The GPAC and LPAC are statutorily mandated advisory committees that advise PHMSA on proposed safety standards, risks assessments, and safety policies for natural gas pipelines and for hazardous liquid pipelines. Both committees were established under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 1) and the pipeline safety law (49 U.S.C. Chap. 601). Each committee consists of 15 members—with membership evenly divided among the Federal and state government, the regulated industry, and the public. The committees advise PHMSA on the technical feasibility, practicability, and cost-effectiveness of each proposed pipeline safety standard.

III. Agenda

The Agenda will be published on the PHMSA (DOT) Web site.

Authority: 49 U.S.C. 60102, 60115; 60118.

Issued in Washington, DC, on November 19, 2012.

Linda Daugherty,

Deputy Associate Administrator for Policy and Programs.

[FR Doc. 2012–28463 Filed 11–23–12; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities; Proposed Information Collection; Comment Request; Bank Secrecy Act/Money Laundering Risk Assessment

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, 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 a continuing information collection, as required by the Paperwork Reduction Act of 1995.

Under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35)(PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice.

In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The OCC is soliciting comment concerning its information collection entitled, ''Bank Secrecy Act/Money Laundering Risk Assessment,'' also known as the Money Laundering Risk (MLR) System.

DATES: Comments must be submitted by January 25, 2013.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Mailstop 2–3, Attention: 1557–0231, 250 E Street SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–5274, or by electronic mail to *regs.comments@occ.treas.gov*. You may personally inspect and photocopy comments at the OCC, 250 E Street SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the information collection from Mary H. Gottlieb or Johnny Vilela, OCC Clearance Officers, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the OCC is publishing notice of the proposed collection of information set forth in this document.

Bank Secrecy Act/Money Laundering Risk Assessment (OMB Control Number 1557–0231)—Extension

The MLR System enhances the ability of examiners and bank management to identify and evaluate Bank Secrecy Act/Money Laundering and Office of Foreign Asset Control (OFAC) sanctions risks associated with banks' products, services, customers, and locations. As new products and services are introduced, existing products and services change, and banks expand through mergers and acquisitions, management's evaluation of potentially new money laundering and terrorist financing risks must evolve as well. Consequently, the MLR risk assessment is an important tool for the OCC's Bank Secrecy Act/Anti-Money Laundering/OFAC supervision activities because it allows the agency to better identify those institutions, and areas within institutions, that pose heightened risk and allocate examination resources accordingly. This risk assessment is critical in protecting financial institutions of all sizes from potential abuse from money laundering or terrorist financing. Absent an appropriate risk assessment, applicable controls cannot be effectively implemented for these lines of business, products, or entities, which would elevate Bank Secrecy Act/Money Laundering and OFAC compliance risks.

The OCC is considering expanding this reporting requirement to include OCC's Midsize and Large Bank populations and, therefore, is seeking OMB approval to include these populations in its information collection.

The OCC recently updated the annual Risk Summary Form. The changes in the 2012 form enhance the assessment process by requiring the reporting of products, services, and customers (PSCs) related to prepaid access or prepaid cards, a growth industry that is receiving increased attention from regulators, law enforcement, and Congress. The form now requires the reporting of the following prepaid card PSCs: (i) Prepaid Cards (Reloadable and Non-Reloadable); (ii) Prepaid Card Programs—Third-Party Sponsored (Reloadable and Non-Reloadable); (iii) Prepaid Card Programs—Bank-Sponsored (Reloadable and Non-Reloadable); (iv) Prepaid Cardholders (Reloadable and Non-Reloadable); and (v) Prepaid Card Program Managers. In addition, the Money Services Business (MSB) section of the form was modified to reflect changes in regulatory definitions. The form now includes MSB customers that are Providers of Prepaid Access and Sellers of Prepaid Access. All of these changes were made within the existing subject headers.

The OCC estimates the burden of this collection of information as follows:

Burden Estimates

Community Bank population

Estimated Number of Respondents: 1,792.

Estimated Number of Responses: 1,792.

Frequency of Response: Annually.

Estimated Annual Burden: 10,752 hours.

Midsize Bank population

Estimated Number of Respondents: 62.

Estimated Number of Responses: 62.

Frequency of Response: Annually.

Estimated Annual Burden: 1,860 hours.

Large Bank population

Estimated Number of Respondents: 99.

Estimated Number of Responses: 99.

Frequency of Response: Annually.

Estimated Annual Burden: 9,900 hours.

With respect to the following collection of information, the OCC invites comments on these topics:

(a) Whether the collection of information is necessary for the proper

performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection 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.

All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology as well as other relevant aspects of the information collection request.

Dated: November 14, 2012.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 2012–28618 Filed 11–23–12; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Proposed Collection; Comment Request; Renewal Without Change of the FinCEN Form 8300

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Financial Crimes Enforcement Network (FinCEN) is soliciting comments concerning Form 8300, Report of Cash Payments Over $10,000 Received in a Trade or Business.

DATES: Written comments should be received on or before January 25, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to the Regulatory Policy and Programs Division, Financial Crimes Enforcement Network, Department of the Treasury, P.O. Box 39, Vienna, Virginia 22183. *Attention:* PRA Comments—Form 8300. Comments also may be submitted by electronic mail to the following Internet address: *regcomments@fincen.gov* with the caption in the body of the text, ''Attention: PRA Comments—Form 8300.''

Inspection of comments. Comments may be inspected, between 10 a.m. and 4 p.m., in the FinCEN reading room in Vienna, VA. Persons wishing to inspect the comments submitted must request an appointment with the Disclosure Officer by telephoning (703) 905–5034 (not a toll free call).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to the Regulatory Policy and Programs Division Regulatory Helpline, (800) 949–2732 and select option 6. A copy of the form may be obtained through the Internet at *www.fincen.gov/forms.*

SUPPLEMENTARY INFORMATION:

Title: Report of Cash Payments Over $10,000 Received in a Trade or Business.

OMB Number: 1506–0018.

Form Number: 8300.

Abstract: 31 CFR 1010.331 requires any person in a trade or business who, in the course of the trade or business, receives more than $10,000 in cash or foreign currency in one or more related transactions to report it to FinCEN and provide a statement to the payer. Form 8300 is used for this purpose.

Section 365 of the USA PATRIOT Act of 2001 (Pub. L. 107–56), adding new section 5331 to Title 31 of the United States Code, authorized FinCEN to collect the information reported on Form 8300. FinCEN makes the Forms 8300 available to law enforcement through its Bank Secrecy Act information sharing agreements.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations, farms, and the Federal government.

Frequency: As required.

Estimated Number of Respondents: 46,800.

Estimated Time per Respondent: 45 minutes.

Estimated Total Annual Burden Hours: 35,100.[1]

[1] The burden for the information collection in 31 CFR 1010.330, (also approved under control number 1506–0018), relating to the Form 8300, is reflected in the burden of the form and includes reporting and recordkeeping.

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 Office of Management and Budget (OMB) control number. In accordance with 31 CFR 1010.330(e)(3), a person required to make a report under this section must keep a copy of each report filed for five years from the date of filing.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: November 16, 2012.

Jennifer Shasky Calvery,

Director, Financial Crimes Enforcement Network.

[FR Doc. 2012–28518 Filed 11–23–12; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network; Proposed Collection; Comment Request; Renewal without Change of the FinCEN Suspicious Activity Reports Currently Approved Electronic Data Fields

AGENCY: Financial Crimes Enforcement Network (''FinCEN''), Treasury.

ACTION: Notice and request for comments.

SUMMARY: FinCEN is proposing to renew without change the OMB-approved list of current data fields within the database that are required to support the FinCEN Suspicious Activity Report (''SAR'') filings by financial institutions required to file such reports under the Bank Secrecy Act (''BSA''). This notice does not propose any new regulatory

requirements or changes to the requirements related to suspicious activity reporting. The data fields reflect the filing requirement for all filers of SARs under the BSA. The FinCEN SAR is an e-filed dynamic and interactive report used by all BSA filing institutions to report suspicious financial activities to the Department of the Treasury. This request for comments covers 31 CFR 1020.320, 1021.320, 1022.320, 1023.320, 1024.320, 1025.320, and 1026.320. This request for comments is being made pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. 3506(c)(2)(A).

DATES: Written comments are welcome and must be received on or before January 25, 2013.

ADDRESSES: Written comments should be submitted to: Regulatory Policy and Programs Division, Financial Crimes Enforcement Network, Department of the Treasury, P.O. Box 39, Vienna, Virginia 22183, ''Attention: PRA Comments—SAR Database.'' Comments also may be submitted by electronic mail to the following Internet address: *regcomments@fincen.treas.gov,* with the caption, ''Attention: SAR Database'' in the body of the text. Please submit by one method only.

Inspection of comments: Comments may be inspected, between 10 a.m. and 4 p.m., in the FinCEN reading room in Vienna, VA. Persons wishing to inspect the comments submitted must request an appointment with the Disclosure Officer by telephoning (703) 905–5034 (not a toll free call).

FOR FURTHER INFORMATION CONTACT: The FinCEN Regulatory Helpline at 800–949–2732, select option 7.

SUPPLEMENTARY INFORMATION: *Title:* FinCEN Suspicious Activity Report by Financial Institutions (see 31 CFR 1020.320, 1021.320, 1022.320, 1023.320, 1024.320, 1025.320, and 1026.320).[1]

OMB Number: 1506–0065.[2]

Form Number: FinCEN 111.

Abstract: The statute generally referred to as the ''Bank Secrecy Act,'' Titles I and II of Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5332, authorizes the Secretary of the Treasury, *inter alia,* to require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities, to protect against international terrorism, and to implement anti-money laundering programs and compliance procedures.[3] Regulations implementing Title II of the BSA appear at 31 CFR Chapter X. The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.[4]

The information collected on the ''report'' is required to be provided pursuant to 31 U.S.C. 5318(g), as implemented by FinCEN regulations found at 31 CFR 1020.320, 1021.320, 1022.320, 1023.320, 1024.320, 1025.320, and 1026.320. The information collected under this requirement is made available to appropriate agencies and organizations as disclosed in FinCEN's Privacy Act System of Records Notice relating to BSA Reports.[5]

Current Action: FinCEN is renewing without change the OMB-approved electronic data elements currently supporting the reporting of suspicious financial activities. All filings (discrete, batch, and computer-to-computer) will be accessed through the BSA E-Filing system using current registration and login procedures.

Type of Review: Renewal without change of the electronic data elements of the FinCEN SAR that support the electronic filing of a dynamic SAR.

Affected public: Business or other for-profit and not-for-profit financial institutions.

Frequency: As required.

Estimated Reporting Burden: Average of 60 minutes per report and 60 minutes recordkeeping per filing. (The reporting burden of the regulations 31 CFR 1020.320, 1021.320, 1022.320, 1023.320, 1024.320, 1025.320, and 1026.320 is reflected in the burden for the form.)

Estimated Recordkeeping and Reporting Burden: 120 minutes (60 reporting and 60 minutes recordkeeping, for a total of 2 hours).[6]

Estimated number of respondents: 84,655 (Broker-Dealers, Casinos and Card Clubs, Depository Institutions, Future Commission Merchants, Insurance Companies, Money Services Businesses, Mutual Funds, and Non-Bank Residential Mortgage Lenders and Originators).

Estimated Total Annual Responses: 1,127,928.[7]

Estimated Total Annual Reporting and Recordkeeping Burden: 2,255,856 hours.

Note: A joint filing[8] will increase the burden to 90 minutes reporting and 60 minutes recordkeeping for a total of 2 and ½ hours per report.

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. Records required to be retained under the BSA must be retained for five years.

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 agencys 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.

Dated: November 16, 2012.

Jennifer Shasky Calvery,

Director, Financial Crimes Enforcement Network.

[FR Doc. 2012–28520 Filed 11–23–12; 8:45 am]

BILLING CODE 4810–02–P

[1] This is a new title for this control number. The previously approved title was ''Bank Secrecy Act Suspicious Activity Report (BSA–SAR).''

[2] The SAR reporting requirements are currently covered under the following OMB Control numbers: 1506–0001 (Depository Institutions), 1506–0006 (Casinos and Card Clubs), 1506–0015 (Money Services Business), 1506–0019 (Securities and Futures Industries), 1506–0029 (Insurance Companies), and 1506–0061 (Residential Mortgage Lenders and Originators).

[3] Language expanding the scope of the BSA to intelligence or counter-intelligence activities to protect against international terrorism was added by Section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the USA PATRIOT Act), Public Law 107–56.

[4] Treasury Order 180–01 (Sept. 26, 2002).

[5] Department of the Treasury bureaus such as FinCEN renew their System of Records Notices every three years unless there is cause to amend them more frequently. FinCEN's System of Records Notice for BSA Reports System was most recently published at 77 FR 60014–60022 (October 1, 2012).

[6] FinCEN believes this burden estimate to be high, but insufficient collection data exist to reduce the number at this time.

[7] Numbers are based on actual 2012 filings as reported to the IRS Enterprise Computing Center-Detroit (EEC–D) as of 09/30/2012. This number reflects the projected total number of SAR filings for the year.

[8] Two separate financial institutions filing a single SAR. This type of filing constitutes less than 1% of total filings.

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network; Proposed Collection; Comment Request; Renewal Without Change of the FinCEN Currency Transaction Reports Currently Approved Electronic Data Fields

AGENCY: Financial Crimes Enforcement Network (''FinCEN''), Treasury.

ACTION: Notice and request for comments.

SUMMARY: FinCEN is proposing to renew without change the OMB-approved list of current data fields within the database that are required to support the FinCEN Currency Transaction Report (''CTR'') filings by financial institutions required to file such reports under the Bank Secrecy Act (''BSA''). This notice does not propose any new regulatory requirements or changes to the requirements related to currency transaction reporting. The data fields reflect the filing requirement for all filers of CTRs under the BSA. The FinCEN CTR is an e-filed dynamic and interactive report used by all BSA filing institutions to report designated currency transactions to the Department of the Treasury. This request for comments covers 31 CFR 1010.311 and 1021.311. This request for comments is being made pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. 3506(c)(2)(A).

DATES: Written comments are welcome and must be received on or before January 25, 2013.

ADDRESSES: Written comments should be submitted to: Regulatory Policy and Programs Division, Financial Crimes Enforcement Network, Department of the Treasury, P.O. Box 39, Vienna, Virginia 22183, ''Attention: PRA Comments—CTR Database.'' Comments also may be submitted by electronic mail to the following Internet address: *regcomments@fincen.treas.gov,* with the caption, ''Attention: CTR Database'' in the body of the text. Please submit by one method only.

Inspection of comments: Comments may be inspected, between 10 a.m. and 4 p.m., in the FinCEN reading room in Vienna, VA. Persons wishing to inspect the comments submitted must request an appointment with the Disclosure Officer by telephoning (703) 905–5034 (not a toll free call).

FOR FURTHER INFORMATION CONTACT: The FinCEN Regulatory Helpline at 800–949–2732, select option 7.

SUPPLEMENTARY INFORMATION:

Title: FinCEN Currency Transaction Report by Financial Institutions (see 31 CFR 1010.311 and 1021.311.[1]

OMB Number: 1506–0064.[2]

Form Number: FinCEN 112.

Abstract: The statute generally referred to as the ''Bank Secrecy Act,'' Titles I and II of Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5332, authorizes the Secretary of the Treasury, *inter alia,* to require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities, to protect against international terrorism, and to implement counter-money laundering programs and compliance procedures.[3] Regulations implementing Title II of the BSA appear at 31 CFR Chapter X. The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.[4] The Secretary of the Treasury was granted authority in 1970, with the enactment of 31 U.S.C. 5313, to require financial institutions to report currency transactions exceeding $10,000.

The information collected on the ''report'' is required to be provided pursuant to 31 U.S.C. 5313 as implemented by FinCEN regulations found at 31 CFR 1010.311 and 1021.311. The information collected under this requirement is made available to appropriate agencies and organizations as disclosed in FinCEN's Privacy Act System of Records Notice relating to BSA Reports.[5]

Current Action: FinCEN is renewing, without change, the OMB-approved electronic data elements currently supporting the reporting of currency transactions. All filings (discrete, batch, and computer-to-computer) will be accessed through the BSA E-Filing system[6] using current registration and login procedures.

Type of Review: Renewal without change of the electronic data elements of the FinCEN CTR that support the electronic filing of a dynamic CTR.

Affected public: Business or other for-profit and not-for-profit financial institutions.

Frequency: As required.

Estimated Reporting Burden: Average of 20 minutes per report and 20 minutes recordkeeping per filing. (The reporting burden of the regulations 31 CFR 1010.311 and 1021.311 is reflected in the burden for the form.)

Estimated Recordkeeping and Reporting Burden: 40 minutes.

Estimated number of respondents: 82,255 (includes depository institutions, broker-dealers, future commission merchants, introducing brokers in commodities, money services businesses, and mutual funds).

Estimated Total Annual Responses: 14,111,600.[7]

Estimated Total Annual Reporting and Recordkeeping Burden: 9,407,733 hours.

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. Records required to be retained under the BSA must be retained for five years.

Request for Comments:

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

[1] This is a new title for this control number. The previously approved title was ''Bank Secrecy Act Currency Transaction Report (BSA–CTR).''

[2] The CTR reporting requirements are currently covered under the following OMB Control numbers: 1506–0004 (Financial Institutions other than Casinos), and 1506–0005 (Casinos and Card Clubs).

[3] Language expanding the scope of the BSA to intelligence or counter-intelligence activities to protect against international terrorism was added by Section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the USA PATRIOT Act), Public Law 107–56.

[4] Treasury Order 180–01 (Sept. 26, 2002).

[5] Department of the Treasury bureaus such as FinCEN renew their System of Records Notices every three years unless there is cause to amend them more frequently. FinCEN's System of Records Notice for BSA Reports System was most recently published at 77 FR 60014–60022 (October 1, 2012).

[6] BSA E-Filing is a free service provided by FinCEN. More information on the filing methods may be accessed at *http://bsaefiling.fincen.treas.gov/main.html.*

[7] Numbers are based on actual 2012 filings as reported to the IRS Enterprise Computing Center-Detroit (EEC–D) as of 09/30/2012. This number reflects the total projected number of filings for both the legacy CTR and CTRC and the FinCEN CTR.

Dated: November 16, 2012.

Jennifer Shasky Calvery,

Director, Financial Crimes Enforcement Network.

[FR Doc. 2012–28521 Filed 11–23–12; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Designation of one (1) individual Pursuant to Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism''

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the name of one (1) individual whose property and interests in property are blocked pursuant to Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism.''

DATES: The designation by the Director of OFAC of the one (1) individual in this notice, pursuant to Executive Order 13224, is effective on November 19, 2012.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Background

On September 23, 2001, the President issued Executive Order 13224 (the ''Order'') pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706, and the United Nations Participation Act of 1945, 22 U.S.C. 287c. In the Order, the President declared a national emergency to address grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the September 11, 2001 terrorist attacks in New York, Pennsylvania, and at the Pentagon. The Order imposes economic sanctions on persons who have committed, pose a significant risk of committing, or support acts of terrorism. The President identified in the Annex to the Order, as amended by Executive Order 13268 of July 2, 2002, 13 individuals and 16 entities as subject to the economic sanctions. The Order was further amended by Executive Order 13284 of January 23, 2003, to reflect the creation of the Department of Homeland Security.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in or hereafter come within the United States or the possession or control of United States persons, of: (1) Foreign persons listed in the Annex to the Order; (2) foreign persons determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States; (3) persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to be owned or controlled by, or to act for or on behalf of those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order; and (4) except as provided in section 5 of the Order and after such consultation, if any, with foreign authorities as the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, deems appropriate in the exercise of his discretion, persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of, such acts of terrorism or those persons listed in the Annex to the Order or determined to be subject to the Order or to be otherwise associated with those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order.

On November 19, 2012 the Director of OFAC, in consultation with the Departments of State, Homeland Security, Justice and other relevant agencies, designated, pursuant to one or more of the criteria set forth in subsections 1(b), 1(c) or 1(d) of the Order, one (1) individual whose property and interests in property are blocked pursuant to Executive Order 13224.

The listing for this individual on OFAC's list of Specially Designated Nationals and Blocked Persons appear as follows:

Individual

1. AL–MUSAWI, Ali Mussa Daqduq (a.k.a. 'ABD AL–YUNIS, Hamid Majid; a.k.a. AL–LAMI, Hamid Muhammad; a.k.a. AL–MASUI, Husayn Muhammad Jabur; a.k.a. AL–MUSAWI, Hamid Muhammad Daqduq; a.k.a. AL–MUSAWI, Hamid Muhammad Jabur; a.k.a. AL–MUSUI, Hamid Muhammad Jabur; a.k.a. DAQDUQ, Ali Mussa; a.k.a. JABUR AL–LAMI, Hamid Muhammad); DOB 01 Sep 1969; alt. DOB 31 Dec 1971; alt. DOB 09 Aug 1971; alt. DOB 09 Sep 1970; alt. DOB 09 Aug 1969; alt. DOB 05 Mar 1972; POB Beirut, Lebanon; alt. POB Al-Karradah, Baghdad, Iraq; nationality Lebanon (individual) [SDGT].

Dated: November 19, 2012.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2012–28656 Filed 11–23–12; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF VETERANS AFFAIRS

National Research Advisory Council, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C., App. 2, that the National Research Advisory Council will hold a meeting on Wednesday, December 5, 2012, in conference room 23, at 131 M Street NE., Washington, DC. The meeting will convene at 9:30 a.m. and end at 3:30 p.m. The meeting is open to the public.

The purpose of the Council is to provide external advice and review for VA's research mission. The agenda will include a review of the 2013 Operations Plan, VA's research portfolio, and a summary of special projects. The Council will also provide feedback on the direction/focus of VA's research initiatives.

No time will be allocated at this meeting for receiving oral presentations from the public. Interested members of the public may submit written statements for the Council's review to Pauline Cilladi-Rehrer, Designated Federal Officer, Office of Research and Development (10P9), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC, 20420, or by email at *pauline.cilladi-rehrer@va.gov.*

Any member of the public wishing to attend the meeting or wishing further

information should contact Ms. Cilladi-Rehrer at (202) 443–5607.

By Direction of the Secretary.

Dated: November 20, 2012.

Vivian Drake,

Committee Management Officer.

[FR Doc. 2012–28597 Filed 11–23–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Disability Compensation, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2, that the Advisory Committee on Disability Compensation will meet on December 5–6, 2012, at the Hilton Homewood Suites, 1475 Massachusetts Avenue NW., Washington, DC. The sessions will begin each day at 8:30 a.m. and end at 4 p.m. The meetings are open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the maintenance and periodic readjustment of the VA Schedule for Rating Disabilities. The Committee is to assemble and review relevant information relating to the nature and character of disabilities arising during service in the Armed Forces, provide an ongoing assessment of the effectiveness of the rating schedule, and give advice on the most appropriate means of responding to the needs of Veterans relating to disability compensation.

The Committee will receive briefings on issues related to compensation for Veterans with service-connected disabilities and other VA benefits programs. Time will be allocated for receiving public comments in the afternoon. Public comments will be limited to three minutes each. Individuals wishing to make oral statements before the Committee will be accommodated on a first-come, first-served basis. Individuals who speak are invited to submit 1–2 page summaries of their comments at the time of the meeting for inclusion in the official meeting record.

The public may submit written statements for the Committee's review to Nancy Copeland, Acting Designated Federal Officer, Department of Veterans Affairs, Veterans Benefits Administration, Compensation Service, Regulation Staff (211D), 810 Vermont Avenue NW., Washington, DC 20420 or email at *nancy.copeland@va.gov.* Any member of the public wishing to attend the meeting or seeking additional information should contact Mrs. Copeland at (202) 461–9685.

Dated: November 20, 2012.

By Direction of the Secretary:

Vivian Drake,

Committee Management Officer.

[FR Doc. 2012–28601 Filed 11–23–12; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 635

Highly Migratory Species; Atlantic Shark Management Measures; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 110831548–2430–01]

RIN 0648–BB29

Highly Migratory Species; Atlantic Shark Management Measures

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS is amending the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan based on several shark stock assessments that were completed from 2009 to 2012. The assessments for Atlantic blacknose, dusky, and scalloped hammerhead sharks indicated that these species are overfished and experiencing overfishing. The assessment for sandbar sharks indicated that this species is overfished, but not experiencing overfishing. The assessment for Gulf of Mexico blacktip sharks, adopted in this rulemaking, indicated that the stock is not overfished and not experiencing overfishing. The assessment for Gulf of Mexico blacknose sharks was not accepted; therefore, the overfished and overfishing statuses have been determined to be unknown. The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (Magnuson-Stevens Act) requires the Agency to implement management measures that prevent overfishing and rebuild overfished stocks, as necessary. Based on the new stock assessments, and after considering public comments received during scoping and on a predraft document, we are proposing measures that would reduce fishing mortality and effort in order to rebuild overfished Atlantic shark species while ensuring that a limited sustainable shark fishery can be maintained consistent with our legal obligations. The proposed measures include changes to commercial quotas and species groups, the creation of several time/area closures, a change to an existing time/area closure, an increase in the recreational minimum size restrictions, and the establishment of recreational reporting for certain species of sharks. The proposed measures could affect U.S. commercial or recreational fishermen who harvest sharks within the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea.

DATES: Written comments will be accepted until February 12, 2013. NMFS will announce the dates and locations of public hearings in a future **Federal Register** notice.

ADDRESSES: NMFS will announce the dates and locations of public hearings in a future **Federal Register** notice.

You may submit comments on this document, identified by NOAA–NMFS–2012–0161, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal *www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2012–0161 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on the right of that line.
- *Mail:* Submit written comments to Peter Cooper, 1315 East-West Highway, Silver Spring, MD 20910.
- *Fax:* 301–713–1917; *Attn:* Peter Cooper

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to the Highly Migratory Species Management Division of the Office of Sustainable Fisheries and by email to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Peter Cooper, Guý DuBeck, Michael Clark, or Karyl Brewster-Geisz at 301–427–8503.

SUPPLEMENTARY INFORMATION: Atlantic tunas and swordfish are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tuna Conventions Act (ATCA), which authorizes the Secretary of Commerce (Secretary) to promulgate regulations as may be necessary and appropriate to implement recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). Federal Atlantic shark fisheries are managed under the authority of the Magnuson-Stevens Act. The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA). On May 28, 1999, NMFS published in the **Federal Register** (64 FR 29090) final regulations, effective July 1, 1999, implementing the Fishery Management Plan (FMP) for Atlantic Tunas, Swordfish, and Sharks (1999 FMP). On October 2, 2006, NMFS published in the **Federal Register** (71 FR 58058) final regulations, effective November 1, 2006, implementing the 2006 Consolidated Highly Migratory Species (HMS) FMP, which details the management measures for Atlantic HMS fisheries, including the Atlantic shark fisheries.

Background

A brief summary of the background of this proposed action is provided below. Additional information regarding Atlantic HMS management can be found in the Draft Environmental Impact Statement for Amendment 5, the 2006 Consolidated HMS FMP and its amendments, the annual HMS Stock Assessment and Fishery Evaluation Reports, and online at *http://www.nmfs.noaa.gov/sfa/hms/.*

On April 28, 2011, we made the determination that scalloped hammerhead sharks were overfished and experiencing overfishing (76 FR 23794). On October 7, 2011, we published a notice announcing our intent to prepare a proposal for Amendment 5 to the 2006 Consolidated HMS FMP with an Environmental Impact Statement in accordance with the requirements of the National Environmental Policy Act (76 FR 62331) based on several assessments and determinations. In that notice, we made stock status determinations based on the results of the Southeast Data, Assessment, and Review 21 process. Determinations in the October 2011

notice included that sandbar sharks are still overfished, but no longer experiencing overfishing, and that dusky sharks are still overfished and still experiencing overfishing (i.e., their stock status has not changed). The October 2011 notice also acknowledged recent available scientific information indicating that there are two stocks of blacknose sharks, the Atlantic blacknose shark and the Gulf of Mexico blacknose shark, and that the Atlantic blacknose shark stock is overfished and experiencing overfishing, and the Gulf of Mexico blacknose shark stock status is unknown.

In that notice, as part of a scoping process for Amendment 5, we asked for comments on existing commercial and recreational shark management measures that would assist us in determining options for conservation and management of scalloped hammerhead, sandbar, dusky, and blacknose sharks consistent with relevant Federal statutes. We held six scoping meetings from October through December 2011 and released a scoping presentation in conjunction with the **Federal Register** notice. In the presentation and at the scoping meetings, we described results of stock assessments and potential options for management of scalloped hammerhead, sandbar, dusky, and blacknose sharks to reach rebuilding goals.

We released a predraft of Amendment 5 to the 2006 Consolidated HMS FMP, which summarized and incorporated comments received during scoping, to the HMS Advisory Panel on March 14, 2012, and made it available to the public on the Internet for broader public comment. The predraft included, among other things, the outcome of stock assessments for sandbar, dusky, scalloped hammerhead, Atlantic blacknose, and Gulf of Mexico blacknose sharks as well as potential management measures for these species/stocks. We requested that the HMS Advisory Panel and Consulting Parties (Atlantic, Gulf, and Caribbean Fishery Management Councils, Marine Fisheries Commissions, U.S. Coast Guard, and other State and Federal Agency representatives) submit comments on the predraft by April 13, 2012. The predraft was published online and public comments were collected.

We published a **Federal Register** notice on May 29, 2012 (77 FR 31562) notifying the public that we were considering the addition of Gulf of Mexico blacktip sharks to Amendment 5. This addition was proposed because Gulf of Mexico blacktip sharks were undergoing a stock assessment as part of the Southeast Data, Assessment, and Review 29 process, and that process would be completed before this amendment was finalized. Therefore, we believed that the addition of Gulf of Mexico blacktip sharks to this amendment would facilitate administrative efficiency by optimizing our resources, and would allow us to address new scientific information in the timeliest manner. We also expected that this addition would provide better clarity to and understanding by the public regarding any possible impacts of the rulemaking on shark fisheries by combining potential management measures resulting from recent shark stock assessments into one rulemaking. Public comments on this addition to Amendment 5 were accepted until June 21, 2012. We received two comments on the notice, one supporting the addition of blacktip sharks, the other opposing the addition. The commenter who opposed the addition felt that more time was needed in the predraft scoping period to provide comment on any particular proposals regarding blacktip shark management. While it is preferable to have a pre-draft, it is not a legal requirement and we believe that ample opportunity will be presented through the rulemaking process for public input and comment. The commenter who supported the addition felt that this was the most responsive and timely way to address the stock assessment.

The Final Stock Assessment Report for Gulf of Mexico Blacktip Sharks was completed in June 2012, and the peer review was completed in July 2012. The assessment was conducted through the Southeast Data, Assessment, and Review process and the peer review was conducted by two scientists under the Center for Independent Experts. Both peer reviewers raised questions about the assessment. One reviewer accepted the model and its results. The other peer reviewer supported the assessment's conclusion that the Gulf of Mexico blacktip shark stock is not overfished, but concluded that the status regarding overfishing is uncertain. The Southeast Fisheries Science Center addressed the questions from the peer reviewers in a post peer-review ''updates and projections'' document written by stock assessment scientists, who were the lead scientists during the Southeast Data, Assessment, and Review 29 process. The scientists concluded that the reviewer's conclusion on the overfishing status was based on the reviewer's interpretation that the model configuration was not appropriate for the stock. Specifically, the peer reviewer did not think that reasonable variation in recruitment was incorporated into the model and was not confident about the conclusion of ''no overfishing'' reached in the assessment because three of the indices had declined in the last five years and because maximum sustainable yield fishing mortality (F_{MSY}) was low. The peer reviewer stated that a model with reasonable variation in recruitment could indicate a current fishing mortality more similar to F_{MSY} and thus show the stock approaching an overfishing condition. The stock assessment scientists showed in the post-review updates and projections document that process error in recruitment was fully considered and that recruitment in the model was reasonable. They also showed that the low value of F_{MSY} is consistent with what is expected from the biology of sharks, and that of the three indices mentioned by the reviewer that showed a decline, two show an increase in the terminal year of 2010. Therefore, the stock assessment scientists concluded that the stock assessment result of no overfishing is warranted. As such, in this proposed rule, we accept the results of the stock assessment as final and declare the Gulf of Mexico blacktip shark stock to be not overfished with no overfishing occurring.

Results of the stock assessment show that Gulf of Mexico blacktip sharks are not overfished (SSF_{2009}/SSF_{MSY} = 2.50–2.78) and are not experiencing overfishing (F_{2009}/F_{MSY} = 0.03–0.106). Because the stock is healthy, projections and the calculations needed to determine the acceptable biological catch were not considered part of the statement of work for the stock assessment and therefore were not conducted during the stock assessment itself (for an overfished stock, these calculations would have been done before completion of the stock assessment). Rather, the Southeast Fisheries Science Center calculated the projections after the stock assessment as a whole was peer reviewed. The stock assessment noted that current removal rates are sustainable, and the subsequent projections, which were completed outside the Southeast Data, Assessment, and Review process, indicate that current removals are unlikely to lead to an overfished fish stock by 2040. The projections also indicate that higher levels of removal (those associated with an F_{TARGET} scenario) are unlikely to result in an overfished stock; however, the methodology for estimating F_{TARGET} is currently in development for sharks and has yet to be introduced and reviewed within the Southeast Data, Assessment,

and Review process for this species. Therefore, we analyze a range of alternatives to calculate the total allowable catch and define a draft preferred alternative. Once this rule and Amendment is finalized in 2013, we will establish the total allowable catch described in the final preferred alternative to be the annual catch limit for the stock. As described above and in the Alternative Suites, we split the total allowable catch into recreational harvest, dead discards, and commercial landings to calculate the different sector annual catch limits. These sector annual catch limits are currently in draft and their calculation depends on the amount calculated for the total allowable catch. Thus, we analyze a range of sector annual catch limits dependent on the total allowable catch.

Based on comments received during scoping, on the predraft, and on our notice considering the addition of Gulf of Mexico blacktip shark, we determined the scope of significant issues of concern that would be addressed in this draft amendment. The objectives in the draft amendment and this proposed rule are driven by statutory mandates under the Magnuson-Stevens Act, such as rebuilding overfished sandbar, dusky, scalloped hammerhead, and Atlantic blacknose shark stocks, and ending overfishing of dusky, scalloped hammerhead, and Atlantic blacknose sharks. The specific goals and objectives of the draft amendment and proposed rule are: (1) To end overfishing and achieve optimum yield for dusky, scalloped hammerhead, and Atlantic blacknose sharks; (2) to implement a rebuilding plan for scalloped hammerhead and Atlantic blacknose sharks to ensure that fishing mortality levels for both species are maintained at or below levels that would result in a 70-percent probability of rebuilding in the timeframe recommended by the assessments; (3) to modify the current rebuilding plan for dusky sharks to ensure that fishing mortality levels for dusky sharks are maintained at or below levels that would result in a 70-percent probability of rebuilding in the timeframe recommended by the assessment; (4) to maintain the rebuilding plan for sandbar sharks to ensure a 70-percent probability of rebuilding in the timeframe recommended by the assessment; and (5) to achieve optimum yield and provide an opportunity for the sustainable harvest of Gulf of Mexico blacknose, Gulf of Mexico blacktip sharks, and other sharks, as appropriate.

To meet these objectives, we consider a range of alternatives for several different issues including establishing total allowable catches, quota limits, time/area closures and bycatch caps, as well as establishing rebuilding plans for overfished stocks, and recreational measures. Because many of the species-specific total allowable catch, commercial quota, and recreational measures are interlinked, these alternatives are arranged and analyzed in groups of Alternative Suites. In addition to the Alternative Suites, which focus on quotas and recreational measures, we developed potential stand-alone alternatives for pelagic and bottom longline effort modifications or controls. These alternatives contain independent measures to modify and/or establish time/area closures, bycatch caps, and restrictions within the shark research fishery. Many of these effort modification alternatives are designed to reduce fishing mortality of dusky sharks, a species that has been prohibited from commercial and recreational retention since 2000, but was still determined to be overfished and experiencing overfishing. For details regarding all the alternatives considered and their potential impacts, please see draft Amendment 5. A summary of the alternatives and their expected impact is found below. The proposed measures in this rule are the preferred alternatives in draft Amendment 5.

It is important to note that while the alternatives could affect all shark fishing, this proposed rule and the draft Amendment 5 do not propose changes to the current total allowable catch or commercial quota for sandbar sharks. According to the 2010/2011 stock assessment, current management measures implemented in Amendment 2 to the 2006 Consolidated HMS FMP in 2008 appear to have stopped overfishing on sandbar sharks. Additionally, according to the most recent stock assessment, the sandbar shark stock status is improving, and the current rebuilding timeframe, with the 2008 total allowable catch of 220 metric tons (mt) whole weight (ww) (158.3 mt dressed weight (dw)), provides a greater than 70-percent probability of rebuilding by 2070. Having a 70-percent probability of rebuilding is the level of success for rebuilding of sharks that was established in the 1999 FMP for Atlantic Tunas, Swordfish, and Sharks and carried over in the 2006 Consolidated HMS FMP. The recent stock assessment also indicates that reducing the total allowable catch from the current 220 to 178 mt ww (128 mt dw) would provide a 70-percent chance of rebuilding the stock by the year 2066, a reduction of 4 years from the current rebuilding timeframe. Because the current total allowable catch already provides a greater than 70-percent probability of rebuilding, and because overfishing is not occurring and the stock status is improving, we believe that maintaining the current total allowable catch and rebuilding plan is fully consistent with the Magnuson-Stevens Act requirements and the National Standard Guidelines. Additionally, a change in the rebuilding plan that would result in a reduction in total allowable catch of sandbar sharks from 220 to 178 mt ww could have significant economic impacts to fishermen participating in the shark research fishery. If fishermen feel the economic impacts are sufficiently negative, they are less likely to participate in the shark research fishery which, in turn, would likely reduce the ability of the Agency to both collect biological and other data for stock assessments from the research fishery and monitor the status of sandbar and other sharks. Furthermore, we anticipate that the other measures proposed, such as modifications to the recreational minimum size and new or expanded time/area closures, would likely further reduce fishing mortality of sandbar sharks beyond the reductions considered in the assessment, and that these reductions will likely provide assurances of meeting or reducing the current rebuilding timeframe. After considering this information, we are maintaining the current sandbar shark total allowable catch of 220 mt ww and the current sandbar shark rebuilding plan including regulations prohibiting possession of sandbar sharks in commercial and recreational shark fisheries and allowing retention only in a shark research fishery.

In addition to the management measures considered in this proposed action and below, we are also proposing several minor changes in the regulations for corrective or clarification purposes. The proposed changes are not expected to have any ecological or economic impacts and do not impose any new requirements on the regulated community or require fishermen to change their actions to comply with the regulations. These administrative changes are: (1) The addition of a definition for ''fork length''; (2) an update to the permit Web page and name of the reporting system at § 635.5(c)(1); (3) the deletion of incorrect text referring to swordfish permits in a sentence regarding tunas at § 635.20(a); (4) a correction changing the term ''NED closed area'' to ''NED restricted area'' at § 635.21(c)(5)(iii)(C);

(5) the removal of smoothhound shark language at § 635.24(a)(7) that incorrectly remained after the final rule (November 10, 2011, 76 FR 70064) delaying the effectiveness of the smoothhound measures indefinitely; (6) the removal of language at § 635.27(b)(1)(iv)(C) that required landings reported by dealers located in certain areas to be counted against the regional quota where the dealer is located. Measures recently put in place in the electronic dealer reporting rule (August 8, 2012, 77 FR 47303) allow dealers to report and to count landed fish against the appropriate quota of the region where the fish was caught; and (7) in Table 1 of Appendix A, a correction to the scientific name of Atlantic angel sharks along with a removal of the headings ''ridgeback'' and ''non-ridgeback sharks'' since, with the proposed changes in this rule, those terms are no longer used. Additionally, to accommodate the changes being proposed and to more clearly organize the regulations § 635.27(b) has been reorganized. Changes to the operative text are minimal and include: removing language and sentences that refer to text that will be expired before this rule is finalized and removing terms such as ''non-sandbar LCS'' that would no longer be operable based on the proposed changes in this rule.

Summary of the Alternatives Considered Regarding Total Allowable Catches, Commercial Quotas, and Recreational Measures

As described above, because many of the species-specific total allowable catch, commercial quota, and recreational measures are interlinked, these alternatives are arranged in groups of Alternative Suites. We considered five Alternative Suites that were chosen to meet the objectives of the rulemaking consistent with the Magnuson-Stevens Act, the 2006 Consolidated HMS FMP and its amendments, and other requirements. Each Alternative Suite analyzes certain management actions under seven different topics including: Scalloped hammerhead measures, large coastal shark (LCS) measures, blacktip measures, blacknose measures, non-blacknose small coastal shark (SCS) measures, quota linkage measures, and recreational measures.

A. Analyses of the Proposed Alternative Suite

We are proposing the management measures in Preferred Alternative Suite A2, the Preferred Alternative Suite in the draft Amendment 5. Preferred Alternative Suite A2 would establish species-specific total allowable catches for scalloped hammerhead, Atlantic blacknose, Gulf of Mexico blacknose, and Gulf of Mexico blacktip sharks. It also would also create regional commercial quotas for all hammerheads combined, blacknose, non-blacknose SCS, and ''aggregated LCS,'' and species-specific commercial quotas for blacknose and Gulf of Mexico blacktip sharks. Furthermore, certain quota would be linked to prevent overfishing, and there are multiple recreational measures that would be implemented, including increasing the minimum size and requiring non-tournament reporting of hammerhead sharks. The details and impacts of each of these measures are described below, starting with impacts of the alternative as a whole followed by the impacts of the alternative on each of the seven topics in the Alternative Suite.

Overall, Preferred Alternative Suite A2 is expected to have direct, moderate, beneficial ecological impacts in the short- and long-term as these measures in the Atlantic shark fisheries would end overfishing and rebuild the stocks. These impacts would mostly affect scalloped hammerhead and blacknose sharks, because the quotas for those species would be reduced slightly. The quota linkages between species and species groups would ensure that overfishing ends because shark species that are undergoing rebuilding would not be caught as bycatch in other shark fisheries once the directed quota category has been closed. These management measures would cause neutral indirect impacts in the short- and long-term since fishermen would not be expected to redirect fishing pressure on other species. The cumulative direct and indirect impacts on essential fish habitat, predator/prey relationships, and protected resources would be neutral for the short- and long-term because commercial quotas would be similar to or reduced slightly compared to current levels and fishing pressure is not expected to change.

Overall, Preferred Alternative Suite A2 would likely have direct short- and long-term minor adverse socioeconomic impacts. These impacts would mostly affect fishermen targeting scalloped hammerhead and blacknose sharks, because those quotas for those species would be reduced. Fishermen are likely to adapt to the new regulations by fishing in other fisheries, or changing their fishing habitats. Recreational management measures would increase the size limit and would require fishermen to catch and release sharks (rather than land them), although tournament participants should not be impacted because tournament participants typically target larger sharks and the sharks many tournaments target, such as shortfin mako, blue, and thresher, grow to larger than 96 inches FL. Neutral socioeconomic impacts are expected for fishermen targeting the newly configured ''aggregated LCS'' and non-blacknose SCS groups since the new proposed quotas are based on the average landings for each species. Quota linkages would affect the socioeconomic impacts based on the fishing rate of each linked shark quota. For example, the Preferred Alternative Suite A2 proposes to link regional hammerhead shark and aggregated LCS quotas so that the two quotas will open and close together. If fishermen fill both quotas at about the same rate, there will be little or no unutilized quota. If, however, one or the other is filled at a much faster rate than the other and both quotas close, there could be quota available that otherwise could have been harvested and sold by fishermen. When we compare the socioeconomic impacts of Preferred Alternative Suite A2 to the other Alternative Suites, this Alternative Suite would cause fewer impacts overall to fishermen. For this reason and the ecological reasons stated above, we prefer this Alternative Suite at this time.

1. Scalloped Hammerhead Sharks

Under Preferred Alternative Suite A2, scalloped, smooth, and great hammerhead sharks (hammerhead sharks) would be removed from what is now the ''non-sandbar LCS'' complex, and separate Atlantic and Gulf of Mexico hammerhead shark quotas would be established. To calculate the Atlantic and Gulf of Mexico hammerhead shark quotas, we would estimate the maximum sustainable level of scalloped hammerhead shark commercial landings by using the total allowable catch calculated in the 2009 stock assessment and all sources of scalloped hammerhead mortality (including recreational landings, commercial discards, and research mortality). We would then split this maximum sustainable level of scalloped hammerhead shark commercial landings between each region, and make it applicable to scalloped, smooth, and great hammerhead sharks. As a result, we are proposing that the total Atlantic and Gulf of Mexico commercial hammerhead shark quota would be 52.2 mt dw (115,076 lb dw). This quota would be split between the two regions using the average percentage of hammerhead sharks landed in each region from 2008 to 2011, or 54.2 percent for the Atlantic region and 45.8 percent for the Gulf of Mexico region.

This action would have short- and long-term direct, moderate, beneficial ecological impacts for the following reasons. A separate hammerhead shark quota in each region would allow us to more precisely monitor commercial landings of the species to keep mortality within the recommended total allowable catch in the stock assessment and to rebuild within the parameters set by the rebuilding plan. Additionally, including all three large hammerhead species (scalloped, great, and smooth hammerhead sharks) under the same quota would prevent fishing in excess of the quota that could occur as a result of species identification problems. The three large hammerhead species can be difficult to differentiate, particularly when dressed with the head removed. Including all three species under one quota is proposed, because, otherwise, scalloped hammerhead sharks that are mistakenly identified as one of the other large hammerhead species could improperly be reported under the LCS quota. Including all three species in one quota will therefore enable us to more effectively monitor commercial landings of hammerhead sharks and will provide additional ecological benefits for the species by better tracking the populations and more carefully enforcing the quota limits. Preferred Alternative Suite A2 would cause neutral direct and indirect impacts on essential fish habitat, predator/prey relationships, and protected resources in the short- and long-term because the changed hammerhead shark complex and quota should not increase fishing pressure.

This action would have short- and long-term direct minor adverse socioeconomic impacts due to the reduction in hammerhead shark quotas. From 2008 through 2011, the data indicate that fishermen caught and sold an annual average 63,404 lb dw of hammerhead sharks in the Atlantic and 53,613 lb dw in the Gulf of Mexico. Under Preferred Alternative Suite A2, harvest of hammerhead sharks would be limited to 62,371 lb dw in the Atlantic and 52,705 lb dw in the Gulf of Mexico. Using the ex-vessel prices described in the DEIS under Alternative Suite A1 and assuming a fin-to-carcass ratio of 5 percent, this would result in the hammerhead fishery having an average annual ex-vessel value of $50,721 in the Atlantic (63,404 lb of meat, 3,170 lb of fins) and $53,618 in the Gulf of Mexico (53,613 lb of meat, 2,681 lb of fins). Under the quotas proposed under Preferred Alternative Suite A2, ex-vessel hammerhead shark revenue would be reduced by $809 to $49,912 in the Atlantic (62,390 lb of meat, 3,120 lb of fins) and reduced by $928 to $52,690 in the Gulf of Mexico (52,690 lb of meat, 2,634 lb of fins), assuming the same ex-vessel values and fin-to-carcass ratio. These reductions in revenue would negatively impact fishermen in the directed and incidental hammerhead shark fishery but not to a great extent. Additionally, hammerhead sharks species rarely make up a significant portion of the catch. Therefore, short- and long-term direct minor adverse socioeconomic impacts are expected.

2. Large Coastal Shark Complex

Under Preferred Alternative Suite A2, species formerly grouped in Atlantic and Gulf of Mexico non-sandbar LCS complexes would be re-grouped. Some species now would be addressed individually while others would continue to be managed within a newly-configured and re-named complex. In the Atlantic, all three hammerhead sharks (scalloped, smooth, and great hammerhead sharks) would be removed from the Atlantic non-sandbar LCS quota and a separate Atlantic hammerhead shark quota would be established. The methodology for establishing the Atlantic hammerhead shark quota is outlined above. After removing hammerhead sharks, the sharks remaining from the Atlantic non-sandbar LCS quota would be renamed the ''Atlantic Aggregated LCS quota'' and would include blacktip, bull, lemon, nurse, silky, spinner, and tiger sharks. Using the methodology outlined in draft Amendment 5, under Preferred Alternative Suite A2, the Atlantic Aggregated LCS commercial quota would be 168.2 mt dw. For the Gulf of Mexico region, blacktip sharks as well as all three hammerhead sharks (scalloped, smooth, and great hammerhead sharks) would be removed from the current Gulf of Mexico non-sandbar LCS complex, and the complex, composed of the remaining species, would be renamed the ''Gulf of Mexico aggregated LCS.'' In addition, a separate quota would be established for both blacktip sharks and hammerhead sharks. The Gulf of Mexico Aggregated LCS would include bull, lemon, nurse, silky, spinner, and tiger sharks. Using the methodology described in the draft Amendment 5, under Preferred Alternative Suite A2, the Gulf of Mexico aggregated LCS commercial quota would be 157.9 mt dw.

The aggregated LCS quota would be based on average annual landings of the remaining species. Therefore, those species comprising the aggregated LCS management groups would not experience a change in fishing pressure, and landings would be capped at recent levels. For these reasons, short- and long-term direct ecological impacts resulting from this portion of Preferred Alternative Suite A2 are expected to be neutral. Similarly, the short- and long-term direct socioeconomic impacts resulting from this portion of Preferred Alternative Suite A2 are expected to be neutral. We do not expect any additional ecological or socioeconomic impacts to occur as the result of the measures in this Alternative Suite.

3. Blacktip Sharks

Under Preferred Alternative Suite A2, blacktip sharks would be removed from the non-sandbar LCS quota complex in the Gulf of Mexico and a separate blacktip quota would be established along with a new ''aggregated LCS'' commercial quota. The assessment of Gulf of Mexico blacktip sharks was recently completed and we adopt its results as final in this proposed rule. The assessment and the projections completed by the Southeast Fisheries Science Center indicate that the Gulf of Mexico blacktip shark stock is not overfished and overfishing is not occurring, that current removal rates are sustainable and are unlikely to lead to an overfished stock by 2040, and that higher levels of removal are unlikely to result in an overfished stock. Based on this information, we would establish a total allowable catch based on current sustainable levels of catch. This total allowable catch would be 413.4 mt dw and would be calculated by summing all of the sources of mortality (recreational landings, commercial discards, and research set-aside mortality) and the commercial quota. The commercial quota would be calculated by taking the proportion of current Gulf of Mexico blacktip shark landings that make up the Gulf of Mexico non-sandbar LCS quota multiplied by the Gulf of Mexico non-sandbar LCS quota that will be in effect in 2013. This would result in a commercial quota of 256.7 mt dw (565,921 lb dw).

Neutral short- and long-term direct impacts would be expected under Alternative Suite A2, the preferred alternative, as overfishing is not occurring and commercial landings would be capped at current fishing levels. Based on the stock assessment, this alternative would cause neutral direct and indirect impacts on EFH, predator/prey relationships, and protected resources in the short- and long-term because fishing pressure would be similar to current levels and is not anticipated to change.

This alternative suite's proposed blacktip shark measure is likely to result

in short- and long-term direct socioeconomic neutral impacts. The quota of 256.7 mt dw (565,921 lb dw) of blacktip sharks is representative of the current blacktip shark landings percentage applied to the 2013 Gulf of Mexico non-sandbar LCS quota (see draft Amendment 5 for further details). Based on current average annual landings, the Gulf of Mexico blacktip shark fishery has average annual revenues of $650,809 across the whole fishery (2008–2011 median ex-vessel values of $0.40 for meat and $15for fins, based on a 5 percent fin-to-carcass ratio). Given the current stock status, fishermen would likely continue to realize this revenue, fishery-wide. Therefore, short- and long-term direct socioeconomic impacts are expected to be neutral.

4. Blacknose Sharks

In 2010, Amendment 3 to the 2006 Consolidated HMS FMP (Amendment 3) removed blacknose sharks from the SCS complex and established a separate quota for blacknose sharks that covered both the Atlantic and Gulf of Mexico regions. Preferred Alternative Suite A2 would create separate commercial quotas for Atlantic and Gulf of Mexico blacknose sharks based on the recent blacknose assessments conducted under the Southeast, Data, Assessment and Review 21 process, which determined that two separate stocks exist (Atlantic and Gulf of Mexico). The Atlantic commercial quota would be derived from the total allowable catch of 7,300 blacknose sharks, or 21.2 mt dw, that was specified in the stock assessment. Within the total allowable catch of 21.2 mt dw, all of the sources of mortality (recreational landings, commercial discards, and research set-aside mortality) would be summed and subtracted from the total allowable catch to calculate the commercial quota of 18 mt dw (39,749 lb dw).

The Southeast Data, Assessment, and Review 21 Review Panel did not accept the Gulf of Mexico stock assessment for blacknose sharks, and therefore, we did not receive a total allowable catch recommendation. Therefore, we determined that the stock status for the Gulf of Mexico blacknose shark stock is unknown (76 FR 62331; October 7, 2011). As such, we explored how to calculate a Gulf of Mexico blacknose shark total allowable catch that would include all commercial and recreational landings and any dead discards in all fisheries that interact with Gulf of Mexico blacknose sharks. A total allowable catch of 34.9 mt dw for blacknose sharks was calculated by summing mortality from the 2011 commercial fishery and average recreational and discard mortality since the implementation of blacknose shark measures from Amendment 3 to the 2006 Consolidated HMS Fishery FMP in 2010. Amendment 3 removed blacknose sharks from the SCS quota and created a blacknose shark-specific quota of 19.9 mt dw (43,872 lb dw) for both regions. Also, the blacknose shark and non-blacknose SCS quotas were linked, so if either the blacknose shark quota or non-blacknose SCS quota (488,540 lb dw; 221.6 mt dw) reaches 80 percent, both fisheries close for the rest of the season. The reduced quotas and quota linkage changed the fishery as fishermen began avoiding blacknose sharks to ensure that the larger non-blacknose SCS quota remained open. The 2011 commercial mortality was used to calculate the total allowable catch instead of average commercial mortality since Amendment 3 was implemented because of a shortened 2010 fishing season due to the implementation of Amendment 3 (season opened on June 1, 2010) and fishing restrictions due to the Deepwater Horizon/BP oil spill. On May 11, 2010, we issued an emergency rule to close portions of the Gulf of Mexico Exclusive Economic Zone to all fishing, in order to respond to the evolving nature of the Deepwater Horizon/BP oil spill in the Gulf of Mexico (75 FR 27217). Thus, a large portion of the fishing grounds for blacknose and non-blacknose SCS in the Gulf of Mexico, whose commercial fishing season opened on June 1, 2010, were closed for most of the 2010 commercial fishing season. Using 2011 commercial landings of blacknose sharks in the Gulf of Mexico, the new Gulf of Mexico blacknose shark commercial quota would be 2.0 mt dw (4,513 lb dw). Establishing this total allowable catch would account for the blacknose shark mortality that occurs as bycatch in the shrimp trawl and reef fish fisheries in the Gulf of Mexico region. Since the Gulf of Mexico Fishery Management Council manages the shrimp trawl and reef fish fisheries, we would continue to work with the Gulf of Mexico Fishery Management Council to establish bycatch reduction methods, as appropriate, to reduce mortality in the shrimp trawl and reef fish fisheries.

Preferred Alternative Suite A2 is anticipated to have minor, beneficial ecological impacts for blacknose sharks as it would separate blacknose sharks into two separate regions (Atlantic Ocean and Gulf of Mexico) as recommended in the Southeast Data, Assessment and Review 21 stock assessment and reduce fishing mortality based on the total allowable catch. The Atlantic blacknose shark stock is overfished with overfishing occurring, while the Gulf of Mexico stock status is unknown. Projections of the base model indicated that the Atlantic stock could rebuild by 2043 with a total allowable catch of 7,300 blacknose sharks. For the Gulf of Mexico blacknose shark stock, we would use a total allowable catch of 17,802 blacknose sharks, which was determined by using the average mortality of blacknose sharks since Amendment 3 as well as commercial landings from 2011. Preferred Alternative Suite A2 would cause neutral direct and indirect impacts on essential fish habitat, predator/prey relationships, and protected resources in the short- and long-term because the fishery would not change.

This alternative would decrease the blacknose shark quotas overall in each region. In the Atlantic region, blacknose shark landings would be reduced by 61 percent to allow for a total allowable catch of 7,300 blacknose sharks consistent with the assessment. The new commercial quota for the Atlantic blacknose sharks would be 18.0 mt dw (39,749 lb dw) under Preferred Alternative Suite A2. Average annual gross revenues for the blacknose shark landings for the Atlantic region would decrease by $3,268 from $58,122 under the No Action alternative to $54,854 under Preferred Alternative Suite A2. We anticipate these directed and incidental shark permit holders would experience minor direct adverse socioeconomic impacts in the short- and long-term as blacknose sharks are not the targeted shark species for SCS fishermen.

For the Gulf of Mexico, we would implement a blacknose shark quota that is equal to the 2011 commercial landings. The new quota would be 2.0 mt dw (4,513 lb dw) under this alternative. This would cause a minor increase to the average annual gross revenues for the blacknose shark landings for the Gulf of Mexico region from $3,273 under the No Action alternative to $5,650 under Preferred Alternative Suite A2. We anticipate these directed and incidental shark permit holders would experience neutral direct socioeconomic impacts in the short- and long-term since the new Gulf of Mexico blacknose shark quota would be consistent with current landings.

Under Preferred Alternative Suite A2, we anticipate that there would be direct moderate adverse socioeconomic impacts in the short-term from the proposed quotas under this Alternative Suite. In the short-term, lost revenues would be moderate for the 22 directed

shark permit and 3 incidental shark permit holders that land blacknose sharks in the Atlantic region, and the 8 directed shark and the 2 incidental shark permits that land blacknose sharks in the Gulf of Mexico. Over the long-term, the socioeconomic impact would be minor, as the fishermen are likely to adapt to the new regulations by fishing in other fisheries, or change their fishing habitats. The indirect socioeconomic impacts from Preferred Alternative Suite A2 would be adverse, but minor in the short-term, as the anticipated reduction in blacknose landings would result in a corresponding loss of revenue for a small number of businesses as blacknose shark product does not make up a large part of the market. In the long-term, these indirect impacts would be neutral as businesses would be expected to find other sources of revenue to augment the losses from the reduced quotas.

5. Non-Blacknose Small Coastal Sharks

Preferred Alternative Suite A2 would separate the non-blacknose SCS quota into two separate regions (Atlantic Ocean and Gulf of Mexico) based on the percentage of regional landings since implementation of the Amendment 3 blacknose shark quotas. As described above, blacknose sharks were removed from the SCS complex and a non-blacknose shark-specific quota of 221.6 mt dw (488,540 lb dw) was created for both regions. Blacknose shark and non-blacknose SCS quotas were also linked so that if either the non-blacknose SCS quota or blacknose shark quota reaches 80 percent, both fisheries close for the rest of the fishing year. The reduced quotas and quota linkage changed how the SCS fishery operated as fishermen began to specifically avoid blacknose sharks to ensure that the larger non-blacknose SCS quota would remain open. According to 2010 and 2011 dealer data, an average of 89.3 percent of non-blacknose landings occurred in the Atlantic region (94.2 and 85.2 percent for 2010 and 2011, respectively). The 2010 and 2011 Gulf of Mexico non-blacknose SCS landings were 5.8 and 14.8 percent, respectively, for an average of 10.7 percent for total Gulf of Mexico non-blacknose SCS landings. Based on these averages, the new non-blacknose SCS quota in the Atlantic would be 197.9 mt dw (436,290 lb dw), while the Gulf of Mexico quota would be 23.7 mt dw (52,249 lb dw).

This alternative is anticipated to have direct, minor beneficial ecological impacts for Atlantic sharpnose, bonnethead, and finetooth sharks in the short- and long-term as it would create regional quotas and restrict fishing mortality below the total allowable catch established for SCS in the last stock assessment for those species. Currently, there is one quota for non-blacknose SCS in both the Atlantic and Gulf of Mexico, and, according to landings reports from 2008 through 2011, fishing pressure for non-blacknose SCS is higher in the Atlantic region. Over time, this could cause unsustainable fishing pressure on non-blacknose SCS in the Atlantic region. However, regional quotas would cap fishing pressure at levels since Amendment 3 was implemented and prevent overfishing. Since fishing pressure would be similar to current levels, the impacts on essential fish habitat, predator/prey relationships, and protected resources would be neutral.

Based on the landings data, the non-blacknose SCS quota in the Atlantic would be 197.9 mt dw (436,243 lb dw) and the Gulf of Mexico quota would be 23.7 mt dw (52,296 lb dw). In the Atlantic, an average of approximately 33 vessels with directed shark permits landed blacknose sharks, while approximately 10 vessels with incidental shark permits landed non-blacknose SCS. The average annual gross revenues from Atlantic non-blacknose SCS meat were $314,095 and average annual gross revenues for Atlantic non-blacknose SCS fins were $261,746, making total average annual gross revenues for blacknose shark landings for the entire fishery $575,841.

In the Gulf of Mexico, an average of approximately nine vessels with directed shark permits landed blacknose sharks, while approximately three vessels with incidental shark permits landed non-blacknose SCS since Amendment 3. The average annual gross revenues from Gulf of Mexico non-blacknose SCS meat were $31,378 and average annual gross revenues for Atlantic non-blacknose SCS fins were $39,222, making total average annual gross revenues for blacknose shark landings for the entire fishery $70,600.

Under the Preferred Alternative Suite A2, there would be neutral direct and indirect socioeconomic impacts to directed and incidental shark permit holders as the average annual gross revenues from non-blacknose SCS landings would be the same as the status quo in the short- and long-term. Fishermen and shark dealers would be expected to operate in the same manner as the status quo in the short- term. However, this Alternative Suite could have minor negative direct and indirect socioeconomic impacts on fishermen and shark dealers and associated shark businesses that deal with non-blacknose SCS product if fishing effort increases for non-blacknose SCS. Currently, the fishery never reaches the allowable quota, but that could change with a smaller regional quota and if fishermen are displaced from other fisheries.

6. Quota Linkages

Under Preferred Alternative Suite A2, several quota linkages would be implemented to prevent exceeding the newly established quotas. Generally, two or more shark species with separate quotas are caught together on the same set or trip. If the quota for one of these species has been filled and closed, that species could still be caught in other directed shark fisheries as bycatch, possibly resulting in mortality and negating some of the conservation benefit of quota closures. Preferred Alternative Suite A2 would link several quotas to ensure that the quota for shark species that are caught together open and close at the same time. In the Atlantic, the hammerhead shark and aggregated LCS quotas would be linked. These two quotas would open at the same time and both quotas would close when landings of either hammerhead sharks or aggregated LCS reach, or are expected to reach, 80 percent of the quota. Opening and closing these two quotas concurrently would strengthen the conservation benefits of either group's quota closure. Similarly, in the Gulf of Mexico, hammerhead sharks, blacktip sharks, and the aggregated LCS quota would open at the same time and all three quotas would close when landings of any one of the three quotas reach, or are expected to reach, 80 percent. Also, linkage of the blacknose and non-blacknose SCS regional quotas would be implemented under this alternative. The Atlantic blacknose shark quota would be linked to the Atlantic non-blacknose SCS quota, and the Gulf of Mexico blacknose shark quota would be linked to the Gulf of Mexico non-blacknose SCS quota.

We would also establish a mechanism to allow inseason and annual regional quota transfers between species or species groups where the quota was split regionally for management purposes and not as a result of a stock assessment. At this time, only the Atlantic and Gulf of Mexico non-blacknose SCS and the Atlantic and Gulf of Mexico hammerhead regional quotas meet this criterion. Monitoring total mortality for these quotas, not regional-specific mortality, is necessary for conservation purposes. Providing this regional quota transfer flexibility would facilitate overall quota management while having no negative conservation impacts on stocks where

regional mortality is not a concern for stock conservation. Before making any inseason quota transfer, we would consider certain criteria and other relevant factors described in § 635.27(b)(2)(iii)(A) through (b)(2)(iii)(H).

The quota linkages proposed under this Alternative Suite would be expected to have short- and long-term direct moderate beneficial ecological impacts. Linking quotas of species that are often caught together on the same set or trip can prevent incidental catch of sharks caught in other directed shark fisheries as bycatch, possibly resulting in mortality and negating some of the conservation benefit of quota closures. For quotas that are linked, the fisheries would open and close together. In the Atlantic, the hammerhead shark and aggregated LCS quotas would be linked as would the non-blacknose SCS and blacknose shark quotas. If, for example, the Atlantic the hammerhead quota closes based on landings information, the Atlantic aggregated LCS quota would close as well, preventing additional incidental hammerhead mortality from occurring in the directed aggregated LCS fishery. Similarly, if the aggregated LCS quota closes, a hammerhead quota closure would prevent incidental aggregated LCS landings in the directed hammerhead fishery, to the extent that a directed hammerhead fishery occurs. In the Gulf of Mexico, the blacktip, hammerhead, and aggregated LCS quota would be linked as would the non-blacknose SCS and blacknose shark quotas. In addition, we would allow inseason regional quota transfers between regions for species or management groups where the species are the same between regions and the quota is split between regions for management purposes and not as a result of a stock assessment. At this time, only the hammerhead sharks and the regional non-blacknose SCS meet this description; and therefore, we are proposing that only the hammerhead shark and non-blacknose SCS regional quotas can be transferred on an inseason basis between regions. Before making any inseason quota transfer, we would consider certain criteria and other relevant factors described in § 635.27(b)(2)(iii)(A–H). This would help ensure that the hammerhead shark and non-blacknose SCS fisheries are not limited by the smaller regional quotas. All quota transfers would be announced in a **Federal Register** notice. These measures would have direct, minor beneficial ecological impacts because they provide additional protection against exceeding the scientifically-determined total allowable catch for each species and complex.

The quota linkages proposed under this Alternative Suite could have short- and long-term direct moderate adverse socioeconomic impacts. Quota linkages are explicitly designed to concurrently close multiple shark quotas, regardless of whether all the linked quotas are filled. This provides protection against incidental capture for species for which the quota has been reached, but it can also preclude fishermen from harvesting the entirety of each of the linked quotas. A quantitative analysis of the economic impact is not possible without comparing the rates of hammerhead shark, blacktip shark, and aggregated LCS catch, and without knowing the extent to which fishermen can avoid hammerhead sharks. However, a qualitative analysis can provide insight on possible adverse socioeconomic impacts. Under Preferred Alternative Suite A2, both the hammerhead shark and aggregated LCS quotas would close when landings of either reaches or is expected to reach 80 percent of the quota. If hammerhead shark landings reach 80 percent of the hammerhead shark quota, the aggregated LCS fishery would close, regardless of what portion of the aggregated LCS quota has been filled. If the entire Aggregate LCS quota has not been harvested, the fishery would not realize the full level of revenues possible under the established quota. A similar situation could occur in the Gulf of Mexico under Preferred Alternative Suite A2 where both the hammerhead shark and blacktip shark quotas would be linked to the aggregated LCS quota.

The blacknose shark and non-blacknose SCS socioeconomic impacts would be the same as the aggregated LCS since there would be similar scenarios with the quota linkage by species and region. In addition, we would allow inseason quota transfer between non-blacknose SCS regions. This would have minor beneficial socioeconomic impacts for this fishery as the non-blacknose SCS quota would not be the limiting factor. Consequently, the quota linkages proposed under this Alternative Suite could have short- and long-term direct moderate adverse socioeconomic impacts.

7. Recreational Measures

Under Preferred Alternative Suite A2, the minimum recreational size limit for sharks would increase from 54 to 96 inches fork length (FL) (8 ft or 244 cm). Currently, the recreational size limit for authorized shark species (except for Atlantic sharpnose and bonnethead sharks) is 54-inches FL. This minimum size was established based on the size at maturity of sandbar sharks. This new size limit is based on the best available scientific information, which reported female dusky shark size-at-maturity to be 235 cm fork length (approximately 93 inches). Since 93 inches does not equate to a round number of feet (93 inches = 7.75 feet), we are proposing to round up the minimum size to the whole foot, resulting in a proposed minimum size of 96 inches FL (8 feet). Dusky sharks have been prohibited in the recreational fishery since 1999, but are still landed due to misidentification issues. To address the misidentification issues, we would increase outreach to the recreational community to increase awareness of current regulations and shark identification, specifically for dusky and sandbar sharks which are prohibited, and for the three species of hammerhead sharks (great, scalloped, and smooth).

This increased recreational size limit will also help reduce blacknose, sandbar, and scalloped hammerhead shark catches because fishermen usually do not catch sharks that large frequently. Blacknose shark retention in the recreational fishery effectively would be eliminated with a 96-inch FL recreational size limit. Blacknose sharks rarely reach a size greater than the current Federal minimum size of 54-inch FL; therefore, the 96-inch FL size limit creates a *de facto* retention prohibition of blacknose sharks in Federal waters. In the draft Amendment 3, we proposed prohibiting retention of blacknose sharks in the recreational fishery. During the public comment period for Amendment 3, we received comments that if we prohibited the retention of blacknose sharks in Federal waters, then states would also have to implement the prohibition in state waters. The comments also stated that because some states have a well-managed blacknose recreational fishery and conservation measures in place to adequately protect this species in state waters, prohibiting their retention is unnecessary. However, since we did not prohibit blacknose sharks in Amendment 3, some states continued to allow recreational landings of blacknose sharks below the 54-inch FL in state waters. Overfishing continued to occur on the Atlantic blacknose shark stock based on the recent assessment, and we need to reduce the recreational mortality of blacknose sharks to meet rebuilding target for the established total allowable catch.

Like dusky sharks, recreational fishermen are not allowed to retain sandbar sharks, but fishermen still land them due to misidentification. The

larger size limit would reduce recreational catches since sandbar sharks do not grow to 96 inches FL. We plan to conduct outreach to the recreational community to better inform anglers of prohibited species as well as identifying dusky and sandbar sharks. This increase in minimum size would also reduce scalloped hammerhead sharks catches in the recreational fishery and help rebuild this overfished stock. Female scalloped hammerhead sharks reach maturity at approximately 78-inches FL. The larger recreational size limit would limit the retention of scalloped hammerhead sharks to mature individuals and help rebuild the stock faster consistent with rebuilding goals. We are currently working on an identification guide for all of the prohibited shark species to help with this outreach. This identification guide would complement the existing guide of shark species that can be landed by focusing on the species that cannot be landed.

In addition to the change in minimum size, we would require mandatory reporting of all hammerhead sharks landed recreationally through the non-tournament reporting system. The non-tournament reporting system was established to track the trips that released (alive or dead) or retained bluefin tuna, blue marlin, white marlin, roundscale spearfish, longbill spearfish, sailfish, and swordfish. Fishermen can report online or over the phone. Recreational fishermen who land hammerhead sharks would need to submit similar information, thus providing us more timely and accurate estimates of recreational hammerhead landings.

This alternative would have short- and long-term moderate, beneficial ecological impacts on dusky, sandbar, scalloped hammerhead, and blacknose sharks. Increasing the size limit, providing outreach material, and establishing mandatory reporting for hammerhead sharks should reduce recreational catches and provide us better and timelier estimates of recreational ladings of hammerhead sharks. There would be beneficial indirect ecological impacts since increasing the size limit would reduce the recreational catch of other shark species that do not grow larger than 96 inches FL. Overall, the reductions in recreational mortality along with the commercial management measures are expected to help rebuild the overfished stocks. The increased recreational size limit would cause neutral direct and indirect impacts on essential fish habitat, predator/prey relationships, and protected resources in the short- and long-term.

This alternative would result in direct minor adverse socioeconomic impacts for recreational fishermen in the short-term due to the reduced incentive to recreationally fish for sharks. However, management measures to address overfishing of dusky, sandbar, scalloped hammerhead, and blacknose sharks are needed based on the stock assessments. Tournaments awarding points for sharks are unlikely to be impacted by implementing the 96 inch FL minimum size. Tournament participants typically target larger sharks and the sharks many tournaments target, such as shortfin mako, blue, and thresher, grow to larger than 96 inches FL. These measures could change the way that the recreational shark fishery operates, which could cause short-term moderate adverse direct socioeconomic impacts. Implementation of management measures that would significantly alter the way charter vessels operate, or reduce opportunity and demand for recreational shark fishing, could create adverse socioeconomic impacts. In the long-term, increased recreational fisheries opportunities may result as these measures end overfishing and overfished stocks rebuild.

B. Summary of the Other Alternative Suites Considered

In addition to Preferred Alternative Suite A2, we considered four other Alternative Suites ranging from status quo or no action (Alternative Suite A1) to closing all shark fisheries (Alternative Suite A5). Alternative Suite A1 is the No Action Alternative. Under this alternative, we would maintain current total allowable catches, commercial quotas, and recreational measures in all shark fisheries. Choosing this alternative would not end overfishing or rebuild overfished stocks. Taken as a whole, this alternative would have direct moderate, adverse ecological impacts in the short-term since there would be no change to harvest levels in the Atlantic shark fisheries and overfishing of scalloped hammerhead and blacknose sharks would continue. This alternative could result in direct significant, adverse long-term ecological impacts for certain LCS and SCS, since this alternative would result in continued overfishing of scalloped hammerhead, dusky, and Atlantic blacknose sharks, which would lead to further stock decline of these species, and could increase fishing pressure on the other LCS and SCS species as fishermen shift their efforts to other species to make up for the reduced catches. This alternative would have indirect neutral ecological impacts in the short-term since no action would be taken, but may result in moderate, adverse indirect impacts over time due to the increasing decline of the scalloped hammerhead, dusky, and Atlantic blacknose shark populations. Alternative Suite A1 would cause neutral direct and indirect impacts on essential fish habitat, predator/prey relationships, and protected resources in the short- and long-term no action would be taken relative to the status quo.

Alternative Suite A1 would likely have direct neutral social and economic impacts in the short-term because the fisheries would continue to operate as they currently do. In the long-term, it could cause direct moderate adverse social and economic impacts because overfished stocks would not rebuild and catches would decline. The decline in catches would lead to a moderate reduction in sales and revenue. Additionally, Alternative Suite A1 would likely have neutral indirect short-term socioeconomic impacts. Dealers and supporting businesses, such as bait and tackle suppliers, would be unlikely to experience any impacts in the short-term. In the long-term, catches of the overfished stocks would decline, and minor negative socioeconomic impacts would occur as dealers and supporting businesses would have to offset reduced revenues from shark landings. For these reasons, we do not prefer this Alternative Suite at this time.

Alternative Suite A3 is similar to the proposed Preferred Alternative Suite A2 except we would not create regional hammerhead shark and non-blacknose SCS quotas, there would be no quota linkage for the shark fisheries, and there would be an increase in the recreational minimum size limit for only hammerhead sharks. Specifically, Alternative Suite A3 would establish new species complexes by regions, adjust LCS and SCS quotas, prohibit retention of commercial blacknose sharks in the Gulf of Mexico, and increase the hammerhead shark minimum recreational size to 78″ FL. This alternative would remove hammerhead sharks from the non-sandbar LCS complex to form a separate non-regional quota of 52.2 mt dw, while non-blacknose SCS regulations and quota would remain the same (221.6 mt dw). This alternative would also create regional quotas for blacknose sharks as well as remove blacktip sharks from the Gulf of Mexico non-sandbar LCS complex. Additionally, this alternative would reconfigure and rename the species remaining in the non-sandbar LCS complex as the ''aggregated LCS'' in both the Atlantic and Gulf of Mexico

regions. The new Gulf of Mexico base quotas would be as follows: blacktip sharks—380.7 mt dw; and non-sandbar LCS—157.3 mt dw. The new aggregated LCS complex in the Gulf of Mexico region would consist of bull, lemon, nurse, spinner, silky, and tiger sharks. In the Atlantic region, base quotas would be as follows: Non-sandbar LCS—168.2 mt dw; and blacknose sharks—18 mt dw. The new aggregated LCS complex in the Atlantic would consist of blacktip, bull, lemon, nurse, spinner, silky, and tiger sharks. We would need to prohibit the retention of blacknose sharks in the Gulf of Mexico region so we can meet the rebuilding plan for this species.

When taken as a whole, Alternative Suite A3 would have direct moderate, beneficial ecological impacts in the short-term since changes to the Atlantic shark fisheries would help rebuild scalloped hammerhead and blacknose shark stocks, but long-term impacts would be minor and adverse because the absence of quota linkages could allow overfishing to continue through dead discards in other fisheries. The indirect ecological impacts would be neutral to essential fish habitat, predator/prey relationships, or protected resources because fishing pressure is expected to remain near current levels. Establishing a Gulf of Mexico blacktip shark total allowable catch at a level 30 percent greater than the total allowable catch calculated in Alternative Suite 2 could increase shark fishing effort and, as described above, might have adverse ecological impacts on other shark stocks and other species. It is also uncertain what impact the increase would have on the Gulf of Mexico shark stock because there is high degree of uncertainty associated with the projections, particularly since these projections were not peer reviewed as part of the Southeast Data, Assessment and Review process.

Additionally, Alternative Suite A3 would likely have direct short- and long-term moderate beneficial socioeconomic impacts, mainly resulting from the increase in Gulf of Mexico blacktip quota. Adverse impacts would mostly affect fishermen catching hammerhead and blacknose sharks. The hammerhead shark quota would be based on the scalloped hammerhead shark total allowable catch and would reduce all hammerhead shark landings. The blacknose shark quota in the Atlantic would be reduced, while the Gulf of Mexico blacknose shark retention would be prohibited to meet the total allowable catch. Recreational management measures would affect fishermen who catch hammerhead sharks since the increased size limit would result in more hammerhead sharks having to be released, and blacknose sharks would be prohibited under this Alternative Suite. Neutral socioeconomic impacts are expected for fishermen targeting the aggregated LCS and non-blacknose SCS complexes since these management measures would maintain status quo in these fisheries. Furthermore, the lack of quota linkages in Alternative Suite A3 would allow fishermen to fully harvest all of the quotas. This alternative would likely have indirect short-term minor adverse socioeconomic impacts. The measures in this Alternative Suite adjust quotas based on new scientific information and would impact shark landings. Consequently, dealers and supporting businesses such as bait and tackle suppliers may experience minor adverse impacts in the short-term, but since they do not rely solely on the shark fishery and buy from and sell to a variety of fisheries, the impacts are expected to be neutral in the long-term. The changes to quotas would impact fishermen retaining sharks, but the changes are small enough that dealers and supporting businesses are unlikely to experience impacts from this Alternative Suite. While Alternative Suite A3 might have more beneficial direct socioeconomic impacts than the proposed Preferred Alternative Suite A2, the ecological impacts would be adverse and would not achieve the rebuilding plan targets for these stocks.

Indirect short- and long-term moderate beneficial socioeconomic impacts would likely result from this Alternative Suite's actions. The measures in this Alternative Suite adjust quotas based on new scientific information and would impact shark landings. Consequently, the increase in the commercial Gulf of Mexico blacktip shark quota could result in short- and long-term beneficial economic impacts for dealers and supporting businesses such as bait and tackle suppliers. The other changes to quotas (e.g., scalloped hammerhead, blacknose) would impact fishermen retaining sharks, but the changes are small enough that dealers and supporting businesses are unlikely to experience impacts from this alternative suite. This increase in the Gulf of Mexico blacktip quota could lead to increased revenues of $314,376 when compared to the quota calculated in Alternative Suite A2. Because of the uncertainty in the projections and because this Alternative Suite does not have quota linkages that would prevent quota exceedances from occurring (and thus would affect the ability to end overfishing and rebuild the species), we do not prefer this Alternative Suite at this time.

We also considered Alternative Suite A4. This Alternative Suite is different than the Proposed Alternative Suite A2 because it would establish regional scalloped hammerhead shark quotas, establish regional aggregated LCS quotas based on the largest landings, divide the non-blacknose SCS quota in half for each region, and establish species-specific recreational shark quotas. Specifically, Alternative Suite A4 would establish new species complexes by regions, adjust LCS and SCS quotas, prohibit retention of commercial blacknose sharks in the Gulf of Mexico region, link appropriate quotas, and establish species-specific recreational shark quotas. The alternative would remove scalloped hammerhead sharks from the non-sandbar LCS complex to form separate regional quotas, and create regional quotas for blacknose and non-blacknose SCS. Also, blacktip sharks would be removed from the Gulf of Mexico non-sandbar LCS complex and the non-sandbar LCS complex would be renamed ''aggregated LCS'' in both the Atlantic and Gulf of Mexico. The new Gulf of Mexico base quotas would be as follows: scalloped hammerhead sharks 24.4 mt dw; blacktip sharks 1,992.6 mt dw; non-sandbar LCS 185.2 mt dw; and non-blacknose SCS 110.8 mt dw. The new aggregated LCS complex in the Gulf of Mexico region would consist of bull, lemon, nurse, spinner, silky, and tiger sharks. In the Atlantic region, base quotas would be as follows: scalloped hammerhead sharks 27.8 mt dw; non-sandbar LCS 180.1 mt dw; blacknose sharks 18 mt dw; and non-blacknose SCS 110.8 mt dw. The new aggregated LCS in the Atlantic region would consist of blacktip, bull, lemon, nurse, spinner, silky, and tiger sharks. This Alternative Suite would also link the species within regional LCS and SCS quotas to prevent overfishing of one species while fishing for another species/group continues. Under this Alternative Suite, we would prohibit the retention of blacknose sharks in the Gulf of Mexico to end overfishing and meet the rebuilding plan target for this species.

Considering all the ecological impacts for each species, complex, or issue as discussed above, when taken as a whole, Alternative Suite A4 would likely have direct short- and long-term minor beneficial ecological impacts. Overfishing on scalloped hammerhead and Atlantic blacknose sharks would be addressed, and the rebuilding plans for these stocks would be implemented.

However, only scalloped hammerhead sharks would be included under the scalloped hammerhead total allowable catch, rather than all three large hammerhead species as in Alternative Suites A2 and A3, possibly leading to exceedances of scalloped hammerhead total allowable catch due to capture and retention of scalloped hammerheads misidentified as other hammerhead species. Additionally, the Atlantic non-blacknose SCS commercial quota would be reduced. Indirect short- and long-term ecological impacts resulting from any of the Alternative Suite A4 actions would likely be neutral. Similarly, all impacts on protected resources would be neutral as well because the measures in Alternative Suite A4 would be unlikely to significantly alter effort in the Atlantic or Gulf of Mexico shark fisheries. Therefore, additional impacts to essential fish habitat, predator/prey relationships, or protected resources are unlikely. Although this alternative suite would allow for the highest Gulf of Mexico blacktip shark commercial quota, it is based on base model projections, which the NMFS scientists who participated in the stock assessment felt had a high degree of uncertainty, and, because these projections were developed outside of the standard Southeast Data, Assessment and Review process and were not been peer reviewed, they could not conclude with certainty that such a high level of catch would not result in overfishing. Therefore, given the uncertainty in the results of the projections at this level of catch, this alternative suite could lead to long-term adverse ecological impacts due to overfishing if the projections were overly optimistic.

Alternative Suite A4 would likely have direct short- and long-term minor adverse socioeconomic impacts. These impacts would mostly affect fishermen catching blacknose sharks. The blacknose shark quota in the Atlantic would be reduced, while the Gulf of Mexico blacknose shark retention would be prohibited to prevent exceedance of the total allowable catch. Recreational management measures would affect fishermen who retain sharks since we would implement species- and complex-specific quotas for the recreational fishery. Neutral socioeconomic impacts are expected for recreational and commercial fishermen targeting scalloped hammerhead sharks, aggregated LCS, and non-blacknose SCS as detailed in those sections of this Alternative Suite. While this alternative suite might have minor adverse socioeconomic impacts, there is the potential for more adverse socioeconomic impacts if quotas are exceeded in the future. Although this alternative suite would allow for the highest Gulf of Mexico blacktip shark commercial quota, as described above, the stock assessment scientists could not conclude with certainty that such a high level of catch would not result in overfishing. In addition to the uncertainty in the model, the blacktip shark quota proposed under this alternative suite could lead to increased bycatch of other species due to increased fishing effort.

Indirect short-term minor adverse socioeconomic impacts would likely result from this Alternative Suite's actions. The measures in this Alternative Suite adjust quotas based on new scientific information and would impact shark landings. Consequently, dealers and supporting businesses such as bait and tackle suppliers may experience minor adverse impacts in the short-term, but since they do not rely solely on the shark fishery and buy from and sell to a variety of fisheries, the impacts are expected to be neutral in the long-term. The changes to quotas would impact fishermen retaining sharks, but the changes are small enough that dealers and supporting businesses are unlikely to experience impacts from this Alternative Suite. In summary, this Alternative Suite is less likely to end overfishing on scalloped hammerhead due to catch and misidentification as other hammerheads and because of the administrative difficulties in establishing and monitoring numerous hammerhead species-specific recreational quotas. Additionally, this Alternative Suite may not prevent overfishing on Gulf of Mexico blacktip sharks and could increase fishing mortality of other sharks as bycatch. Furthermore, while this Alternative Suite might have minor adverse socioeconomic impacts, there is the potential for more adverse socioeconomic impacts if quotas are exceeded and stocks are prevented from rebuilding it may become necessary to implement smaller quotas and more strict retention limits. For all these reasons, and because of the potential for additional adverse socioeconomic impacts if quotas are exceeded, we do not prefer this Alternative Suite at this time.

The last Alternative Suite we considered in this section is Alternative Suite A5. Under this Alternative Suite, all commercial and recreational shark fisheries, except spiny dogfish, in all regions (the Atlantic Ocean including the Gulf of Mexico and Caribbean Sea) would close. As a whole, Alternative Suite A5 would have significant beneficial ecological impacts in the short- and long-term. Overfishing on scalloped hammerhead and Atlantic blacknose sharks would end, and rebuilding plan targets would be achieved. By preventing the landing of any sharks, except spiny dogfish, in the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, we would affect not only the species that are overfished, but all other shark species. This Alternative Suite would cause an increase in the number of dead discards of sharks that are caught as bycatch in other fisheries because none of those sharks could be legally landed. Also, closing the recreational shark fishery effectively would create a catch and release requirement for all Atlantic sharks, except spiny dogfish, in the recreational fishery and all tournaments that have Atlantic shark prize categories. Indirect short- and long-term ecological impacts resulting from any of the Alternative Suite A5 actions would likely be significantly beneficial. These measures could eliminate effort in the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, shark fisheries; therefore additional impacts to essential fish habitat, predator/prey relationships, or protected resources are unlikely. This Alternative Suite would likely have direct short- and long-term significant adverse socioeconomic impacts because all recreational and commercial shark fishing would be prohibited. Indirect short- and long-term socioeconomic impacts resulting from this Alternative Suite's actions would likely be moderately adverse. The measures in this Alternative Suite would shut down the commercial and recreational shark fisheries, and dealers and supporting businesses such as bait and tackle suppliers would likely be adversely impacted due to decreased shark catches and sales. Because other alternatives should meet the objectives of this Amendment with less significant adverse socioeconomic impacts, and because this Alternative Suite would curtail data collection for future stock assessments, we do not prefer this Alternative Suite at this time.

Summary of the Alternatives Considered Regarding Pelagic and Bottom Longline Effort Modifications/ Controls

Dusky sharks are overfished and continue to experience overfishing, even though they have been a prohibited shark species since 2000. Therefore, we are considering a number of individually-assessed alternatives that would address pelagic and bottom longline fishing effort to further reduce

interactions and fishing mortality of dusky sharks, especially since dusky sharks tend to have high at-vessel mortality rates on commercial fishing gear. Although these alternatives are mainly targeted at dusky sharks, they should also help end overfishing on other shark species including scalloped hammerhead sharks and help rebuild other species of sharks such as scalloped hammerhead and sandbar sharks. We chose to consider the alternatives described in this section because they meet the objectives of this rulemaking consistent with the Magnuson-Stevens Act, the 2006 Consolidated HMS FMP and its amendments, and other requirements.

Some of the alternatives are based on current time/area closures while others would develop additional time/area closures. The first time/area closure in the HMS regulations was implemented in the 1999 FMP with the Northeastern U.S. closure off New Jersey in June to reduce bluefin tuna discards. Since then, additional closures have been implemented by us and the Regional Fishery Management Councils that affect HMS fishermen. The goals of all of the HMS time/area closures are to: (1) Maximize the reduction in bycatch; (2) minimize the effects of any reduction in the target catch; and (3) consider impacts on non-target HMS (e.g., bluefin tuna, undersized swordfish) to minimize or reduce non-target catch levels, to the extent practicable.

In looking at time/area closures, we analyzed various fishing data using two different methodologies. One methodology is to assume redistribution of effort. Under this methodology, fishing effort that occurred in an area considered for closure is assumed to move into areas that remain open. In other words, we assumed all fishermen would continue fishing in an open area for the duration of the closure or would sell their permits to other fishermen who would continue fishing in the open areas. A second methodology is to assume no redistribution of effort. Under this methodology, fishing effort that occurred in an area considered for closure is assumed to stop. In other words, we assumed all fishermen would stop fishing entirely for the duration of the closure rather than fish in an open area. In reality, the impact of any particular closure or group of closures is likely to be somewhere between the results of these two methodologies as some fishermen will continue fishing while other fishermen will move onto different species or to other occupations.

C. Summary of the Proposed Individual Alternatives

We are proposing three Alternatives (Alternatives B3, B5, and B6) that would modify pelagic and bottom longline fishing effort. The first alternative is Alternative B3. Alternative B3 would identify discrete areas in space and time where high dusky shark interactions occurred (according to HMS logbook data from 2008–2010), and would prohibit pelagic longline fishing in these dusky shark ''hotspot'' areas by all U.S. flagged-vessels permitted to fish for HMS. ''Hotspot'' areas were identified by using Geographic Information System software to plot the location and timing of dusky shark interactions based on latitude and longitude coordinates of individual sets made with pelagic longline gear between 2008 and 2010. In order to maximize the efficacy of hotspot closed areas, areas were selected based on the number and concentration of interactions and the ability to delineate a simple polygon that would encapsulate these interactions. Discrete, identifiable areas with fishing effort that contributed to greater than 10 dusky shark interactions over the 3-year period were included for analysis. Areas with fewer than 10 dusky shark interactions over the 3-year period were not included because they would not make a significant contribution to reducing dusky shark interactions. Furthermore, odd-shaped or excessively large polygons were avoided in favor of more discrete areas for shorter periods of time to avoid significant disruptions to fishing activity while ensuring dusky shark interactions are reduced. Using this methodology, a total of eight hotspot areas are proposed to be closed to pelagic longline fishing.

In draft Amendment 5, the eight hotspot closed areas are subdivided into alternatives B3a through B3h. While draft Amendment 5 looks at the impact of each individual hotspot closed area, all of these hotspot closed areas are included and proposed under Alternative B3 because their cumulative reduction in dusky shark interactions would be necessary to assist in reaching reductions in fishing mortality recommended by the stock assessment. A summary of the cumulative impact of all eight hotspot closed areas is included below. For more details regarding the impact of each individual hotspot closed area, please see draft Amendment 5.

The primary goal of the proposed hotspot closed areas for pelagic longline gear is to maximize reductions in interactions with dusky sharks while minimizing impacts to target species or other bycatch, including protected resources. By limiting the size and duration of these hotspot closed areas, the Agency is attempting to minimize any negative ecological impacts that could occur if fishing effort redistributes to adjacent areas. The cumulative impact of combining the eight preferred hotspot closed areas for pelagic longline gear under Alternative B3 and assuming redistribution of fishing effort would reduce the number of dusky shark interactions by 854 dusky sharks. This represents a 49-percent reduction in the number of dusky shark interactions compared to current levels. If fishing effort were not redistributed, dusky shark interactions would be reduced by 55-percent. Reducing dusky shark interactions to this extent would result in direct, moderate, beneficial long-term ecological benefits for dusky shark populations consistent with stock assessment recommendations to reduce fishing mortality by 62 percent in all fisheries. Short-term, moderate beneficial impacts for dusky sharks are expected as well; however, it would take time to see any impacts on the dusky shark population.

The ecological impacts on 34 HMS and non-HMS target species, prohibited species, and bycatch depends on the species and whether or not interactions increase or decrease after redistribution of fishing effort as a result of the eight closures. See draft Amendment 5 for tables summarizing the impacts of the proposed closure for these individual species, both with and without redistribution of fishing effort. Generally, we expect direct, moderate, beneficial, short- and long-term ecological impacts for protected sea turtles because after redistributing fishing effort to adjacent open areas, interactions with sea turtles would decrease by three leatherback and 23 loggerhead sea turtles. Given the moderate direct impacts of most species, with the exception of dusky sharks, the indirect impacts of Alternative B3 on ecosystem function and predator/prey relationships are anticipated to be neutral in the short- and long-term.

These pelagic longline hotspot closed areas are being considered along with other measures that would affect the number of dusky shark interactions in bottom longline and recreational fisheries, although the alternatives are being assessed individually. While Alternative B3 may not reduce the number of dusky shark interactions in the pelagic longline fishery by the 62-percent target outlined in the 2009 stock assessment, measures proposed for the bottom longline and recreational fisheries may reduce interactions by

more than 62-percent. Considered together, the target reductions for dusky shark interactions outlined in the stock assessment would be achieved. Furthermore, in May of 2011, the Agency implemented a requirement that pelagic longline vessels in the Gulf of Mexico use weak hooks in order to minimize bycatch of large, spawning bluefin tuna on the spawning grounds. Based on research conducted by the Southeast Fisheries Science Center, Mississippi Laboratory, two dusky sharks were caught on experimental weak hooks and four dusky sharks were caught on the standard (non-weak) hooks. This requirement has direct ecological benefits for dusky shark populations in the Gulf of Mexico, and is also included in the reduction targets for dusky sharks to end overfishing and rebuild the stock. Between 2008 and 2010, logbook reports indicate that 133 dusky sharks were discarded in the Gulf of Mexico. The number of dusky shark discards is expected to decrease with the implementation of weak hooks because larger dusky sharks may be able to straighten the hook.

Implementing the eight time/area hotspot closed areas included in Alternative B3 would result in direct, moderate, adverse socioeconomic impacts in the short-term on participants in the pelagic longline fishery. While these impacts may become less adverse in the long-term as the pelagic longline fleet adjusts their fishing activities after implementation of the closures, the time/area closures would result in reduced fishing opportunities in the near-term. In addition to direct impacts to vessels owners, operators, and crew members, these time/area closures would have minor, adverse indirect impacts in the short- and long-term on fish dealers, processors, bait/gear suppliers, and other shore-based businesses impacted by reduced fishing opportunities for pelagic longline vessel owners in the vicinity of the proposed closures. The closures may result in indirect social impacts ranging from disruption of local fishing communities to relocation of vessels and homeports, loss of crew, increased time at sea, and other social hardships stemming from further reducing fishing opportunities in the vicinity of the respective closures. Overall, the proposed time/area closures in Alternative B3 would reduce annual revenues by $385,423 per year and would impact 72 unique vessels that have fished in these hotspot closed areas between 2008 and 2010.

In addition to Alternative B3, we are also proposing Alternative B5, which would modify the timing of the existing mid-Atlantic shark time/area closure from January 1 through July 31 to December 15 through July 15. In other words, this alternative would modify the timing of the existing mid-Atlantic shark time/area closure by two weeks. The Atlantic States Marine Fisheries Commission Shark Plan closes state waters in Virginia, Maryland, Delaware, and New Jersey from May 15 through July 15 every year to protect nursery areas during pupping season. The purpose of Alternative B5 is to ensure that the end date of the closure coincides with the season opening dates in the Atlantic States Marine Fisheries Commission Shark Plan (i.e., July 15) while maintaining the total length of the closure, and to address requests from the State of North Carolina to revisit this time/area closure in regards to impacts to that one state. The State of North Carolina has made several requests, both formally and informally, since 2008 for the Agency to reconsider the timing of the end date of the mid Atlantic Shark Closed Area because North Carolina feels the current opening of July 31 disadvantages its fishermen, contrary to National Standard 4, compared to other states in the region. Thus, North Carolina would like to have Federal waters available to its fishermen on July 15, consistent with the ASMFC Shark Plan and other states near it. These comments have been received during the public comment period for actions that affect the shark fishery. The dimensions of the closure would remain the same and only the start and end dates of the closure would change.

The mid-Atlantic closed area was implemented to reduce bycatch of dusky sharks, along with neonate and juvenile sandbar sharks. Alternative B5 would result in direct and indirect, neutral, short- and long-term ecological benefits for both dusky and sandbar shark stocks as the closure area timing would be shifted by 15 days and should not have a significant impact on fishing effort with bottom longline gear in this area. Fishing effort for sharks in this area would continue to be impacted by the timing of the Federal shark season for LCS, which in recent years, has not opened until July. This alternative would not affect the rebuilding plans for dusky and sandbar sharks and would have neutral impacts on protected resources because the duration of the closure is not affected, while the timing of the closure is affected (15 days). Direct, neutral, short- and long-term ecological impacts for protected resources are expected. Given the neutral impacts on most species, the indirect impacts of Alternative B5 on ecosystem function and predator/prey relationships are also anticipated to be neutral in the short- and long-term.

Alternative B5 is anticipated to have direct, minor, beneficial short- and long-term socioeconomic impacts because fishermen in North Carolina would have access to adjacent Federal waters, consistent with other shark fisheries in other states and the Atlantic States Marine Fisheries Commission Shark Plan. In the short-term, revenue gain would be minor for the 17 directed shark permit and 12 incidental shark permit holders along with state-water fishermen that might normally fish in the mid-Atlantic closed area. These North Carolina fishermen would be able to fish sooner than in previous years, but the adjustment to the starting date of the closure would have minor impacts. In the past 4 years, the non-sandbar LCS fishery, which primarily uses bottom longline gear, has only been open beyond December 15 once. This occurred in 2008 when the fishery opened in late July under the current fishing regulations. Since then, the non-sandbar LCS fishery has closed before December 15. Over the long-term, the economic impact would be minor, as the fishermen are likely to adapt to the new regulations.

Alternative B5 is preferred because it would result in beneficial economic impacts and would not have adverse ecological impacts. This alternative was included in response to several requests from the State of North Carolina for the Agency to reconsider the timing of the end date of the mid-Atlantic Shark Closed Area because North Carolina feels the current opening of July 31 disadvantages its fishermen, contrary to National Standard 4, compared to other states in the region. Thus, North Carolina would like to have Federal waters available to its fishermen on July 15, consistent with the ASMFC Shark Plan and other states near it. These comments have been received in writing during the public comment period for actions that affect the shark fishery. The dimensions of the closure would remain the same and only the start and end dates of the closure would change. It is not expected to have any impacts to the rebuilding plans for dusky or sandbar sharks because overall fishing effort (and fishing mortality) would still be regulated by quotas and retention limits for target species.

The last effort-control proposed alternative is alternative B6. This alternative would modify the existing bottom longline shark research fishery to reduce dusky shark interactions by 62 percent, at a minimum, while still allowing for shark biological and catch

rate data to be collected. In 2008, we implemented a shark research fishery that allowed fishermen to target and retain sandbar sharks to maintain the commercial fishery time series and to obtain biological information for stock assessments. Fishermen participating in the shark research fishery are generally targeting sandbar sharks, and can catch dusky sharks as bycatch. A total of 450 dusky sharks were caught during shark research fishery trips from 2008 through 2011 with 263 being discarded dead. We need to reduce the bycatch of dusky sharks in the shark research fishery to ensure that the dusky rebuilding plan target is achieved. Measures considered to reduce dusky shark interactions, include, but are not limited to: Limitations on soak time, limits on the number of hooks deployed per set, prohibiting participants from deploying bottom longline gear at times and in areas where elevated levels of dusky shark interactions have been observed, and/or stopping the shark research fishery, or a specific vessel in the fishery, for the year if a certain number of dusky shark interactions is reached. Reduction in dusky shark interactions may need to be greater than 62 percent in the shark research fishery if reductions in other fisheries (i.e., pelagic longline and recreational) do not reach their targets.

There are a several options we could use to reduce dusky shark mortality in this fishery. Based on preliminary data, we would have to limit soak times to approximately 4 hours to reduce dusky shark mortality by 50 percent. Another way to reduce dusky shark mortality would be to limit the number of hooks deployed per set. Decreasing the number of hooks and limiting the soak time would decrease the mortality and possible interaction with dusky sharks. In addition, we have noticed certain areas where a large number of dusky sharks have been caught (i.e., the mid-Atlantic shark bottom longline closed area). Fishing in these locations resulted in 71 percent of the dusky shark dead discards from 2008 through 2011. We could prohibit participants from deploying bottom longline gear at times and/or in areas where elevated levels of dusky shark interactions have been observed. Another potential way to decrease dead discards of dusky sharks would be to implement a bycatch cap for dusky shark interactions in the shark research fishery. The potential ramifications of a dusky shark bycatch cap could limit the fishing opportunities to collect data for the shark research fishery if the bycatch cap is reached.

Alternative B6 would have direct, moderate, beneficial ecological impacts for dusky sharks in the short- and long-term. Indirect, minor beneficial impacts would be expected as a result of limiting soak time because of increased post-release survival rates of sharks, and teleosts in the short- and long-term. The potential changes in the shark research fishery are targeted to reduce dusky shark dead discards, but the possible modifications would benefit all sharks. Limiting soak time, decreasing the number of hooks per set, restricting fishing areas, or reducing overall fishing effort by restricting participation in the research fishery would have minor, indirect beneficial ecological impacts. However, extensive modifications to the shark research fishery could become so restricting in the view of fishery participants that participation decreases and valuable data from the shark research fishery could be lost. Direct, neutral, short- and long-term ecological impacts for protected resources are expected. Given the neutral to minor beneficial ecological impacts on most species, with the exception of dusky sharks, the indirect impacts of Alternative B6 on ecosystem function and predator/prey relationships are also anticipated to be neutral in the short- and long-term.

Alternative B6 could result in direct, minor adverse socioeconomic impacts in the short-term for fishermen participating in the shark research fishery because of additional restrictions placed on participating vessels. Long-term impacts are not anticipated because the pool of applicants and those selected for participation in the shark research fishery changes on an annual basis. Fishermen participating in the research fishery are targeting sandbar sharks; however, dusky sharks are often caught as bycatch when targeting sandbar sharks. These measures could change the way that the shark research fishery operates, which could result in direct, short-term, minor adverse socioeconomic impacts. However, it is anticipated that vessels will continue to want to participate in the shark research fishery because these vessels have the exclusive privilege of being able to target and harvest sandbar sharks, a high-fin-value species. There is a possibility that these measures would help sandbar sharks rebuild more quickly and increase commercial fisheries opportunities in the future. Indirect impacts in the short-term would be minor and adverse due to reduced revenues for fish dealers and other support industries that may occur if fishing effort is curtailed in the shark research fishery.

An objective of this rulemaking is to reduce fishing mortality of dusky sharks. Alternative B6 is preferred because it would result in beneficial ecological impacts by reducing the number of dusky shark interactions that occur on bottom longline gear. Since the majority of the interactions with dusky sharks and bottom longline gear occur in the shark research fishery, it is important that modifications in this fishery that reduce interactions with dusky sharks by vessels targeting sandbar sharks. Economic impacts are expected to be minor and adverse as a result of reduced soak time, limiting the number of hooks deployed per set, or preventing fishermen from fishing in areas with elevated densities of sandbar sharks in order to reduce the potential for dusky shark interactions.

D. Summary of the Other Individual Alternatives Considered

In addition to proposed alternatives B3, B5, and B6, we considered four other alternatives, including Alternative B1, the status quo or No Action Alternative; Alternative B2, which would extend the existing Charleston Bump time/area closure through May (Feb. 1 through May 31) and prohibit the use of pelagic longline gear by all U.S. flagged-vessels permitted to fish for HMS in this area; Alternative B4, which would implement bycatch caps on dusky shark interactions in hotspot areas identified for closure in Alternative B3; and Alternative B7, which would prohibit the use of pelagic and bottom longline gear in HMS fisheries in all areas to enhance rebuilding of overfished dusky sharks, as well as other overfished shark species (sharks would still be able to be retained recreationally and commercially with gillnets).

Alternative B1, the No Action Alternative, would maintain all existing time/area closures for pelagic and bottom longline fishermen. The pelagic longline fishery for Atlantic HMS primarily targets swordfish, yellowfin tuna, and bigeye tuna in various areas and seasons. Secondary target species include dolphin, albacore tuna, and, to a lesser degree, sharks, among other species. Although this gear can be modified (e.g., depth of set, hook type, hook size, bait, etc.) to target swordfish, tunas, or sharks, it is generally a multi-species fishery. These vessel operators are opportunistic, switching gear style and making subtle changes to target the best available economic opportunity of each individual trip. Pelagic longline gear sometimes attracts and hooks non-target finfish with little or no commercial value, as well as species that cannot be retained by commercial fishermen due to regulations, such as

billfish. Pelagic longline gear may also interact with protected species such as marine mammals, sea turtles, and seabirds. As of October 2011, there were 242 vessels that could use pelagic longline to catch HMS. The effectiveness of existing pelagic longline time/area closures in reducing bycatch has been evaluated on an annual basis since 2006 for the HMS Stock Assessment and Fishery Evaluation Report. In the 2011 Stock Assessment and Fishery Evaluation report, we examined the combined effects of the individual time/area closures and gear restrictions, comparing the reported catch and discards from 2005 through 2010 to the averages for 1997 through 1999, throughout the entire U.S. Atlantic fishery. Overall effort, expressed as the number of hooks reported per set, declined by 27.6 percent during 2005 through 2010 compared to1997 through 1999. We also noted declines in both the numbers of kept animals and discards of almost all species examined, including swordfish, tunas, sharks, billfish, and sea turtles. The only increases from the base period were the numbers of bluefin tuna and dolphin kept. The closures also had an impact with respect to the number of interactions with bycatch and protected species (turtles).

The bottom longline fishery targets sharks. Comparing landings reported from the South Atlantic region between 2002 through 2004 (without closed area) with 2005 (with closed area) indicates that landings of LCS decreased by 22.3 percent after implementation of the mid-Atlantic shark closed area. Landings of sandbar sharks in the South Atlantic region decreased by 26.7 percent in 2005 compared to 2002–2004, which could have been a result of the mid-Atlantic shark closed area. In addition, observer data from 1994 to 2004 (i.e., before the implementation of the closed area) indicate that there have been five loggerhead sea turtles observed caught on bottom longline gear in the vicinity of the mid-Atlantic shark closed area, two of which were released alive. Therefore, maintaining the mid-Atlantic closed area under Alternative B1 may maintain reductions in sea turtle interactions with sea turtles and bottom longline gear when compared to pre-closure levels, and, therefore have positive ecological impacts for protected resources.

Despite the ecological benefits of the existing pelagic and bottom longline time/area closures, dusky sharks continue to experience overfishing, and additional measures to reduce interactions and mortality of dusky sharks in HMS fisheries are necessary based on the most recent assessment. Maintaining the existing time/area closures, and not implementing additional closures, would result in direct, minor, adverse, short-term ecological impacts for dusky sharks. These impacts would likely become moderate and/or significant as existing interaction rates for dusky sharks would continue to exacerbate overfishing, thus inhibiting the probability that dusky shark populations would rebuild by 2099. The direct and indirect impacts on other species, both HMS and non-HMS target species, bycatch, and protected resources, are expected to be neutral in the short- and long-term because the existing time/area closures would be maintained. Given the minor direct impacts of most species, including dusky sharks, we expect the indirect impacts to ecosystem function and predator/prey relationships as a result of Alternative B1 to be neutral in the short- and long-term.

Maintaining the existing pelagic and bottom longline closures and not implementing additional time/area closures, as proposed in this rulemaking, would have direct, neutral, short-term economic impacts. Vessels would continue to operate subject to existing regulations, including time/area closures, therefore no new economic impacts would be associated with maintaining the status quo. However, in the long-term, if additional measures to prevent overfishing of dusky sharks and allow populations to rebuild were implemented, including time/area closures, minor to moderate adverse economic impacts could be experienced by participants in the pelagic and bottom longline fisheries.

In addition to direct impacts to vessels owners, operators, and crew members, this alternative would have also have neutral indirect impacts in the short- and long-term on fish dealers, processors, bait/gear suppliers, and other shore-based businesses impacted by fishing opportunities for pelagic and bottom longline vessels. Maintaining the status quo would also result in neutral impacts on local fishing communities because it would not modify the existing time/area closures or require that vessels relocate from homeports, have longer trips at sea, and other social hardships that stem from further reducing fishing opportunities for Atlantic HMS vessels.

Alternative B1, the No Action Alternative, is not preferred because maintaining the status quo would not reduce dusky shark fishing mortality by 62 percent, consistent with the stock assessment recommendations. Although the economic impacts of maintaining the status quo would be largely neutral, the adverse ecological impacts are unacceptable and inconsistent with the objectives of this rulemaking, specifically, to implement ''stand-alone measures to reduce shark fishing mortality to rebuild overfished stocks and end overfishing.''

Alternative B2 would extend the Charleston Bump time/area closure through the month of May. This alternative would result in direct, moderate, beneficial ecological impacts for dusky sharks. In the short-term, these impacts may be minor compared to the long-term where impacts may increase to ''moderate'' because the benefits of reducing interactions with individual dusky sharks may take several years to affect the dusky shark population. However, the ecological impacts on numerous HMS and non-HMS target species, prohibited species, and other bycatch depends on the species and whether or not interactions increase or decrease after redistribution of fishing effort from the closed area to adjacent open areas in the Charleston Bump. The direct ecological impacts of closing the Charleston Bump during the month of May would have minor beneficial impacts in the short- and long-term for protected resources because interactions with leatherback and loggerhead sea turtles would decrease by one turtle per species.

Additionally, Alternative B2 would result in direct, moderate, adverse short- and long-term economic impacts. On average from 2008 to 2010, 27 vessels fished in the area that would be closed. However, all pelagic longline vessels could potentially be affected by reduced fishing opportunities. Overall, the annual average reduction in revenues as a result of this closure would be $385,887 (fishery-wide), after adjusting for redistribution of effort into remaining open areas of the South Atlantic Bight Statistical reporting area. Vessels fishing in this area during the month of May are primarily targeting swordfish and dolphin, and, to a lesser extent, wahoo and yellowfin tuna. Reductions of 46 percent (−$356,001) and 12 percent (−$148,447) for swordfish and dolphin, respectively, would be expected on a regional basis after fishing effort is redistributed to remaining open areas of the South Atlantic Bight Statistical reporting area. Wahoo revenues would decrease by 78 percent regionally (−$7,434) with redistribution of fishing effort. Redistributing fishing effort to remaining open areas of the South Atlantic Bight would increase interactions and revenues from bluefin tuna (+$32,758), yellowfin tuna

(+$60,831), and bigeye tuna (+$23,111). While most pelagic longline vessels do not target sharks, revenues from sharks (predominately from shortfin mako sharks) would increase by $9,442.

Alternative B2 would extend an existing three month time/area closure for pelagic longline vessels in the Charleston Bump region for an additional month, which would impose limits on regional fishing opportunities. In addition to direct impacts to vessels owners, operators, and crew members, this alternative would have minor, adverse indirect impacts in the short- and long-term on fish dealers, processors, bait/gear suppliers, and other shore-based businesses in the vicinity of the closure. Impacts would be more pronounced in the vicinity of the proposed closure because of the size and duration of the closure because regional vessel owners would have to travel further to fish in open areas; however, pelagic longline vessels from other areas that have traditionally fished in the proposed closure would also experience adverse economic impacts. The closure may result in numerous indirect social impacts ranging from disruption of local fishing communities to relocation of vessels and homeports, loss of crew, increased time at sea, and other social hardships stemming from further reducing fishing opportunities in the Charleston Bump region.

Alternative B2 is not preferred because Alternative B3 meets the Amendment's objectives and Alternative B2 would result in adverse economic impacts compared to Alternative B3. Alternative B3 includes a sub alternative (Alternative B3a) that would close a portion of the area encapsulated in Alternative B2 where the majority of the dusky shark interactions occur but would not close the entire Charleston Bump. The objective of this rulemaking is to reduce fishing mortality of dusky sharks, and Alternative B2 would reduce dusky shark interactions by an additional nine fish, compared to Alternative B3a. However, interactions with some other species would increase (tiger sharks, hammerhead sharks, sandbar sharks, bluefin tuna, and blue marlin). On balance, Alternative B2 is not selected and Alternative B3 is preferred because Alternative B3a provides ecological benefits that meet the Amendment's objectives while mitigating economic impacts.

Alternative B4 would implement bycatch caps on dusky shark interactions in hotspot areas identified for closure in Alternatives B3. Under this alternative, fishermen could fish in hotspot areas until a specified number of dusky shark interactions occur. If vessel owners are selected for observer coverage and an observer is available, these vessels would be able to fish in hotspot areas within statistical reporting areas for which they had been selected. Vessel operators would be able to fish outside of an area for which they had been selected but they would not be able to fish within any hotspot areas in other statistical reporting areas. This alternative would not completely close the hotspot areas and fishing would still be allowed, with 100-percent observer coverage. The number of dusky shark interactions allowed in hotspot areas would be set at 10 percent of the estimated 3-year reduction in dusky shark interactions by closing each hotspot area and accounting for redistribution of effort. Once observed interactions with dusky sharks meet the 10-percent threshold for a particular hotspot area, then that area would be closed for the remainder of the 3-year period. Any overharvests in excess of the bycatch cap would be accounted for in the subsequent 3-year period.

The ecological impacts of hotspot area closures in Alternative B4 would be similar to those described for the proposed hotspot closed areas in Alternative B3. Overall, for dusky sharks, this alternative would also have moderate, direct beneficial impacts for dusky sharks. In the short-term, these benefits may be somewhat reduced compared to the long-term because the benefits of reducing interactions with individual dusky sharks may take several years to affect the dusky shark population. Interactions with the 34 HMS and non-HMS target species, prohibited species, and bycatch, analyzed in Alternative B3 could be increased or decreased by 10-percent compared to completely closing the area to fishing because vessels would be able to fish in these areas (with an observer) until the 10 percent bycatch cap for dusky sharks was reached. However, because vessels would have to be selected for observer coverage and have an observer onboard to fish in these areas, overall fishing effort and how vessels fish in these hotspot areas would be affected. It is very likely that fishing effort would be reduced considerably in the hotspot areas, especially compared to the status quo, because only a limited number of vessels could gain access in the hotspot area every year subject to observer availability. Furthermore, if a bycatch cap were implemented, vessels may change fishing practices in order to reduce the likelihood of a dusky shark interaction. In the past, fishermen may not have had any incentive to avoid dusky sharks. If bycatch caps were implemented, interactions with dusky sharks in excess of the cap would close the area for up to 3 years, in which case fishermen may change fishing behavior to minimize the likelihood of catching a dusky shark. Fishermen may deploy ''feeler sets'' (shorter sets in length with fewer hooks that are shorter in duration compared to other sets) in order to ascertain whether dusky sharks are in the vicinity. Avoiding water of a certain temperature, shorter soak times, and changes to hook and bait configurations also may be employed to try to avoid dusky sharks.

Implementing bycatch caps in conjunction with the proposed hotspot closed described in Alternative B3 would result in direct, minor adverse socioeconomic impacts in the short- and long-term consistent with the social and economic impacts described for each of the hotspot closed areas included in Alternative B3. The direct economic impacts of Alternative B4 would be less adverse in the short-term than implementing the proposed hotspot closed areas because bycatch caps would allow a limited amount of fishing to continue within the hotspot area until a bycatch cap was reached. The exact economic impacts of implementing bycatch caps would depend on the number of vessels authorized to fish in the hotspot areas (vessels selected for observer coverage and carrying an observer) on an annual basis and the number of trips that occur within each hotspot area before the bycatch cap is met. After the cap is met, economic impacts would be more pronounced and consistent with impacts of Alternative B3, because the hotspot area would close for the remainder of the 3-year period.

Alternative B4 is not preferred because it would result in additional challenges for pelagic longline observers. Relative to target catch and incidentally retained pelagic sharks, interactions with dusky sharks are a rare event, making positive identification difficult without bringing the fish onboard. Furthermore, if and when vessel operators and crew interact with a prohibited species, their goal is to cut the line and release the fish in a manner that maximizes the probability of survival, therefore observers may not have the time and viewing opportunities necessary to identify the sharks with absolute certainty. Pelagic longline vessels typically use longer gangions and have a higher freeboard than other vessels, which also hinders an observer's ability to get an adequate view of the shark to ensure that it is a dusky shark and not another

Carcharhinid shark (e.g., sandbar or silky sharks are commonly confused with dusky sharks). Assuming that all unidentified *Carcharhinid* sharks are dusky sharks may alleviate this concern to a degree; however, we prefer implementation of the hotspot closed areas described in Alternative B3, without bycatch caps, at this time.

Alternative B7 would prohibit the use of pelagic longline and bottom longline gear in all HMS fisheries. Prohibiting the use of pelagic longline gears would have direct, significant beneficial ecological impacts on target and non-target HMS, prohibited species, and bycatch in the short- and long-term. The species-specific ecological impacts on 34 HMS and non-HMS target species, prohibited species, and other bycatch depends on the species' life history, population status, and interaction rates in the pelagic longline fishery. Of the alternatives considered, this alternative would have the most beneficial ecological impacts for dusky sharks because the number of interactions would be reduced by 586 sharks per year. The number of harvested and discarded swordfish would decrease by 48,926 fish per year. Yellowfin tuna harvested would decrease by 35,757 fish per year. Blue and white marlin discards would also decrease by prohibiting the use of pelagic longline gear by 734 and 779 fish per year, respectively. Bluefin tuna kept and discarded 1,853 fish per year. Interactions with loggerhead and leatherback sea turtles would decrease by 162 and 70 turtles per year, respectively. Interactions with pelagic sharks, prohibited sharks, and LCS would all be decreased substantially.

Prohibiting the use of bottom longline gear—which is primarily used to target LCS in HMS fisheries—would have direct, significant, and beneficial ecological impacts on dusky sharks. Indirect, significant, beneficial impacts on HMS and non-HMS target species (primarily LCS), non-target HMS, and protected species in the short- and long-term are also expected. The majority of LCS are caught on bottom longline gear. In 2010, approximately 73 percent of LCS were caught on bottom longline gear. The species-specific ecological impacts on HMS and non-HMS target species, prohibited species, and other bycatch depends on the species' life history, population status, and interaction rates in the bottom longline fishery. Observers are onboard for 100 percent of the trips targeting sandbars in the shark research fishery and for 2–3 percent of the trips outside the shark research fishery. Prohibiting bottom longline gear and closing the shark research fishery would decrease the number of dusky shark interactions because dusky sharks are predominately caught in the bottom longline fishery by vessels targeting sandbar sharks. Between 2008 and 2010, there were 325 observed interactions with dusky sharks in the shark research fishery.

Closing the pelagic and bottom longline fisheries would have indirect, minor negative ecological impacts because these fisheries are the primary source of fishery dependent data. These data are critical to scientific understanding of the species that the fisheries interact with, and the basis of stock assessments for many target and bycatch species frequently encountered. Closing these fisheries would eliminate the logbooks submitted by longline vessel operators and remove the Agency's ability to deploy observers on longline vessels. Observer programs for the pelagic and bottom longline fishery, administered by the Southeast Fisheries Science Center, rely on observers for tagging studies, collecting biological samples, and for enhancing understanding on the life history and ecology of living marine resources. Closing the pelagic and bottom longline fisheries would result in direct, significant adverse economic impacts in the short- and long-term for longline vessel owners, operators, and crew. In 2010, there were 242 tuna longline permits (pelagic longline) and 217 shark directed permit holders (bottom longline) that would be affected. In 2010, the pelagic and bottom longline fisheries had revenues of $27,026,120, which equates to approximately 70 percent of the total revenues for all commercial HMS fisheries.

In addition to direct impacts to vessels owners, operators, and crew members, this alternative would have significant, adverse indirect impacts in the short- and long-term on fish dealers, processors, bait/gear suppliers, and other shore-based businesses in the vicinity of the fishing ports impacted by reduced fishing opportunities for longline vessel owners. Prohibiting the use of longline gear would result in significant, indirect social impacts ranging from disruption of local fishing communities to relocation of vessels and homeports, loss of crew, increased time at sea, and other social hardships stemming from further reducing fishing opportunities for HMS participants. The states with the most tuna permit holders are Massachusetts (31.5 percent), North Carolina (12.9 percent), Maine (10.2 percent), New Jersey (7.0 percent), and New York (6.4 percent). The states with the most swordfish permit holders are Florida (32.4 percent), New Jersey (13.9 percent), Louisiana (11.9 percent), Massachusetts (9.1 percent), and New York (8.0 percent). The states with the majority of shark directed permit holders include Florida (62 percent), New Jersey (11 percent), and North Carolina (7 percent).

Alternative B7 would result in ecological benefits for the 34 species considered in this analysis because prohibiting bottom longline and pelagic longline gear would eliminate a significant source of fishing mortality for these species. However, the economic impacts stemming from prohibiting of these gears would also be significant. While an objective of this rulemaking is to reduce fishing mortality of dusky sharks and this alternative would meet this goal, we do not prefer this alternative at this time because this objective can be achieved via implementation of other measures, as described above.

Request for Comments

We are requesting comments on the alternatives and analyses described in this proposed rule and in the draft Amendment 5. Comments on this proposed rule may be submitted via *http://www.regulations.gov,* mail, or fax. Comments may also be submitted at a public hearing (see Public Hearings and Special Accommodations below). We solicit comments on this proposed rule by February 12, 2013 (see **DATES** and **ADDRESSES**).

We will announce the dates and locations of public hearings in a future **Federal Register** notice. Additionally, we have requested to present a summary of the draft amendment and this proposed rule to the five Atlantic Regional Fishery Management Councils (the New England, Mid-Atlantic, South Atlantic, Gulf of Mexico, and Caribbean Fishery Management Councils) and the Atlantic and Gulf States Marine Fisheries Commissions during the public comment period. Please consult the Councils' and Commissions' fall meeting notices for times and locations.

We are also requesting comments on specific items related to the alternatives to clarify sections of the regulatory text or in analyzing potential impacts of the alternatives. Specifically, we request comments on:

1. Monitoring dusky shark bycatch caps. We are seeking public comment on how to administer monitoring of dusky shark bycatch caps with limited additional observer program resources. One alternative that we are considering would implement dusky shark bycatch caps on vessels fishing with pelagic longline gear. This alternative would allow pelagic longline vessels limited

access to high dusky shark interaction areas while limiting the number of dusky shark interactions that could occur in these areas. Once the dusky shark bycatch cap for an area is reached, that area would close until the end of the 3-year bycatch cap period (see Alternative B4 above). To implement this alternative, we would need an appropriate level of monitoring and accuracy to ensure the mortality rate of dusky sharks, as determined by the stock assessment and this amendment, is not exceeded. However, additional funding sources to provide increased observer coverage to monitor dusky bycatch cap areas are unlikely, and we are looking for comments on how to monitor these areas if this alternative is implemented. Options that we are exploring range from allowing access only to vessels that have been selected for pelagic longline observer program coverage under its current selection process and when they are on a trip with an observer on board, to establishing other monitoring programs, such as an industry-funded observer program, or the use of electronic monitoring technology (e.g., video monitoring).

2. The name ''aggregated LCS.'' We are seeking public comment on what to name the reconfigured grouping of sharks that would continue to be managed collectively in the remainder of what is currently the LCS complex for quota monitoring purposes. When we began managing sharks, we grouped sharks for management purposes into three species complexes: large coastal, small coastal, and pelagic sharks. Over time, as a result of numerous species-specific stock assessments and increasing requests for species-specific management, we have begun managing a number of species separately and have removed those species from the original LCS complex. In the draft Amendment 5 and this proposed rule, we use the name ''aggregated LCS.'' However, other names may exist that are more descriptive or appropriate and that could help avoid confusion in the fishery as the groupings are reconfigured.

3. Suggestions for improving angler identification of shark species and reducing dusky shark mortality in the recreational fishery. We are looking for comments and suggestions on how to improve angler identification of the different shark species. Many shark species are similar looking, particularly to recreational anglers who may not see sharks on a regular basis. This difficulty in identifying sharks correctly has resulted in recreational shark management measures that try to group all sharks together (e.g., the recreational retention limit of one shark per vessel per trip). However, these measures have not been effective for some species, such as dusky sharks, which are prohibited but look similar enough to other species that some anglers land them in error. In the draft Amendment 5 and this proposed rule, we propose increasing outreach to anglers and have suggested a companion to the current shark placard that would describe the characteristics of sharks that cannot be landed recreationally. We are looking for comments and suggestions on additional methods we can use to provide recreational anglers, particularly those that rarely fish for sharks, information on how to identify sharks and comply with the regulations. We are also looking for comments on additional approaches that could reduce dusky shark mortality in the recreational fishery to help meet the rebuilding targets of the Southeast Data, Assessment, and Review 21 stock assessment. Because dusky sharks are prohibited from recreational retention, we are proposing enhancing outreach and education efforts along with increasing the recreational minimum size from 4.5 feet fork length to 8 feet fork length to reach the rebuilding target, but acknowledge that there may be other approaches that could assist in reaching that target while also resulting in fewer changes to the way the recreational fishery currently operates.

4. Stowing longline gear to transit closed areas. We are looking for comments on the proposed change that would allow longline fishermen to stow gear and transit closed areas. There are currently a number of time/area closures for pelagic and bottom longline fishermen that have commercial swordfish and/or shark limited access permits. The regulations do not provide these fishermen the ability to stow their gear and transit the areas. Instead, fishermen must go around the areas to remain in compliance with the regulations. Among other things, this restriction has raised safety-at-sea concerns and could increase the economic cost of fishing by requiring fishermen to spend more time at sea and use more fuel. Over the years, we have heard from fishermen that they should be allowed to transit the closed areas if the hydraulics are disconnected from the mainline and drum. However, we have not implemented that in lieu of a stowage requirement because of concerns that the hydraulics are easily reconnected and, therefore, disconnecting them does not effectively render the gear unavailable for use. In this proposed rule, we propose language similar to the language used in § 622.34 and § 648.23 that would allow fishermen to transit the closed areas if they remove and stow the gangions, hooks, and buoys from the mainline and drum. The hooks could not be baited. We are seeking comments on whether this language is appropriate, if following those requirements is possible on bottom and pelagic longline vessels, and if disconnecting the hydraulics is a feasible option to consider.

Classification

Pursuant to the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that the proposed rule is consistent with the 2006 Consolidated HMS FMP and its amendments, other provisions of the Magnuson-Stevens Act, ATCA, and other applicable law, subject to further consideration after public comment.

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

We prepared a draft environmental impact statement (EIS) for this rule that discusses the impact on the environment that would result from this rule. A copy of the EIS is available from NMFS (see **ADDRESSES**). The Notice of Availability of the EIS is publishing in the **Federal Register** on the same day as this proposed rule. A summary of the impacts of the alternatives considered is described above.

Paperwork Reduction Act

This proposed rule would require recreational fishermen who are not fishing in a tournament to report all landings of hammerhead sharks. If finalized, this requirement would be considered a collection-of-information requirement and would be subject to review and approval by OMB under the Paperwork Reduction Act (PRA). Because we are currently in the process of renewing the existing non-tournament recreational reporting requirement for billfish, swordfish, and bluefin tuna and cannot make changes while in the renewal process, we have not yet submitted this collection-of-information to OMB for approval. If we finalize this permitting requirement, we would submit an application amending the existing non-tournament recreational reporting collection-of-information to OMB for approval and would delay implementation of that portion of the rule pending approval.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the

information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to (enter office name) at the **ADDRESSES** above, and by email to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, 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.

Regulatory Flexibility Act

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A summary of the analysis follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

In compliance with section 603(b)(1) of the RFA, the purpose of this proposed rulemaking is, consistent with the 2006 Consolidated HMS FMP objectives, the Magnuson-Stevens Act, and other applicable law, to rebuild and end overfishing of certain species of sharks, as appropriate. As described earlier in the preamble of this proposed rule and in Chapter 1 of the draft Amendment 5, based on the results of the Southeast Data, Assessment, and Review 21 stock assessments for sandbar, dusky, and blacknose sharks, and a published stock assessment for scalloped hammerhead sharks, we have determined that sandbar, dusky, scalloped hammerhead, and Atlantic blacknose sharks are overfished and that dusky, scalloped hammerhead, and Atlantic blacknose sharks are experiencing overfishing. In addition, the overfishing and overfished status of the Gulf of Mexico blacknose shark stock is unknown, and the results of the Gulf of Mexico blacktip shark stock assessment are to be incorporated into this amendment as appropriate.

In compliance with section 603(b)(2) of the RFA, the objectives of this proposed rulemaking are to provide for the sustainable management of shark species under authority of the Secretary consistent with the requirements of the Magnuson-Stevens Act and other statutes which may apply to such management, including the Endangered Species Act, Marine Mammal Protection Act, and Atlantic Tunas Convention Act. As described earlier in the preamble of this proposed rule and in Chapter 1 of the draft Amendment 5, the management objectives of the proposed regulations will be to amend the 2006 Consolidated HMS FMP to achieve the following: end overfishing and achieve optimum yield for dusky, scalloped hammerhead, and Atlantic blacknose sharks; implement a rebuilding plan for scalloped hammerhead and Atlantic blacknose sharks to ensure that fishing mortality levels for both species are maintained at or below levels that would result in a 70 percent probability of rebuilding in the timeframe recommended by the assessments; modify the current rebuilding plan for dusky sharks to ensure that fishing mortality levels for dusky sharks are maintained at or below levels that would result in a 70 percent probability of rebuilding in the timeframe recommended by the assessment; maintain the rebuilding plan for sandbar sharks to ensure 70 percent probability of rebuilding in the timeframe recommended by the assessment; and achieve optimum yield and provide an opportunity for the sustainable harvest of Gulf of Mexico blacknose, Gulf of Mexico blacktip sharks, and other sharks, as appropriate.

Section 603(b)(3) of the RFA requires Agencies to provide an estimate of the number of small entities to which the rule would apply. The Small Business Administration has defined a ''small'' fishing entity as one with average annual receipts of less than $4.0 million; a small charter/party boat entity is one with average annual receipts of less than $6.5 million; a small wholesale dealer as one with 100 or fewer employees; and a small seafood processor as one with 500 or fewer employees. Under these standards, we consider all Atlantic HMS permit holders subject to this rulemaking to be small entities.

The proposed rule would apply to the 479 commercial shark permit holders in the Atlantic shark fishery based on an analysis of permit holders in October 2011. Of these permit holders, 217 have directed shark permits and 262 hold incidental shark permits. Not all permit holders are active in the fishery in any given year. We estimate that between 2008 and 2011, approximately 169 vessels with directed shark permits and 121 vessels with incidental shark permits landed sharks. The hotspot closed area alternatives also impact pelagic longline vessels. Based on the number of Tuna Longline permit holders, we estimate that there are 242 longline vessels with HMS permits that could potentially be impacted by the proposed hotspot closed areas. Of those pelagic longline vessels, 116 actively fished in 2011.

The recreational measures proposed would also impact HMS Angling category and HMS Charter/Headboat category permit holders. In general, the HMS Charter/Headboat category permit holders can be regarded as small businesses, while HMS Angling category permits are typically obtained by individuals who are not considered small entities for purposes of the RFA. In 2011, 4,194 vessels obtained HMS Charter/Headboat category permits. It is unknown what portion of these permit holders actively participate in shark fishing or market shark fishing services for recreational anglers.

Under section 603(b)(4) of the RFA, Agencies are required to describe any new reporting, record-keeping and other compliance requirements. Most of the proposed commercial and recreational measures would not introduce any new reporting and record-keeping requirements. However, Alternative Suite A2 would require hammerhead shark reporting through the non-tournament reporting system. While this reporting requirement primarily impacts recreational fishermen, it also impacts small entities that operate charter/headboat trips that catch hammerhead sharks. The 4,194 charter/headboat permit holders in 2011 would be required to submit hammerhead shark landings through the non-tournament reporting system. Some small portion of those charter/headboat permit holders, primarily vessels in the Gulf of Mexico or South Atlantic targeting sharks, would actually be submitting reports because most charter-headboat trips target other HMS species and not hammerhead sharks.

Under section 603(b)(5) of the RFA, Agencies must identify, to the extent practicable, relevant Federal rules which duplicate, overlap, or conflict with the proposed rule. Fishermen, dealers, and managers in these fisheries must comply with a number of international agreements, domestic laws, and other FMPs. These include, but are not limited to, the Magnuson-Stevens Act, ATCA, the High Seas Fishing Compliance Act, the Marine Mammal Protection Act, the Endangered Species Act, the National Environmental Policy Act, the Paperwork Reduction Act, and the Coastal Zone Management Act. The new regulations proposed to be implemented

do not conflict with any relevant regulations, Federal or otherwise.

Under section 603(c), agencies are required to describe any alternatives to the proposed rule which accomplish the stated objectives and which minimize any significant economic impacts. These impacts are summarized below and in Amendment 5.

One of the requirements of an IRFA is to describe any alternatives to the proposed rule which accomplish the stated objectives and which minimize any significant economic impacts. These impacts are discussed below. Additionally, the RFA (5 U.S.C. 603(c)(1)–(4)) lists four general categories of ''significant'' alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are: (1) Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; and (4) exemptions from coverage of the rule for small entities. In order to meet the objectives of this proposed rule, consistent with the Magnuson-Stevens Act and ESA, we cannot exempt small entities or change the reporting requirements only for small entities because all the entities affected are considered small entities. Thus, there are no alternatives discussed that fall under the first and fourth categories described above. Under the third category, ''use of performance rather than design standards,'' we consider Alternative B4 addressing dusky shark bycatch caps in the pelagic longline fishery, to be a performance standard rather than a design standard. It establishes performance levels for pelagic longline vessels for avoiding interactions with dusky sharks, and only triggers closures of hotspot areas if those performance levels are exceeded. As described below, we analyzed several different alternatives in this proposed rulemaking and provide the rationale for identifying the preferred alternative to achieve the desired objective.

In this rulemaking, we considered two different categories of issues to address shark management measures where each issue had its own range of alternatives that would meet the objectives of the Magnuson-Stevens Act and the 2006 Consolidated HMS FMP. The first category (Alternative Suites A1–A5) covers five alternative suites that address various shark quotas and total allowable catch. The second category of alternatives (Alternatives B1–B7) involves pelagic longline and bottom longline effort modifications, including time/area closures, bycatch caps, modification to the existing bottom longline shark research fishery, and gear restrictions. The expected economic impacts of the different alternatives considered and analyzed are discussed below. The potential impacts these alternatives may have on small entities have been analyzed and are summarized below. The full IRFA and all its analyses can be found in draft Amendment 5. The proposed action includes: Alternative Suite A2, Alternative B3, Alternative B5, and Alternative B6. The economic impacts that would occur under these proposed actions were compared with the other alternatives considered to determine if economic impacts to small entities could be minimized while still accomplishing the stated objectives of this rule.

Under the first group of alternatives that address various shark quotas and total allowable catches, Alternative Suite A1 (status quo) would not change current management of the Atlantic shark fisheries. Specifically, for hammerhead sharks, from 2008 through 2011, approximately 39 vessels with directed shark permits had hammerhead shark landings, while approximately 9 vessels with incidental shark permits had hammerhead shark landings in the Atlantic. In the Gulf of Mexico, approximately 25 vessels with directed shark permits had hammerhead shark landings, while approximately 4 vessels with incidental shark permits had hammerhead shark landings. Spread amongst the directed and incidental shark permit holders that landed scalloped hammerhead in the Atlantic, the average directed shark permit holder earned $748 in average annual gross revenues, and the average incidental shark permit holder earned $760 in average annual gross revenues from scalloped hammerhead shark landings. Spread amongst the directed and incidental shark permit holders that landed scalloped hammerhead in the Gulf of Mexico, the average directed shark permit holder earned $1,363 in average annual gross revenues, and the average incidental shark permit holder earned $1,387 in average annual gross revenues from scalloped hammerhead shark landings. Scalloped hammerhead sharks compose a small portion of total non-sandbar LCS landings; an annual average of 7.6 percent of non-sandbar LCS landings are scalloped hammerhead sharks in the Atlantic and 4.3 percent on the Gulf of Mexico. Scalloped hammerhead sharks are overfished with overfishing occurring, and the stock could become increasingly unproductive, therefore we do not prefer this alternative at this time.

For LCS, from 2008 through 2011, approximately 68 vessels with directed shark permits had non-sandbar LCS landings, while approximately 25 vessels with incidental shark permits had non-sandbar LCS landings in the Atlantic. In the Gulf of Mexico, approximately 45 vessels with directed shark permits had non-sandbar LCS landings, while approximately 11 vessels with incidental shark permits had non-sandbar LCS landings. It is estimated that these permit holders would be the most affected by management measures proposed for non-sandbar LCS. Spread amongst the directed and incidental shark permit holders that landed non-sandbar LCS in the Atlantic, the average directed shark permit holder earned $7,656 in average annual gross revenues, and the average incidental shark permit holder earned $7,703 in average annual gross revenues from non-sandbar LCS landings. Spread amongst the directed and incidental shark permit holders that landed non-sandbar LCS, the average directed shark permit holder earned $19,001 in average annual gross revenues, and the average incidental shark permit holder earned $19,433 in average annual gross revenues from non-sandbar LCS landings.

For Gulf of Mexico blacktip sharks, from 2008 through 2011, approximately 41 vessels with directed shark permits had blacktip shark landings, while approximately 4 vessels with incidental shark permits had blacktip shark landings in the Gulf of Mexico. Spread amongst the directed and incidental shark permit holders that landed blacktip shark, the average directed shark permit holder earned $13,861 in average annual gross revenues, and the average incidental shark permit holder earned $14,051 in average annual gross revenues from blacktip shark landings.

For blacknose sharks, since Amendment 3 to the 2006 HMS FMP was implemented in 2010, an average of approximately 25 vessels with directed shark permits had blacknose shark landings, while approximately 4 vessels with incidental shark permits had blacknose shark landings. It is estimated that these permit holders would be the most affected by management measures proposed for blacknose sharks. Spread amongst the directed and incidental shark permit holders that landed blacknose, the average directed shark permit holder earned $1,739 in average annual gross revenues, and the average

incidental shark permit holder earned $222 in average annual gross revenues from blacknose shark landings.

Similarly, for non-blacknose SCS, since Amendment 3 to the 2006 HMS FMP was implemented in 2010, an average of approximately 39 vessels with directed shark permits had blacknose shark landings, while approximately 13 vessels with incidental shark permits had non-blacknose SCS landings. It is estimated that these permit holders would be the most affected by management measures proposed for non-blacknose SCS. Spread amongst the directed and incidental shark permit holders that landed non-blacknose SCS, the average directed shark permit holder earned $13,414 in average annual gross revenues, and the average incidental shark permit holder earned $1,677 in average annual gross revenues from non-blacknose SCS landings.

Regarding quota linkages, since Alternative Suite A1 does not create any new species or species complex, new quota linkages would be unnecessarily. Consequently, there are no additional direct or indirect socioeconomic impacts in the short or long-term beyond those discussed for scalloped hammerhead, blacktip sharks, non-blacknose SCS, and blacknose sharks.

Regarding recreational measures, under Alternative Suite A1, there would be no changes to the existing recreational retention limits for all species. Therefore, small entities, such as charter/headboat operators and tournaments that target sharks, would not experience any change in economic impact under this alternative.

When taken as a whole, Alternative Suite A1 would likely have neutral economic impacts on small entities in the short-term because the fisheries would continue to operate as status quo. In the long-term, it could cause direct minor adverse economic impacts because we would need to make to changes to the fishery to address the overfishing and overfished stocks. Since Alternative Suite A1 does not address the overfished and/or overfishing determination based on recent stock assessments, we do not prefer this alternative at this time.

Alternative Suite A2, the preferred alternative, would establish new species complexes by regions, adjust LCS and SCS quotas, link appropriate quotas, and increase the shark minimum recreational size to 96″ FL. Specifically, for scalloped hammerhead sharks, under Alternative Suite A2, we would establish an Atlantic and a Gulf of Mexico hammerhead shark quota (including scalloped, smooth, and great hammerhead sharks). Under those quotas, the reduction in revenue fishery-wide would be $809 in the Atlantic and $928 in the Gulf of Mexico. Therefore, there would be minimal impact on the annual revenues of individual vessels actively involved in the fishery.

For LCS, Alternative Suite A2 would establish new, separate quotas for scalloped hammerhead sharks and Gulf of Mexico blacktip sharks, necessitating removal of these species from the non-sandbar LCS complex (which will then be renamed aggregated LCS complex in both the Atlantic and Gulf of Mexico). The aggregated LCS quota would be based on average annual landings of the remaining species, therefore, those species composing the aggregated LCS complex would not experience a change in fishing pressure and landings would be capped at recent levels. For these reasons, economic impacts to small entities resulting from this portion of Alternative Suite A2 are expected to be neutral.

For Gulf of Mexico blacktip sharks, this alternative suite's proposed blacktip shark action would essentially maintain the current fishing levels and is likely to result in neutral economic impacts to small entities. We have determined that the Gulf of Mexico blacktip shark stock is not overfished and not experiencing overfishing. The results of the most recent stock assessment indicate the Gulf of Mexico blacktip shark stock can sustain current fishing levels and should not result in any additional impacts to small entities.

For blacknose sharks, under Alternative Suite A2, we would separate blacknose sharks into the Atlantic and Gulf of Mexico regions as suggested in the Southeast Data, Assessment, and Review 21 stock assessment. These alternatives would decrease the blacknose shark landings in each region. Average annual gross revenues for the blacknose shark landings for the Atlantic region would decrease from $58,122 under the No Action alternative down to $54,854 under Alternative Suite A2. We anticipate these directed and incidental shark permit holders would experience minor economic impacts as blacknose sharks are not the targeted shark species for SCS fishermen. Average annual gross revenues for the blacknose shark landings for the Gulf of Mexico region would increase from $3,273 under the No Action alternative to $5,650 under Alternative Suite A2. We anticipate these directed and incidental shark permit holders would experience neutral economic impacts since the new Gulf of Mexico blacknose shark quota is consistent with current landings. In the short-term, lost revenues would be moderate for the 22 directed shark permit and 3 incidental shark permit holders that land blacknose sharks in the Atlantic region, and the 8 directed shark and the 2 incidental shark permits that land blacknose sharks in the Gulf of Mexico.

For non-blacknose SCS, Alternative Suite A2 would establish regional quotas for non-blacknose SCS based on the landings since Amendment 3 to the 2006 HMS FMP was implemented in 2010. In the Atlantic, an average of approximately 33 vessels with directed shark permits had blacknose shark landings, while approximately 10 vessels with incidental shark permits had non-blacknose SCS landings. In the Gulf of Mexico, an average of approximately 9 vessels with directed shark permits had blacknose shark landings, while approximately 3 vessels with incidental shark permits had non-blacknose SCS landings since Amendment 3. Under the Alternative Suite A2, there would be neutral economic impacts to directed and incidental shark permit holders as the average annual gross revenues from non-blacknose SCS landings would be the same as the status quo in the short- and long-term. Fishermen would be expected to operate in the same manner as the status quo in the short-term. However, this alternative suite could have minor negative economic impacts on fishermen if fishing effort increases for non-blacknose SCS. The fishery has never filled the entire quota established for the fishery in 2010, but that could change with a smaller regional quota and if fishermen are displaced from other fisheries.

Under Alternative Suite A2, the quota linkages could have short and long-term moderate adverse economic impacts. Quota linkages are explicitly designed to concurrently close multiple shark quotas, regardless of whether all the linked quotas are filled. This provides protection from exceeding the quota by incidental capture where a directed fishery has been closed because it filled its quota, but it could also preclude fishermen from harvesting the entirety of each of the linked quotas. A quantitative analysis of the economic impact is not possible without comparing the rates of hammerhead shark, blacktip shark, and aggregated LCS catch and without knowing the extent to which fishermen can avoid hammerhead sharks because. If fisherman are unable to sufficiently avoid hammerhead sharks the quotas will likely close much sooner, but if they can successfully avoid hammerhead sharks, it is likely that

they will be able to fully utilize the other shark quotas. However, a qualitative analysis can provide insight on possible adverse socioeconomic impacts. Under Alternative Suite A2, both the hammerhead shark and aggregated LCS quotas would close when landings of either reaches or is expected to reach 80 percent of the quota. If hammerhead shark landings reach 80 percent of the quota, the aggregated LCS fishery would close, regardless of what portion of the quota has been filled. If the entire aggregate LCS quota has not been harvested, the fishery would not realize the full level of revenues possible under the established quota. A similar situation could occur in the Gulf of Mexico under Alternative Suite A2 where both the hammerhead shark and blacktip shark quotas would be linked to the aggregated LCS quota. The blacknose shark and non-blacknose SCS socioeconomic impacts would be the same as the LCS since there would be similar scenarios with the quota linkage by species and region. In addition, we would allow inseason quota transfer between non-blacknose SCS regions. This would have minor beneficial economic impacts for the fishery as the non-blacknose SCS quota would not be the limiting factor. Consequently, the quota linkages proposed under Alternative Suite A2 could have moderate adverse economic impacts.

Under Alternative Suite A2, we would increase the current recreational size limit for all authorized shark species to 96 inches FL, implement mandatory reporting of landed hammerhead sharks, and provide identification guide for all of the prohibition shark species. Implementation of these management measures would significantly alter the way tournaments and charter vessels operate, or reduce opportunity and demand for recreational shark fishing, could create adverse economic impacts. However, these measures would help the stocks rebuild and possibly increase recreational fisheries opportunities in the future.

When taken as a whole, Alternative Suite A2 would likely have direct short and long-term minor adverse economic impacts. These impacts would mostly affect fishermen targeting scalloped hammerhead and blacknose sharks since the quotas would be reduced. These fishermen are likely to adapt to the new regulations by fishing in other fisheries, or change their fishing habitats. Recreational management measures would increase the size limit and cause fishermen to catch and release more sharks. Neutral economic impacts are expected for fishermen targeting the aggregated LCS and non-blacknose SCS complexes since the new proposed quotas are based on the average landings for each species. Furthermore, quota linkages would affect the economic impacts based on the fishing rate of each linked shark quota. When we compare the economic impacts of Alternative Suite A2 to the other alternative suites, this alternative suite would cause fewer impacts overall to fishermen. For this reason and the ecological reasons previously discussed, we prefer this alternative suite at this time.

Alternative Suite A3 would establish new species complexes by regions, adjust LCS and SCS quotas, prohibit retention of commercial blacknose sharks in the Gulf of Mexico, and increase the hammerhead shark minimum recreational size to 96″ FL. Specifically, for hammerhead sharks, we would remove hammerhead sharks from the non-sandbar LCS quota and establish a separate hammerhead shark quota for the three species of large hammerhead sharks (scalloped, smooth, and great hammerhead sharks), similar to the action proposed under Alternative Suite A2. In contrast to Alternative Suite A2, however, the hammerhead shark quota under Alternative Suite A3 would not be split between the Atlantic and Gulf of Mexico, leaving one hammerhead shark quota across both regions. Although this difference could create some administrative difficulties, it is unlikely to alter the economic impacts from Alternative Suite A2's minor adverse economic impacts. Alternative B2 would have split the quota between the two regions based on historical landings; therefore, under Alternative Suite A3, a similar breakdown of landings would likely occur.

Non-sandbar LCS complex management measures under Alternative Suite A3 are identical to those under Alternative Suite A2. See the LCS complex section of Alternative Suite A2 for more details on impacts.

Alternative Suite A3 would create a separate Gulf of Mexico blacktip shark total allowable catch and commercial quota, by increasing the total allowable catch calculated in Alternative Suite A2 by 30 percent, which is based on the current landings percentage of Gulf of Mexico blacktip sharks. This would result in a commercial quota of 380.7 mt dw (839,291 lb dw), which is a 48 percent increase from average Gulf of Mexico blacktip shark landings from 2008–2011 (256.7 mt dw; 565,921 lb dw). This is an increase of $314,376 when compared to current landings. From 2008 through 2011, approximately 41 vessels with directed shark permits had blacktip shark landings, while approximately 4 vessels with incidental shark permits had blacktip shark landings in the Gulf of Mexico. Spread amongst the directed and incidental shark permit holders that landed blacktip shark, the average shark permit holder could potentially land up to $6,986 in additional annual revenue from Gulf of Mexico blacktip sharks.

The blacknose shark management measures under Alternative Suite A3 are identical to those under Alternative Suite A2 for the Atlantic region. Under Alternative Suite A3, we would prohibit blacknose sharks in the commercial and recreational shark fisheries in the Gulf of Mexico region and work with the Gulf of Mexico Fishery Management Council to reduce the mortality of blacknose sharks to attain the total allowable catch of 11,900 sharks. Currently, the average annual gross revenues for blacknose shark landings for the entire commercial fishery are $3,273, but would be reduced to $0 under this alternative. Under Alternative Suite A3, lost revenues would lead to moderate direct adverse economic impacts for the 8 directed shark and the 2 incidental shark permits that land blacknose sharks in the Gulf of Mexico.

Alternative Suite A3 would keep the non-blacknose SCS complex and quota as status quo with one regional quota of 221.6 mt dw (488,539 lb dw). There would be neutral economic impacts to shark permit holders.

Under Alternative Suite A3, no quota linkages would be implemented. All shark quotas would open and close independently of each other. Quota linkages can lead to closures of quotas that are not yet filled if quotas of other sharks caught concurrently are closed. If each quota opens and closes independently, each quota would have a higher likelihood of being filled, allowing for full realization of potential revenues. Thus, the lack of quota linkages under this alternative suite could lead to minor beneficial economic impacts. However, this could result in adverse ecological impacts for overfished shark species.

Alternative Suite A3 would increase the minimum recreational size for all hammerhead sharks (great, smooth, and scalloped) to 78 inches FL, provide identification guide for all of the prohibition shark species, and prohibit the retention of blacknose sharks in the recreational fishery. Therefore, this alternative would likely result in minor adverse economic impacts for charter/head boat operators and tournaments

that target hammerhead and blacknose sharks because of the reduced incentive to recreationally fish for these species. Increasing the recreational size limit for hammerhead sharks would ensure that only larger or ''trophy'' sized sharks would be landed.

When taken as a whole, Alternative Suite A3 would likely have moderate adverse economic impacts on small entities. These impacts would mostly affect fishermen catching hammerhead and blacknose sharks. The hammerhead shark quota would be based on the scalloped hammerhead shark total allowable catch and would reduce all hammerhead shark landings. The blacknose shark quota in the Atlantic would be reduced, while the Gulf of Mexico blacknose shark retention would be prohibited. Recreational management measures would affect fishermen who catch hammerhead sharks since the increased size limit would result in more hammerhead sharks having to be released and blacknose sharks as blacknose sharks would be prohibited under this alternative suite. In addition, no quota linkages would allow fishermen to fully harvest all of the quotas. While this alternative suite might have more beneficial direct economic impacts than Alternative Suite A2, the ecological impacts would be adverse and would not achieve the rebuilding plan targets for these stocks.

Alternative Suite A4 would establish new species complexes by regions, adjust LCS and SCS quotas, prohibit retention of commercial blacknose sharks in the Gulf of Mexico, link appropriate quotas, and establish a species-specific recreational shark quota. Specifically, for scalloped hammerhead sharks, Alternative Suite A4 would use the scalloped hammerhead shark total allowable catch established in the stock assessment to create separate Atlantic and Gulf of Mexico quotas applicable to only scalloped hammerheads sharks rather than all three large hammerhead sharks as proposed under Alternative Suite A2. The proposed quotas in both regions are higher than current landings. Therefore, we expect neutral economic impacts. Great and smooth hammerhead sharks could continue to be landed at current levels under the aggregated LCS quota.

For LCS, Alternative Suite A4 would establish new aggregated LCS quotas in the Atlantic and Gulf of Mexico using a similar methodology to that outlined in Alternative Suite A2, except for one difference. While Alternative Suite A2 would calculate each species' contribution to total non-sandbar LCS landings using average annual landings between 2008 and 2011, Alternative Suite A4 would instead calculate each species' contribution to total non-sandbar LCS landings using the year with the highest annual landings for the complex between 2008 and 2011 for each species. The year with the highest non-sandbar LCS landings in the Atlantic was 2008 and the highest in the Gulf of Mexico was 2011. This deviation in method does not substantially change the quotas; therefore, economic impacts are unchanged from Alternative Suite A2.

Alternative Suite A4 would establish a separate Gulf of Mexico blacktip shark quota of 1,992.6 mt dw based upon projections produced by stock assessment scientists. The quota of 1,992.6 mt dw is more than five times the current Gulf of Mexico non-sandbar LCS quota. Ex-vessel revenue resulting from this quota could increase by up to $4,427,322 across the entire Gulf of Mexico blacktip. Spread amongst the 45 directed and incidental shark permit holders that landed blacktip shark, the average shark permit holder could potentially land up to $98,385 in additional annual revenue from Gulf of Mexico blacktip sharks. However, it is unlikely that this value would be realized. The Gulf of Mexico blacktip shark quota would be linked to the Gulf of Mexico aggregated LCS and scalloped hammerhead shark quotas. All three of these quotas would close when one reached, or was expected to reach, 80 percent of the respective quota. Either the aggregated or scalloped hammerhead quota would be likely to be filled before the large blacktip quota was filled. Regardless, the increase blacktip quota would allow for increased fishing opportunities and positive impacts to small entities.

Under Alternative Suite A4, the mortality of blacknose sharks in the Atlantic region will be reduced by at least 61 percent in the Atlantic region as recommended in the stock assessment. All of the economic impacts resulting from this portion of the alternative suite are the same as those analyzed in Alternative Suite A2.

For the Gulf of Mexico, we would establish a total allowable catch of 9,792 blacknose sharks. As described in Alternative Suite A3, we would prohibit blacknose sharks in any shark fishery in the Gulf of Mexico in order to meet this proposed total allowable catch given the blacknose mortality in non-HMS fisheries in the Gulf of Mexico. We would also work with the Gulf of Mexico Fishery Management Council to reduce bycatch mortality of blacknose sharks in the shrimp trawl and reef fish fisheries. The average annual gross revenues for blacknose shark landings for the commercial fishery are $3,273, but would be reduced to $0 under this alternative. Under Alternative Suite A4, it is anticipated that there would be moderate adverse economic impacts. In the short-term lost revenues would be moderate for the 8 directed shark and the 2 incidental shark permits that land blacknose sharks in the Gulf of Mexico. Over the long-term the economic impact would be moderate, as the other management measures could be implemented to reduce the discards of blacknose sharks.

For non-sandbar SCS, under Alternative Suite A4, we would establish regional quotas for non-blacknose SCS by dividing the current quota in half. This alternative would cause significant adverse economic impacts for shark fishermen in the Atlantic region. Alternative Suite A4 would restrict fishing of non-blacknose in the Atlantic to 244,269.5 lb dw and potentially reduce current annual revenue by $253,411. In the Gulf of Mexico, this alternative would cause beneficial economic impacts for non-blacknose SCS fishery as the quota would be larger than their average landings. This larger quota could potentially increase gross revenues by $259,157. However, this alternative suite would cause adverse impacts on blacknose sharks since current fishing and bycatch levels of blacknose sharks could increase. Since Alternative Suite A4 would not reduce blacknose shark mortality in the Gulf of Mexico and decrease the Atlantic non-blacknose SCS fishing levels, we do not prefer this alternative at this time.

Quota linkages under Alternative Suite A4 are nearly identical to those under Alternative Suite A2, except that instead of linking the hammerhead quotas to the aggregated LCS quota in the Atlantic and Gulf of Mexico, the scalloped hammerhead quota would be linked instead. This deviation should not change the expected economic impacts. In addition, we would link the Atlantic blacknose and non-blacknose SCS quotas and Gulf of Mexico blacknose shark and non-blacknose SCS quotas, and allow inseason quota transfer between the non-blacknose SCS regions. The quota linkages proposed under Alternative Suite A4 would be expected to have moderate adverse economic impacts.

Under Alternative Suite A4, we would establish species-specific recreational shark quotas and prohibit the recreational retention of blacknose sharks. This alternative would cause short-term neutral economic impacts for recreational fishermen as it would restrict landings to current levels. In the

long-term, this alternative could have minor adverse socioeconomic impacts if the species-specific recreational shark quotas are exceeded and we implement additional management measures. This would have a greater effect on tournaments and charter vessels that target sharks.

Overall, Alternative Suite A4 would likely have direct short and long-term minor adverse economic impacts. These impacts would mostly affect fishermen catching blacknose sharks. The blacknose shark quota in the Atlantic would be reduced, while the Gulf of Mexico blacknose shark retention would be prohibited to meet the total allowable catch. Recreational management measures would affect fishermen who retain sharks since we would implement a species-specific quota for the recreational fishery. Neutral economic impacts are expected for recreational and commercial fishermen targeting scalloped hammerhead sharks, aggregated LCS and non-blacknose SCS. While this alternative suite might have minor adverse economic impacts, there is the potential for more adverse economic impacts if quotas are exceeded in the future. Although this alternative suite would allow for the highest Gulf of Mexico blacktip shark commercial quota, it is based on base model projections produced by stock assessment scientists after the formal stock assessment process. These stock assessment scientists felt that the projections had a high degree of uncertainty in the base model used to create the projections. Furthermore, these projections were developed outside of the standard stock assessment process and were not reviewed. In addition to the uncertainty in the model, the blacktip shark quota proposed under this alternative suite could lead to increased bycatch of other species due to increased fishing effort. For all these reasons, and because of the potential for additional adverse socioeconomic impacts if quotas are exceeded, we do not prefer this alternative suite at this time.

Alternative Suite A5 would close all commercial and recreational shark fisheries. Currently, scalloped hammerhead sharks provide fishery-wide revenue of $75,633 (as discussed under Alternative Suite A1), which would be lost under this alternative suite. Consequently, the scalloped hammerhead portion of Alternative Suite A5 would be expected to only have moderate adverse direct economic impacts. Closure of the non-sandbar LCS fishery would have significant adverse direct economic impacts. Many fishermen rely on the non-sandbar LCS fishery for a large portion of annual earnings. A closure of the fishery would significantly impact the livelihoods of these fishermen. Currently, the non-sandbar LCS fishery provides fishery-wide revenue of $1,781,996 (as discussed under Alternative Suite A1), which would be lost under this alternative suite. Currently, Gulf of Mexico blacktip sharks provide fishery-wide revenue of $624,496 (as discussed under Alternative Suite A1), which would be lost under this alternative suite and reduce the annual revenue of the approximately 45 direct and incidental shark permit holders that had blacktip shark landings by $13,878 per permit holder. Consequently, the Gulf of Mexico blacktip shark portion of Alternative Suite A5 would be expected to have significant adverse economic impacts. Alternative Suite A5 would close the entire blacknose commercial shark fishery, prohibiting the landing of any blacknose sharks. This alternative would have significant, adverse, economic impacts on fishermen with directed and incidental shark permits that fish for blacknose: the 29 directed shark permit holders, and the 4 incidental shark permit holders that had blacknose shark landings during 2008 through 2011. The result would be a loss of average annual gross revenues of $35,797 from blacknose shark landings. While this alternative could reduce blacknose mortality below the commercial allowance required to rebuild blacknose shark stocks, it would also drastically reduce non-blacknose SCS landings, and have the largest social and economic impacts of all the alternatives considered. This action would require fishermen to leave the closed shark fisheries altogether. Alternative Suite A5 would close the entire SCS commercial shark fishery, prohibiting the landing of any SCS, including finetooth, Atlantic sharpnose, and bonnethead. This alternative would have significant, adverse, socioeconomic impacts on fishermen with directed and incidental shark permits that fish for non-blacknose SCS, the 39 directed shark permit holders, and the 13 incidental shark permit holders that had non-blacknose SCS landings since Amendment 3. The result would be a loss of average annual gross revenues of $544,954 from non-blacknose SCS landings. This action would require fishermen to leave the closed shark fisheries altogether. Alternative Suite A5 would close all federally managed Atlantic recreational and commercial shark fisheries, obviating the need for quota linkages. The quota linkages portion of Alternative Suite A5 would likely result in no additional economic impacts on small entities. Alternative Suite A5 would have direct significant adverse socioeconomic impacts because it would prohibit the retention of all sharks for recreational anglers. This would have a significant effect on tournaments and charter vessels that target sharks. Alternative Suite A5 would likely have significant adverse economic impacts because recreational and commercial shark fishing in the Atlantic, Gulf of Mexico and Caribbean would be prohibited. Because other alternatives should meet the objectives of this Amendment with less significant adverse socioeconomic impacts, we do not prefer this alternative suite at this time.

As explained above, in addition to Alternatives Suites A1 through B5, we also considered a second category of alternatives (Alternatives B1 through B7) that involve pelagic longline and bottom longline effort modifications, including time/area closures, bycatch caps, modification to the existing bottom longline shark research fishery, and gear restrictions. Alternative B1 is the no action alternative in this group and would maintain existing time/area closures and would not implement any new time/area closures. Under this alternative, maintaining the existing closures and not implementing additional time area closures would have neutral, direct economic impacts in the short term. Vessels would continue to operate subject to existing regulations, including time/area closures, therefore no new economic impacts would be associated with maintaining the status quo. However, in the long-term, if additional measures to prevent overfishing of dusky sharks and allow populations to rebuild were implemented, including time/area closures, minor to moderate adverse economic impacts could be experienced by participants in the PLL and BLL fisheries.

Alternative B2 would modify the existing Charleston Bump Pelagic Longline time/area closure by extending the timing of the closure through May 31 every year. Closing the entire Charleston Bump during the month of May would result in direct, moderate adverse economic impacts in the short and long-term. On average from 2008 to 2010, 27 vessels fished in the proposed closure and would be affected. The annual average reduction in revenues per affected vessel as a result of the closure would be $14,292, after adjusting for redistribution of effort into open areas of the South Atlantic Bight Statistical reporting area.

Alternative B3 would create additional time/area closures based on dusky shark interaction hotspot areas. This is the preferred alternative and under this alternative, we consider several different sub-alternatives, all of which are preferred. Alternative B3a would prohibit the use of pelagic longline gear in HMS fisheries in a portion of the Charleston Bump during the month of May. This sub-alternative would result in direct, minor adverse economic impacts in the short and long-term, although this would be offset by a potential increase in dolphin revenues. On average from 2008 to 2010, 17 vessels fished in the proposed closure and would be affected. The annual average reduction in revenues per affected vessel as a result of the closure would be $1,074, after adjusting for redistribution of effort into open areas of the Charleston Bump closed area.

Alternative B3b would prohibit the use of pelagic longline gear in HMS fisheries in the vicinity of the Cape Hatteras Special Research/Hatteras Shelf Area during the month of May. This sub-alternative would result in direct, minor adverse economic impacts in the short and long-term. On average from 2008 to 2010, 10 vessels fished in the proposed closure during that month and would be affected. The annual average reduction in revenues per affected vessel as a result of the closure would be $2,982, after adjusting for redistribution of effort into open areas of the Mid Atlantic Bight Statistical reporting area.

Alternative B3c would prohibit the use of pelagic longline gear in HMS fisheries in the vicinity of the Cape Hatteras Special Research/Hatteras Shelf Area during the month of June. This sub-alternative would result in direct, minor adverse economic impacts in the short and long-term. On average from 2008 to 2010, 11 vessels fished in the proposed closure and would be affected. The annual average reduction in revenues per affected vessel as a result of the closure would be $2,559, after adjusting for redistribution of effort into open areas of the Mid Atlantic Bight Statistical reporting area.

Alternative B3d would prohibit the use of pelagic longline gear in HMS fisheries in the vicinity of the Cape Hatteras Special Research/Hatteras Shelf Area during the month of November. This sub-alternative would result in direct, minor adverse economic impacts in the short and long-term. On average from 2008 to 2010, 9 vessels fished in the proposed closure and would be affected. The annual average reduction in revenues per affected vessel as a result of the closure would be $4,177, after adjusting for redistribution of effort into open areas of the Mid Atlantic Bight Statistical reporting area.

Alternative B3e would prohibit the use of pelagic longline gear in HMS fisheries in three distinct closures in the vicinity of the Mid Atlantic Bight Canyons during the month of October. This sub-alternative would result in neutral direct ecological impacts in the short and long-term. On average from 2008 to 2010, 24 vessels fished in the proposed closure and would be affected. The annual average increase in revenues per affected vessel as a result of the closure would be +$5,707, after adjusting for redistribution of effort into open areas of the Mid Atlantic Bight Statistical reporting area.

Alternative B3f would prohibit the use of pelagic longline gear in HMS fisheries in an area in the vicinity of the existing Northeastern closed area during the month of July. This sub-alternative would result in direct, moderate adverse economic impacts in the short term becoming minor in the long-term as fishing vessels adjust to fishing in different areas during the proposed closure. On average from 2008 to 2010, 15 vessels fished in the proposed closure and would be affected. The annual average reduction in revenues per vessel as a result of the closure would be −$12,518 after adjusting for redistribution of effort into open areas of the Northeast Coastal Statistical reporting area.

Alternative B3g would prohibit the use of pelagic longline gear in HMS fisheries in an area in the vicinity of the existing Northeastern closed area during the month of August. This sub-alternative would result in direct, moderate adverse economic impacts in the short term becoming minor in the long-term as fishing vessels adjust to fishing in different areas during the proposed closure. On average from 2008 to 2010, 15 vessels fished in the proposed closure and would be affected. The annual average reduction in revenues per affected vessel as a result of the closure would be −$7,557, after adjusting for redistribution of effort into open areas of the Northeast Coastal Statistical reporting area.

Alternative B3h would prohibit the use of pelagic longline gear in HMS fisheries in a portion of the Charleston Bump during the month of November. This sub-alternative would result in direct, moderate adverse economic impacts in the short-term becoming minor in the long-term as fishing vessels adjust to fishing in different areas during the proposed closure. On average from 2008 to 2010, 12 vessels fished in the proposed closure and would be affected. The annual average reduction in revenues per vessel as a result of the closure would be $8,954, after adjusting for redistribution of effort into open areas of the Charleston Bump area.

Under Alternative B4, we would implement dusky shark bycatch caps in the pelagic longline fishery. Implementing bycatch caps in conjunction with the proposed time/area closures described in Alternative B3 would result in direct, minor economic impacts in the short and long-term consistent with the economic impacts described for each of the hotspot closed areas included in Alternative B3. The economic impacts of Alternative B4 would be less adverse in the short-term than implementing the preferred time/area closures because bycatch caps would allow a limited amount of fishing to continue within the time/area closures until a bycatch cap was reached. The exact economic impacts of implementing bycatch caps would depend on the number of vessels authorized to fish in the hotspot areas (vessels selected for observer coverage and carrying an observer on an annual basis and the number of trips that occur within each hotspot areas before the bycatch cap is met. After the cap is met, economic impacts would be more pronounced because of the fact that the hotspot area would close for the remainder of the three year period.

Between 2008 and 2010, a total of 72 unique vessels fished in the proposed hotspot closed areas. The number of vessels that would be authorized to fish in these areas would decrease as a result of selecting this alternative, however, a limited number of vessels would still be authorized to fish in the hotspot areas with an observer therefore the economic impacts of this alternative would be more adverse than the status quo (Alternative B1) and less adverse than the preferred alternative (Alternative B3).

Under Alternative B5, we would modify the timing of the existing mid-Atlantic shark closed area to December 15 to July 15. This is a preferred alternative. Under Alternative B2, we would modify the timing of the existing mid-Atlantic shark closed area to coincide with the season opening dates in the Atlantic States Marine Fisheries Commission Shark Plan. This is anticipated to have direct, minor, socioeconomic impacts in the short- and long-term because fishermen in North Carolina would have access to adjacent Federal waters at the same that state waters open, consistent with the Atlantic States Marine Fisheries Commission Shark Plan. In the short-

term, revenue gain would be minor for the 17 directed shark permit and 12 incidental shark permit holders along with state-water fishermen that might normally fish in the mid-Atlantic closed area. These North Carolina fishermen would be able to fish sooner than in previous years, but the adjustment to the starting date of the closure would have very minor impacts. In the past four years, the non-sandbar LCS fishery, which primarily uses bottom longline gear, has only been open beyond December 15th once. This occurred in 2008 when the fishery opened in late July under the current fishing regulations. Since then, the non-sandbar LCS fishery has closed before December 15th. Over the long-term, the economic impact would be minor, as the fishermen are likely to adapt to the new regulations. Because the economic impacts of this alternative would have direct, minor economic benefits and neutral ecological impacts, we prefer this alternative suite at this time.

Under Alternative B6, we would modify the existing bottom longline shark research fishery to ensure that dusky shark interactions are reduced. This alternative is also preferred. Under Alternative B6, we would implement measures in the shark research fishery to reduce the interactions with dusky sharks. This alternative would result in direct, minor adverse socioeconomic impacts in the short and long term for fishermen participating in the shark research fishery because of additional restrictions placed on vessels participating in the shark research fishery, including, but not limited to: Limitations on soak time, limits on the number of hooks deployed per set, prohibiting participants from deploying bottom longline gear at times and in areas where elevated levels of dusky shark interactions have been observed, and/or stopping the shark research fishery for the year if a certain number of dusky shark interactions is reached. Fishermen participating in the research fishery are targeting sandbar sharks; however, dusky sharks are often caught as bycatch when targeting sandbar sharks. These measures could change the way that the shark research fishery operates, which could result in direct, long-term, minor adverse socioeconomic impacts. However, it is anticipated that vessels will continue to want to participate in the shark research fishery because these vessels have the exclusive privilege of being able to target and harvest sandbar sharks which are desired because of their high fin value. It is likely that these measures would help sandbar sharks rebuild more quickly and increase commercial fisheries opportunities in the future. Indirect impacts, in the short and long term would be minor and adverse due to reduced revenues for fish dealers and other support industries that may occur if fishing effort is curtailed in the shark research fishery.

Alternative B7 would prohibit the use of pelagic longline and bottom longline gear in Atlantic HMS fisheries. Closing the pelagic and bottom longline fisheries would result in direct, significant adverse economic impacts in the short and long-term for longline vessel owners, operators, and crew. In 2010, there were 242 tuna longline permits (pelagic longline) and 217 shark directed permit holders (bottom longline) that would be affected. We estimate that between 2008 and 2011, approximately 169 vessels with directed shark permits landed sharks and 116 pelagic longline vessels made a set in 2011. In 2010, the pelagic and bottom longline fisheries had revenues of $27,026,120, which equates to approximately 70 percent of the total revenues for all commercial HMS fisheries. Assuming these revenues are distributed evenly among the 285 active vessels, the estimated annual reduction in revenues per vessel would be approximately $94,828. Given that other alternatives meet the objectives of this rule at significantly lower economic impacts to small entities, this alternative is not preferred.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: November 14, 2012.

Alan D. Risenhoover,

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

For the reasons set out in the preamble, 50 CFR part 635 is proposed to be amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.;* 16 U.S.C. 1801 *et seq.*

2. In § 635.2:

a. Remove the definitions of ''Non-ridgeback large coastal shark,'' ''Non-sandbar LCS,'' and ''Ridgeback large coastal shark''; and

b. Add the definitions of ''Atlantic Aggregated LCS,'' ''Canyons Hotspot closed area,'' ''Charleston Bump May Hotspot closed area,'' ''Charleston Bump November Hotspot closed area,'' ''FL (fork length),'' ''Gulf of Mexico Aggregated LCS,'' ''Hammerhead Shark(s),'' ''Hatteras Shelf Hotspot closed area,'' ''Research LCS,'' and ''Southern Georges Bank Hotspot closed'' in alphabetical order to read as follows:

§ 635.2 Definitions.

* * * * *

Atlantic Aggregated LCS means one of the following species, or parts thereof, as listed in Table 1 of Appendix A of this part: Atlantic blacktip, bull, lemon, nurse, silky, spinner, and tiger.

* * * * *

Canyons Hotspot closed area means a closed area comprised of three separate rectangular areas of the Atlantic Ocean. Each of these areas is bounded by straight lines connecting the following coordinates in the order stated:

(1) South area: 37° 30′ N. Lat., 74° 50′ W. Long.; 37° 30′ N. Lat., 74° 20′ W. Long.; 36° 30′ N. Lat., 74° 20′ W. Long.; 36° 30′ N. Lat., 74° 50′ W. Long; 37° 30′ N. Lat., 74° 50′ W. Long.

(2) Middle area: 39° 10′ N. Lat., 73° 20′ W. Long.; 39° 10′ N. Lat., 72° 40′ W. Long.; 38° 40′ N. Lat., 72° 40′ W. Long; 38° 40′ N. Lat., 74° 50′ W. Long; 39° 10′ N. Lat., 73° 20′ W. Long.

(3) North area: 40° 00′ N. Lat., 72° 00′ W. Long.; 40° 00′ N. Lat., 70° 30′ W. Long.; 39° 30′ N. Lat., 70° 30′ W. Long.; 39° 30′ N. Lat., 72° 00′ W. Long; 40° 00′ N. Lat., 72° 00′ W. Long.

* * * * *

Charleston Bump May Hotspot closed area means a closed area comprised of the rectangular area of the Atlantic Ocean bounded by straight lines connecting the following coordinates in the order stated: 31°30′ N. Lat., 80°00′ W. Long.; 31°30′ N. Lat., 78°20′ W. Long.; 31°00′ N. Lat., 78°20′ W. Long.; 31°00′ N. Lat., 80°00′ W. Long.; 31°30′ N. Lat., 80°00′ W. Long.

Charleston Bump November Hotspot closed area means a closed area comprised of the polygon area of the Atlantic Ocean bounded by straight lines connecting the following coordinates in the order stated: 31°10′ N. Lat., 79°20′ W. Long.; 31°10′ N. Lat., 79°10′ W. Long.; 31°20′ N. Lat., 79°10′ W. Long.; 31°20′ N. Lat., 78°50′ W. Long.; 31°00′ N. Lat., 78°50′ W. Long.; 31°00′ N. Lat., 79°20′ W. Long.; 31°10′ N. Lat., 79°20′ W. Long.

* * * * *

FL (fork length) means the straight line measurement along the length of

the fish from the tip of the upper jaw to the fork of the tail.

* * * * *

Gulf of Mexico Aggregated LCS means one of the following species, or parts thereof, as listed in Table 1 of appendix A of this part: bull, lemon, nurse, silky, spinner, and tiger.

* * * * *

Hammerhead Shark(s) means great, scalloped, and smooth hammerhead shark species, or parts thereof, as listed in Table 1 in Appendix A of this part.

* * * * *

Hatteras Shelf Hotspot closed area means a closed area comprised of the rectangular area of the Atlantic Ocean bounded by straight lines connecting the following coordinates in the area stated: 36°10′ N. Lat., 75°00′ W. Long.; 36°10′ N. Lat., 74°40′ W. Long.; 35°10′ N. Lat., 74°40′ W. Long.; 35°10′ N. Lat., 75°00′ W. Long.; 36°10′ N. Lat., 75°00′ W. Long.

* * * * *

Research LCS means one of the species, or part thereof, listed under heading A of Table 1 in Appendix A of this part, other than the sandbar shark.

* * * * *

Southern Georges Bank Hotspot closed area means a closed area comprised of the parallelogram shaped area of the Atlantic Ocean bounded by straight lines connecting the following coordinates in the area stated: 40°50′ N. Lat., 68°50′ W. Long.; 40°50′ N. Lat., 66°30′ W. Long.; 39°40′ N. Lat., 67°40′ W. Long.; 39°40′ N. Lat., 70°00′ W. Long.; 40°50′ N. Lat., 68°50′ W. Long.

* * * * *

3. In § 635.5, introductory paragraph (c) and paragraphs (c)(1) and (c)(2) are revised to read as follows:

§ 635.5 Recordkeeping and reporting.

* * * * *

(c) *Anglers.* All bluefin tuna, billfish, North Atlantic swordfish, and hammerhead shark non-tournament landings must be reported as specified under paragraphs (c)(1) or (c)(2) of this section, unless an alternative recreational catch reporting system has been established as specified under paragraph (c)(3) of this section. Tournament landings must be reported as specified under paragraph (d) of this section.

(1) *Bluefin tuna.* The owner of a vessel permitted, or required to be permitted, in the Atlantic HMS Angling or Atlantic HMS Charter/Headboat category must report all BFT landings under the Angling category quota designated at § 635.27(a) through the NMFS automated landings reporting system within 24 hours of the landing. Such reports may be made by calling 1–888–872–8862 or by submitting the required information over the Internet at: *www.hmspermits.gov.*

(2) The owner, or the owner's designee, of a vessel permitted, or required to be permitted, in the Atlantic HMS Angling or Atlantic HMS Charter/Headboat category must report all non-tournament landings of Atlantic blue marlin, Atlantic white marlin, roundscale spearfish, and Atlantic sailfish, and all non-tournament and non-commercial landings of North Atlantic swordfish and hammerhead sharks to NMFS by telephone to a number designated by NMFS, or electronically via the internet to an internet Web site designated by NMFS, or by other means as specified by NMFS, within 24 hours of that landing. For telephone landing reports, the owner, or the owner's designee, must provide a contact phone number so that a NMFS designee can call the vessel owner, or the owner's designee, for follow up questions and to confirm the reported landing. Regardless of how submitted, landing reports submitted to NMFS are not complete unless the vessel owner, or the owner's designee, has received a confirmation number from NMFS or a NMFS designee.

* * * * *

4. In § 635.20, paragraphs (a) and (e)(2) are revised to read as follows:

§ 635.20 Size limits.

(a) *General.* The CFL will be the sole criterion for determining the size and/or size class of whole (head on) Atlantic tunas.

* * * * *

(e) * * *

(2) All sharks landed under the recreational retention limits specified at § 635.22(c)(2) must be at least 96 inches (243.8 cm) FL.

* * * * *

5. In § 635.21:

a. Remove the introductory paragraph; and

b. Revise introductory paragraph (c), paragraph (c)(1)(i), introductory paragraph (c)(2), paragraphs (c)(2)(i) and (ii), introductory paragraph (c)(5)(iii)(c), introductory paragraph (d), and paragraphs (d)(1)(i) and (d)(4) to read as follows:

§ 635.21 Gear operation and deployment restrictions.

* * * * *

(c) *Pelagic longlines.* For purposes of this part, a vessel is considered to have pelagic longline gear on board when a power-operated longline hauler, a mainline, floats capable of supporting the mainline, and leaders (gangions) with hooks are on board. Removal of any one of these elements constitutes removal of pelagic longline gear. If a vessel issued a permit under this part is in a closed area designated under paragraph (c)(2) of this section with pelagic longline gear on board, it is a rebuttable presumption that fish on board such vessel were taken with pelagic longline gear in the closed area except where such possession is aboard a vessel transiting a closed area with fishing gear stowed appropriately. ''In transit'' or ''transiting'' means non-stop progression through an area. Longline gear is stowed appropriately as long as all gangions and hooks are disconnected from the mainline and are stowed on or below deck, hooks are not baited, and all buoys are disconnected from the mainline and drum (buoys may remain on deck).

(1) * * *

(i) Is in a closed area designated under paragraph (c)(2) of this section with bottom longline gear onboard, and is not transiting such closed area and does not have with fishing gear stowed appropriately as defined above, the vessel may not, at any time, possess or land any pelagic species listed in table 2 of appendix A to this part in excess of 5 percent, by weight, of the total weight of pelagic and demersal species possessed or landed, that are listed in tables 2 and 3 of appendix A to this part.

* * * * *

(2) If pelagic longline gear is on board a vessel issued a permit under this part, persons aboard that vessel may not fish or deploy any type of fishing gear:

(i) In the following month-long closures every year: the Charleston Bump May Hotspot closed area in May; Northeastern United States closed area in June; the Canyons Hotspot closed area in October; the Hatteras Shelf Hotspot closed area in November; and the Charleston Bump November Hotspot closed area in November;

(ii) In the following multi-month closures each year: Charleston Bump Hotspot closed area from February through April; the Hatteras Shelf Hotspot closed area in May and June; and the Southern Georges Bank Hotspot closed area in July and August;

* * * * *

(5) * * *

(iii) * * *

(C) *Hook size, type, and bait.* Vessels fishing outside of the Northeast Distant gear restricted area, as defined at § 635.2, that have pelagic longline gear on board, and that have, or are required to have, a limited access swordfish, shark, or tuna longline category permit

for use in the Atlantic Ocean, including the Caribbean Sea and the Gulf of Mexico, are limited, at all times, to possessing on board and/or using only whole finfish and/or squid bait, and the following types and sizes of fishing hooks:

* * * * *

(d) *Bottom longlines.* For the purposes of this part, a vessel is considered to have bottom longline gear on board when a power-operated longline hauler, a mainline, weights and/or anchors capable of maintaining contact between the mainline and the ocean bottom, and leaders (gangions) with hooks are on board. Removal of any one of these elements constitutes removal of bottom longline gear. Bottom longline vessels may have a limited number of floats and/or high flyers onboard for the purposes of marking the location of the gear but removal of these floats does not constitute removal of bottom longline gear. If a vessel issued a permit under this part is in a closed area designated under paragraph (d)(1) of this section with bottom longline gear on board, it is a rebuttable presumption that any fish on board such a vessel were taken with bottom longline in the closed area except where such possession is aboard a vessel transiting a closed area fishing gear stowed appropriately. ''In transit'' or ''transiting'' means non-stop progression through an area. Longline gear is stowed appropriately as long as all gangions and hooks are disconnected from the mainline and are stowed on or below deck, hooks are not baited, and all buoys are disconnected from the mainline and drum (buoys may remain on deck).

(1) * * *

(i) The mid-Atlantic shark closed area from December 15 through July 15 every year;

* * * * *

(4) If a vessel issued or required to be issued a permit under this part is in a closed area designated under paragraph (d)(1) of this section with pelagic longline gear onboard, and is not transiting such closed area and does not have with gear stowed appropriately as defined above, the vessel may not, at any time, possess or land any demersal species listed in Table 3 of Appendix A to this part in excess of 5 percent, by weight, of the total weight of pelagic and demersal species possessed or landed, that are listed in Tables 2 and 3 of Appendix A to this part.

* * * * *

6. In § 635.22, paragraph (c)(2) is revised to read as follows:

§ 635.22 Recreational retention limits.

* * * * *

(c) * * *

(2) Only one shark from the following list may be retained per vessel per trip, subject to the size limits described in § 635.20(e)(2): Atlantic blacktip, Gulf of Mexico blacktip, bull, great hammerhead, scalloped hammerhead, smooth hammerhead, lemon, nurse, spinner, tiger, blue, common thresher, oceanic whitetip, porbeagle, shortfin mako, Atlantic sharpnose, finetooth, Atlantic blacknose, Gulf of Mexico blacknose, and bonnethead.

* * * * *

7. In § 635.24:

a. Remove and reserve paragraph (a)(7); and

b. Revise paragraphs (a)(2), (a)(3), and (a)(4)(ii) to read as follows:

§ 635.24 Commercial retention limits for sharks and swordfish.

* * * * *

(a) * * *

(2) A person who owns or operates a vessel that has been issued a directed LAP for sharks and does not have a valid shark research permit, or a person who owns or operates a vessel that has been issued a directed LAP for sharks and that has been issued a shark research permit but does not have a NMFS-approved observer on board, may retain, possess, or land no more than 36 LCS other than sandbar sharks per vessel per trip if the respective LCS fishery(ies) is open per § 635.27 and § 635.28. Such persons may not retain, possess, or land sandbar sharks.

(3) A person who owns or operates a vessel that has been issued an incidental LAP for sharks and does not have a valid shark research permit, or a person who owns or operates a vessel that has been issued an incidental LAP for sharks and that has been issued a valid shark research permit but does not have a NMFS-approved observer on board, may retain, possess, or land no more than 3 LCS other than sandbar sharks per vessel per trip if the respective LCS fishery(ies) is open per § 635.27 and § 635.28. Such persons may not retain, possess, or land sandbar sharks.

(4) * * *

(ii) A person who owns or operates a vessel that has been issued a directed shark LAP may retain, possess, or land blacknose and non-blacknose SCS if the respective blacknose and non-blacknose SCS fisheries are open per §§ 635.27 and 635.28.

* * * * *

8. In § 635.27, paragraph (b) is revised to read as follows:

§ 635.27 Quotas.

* * * * *

(b) *Sharks*—(1) *Commercial quotas.* The commercial quotas for sharks specified in this section apply to all sharks harvested from the management unit, regardless of where harvested. The base quotas listed below may be adjusted per paragraph (b)(2) of this section. Sharks taken and landed commercially from state waters, even by fishermen without Federal shark permits, must be counted against the commercial quota. Any sharks landed commercially as unclassified will be counted against the appropriate quota based on the species composition calculated from data collected by observers on non-research trips and/or dealer data. No prohibited sharks, including parts or pieces of prohibited sharks, which are listed under heading D of Table 1 of Appendix A to this part, may be retained except as authorized under § 635.32. For the purposes of this section, the boundary between the Gulf of Mexico region and the Atlantic region is defined as a line beginning on the east coast of Florida at the mainland at 25°20.4′ N. lat, proceeding due east. Any water and land to the south and west of that boundary is considered, for the purposes of quota monitoring and setting of quotas, to be within the Gulf of Mexico region. Any water and land to the north and east of that boundary, for the purposes of quota monitoring and setting of quotas, is considered to be within the Atlantic region.

(i) *Sandbar sharks.* The base annual commercial quota for sandbar sharks is 116.6 mt dw. This quota, as adjusted per paragraph (b)(2) of this section, is available only to the owners of commercial shark vessels that have been issued a valid shark research permit and that have a NMFS-approved observer onboard.

(ii) *Atlantic aggregated LCS.* The base annual commercial quota for Atlantic aggregated LCS is 168.2 mt dw. The commercial quota for the Atlantic aggregated LCS, as adjusted per paragraph (b)(2) of this section, applies only to those species of sharks that were caught in the Atlantic region, as defined in paragraph (b)(1) of this section.

(iii) *Gulf of Mexico aggregated LCS.* The base annual commercial quota for Gulf of Mexico aggregated LCS is 157.3 mt dw. The commercial quota for the Gulf of Mexico aggregated LCS, as adjusted per paragraph (b)(2), applies only to those species of sharks that were caught in the Gulf of Mexico region, as defined in paragraph (b)(1) of this section.

(iv) *Research LCS.* The base annual commercial quota for Research LCS is

50 mt dw. This quota, as adjusted per paragraph (b)(2) of this section, is available only to the owners of commercial shark vessels that have been issued a valid shark research permit and that have a NMFS-approved observer onboard.

(v) *Hammerhead sharks.* The base annual commercial quota for all hammerhead sharks is 52.2 mt dw. This quota is split between the regions defined in paragraph (b)(1) of this section as follows: Atlantic region receives 54.2% of the base quota, except as adjusted per paragraph (b)(2) of this section; Gulf of Mexico region receives 45.8% of the base quota, except as adjusted per paragraph (b)(2) of this section. The commercial quota for Atlantic hammerhead sharks applies only to those species of sharks that were caught in the Atlantic region, as defined in paragraph (b)(1) of this section. The commercial quota for Gulf of Mexico hammerhead sharks applies only to those species of sharks that were caught in the Gulf of Mexico region, as defined in paragraph (b)(1) of this section.

(vi) *Gulf of Mexico blacktip sharks.* The base annual commercial quota for Gulf of Mexico blacktip sharks is 256.7 mt dw. The commercial quota for Gulf of Mexico blacktip sharks, as adjusted per paragraph (b)(2) of this section, applies only to those species of sharks that were caught in the Gulf of Mexico region, as defined in paragraph (b)(1) of this section.

(vii) *Non-blacknose small coastal sharks.* The base annual commercial quota for non-blacknose small coastal sharks across all regions is 221.6 mt dw. This quota is split between the regions defined in paragraph (b)(1) of this section as follows: The Atlantic region receives 89.3% of the base quota, except as adjusted per paragraph (b)(2) of this section; the Gulf of Mexico region receives 10.7% of the base quota, except as adjusted per paragraph (b)(2) of this section. The commercial quota for Atlantic non-blacknose SCS applies only to those species of sharks that were caught in the Atlantic region, as defined in paragraph (b)(1) of this section. The commercial quota for Gulf of Mexico non-blacknose SCS applies only to those species of sharks that were caught in the Gulf of Mexico region, as defined in paragraph (b)(1) of this section.

(viii) *Atlantic blacknose sharks.* The base annual commercial quota for Atlantic blacknose sharks is 18 mt dw. The commercial quota for Atlantic blacknose sharks, as adjusted per paragraph (b)(2) of this section, applies only to those species of sharks that were caught in the Atlantic region, as defined in paragraph (b)(1) of this section.

(ix) *Gulf of Mexico blacknose sharks.* The base annual commercial quota for Gulf of Mexico blacknose sharks is 2 mt dw. The commercial quota for Gulf of Mexico blacknose sharks, as adjusted per paragraph (b)(2) of this section, applies only to those species of sharks that were caught in the Gulf of Mexico region, as defined in paragraph (b)(1) of this section.

(x) *Pelagic sharks.* The base annual commercial quotas for pelagic sharks are 273 mt dw for blue sharks, 1.7 mt dw for porbeagle sharks, and 488 mt dw for pelagic sharks other than blue sharks or porbeagle sharks.

(2) *Annual and inseason adjustments of commercial quotas.* NMFS will publish in the **Federal Register** any annual or inseason adjustments to the base annual commercial quotas. The base annual quota will not be available, and the fishery will not open, until any adjustments are published and effective in the **Federal Register**. Within a fishing year or at the start of a fishing year, NMFS may transfer quotas between regions of the same species or management group, as appropriate, based on the criteria in paragraph (b)(1)(i)(C) of this section.

(i) *Annual overharvest adjustments.* Except as noted in this paragraph, if any of the available commercial base or adjusted quotas as described in this section is exceeded in any fishing year, NMFS will deduct an amount equivalent to the overharvest(s) from the base quota the following fishing year or, depending on the level of overharvest(s), NMFS may deduct from the base quota an amount equivalent to the overharvest(s) spread over a number of subsequent fishing years to a maximum of five years. If the blue shark quota is exceeded, NMFS will reduce the annual commercial quota for pelagic sharks by the amount that the blue shark quota is exceeded prior to the start of the next fishing year or, depending on the level of overharvest(s), deduct an amount equivalent to the overharvest(s) spread over a number of subsequent fishing years to a maximum of five years.

(ii) *Annual underharvest adjustments.* Except as noted in this paragraph, if any of the annual base or adjusted quotas as described in this section is not harvested, NMFS may adjust the annual base quota depending on the status of the stock or quota group. If a species or a specific species within a management group is declared to be overfished, to have overfishing occurring, or to have an unknown status, NMFS may not adjust the following fishing year's base quota for any underharvest, and the following fishing year's quota will be equal to the base annual quota. If the species or all species in a management group is not declared to be overfished, to have overfishing occurring, or to have an unknown status, NMFS may increase the following year's base annual quota by an equivalent amount of the underharvest up to 50 percent above the base annual quota. Except as noted below, underharvests are not transferable between regions, species, and/or management groups.

(iii) *Determination criteria for inseason and annual quota transfers between regions.* Inseason and/or annual quota transfers of regional quotas between regions may be conducted only for species or management groups where the species are the same between regions and the quota is split between regions for management purposes and not as a result of a stock assessment. Before making any inseason or annual quota transfer between regions, NMFS will consider the following criteria and other relevant factors:

(A) The usefulness of information obtained from catches in the particular management group for biological sampling and monitoring of the status of the respective shark species and/or management group.

(B) The catches of the particular species and/or management group quota to date and the likelihood of closure of that segment of the fishery if no adjustment is made.

(C) The projected ability of the vessels fishing under the particular species and/or management group quota to harvest the additional amount of corresponding quota before the end of the fishing year.

(D) Effects of the adjustment on the status of all shark species.

(E) Effects of the adjustment on accomplishing the objectives of the fishery management plan.

(F) Variations in seasonal distribution, abundance, or migration patterns of the appropriate shark species and/or management group.

(G) Effects of catch rates in one area precluding vessels in another area from having a reasonable opportunity to harvest a portion of the quota.

(H) Review of dealer reports, daily landing trends, and the availability of the respective shark species and/or management group on the fishing grounds.

(3) *Opening commercial fishing season criteria.* NMFS will file with the Office of the Federal Register for publication notification of the opening dates of the shark fishery for each species and management group. Before making any decisions, NMFS would consider the following criteria and other

relevant factors in establishing the opening dates:

(i) The available annual quotas for the current fishing season for the different species/complexes based on any over- and/or underharvests experienced during the previous commercial shark fishing seasons;

(ii) Estimated season length based on available quota(s) and average weekly catch rates of different species and/or management group from the previous years;

(iii) Length of the season for the different species and/or management group in the previous years and whether fishermen were able to participate in the fishery in those years;

(iv) Variations in seasonal distribution, abundance, or migratory patterns of the different species/complexes based on scientific and fishery information;

(v) Effects of catch rates in one part of a region precluding vessels in another part of that region from having a reasonable opportunity to harvest a portion of the different species and/or management quotas;

(vi) Effects of the adjustment on accomplishing the objectives of the 2006 Consolidated HMS FMP and its amendments; and/or,

(vii) Effects of a delayed opening with regard to fishing opportunities in other fisheries.

(4) *Public display and non-specific research quotas.* All sharks collected under the authority of a display permit or EFP, subject to restrictions at § 635.32, will be counted against the following:

(i) The base annual quota for persons who collect LCS other than sandbar, SCS, pelagic sharks, blue sharks, porbeagle sharks, or prohibited species under a display permit or EFP is 57.2 mt ww (41.2 mt dw).

(ii) The base annual quota for persons who collect sandbar sharks under a display permit is 1.4 mt ww (1 mt dw) and under an EFP is 1.4 mt ww (1 mt dw).

(iii) No persons may collect dusky sharks under a display permit. Collection of dusky sharks for research under EFPs and/or SRPs may be considered on a case by case basis and any associated mortality would be deducted from the shark research and display quota.

* * * * *

9. In § 635.28, the section heading and paragraph (b) are revised to read as follows:

§ 635.28 Fishery closures.

* * * * *

(b) *Sharks*—(1) Non-linked quotas: If the quota of a species or management group is not linked to another species or management group, then if quota is available as specified by a publication in the **Federal Register**, the commercial fishery for the shark species management group specified in § 635.27(b) will remain open. When NMFS calculates that the landings for the shark species management group, as specified in § 635.27(b)(1), has reached or is projected to reach 80 percent of the available quota as specified in § 635.27(b)(1), NMFS will file for publication with the Office of the Federal Register a notice of closure for that shark species, shark management group, and/or region that will be effective no fewer than 5 days from date of filing. From the effective date and time of the closure until NMFS announces, via the publication of a notice in the **Federal Register**, that additional quota is available and the season is reopened, the fisheries for the shark species or management group are closed, even across fishing years.

(2) Linked Quotas: As specified in paragraph (b)(3) of this section, the quotas of some shark species and/or management groups are linked to the quotas of other shark species and/or management groups. For these linked species and/or management groups, if the quota specified in § 635.27(b)(1) is available for all the linked species and/or management groups as specified by a publication in the **Federal Register**, the commercial fishery for all linked species and/or management groups will remain open. When NMFS calculates that the landings for any species and/or management group of a linked group has reached or is projected to reach 80 percent of the available quota as specified in § 635.27(b)(1), NMFS will file for publication with the Office of the Federal Register a notice of closure for all of the species and/or management groups in a linked group that will be effective no fewer than 5 days from date of filing. From the effective date and time of the closure until NMFS announces, via the publication of a notice in the **Federal Register**, that additional quota is available and the season is reopened, the fishery for all species and/or management groups in a linked group is closed, even across fishing years.

(3) The quotas of the following species and/or management groups are linked:

(i) Atlantic hammerhead sharks and Atlantic aggregated LCS.

(ii) Gulf of Mexico hammerhead sharks, Gulf of Mexico aggregated LCS, and Gulf of Mexico blacktip sharks.

(iii) Atlantic blacknose and Atlantic non-blacknose SCS.

(iv) Gulf of Mexico blacknose and Gulf of Mexico non-blacknose SCS.

(4) When the fishery for a shark species and/or management group is closed, a fishing vessel, issued a Federal Atlantic commercial shark permit pursuant to § 635.4, may not possess or sell a shark of that species and/or management group, except under the conditions specified in § 635.22(a) and (c) or if the vessel possesses a valid shark research permit under § 635.32, a NMFS-approved observer is onboard, and the sandbar and/or Research LCS fishery is open. A shark dealer, issued a permit pursuant to § 635.4, may not purchase or receive a shark of that species and/or management group from a vessel issued a Federal Atlantic commercial shark permit, except that a permitted shark dealer or processor may possess sharks that were harvested, off-loaded, and sold, traded, or bartered, prior to the effective date of the closure and were held in storage. Under a closure for a shark species group, a shark dealer, issued a permit pursuant to § 635.4 may, in accordance with State regulations, purchase or receive a shark of that species or management group if the sharks were harvested, off-loaded, and sold, traded, or bartered from a vessel that fishes only in State waters and that has not been issued a Federal Atlantic commercial shark permit, HMS Angling permit, or HMS Charter/Headboat permit pursuant to § 635.4. Additionally, under a closure for a shark species and/or management group, a shark dealer, issued a permit pursuant to § 635.4, may purchase or receive a shark of that species group if the sandbar and/or Research LCS fishery is open and the sharks were harvested, off-loaded, and sold, traded, or bartered from a vessel issued a valid shark research permit (per § 635.32) that had a NMFS-approved observer on board during the trip sharks were collected.

* * * * *

10. In § 635.31, paragraphs (c)(1) and (c)(4) are revised to read as follows:

§ 635.31 Restrictions on sale and purchase.

* * * * *

(c) * * *

(1) Persons who own or operate a vessel that possesses a shark from the management unit may sell such shark only if the vessel has a valid commercial shark permit issued under this part. Persons may possess and sell a shark only when the fishery for that species, management group, and/or region has

not been closed, as specified in § 635.28(b).

* * * * *

(4) Only dealers who have a valid shark dealer permit may purchase shark from the owner or operator of a fishing vessel. Dealers may purchase a shark only from an owner or operator of a vessel who has a valid commercial shark permit issued under this part, except that dealers may purchase a shark from an owner or operator of a vessel who does not have a commercial permit for shark if that vessel fishes exclusively in state waters. Dealers may purchase a sandbar shark only from an owner or operator of a vessel who has a valid shark research permit and who had a NMFS-approved observer onboard the vessel for the trip in which the sandbar shark was collected. Dealers may purchase a shark from an owner or operator of fishing vessel who has a permit issued under this part only when the fishery for that species, management group, and/or region has not been closed, as specified in § 635.28(b).

* * * * *

11. In § 635.71, paragraphs (d)(3) and (d)(4) are revised to read as follows:

§ 635.71 Prohibitions.

* * * * *

(d) * * *

(3) Retain, possess, or land a shark of a species group when the fishery for that species, management group, and/or region is closed, as specified in § 635.28(b).

(4) Sell or purchase a shark of a species group when the fishery for that species, management group, and/or region is closed, as specified in § 635.28(b).

* * * * *

12. In Appendix A to part 635, Sections A, B, and D of Table 1 are revised to read as follows:

Appendix A to Part 635—Species Tables

Table 1 of Appendix A to Part 635—Oceanic Sharks

A. Large Coastal Sharks

Atlantic and Gulf of Mexico blacktip, *Carcharhinus limbatus*
Bull, *Carcharhinus leucas*
Great hammerhead, *Sphyrna mokarran*
Lemon, *Negaprion brevirostris*
Nurse, *Ginglymostoma cirratum*
Sandbar, *Carcharhinus plumbeus*
Scalloped hammerhead, *Sphyrna lewini*
Silky, *Carcharhinus falciformis*
Smooth hammerhead, *Sphyrna zygaena*
Spinner, *Carcharhinus brevipinna*
Tiger, *Galeocerdo cuvier*

B. Small Coastal Sharks

Atlantic sharpnose, *Rhizoprionodon terraenovae*
Atlantic and Gulf of Mexico blacknose, *Carcharhinus acronotus*
Bonnethead, *Sphyrna tiburo*
Finetooth, *Carcharhinus isodon*

* * * * *

D. Prohibited Sharks

Atlantic angel, *Squatina dumeril*
Basking, *Cetorhinus maximus*
Bigeye sand tiger, *Odontaspis noronhai*
Bigeye sixgill, *Hexanchus nakamurai*
Bigeye thresher, *Alopias superciliosus*
Bignose, *Carcharhinus altimus*
Caribbean reef, *Carcharhinus perezii*
Caribbean sharpnose, *Rhizoprionodon porosus*
Dusky, *Carcharhinus obscurus*
Galapagos, *Carcharhinus galapagensis*
Longfin mako, *Isurus paucus*
Narrowtooth, *Carcharhinus brachyurus*
Night, *Carcharhinus signatus*
Sand tiger, *Carcharias taurus*
Sevengill, *Heptranchias perlo*
Sixgill, *Hexanchus griseus*
Smalltail, *Carcharhinus porosus*
Whale, *Rhincodon typus*
White, *Carcharodon carcharias*

* * * * *

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Part III

Department of Health and Human Services

45 CFR Parts 144, 147, 150, *et al.*

Patient Protection and Affordable Care Act; Health Insurance Market Rules; Rate Review; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Parts 144, 147, 150, 154 and 156

[CMS–9972–P]

RIN 0938–AR40

Patient Protection and Affordable Care Act; Health Insurance Market Rules; Rate Review

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement the Affordable Care Act's policies related to fair health insurance premiums, guaranteed availability, guaranteed renewability, risk pools, and catastrophic plans. The proposed rule would clarify the approach used to enforce the applicable requirements of the Affordable Care Act with respect to health insurance issuers and group health plans that are non-federal governmental plans. This proposed rule would also amend the standards for health insurance issuers and states regarding reporting, utilization, and collection of data under section 2794 of the Public Health Service Act (PHS Act). It also revises the timeline for states to propose state-specific thresholds for review and approval by CMS.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on December 26, 2012.

ADDRESSES: In commenting, please refer to file code CMS–9972–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 ''Submit a comment'' instructions.

2. *By Regular Mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–9972–P, P.O. Box 8012, Baltimore, MD 21244–1850.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By Express or Overnight Mail.* You may send written comments to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–9972–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By Hand or Courier.* Alternatively, you may deliver (by hand or courier) your written comments only to the following addresses prior to the close of the comment period:

a. For delivery in Washington, DC—

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—

Centers for Medicare & Medicaid Services,

Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Jacob Ackerman, (410) 786–1565, concerning the health insurance market rules; Douglas Pennington, (410) 786–1553 (or by email: *ratereview@hhs.gov*), concerning rate review.

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 (800) 743–3951.

I. Executive Summary

A. Purpose of the Proposed Regulatory Action

1. Need for the Proposed Regulatory Action

Today, consumers with current or past medical problems can be denied health insurance coverage in the vast majority of individual (nongroup) markets (45 states). Similarly, individuals and small employers often find that they have few protections in terms of the premiums that issuers can charge them. For example, in the individual market, 43 states allow health status rating and 48 states allow age rating (often unlimited). While 37 states explicitly allow gender rating, three states that prohibit gender rating do not require maternity coverage in all individual market policies, meaning that, since maternity coverage requires additional premium in those states, a total of 40 states allow some form of gender rating in practice. In the small group market, 38 states allow health status rating, 48 states allow age rating (often unlimited), 35 states allow gender rating, and 37 states allow industry rating.[1]

Sections 2701, 2702, and 2703 of the Public Health Service Act (PHS Act), as added and amended by the Patient Protection and Affordable Care Act (Affordable Care Act), and section 1312(c) of the Affordable Care Act address these problems by extending guaranteed availability (also known as guaranteed issue) protections so that individuals and employers will be able to obtain coverage when it currently can be denied, by continuing current guaranteed renewability protections, by prohibiting the use of factors such as health status, medical history, gender, and industry of employment to set premium rates, by limiting age rating, and by prohibiting issuers from dividing up their insurance pools. These reforms are effective for plan years (group

[1] Ctr. on Health Ins. Reforms, Georgetown Univ. Health Policy Inst., *Individual Market Guaranteed Issue, Individual Health Insurance Market Rate Restrictions,* and *Small Group Health Insurance Market Rate Restrictions,* available at *http://statehealthfacts.org*; Nat'l Women's Law Center, *Turning to Fairness: Insurance Discrimination Against Women Today and the Affordable Care Act* (2012).

market) and policy years (individual market) starting on or after January 1, 2014.

The implementation of these proposed rules will ensure that every American, for the first time, will have access to affordable health insurance coverage notwithstanding any health problems they may have. In addition, also for the first time throughout the nation, health insurance issuers will be prevented from charging individuals and small employers higher premiums due to enrollees' health status or gender. CMS is issuing these proposed regulations to provide the necessary guidance to implement these important consumer protections included in sections 2701, 2702, and 2703 of the PHS Act and section 1312(c) of the Affordable Care Act.

In addition, PHS Act section 2723 provides CMS with enforcement authority with respect to health insurance issuers (in certain instances) and group health plans that are non-federal governmental plans in connection with the various health insurance and group health plan standards added by the Affordable Care Act. The proposed rules would make non-substantive changes that clarify the processes that CMS currently uses to enforce such standards. These technical changes seek to eliminate confusion among states, issuers, non-federal governmental group health plans, consumers, and others concerning CMS's enforcement processes.

The proposed rule would also include proposed policy for enrollment in catastrophic plans that are available for young adults and people who would otherwise find health insurance unaffordable.

The proposed rule would also revise the timing of the submission of requests for state-specific thresholds and the effective dates of such thresholds; require that health insurance issuers submit data on proposed rate increases in a form and manner to be determined by CMS, and amend the requirements for a state to have an Effective Rate Review Program. We are proposing these changes to align with the timing of rate submissions of qualified health plans (QHPs), as defined under section 1301 of the Affordable Care Act, in the Exchanges, and to adjust rate review to meet its additional purpose of helping to promote fair market competition beginning in 2014. The law requires that, beginning in 2014, the Secretary of the Department of Health and Human Services (the Secretary), in conjunction with states, monitor premium increases of health insurance coverage offered through an Exchange and outside of an Exchange. The Secretary will monitor these increases to identify patterns that could signal market disruption and assist in oversight of the new market-wide rating reforms created by the Affordable Care Act, which are effective on January 1, 2014.

2. Legal Authority

The substantive authority for these proposed rules is generally sections 2701, 2702, 2703, 2723 and 2794 of the PHS Act and sections 1302(e), 1312(c), and 1560(c) of the Affordable Care Act. PHS Act section 2792 authorizes us to promulgate regulations that are necessary or appropriate to carry out sections 2701, 2702, 2703, 2723, and 2794. Section 1321(a) of the Affordable Care Act authorizes rulemaking with respect to sections 1302(e), 1312(c), and 1560(c).

B. Summary of the Major Provisions of This Proposed Regulatory Action

Proposed 45 CFR 147.102 would require issuers offering non-grandfathered health insurance coverage in the individual and small group markets starting in 2014, and the large group market if such coverage is available through an Affordable Insurance Exchange (Exchange) starting in 2017, to limit any variation in premiums with respect to a particular plan or coverage to age and tobacco use within limits, family size, and geography.

Proposed § 147.104 would require issuers offering non-grandfathered health insurance coverage to accept every individual or employer who applies for coverage in the individual or group market, as applicable, subject to certain exceptions (for example, limits on network capacity).

Proposed § 147.106 would require issuers to renew all coverage in the individual and group markets, subject to certain exceptions (for example, non-payment of premiums or fraud).

The proposed revisions in 45 CFR part 154 would make three changes to the existing rate review program. Proposed revisions in § 154.200 would require states seeking state-specific thresholds to submit proposals for such thresholds by August 1 of each year and require CMS to review the proposals by September 1 of each year. If approved, a state-specific threshold would be effective January 1 of the following year. Proposed revisions in § 154.215 and § 154.220 would require health insurance issuers to submit, in a standardized format to be specified by the Secretary, data relating to proposed rate increases that are filed in a state on or after April 1, 2013, or effective on or after January 1, 2014 in a state that does not require the rate increases to be filed. Proposed revisions in § 154.301 would add criteria and factors for a state to have an Effective Rate Review Program, including that the state receives from all issuers proposing rate increases data and documentation about the rate increases in the standardized form specified by the Secretary; reviews the information for proposed rate increases greater than or equal to the review threshold; and makes information publicly available through its Web site.

Proposed § 156.80 generally would require health insurance issuers to treat all of their non-grandfathered business in the individual market and small group market, respectively, as a single risk pool. A state would have the authority to choose to direct issuers to merge their non-grandfathered individual and small group pools into a combined pool.

Proposed § 156.155 generally would codify section 1302(e) of the Affordable Care Act regarding catastrophic plans.

The proposed revisions in 45 CFR part 150 would clarify that CMS uses the same enforcement processes with respect to the requirements of 45 CFR part 147, which implements provisions added by the Affordable Care Act, as it does with respect to the requirements of 45 CFR parts 146 and 148, which pre-date the Affordable Care Act. Additional revisions would conform certain sections in 45 CFR part 144 to the clarification concerning the scope of 45 CFR part 150.

C. Costs and Benefits

The provisions of this proposed rule, combined with other provisions in the Affordable Care Act, will improve the individual health insurance market by making insurance affordable and accessible to millions of Americans who currently do not have affordable options available to them. The shortcomings of the individual market today have been widely documented.[2] Between 50 and 129 million Americans, if they tried to purchase coverage in the individual market, would be denied coverage entirely or would have their premiums ''rated up,'' and would likely have coverage for certain medical conditions

[2] Michelle M. Doty et al., Failure to Protect: Why the Individual Insurance Market Is Not a Viable Option for Most U.S. Families: Findings from the Commonwealth Fund Biennial Health Insurance Survey, 2007, The Commonwealth Fund, July 2009; Sara R. Collins, Invited Testimony: Premium Tax Credits Under The Affordable Care Act: How They Will Help Millions Of Uninsured And Underinsured Americans Gain Affordable, Comprehensive Health Insurance, The Commonwealth Fund, October 27, 2011.

excluded.[3] In addition, people previously enrolled in individual insurance with high health risks or costs are often further blocked from access to the market as they are put into ''closed blocks'' of business that are not open to new enrollees, and subject to large premium increases each year. Relatively healthy subscribers can switch into lower-priced, open blocks of coverage, while those who are sick only have the choice of paying the large premium increases or dropping coverage altogether.

These limitations of the individual market are made evident by how few people actually purchase coverage in the individual market. In 2011, approximately 48.6 million people were uninsured in the United States,[4] while only around 10.8 million were enrolled in the individual market.[5] The relatively small fraction of the target market that actually purchases coverage in the individual market in part reflects how expensive the product is relative to its value, people's resources, and how difficult it is for many people to access coverage.

The provisions of this proposed rule, combined with other provisions in the Affordable Care Act, will improve the functioning of both the individual and the small group markets. The provision for guaranteed availability will ensure that individuals with health problems who were previously unable to obtain coverage in the individual market will have access to coverage. The provision requiring that age, tobacco use, family size, and geography are the only permissible rating factors, within limits, will ensure that people with greater than average health needs are not priced out of the market. The provision requiring a single risk pool in each market will ensure that rate increases for healthy and less healthy people will be equal over time. Elimination of rating based on gender will mean lower premium rates for women, and the 3:1 limit on the rates charged to older subscribers will result in lower premium rates for older subscribers without shifting significant risk to younger subscribers as would happen under pure community rating. While eliminating gender rating and the limitations on age ratios could affect premium rates for some in some markets, this will be largely mitigated for most people by the availability of premium tax credits, by increased efficiencies and greater competition in the individual market, by measures such as the transitional reinsurance program and temporary risk corridors program to stabilize premiums, and by expected improvements in the overall health status of the risk pool. The availability of premium tax credits through Exchanges starting in 2014 will result in lower net premium rates for most people currently purchasing coverage in the individual market, and will encourage younger and healthier enrollees to enter the market, improving the risk pool and leading to reductions in premium rates for current policyholders.[6] Additionally, young adults and people for whom coverage would otherwise be unaffordable will have access to a catastrophic plan that will have a lower premium, protect against high out-of-pocket costs, and cover recommended preventive services without cost sharing. Similarly, the minimum coverage provision will lead to expansion in the number of purchasers and improvements in the health of the risk pool. Further, premium rates are expected to decline as a result of the administrative efficiencies from eliminating underwriting, and, more importantly, due to the effects of greater competition in the individual market created by Exchanges. Lower premium rates are expected to lead to further increases in purchase, and a further improvement in the risk pool.

We solicit comments on additional strategies consistent with the Affordable Care Act that CMS or states might deploy to avoid or minimize disruption of rates in the current market and encourage timely enrollment in coverage in 2014. For example, these strategies could include instituting the same enrollment periods inside and outside of Exchanges (as proposed in this rule) or a phase-in or transition period for certain policies. Additionally, we are examining ways in which states could continue their high risk pools beyond 2014 as a means of easing the transition. Ensuring premiums are affordable is a priority for the Administration as well as states, consumers, and insurers, so we welcome suggestions for the final rule on ways to achieve this goal while implementing these essential consumer protections.

Issuers may incur some one-time fixed costs in order to comply with the provisions of the final rule, including administrative and marketing costs. Administrative costs are, however, expected to decrease as a result of the elimination of medical underwriting to determine premium amounts. Issuer revenues and expenditures are also expected to increase substantially as a result of the expected increase in the number of people purchasing individual market coverage, which is projected to exceed 50 percent of current enrollment.[7] We are soliciting information on the nature and magnitude of these costs and benefits to issuers, and the potential effect of the provisions of this rule on premium rates and financial performance.

In addition, states may incur costs if they choose to establish their own, new geographic rating areas and age rating curves. We are also requesting information on such costs.

The proposed amendments to the rate review program would help issuers to avoid significant duplication of effort for filings subject to review by using the same standardized template for both non-QHPs and QHPs. Additionally, the collection of rate information below the rate review threshold and use of a standardized data template would provide the Department of Health and Human Services (HHS) and state departments of insurance with the ability to conduct the review and approval of products sold inside and outside an Exchange and ensure market stability. Health insurance issuers would incur administrative costs to prepare and submit the data.

In accordance with Executive Orders 12866 and 13563, we believe that the benefits of this regulatory action would justify the costs.

II. Background

The Patient Protection and Affordable Care Act, Public Law 111–148, was enacted on March 23, 2010. The Health Care and Education Reconciliation Act, Public Law 111–152, was enacted on March 30, 2010. These laws are

[3] ASPE, At Risk: Preexisting Conditions Could Affect 1 in 2 Americans: 129 Million People Could Be Denied Affordable Coverage Without Health Reform, November 2011.

[4] Source: U.S. Census Bureau, Current Population Survey, 2012 Annual Social and Economic Supplement, Table HI01. Health Insurance Coverage Status and Type of Coverage by Selected Characteristics: 2011.

[5] Source: CMS analysis of June 2012 Medical Loss Ratio Annual Reporting data for 2011 MLR reporting year, available at *http://cciio.cms.gov/resources/data/mlr.html*.

[6] Congressional Budget Office, Letter to Honorable Evan Bayh, providing an Analysis of Health Insurance Premiums Under the Patient Protection and Affordable Care Act, November 30, 2009; Sara R. Collins, Invited Testimony: Premium Tax Credits Under The Affordable Care Act: How They Will Help Millions Of Uninsured And Underinsured Americans Gain Affordable, Comprehensive Health Insurance, The Commonwealth Fund, October 27, 2011; Fredric Blavin et al., The Coverage and Cost Effects of Implementation of the Affordable Care Act in New York State, Urban Institute, March 2012.

[7] Congressional Budget Office, *http://www.cbo.gov/sites/default/files/cbofiles/attachments/03-13-Coverage%20Estimates.pdf* (Table 3).

collectively referred to as the Affordable Care Act.

A. Legislative Overview Prior to the Affordable Care Act

The current individual and small group health insurance markets generally are viewed as dysfunctional, placing consumers at a disadvantage due to the high cost of health insurance coverage, resulting from factors such as lack of competition, adverse selection, and limited transparency. In the past ten years, average total premiums for group and individual health insurance coverage have increased substantially.[8] Similarly, the share of premium paid by employees in the group market has increased, as well as the amounts that employees pay in out-of-pocket costs.[9]

In 2007, 62 percent of personal bankruptcies were attributable to medical expenses. Many of these individuals and families either had health insurance that did not provide adequate coverage for their medical expenses or lost medical coverage due to illness.[10]

In addition to affordability concerns, many people have difficulty finding and enrolling in coverage options. If employer-based coverage is not available, a person may find that affordable individual market coverage is not available due to medical underwriting. Research has shown that individuals could be denied coverage based even on common medical conditions such as asthma, depression, hypertension, and knee injuries.[11] Even if a person is accepted for coverage in the individual market, that coverage may be conditioned on paying higher premiums, preexisting condition exclusion waiting periods, and even permanent exclusions of coverage for certain medical conditions. One study found that 38 percent of persons seeking individual market coverage reported it very difficult or impossible to find the coverage they needed.[12] Uninsured individuals are more likely to report not having routine medical check-ups, not receiving recommended medical treatments, and not refilling prescriptions.[13]

Among other policies, the Affordable Care Act expands affordable coverage to uninsured Americans through the private health insurance market. When fully implemented, its reforms will make health insurance coverage more affordable and accessible for individuals and families, many of whom could not previously get or afford coverage. The insurance market reforms will help ensure that no individual or small employer is denied insurance coverage, and that, once issued, coverage cannot be non-renewed due to health factors. Premiums charged by health insurance issuers may only vary by certain factors. Further, each issuer will have a single risk pool for its business in the individual market and a single risk pool for its business in the small group market (unless a state decides to merge the markets). This risk pool provision will spread risk more evenly among consumers, which will help keep premiums more affordable.

Prior to the Affordable Care Act, title XXVII of the PHS Act included certain insurance market protections for individuals and employers that were added by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). HIPAA provided guaranteed renewability of coverage to individuals and employers, broad guaranteed availability rights to small employers, and narrower guaranteed availability rights in the individual market for certain individuals leaving group coverage. In practice, relatively few individuals exercise their HIPAA rights to individual market guaranteed availability due to the high costs of such coverage in many states and the requirement that they first exhaust any available continuation coverage, such as COBRA, which is often unaffordable.[14] HIPAA did not include any protections to ensure that all persons could obtain affordable coverage in the individual market. Thus, most individuals could be medically underwritten and denied coverage by issuers in the vast majority of states. HIPAA also did not include any limits on premium variation or requirements regarding risk pooling that would have made health insurance coverage more affordable for individuals and small employers. HIPAA included enforcement provisions allowing CMS to enforce these and other requirements of title XXVII of the PHS Act with respect to health insurance issuers (in some instances) and group health plans that are non-federal governmental plans.

Both before and after HIPAA, a number of states enacted limited, incremental reforms to improve access and increase affordability in their individual and group insurance markets. HIPAA explicitly recognized the role of the states as the primary insurance regulators where their standards were at least as protective as HIPAA. Although the level of activity varies by state, most states have adopted guaranteed availability and renewability reforms consistent with HIPAA, and several states have adopted rating standards. For example, one recent survey of state insurance market rules found that all states require guaranteed availability in the small employer market.[15] The same survey found that 41 states had implemented ''alternative mechanisms'' for guaranteed availability for HIPAA-eligible individuals, while the remaining states used the federal fallback mechanism.[16] However, only five states (Maine, Massachusetts, New Jersey, New York, and Vermont) went beyond HIPAA to require that all issuers accept all applicants in the individual market, with limited exceptions.[17] With respect to guaranteed renewability, one survey reported that 48 states require it in the small group market[18] and another survey reported that all 50 states require it in the individual market.[19] While HIPAA did not include any provisions addressing rating or pooling, 47 states have one or more requirements in the small group market and 18 states have

[8] Schoen, C., *et al., State Trends in Premiums and Deductibles, 2003–2010: The Need for Action to Address Rising Costs, Realizing Health Reform's Potential,* p. 5 (Nov. 2011).

[9] Claxton,G., *et al., Health Benefits in 2010: Premiums Rise Modestly, Workers Pay More Toward Coverage, Health Affairs,* 29, no.10 (2010):1942–1950.

[10] Himmelstein, D., *et al., Medical Bankruptcy in the United States, 2007: Results of a National Study, The American Journal of Medicine,* Vol. 122, No. 8, 741–746.

[11] Pollitz, K., *How Accessible is Individual Health Insurance for Consumers in Less-Than-Perfect Health* (2001).

[12] Collins, S., *et al., Gaps in Health Insurance: Why So Many Americans Experience Breaks in Coverage and How the Affordable Care Act Will Help* (April 2011).

[13] Doty, M., *et al., When Unemployed Means Uninsured: The Toll of Job Loss on Health Coverage, and How the Affordable Care Act Will Help,* Realizing Health Reform's Potential, p. 3 (Aug. 2011).

[14] COBRA continuation coverage permits some employees and their dependents, in some circumstances, to remain temporarily covered under an employer's group health plan after coverage would otherwise end. But because a former employee must usually pay the entire premium amount (including both the amount paid as an active employee and the amount previously contributed by the employer), plus a 2-percent administrative fee, COBRA coverage may be unaffordable for many people.

[15] Ctr. on Health Ins. Reforms, Georgetown Univ. Health Policy Inst., *Small Group Health Insurance Market Guaranteed Issue* and *Individual Market Guarantee Issue,* available at *http://statehealthfacts.org.*

[16] Ctr. on Health Ins. Reforms, Georgetown Univ. Health Policy Inst., *Small Group Health Insurance Market Guaranteed Issue* and *Individual Market Guarantee Issue,* available at *http://statehealthfacts.org.*

[17] Ctr. on Health Ins. Reforms, Georgetown Univ. Health Policy Inst., *HIPAA Rules,* available at *http://statehealthfacts.org.*

[18] Pollitz, K., *et al.,* Early Experience with the ''New Federalism'' in Health Insurance Regulation, *Health Affairs,* 19, no.4 (2000):7–22.

[19] Fuchs, B., *Expanding the Individual Health Insurance Market: Lessons from the State Reforms of the 1990s* (2004) at p. 7.

one or more requirements in the individual market.[20]

Despite the advances in some states, only five states (Maine, Massachusetts, New Jersey, New York, and Vermont) have adopted a comprehensive set of guaranteed availability and community rating reforms in both their individual and small group markets that meet or exceed those in the Affordable Care Act. Only Massachusetts, which enacted a landmark health reform law in 2006 that coupled insurance market reforms with an insurance exchange, premium subsidies, and a minimum coverage provision, has succeeded in covering nearly all residents of the state. In 2011, only 3.4 percent of Massachusetts residents were uninsured, compared to 15.7 percent nationally.[21] In contrast, individuals with medical conditions in the 45 states without guaranteed availability and rating reforms often find themselves with few—or even no—coverage options at affordable prices.

B. Overview of the Changes in the Affordable Care Act

Subtitles A and C of title I of the Affordable Care Act reorganized, amended, and added provisions to part A of title XXVII of the PHS Act relating to health insurance issuers in the group and individual markets and group health plans that are non-federal governmental plans.[22] As relevant here, these provisions include PHS Act sections 2701 (fair health insurance premiums), 2702 (guaranteed availability of coverage), and 2703 (guaranteed renewability of coverage), which apply to health insurance coverage offered by health insurance issuers.[23] These provisions will establish a federal floor that ensures all individuals and employers have certain basic protections with respect to the availability of the health insurance coverage in all states.

Section 2701 regarding fair premiums applies to the individual and small group markets generally, and to the large group market if a state permits large employers to purchase coverage through an Exchange.[24] Pursuant to section 1312(f)(2)(B) of the Affordable Care Act, a state may permit large employers to purchase through an Exchange starting in 2017. Sections 2702 and 2703 apply to the individual and group (small and large) markets. These provisions apply to health insurance coverage in the respective markets regardless of whether such coverage is a QHP offered on Exchanges. Section 1255 of the Affordable Care Act provides that PHS Act sections 2701, 2702, and 2703 are effective for plan years (in the individual market, policy years) beginning on or after January 1, 2014.[25] Section 1251(a)(2) of the Affordable Care Act specifies that grandfathered health insurance coverage is not subject to sections 2701, 2702, and 2703 of the PHS Act. In addition, the Affordable Care Act amended the HIPAA enforcement provision that previously was applicable to group health insurance coverage and non-federal governmental group health plans by expanding its scope to include individual health insurance coverage and by renumbering the provision as PHS Act section 2723.

The preemption provisions of PHS Act section 2724(a)(1) apply so that the requirements of the Affordable Care Act are not to be ''construed to supersede any provision of state law which establishes, implements, or continues in effect any standard or requirement solely relating to health insurance issuers in connection with individual or group health insurance coverage except to the extent that such standard or requirement prevents the application of a requirement'' of the Affordable Care Act. Section 1321(d) of the Affordable Care Act applies the same preemption principle to requirements of title I of the Affordable Care Act. As mentioned, state laws that impose stricter requirements on health insurance issuers than those imposed by the Affordable Care Act will not be superseded by the Affordable Care Act.[26]

Section 1312(c) of the Affordable Care Act creates a single risk pool standard, applicable to both QHPs and non-QHPs, in the individual and small group markets; in addition, states may choose to have a merged individual and small group market pool. Although the Affordable Care Act does not provide an explicit effective date for section 1312(c), we interpret it to be effective for plan years (in the individual market, policy years) beginning on or after January 1, 2014, given its dependence on and interaction with the new market reforms, as well as its explicit reference to the establishment of the Exchanges in 2014. Section 1312(c) does not apply to grandfathered health plans.

Lastly, section 1302 of the Affordable Care Act specifies levels of cost-sharing protections that health plans will offer, including in subsection (e) a catastrophic plan for young adults and people who cannot otherwise afford health insurance.

C. Rate Increase Disclosure and Review

Section 1003 of the Affordable Care Act adds a new section 2794 of the PHS Act, which directs the Secretary, in conjunction with the states, to establish a process for the annual review of ''unreasonable increases in premiums for health insurance coverage.'' The statute provides that health insurance issuers must submit to the Secretary and the applicable state justifications for unreasonable premium increases prior to the implementation of the increases. Section 2794 also specifies that beginning with plan years beginning in 2014, the Secretary, in conjunction with the states, shall monitor premium increases of health insurance coverage offered through an Exchange and outside of an Exchange. Section 2794 of the PHS Act does not apply to grandfathered health insurance coverage, nor does it apply to self-funded plans.[27]

On May 23, 2011, CMS published a final rule with comment period (76 FR 29964), to implement the annual review

[20] Ctr. on Health Ins. Reforms, Georgetown Univ. Health Policy Inst., *Small Group Health Insurance Market Rate Restrictions* and *Individual Market Rate Restrictions,* available at *http://statehealthfacts.org.*

[21] Source: U.S. Census Bureau, Current Population Survey, 2012 Annual Social and Economic Supplement, Table HI06. Health Insurance Coverage Status by State for All People: 2011.

[22] The Affordable Care Act also added section 715(a)(1) to the Employee Retirement Income Security Act (ERISA) and section 9815(a)(1) to the Internal Revenue Code (the Code) to incorporate the provisions of part A of title XXVII of the PHS Act into ERISA and the Code, and to make them applicable to group health plans other than non-federal governmental group health plans. The market requirements discussed in this proposed rule apply to health insurance issuers offering health insurance coverage.

[23] Under the HIPAA enforcement structure, the states (or, if they lack authority or fail to substantially enforce, CMS) take enforcement actions against health insurance issuers that fail to comply with the requirements of PHS Act sections 2701–2703. *See* Code § 4980D(d); ERISA § 502(b)(3); PHS Act § 2723.

[24] The applicable definitions for individual market, small group market, and large group market are found in PHS Act section 2791(e) and section 1304(a) of the Affordable Care Act.

[25] ''Plan year'' and ''policy year,'' for purposes of these proposed rules, are defined at 45 CFR 144.103. These terms are defined differently than ''plan year'' and ''benefit year'' as used in connection with QHPs (45 CFR 155.20).

[26] In addition, although not the subject of this proposed rule, section 1252 of the Affordable Care Act generally provides that any standard or requirement adopted by a state pursuant to title I of the Affordable Care Act (or an amendment made by title I) shall be applied uniformly to all health plans in each insurance market to which the standard and requirements apply. Sections 1302(e) and 1312(c) of the Affordable Care Act and the amendments to PHS Act sections 2701, 2702, and 2703 are all found in title I of the Affordable Care Act.

[27] In addition, through regulation, section 2794 does not apply to health insurance issuers offering health insurance coverage in the large group market.

of unreasonable increases in premiums for health insurance coverage called for by section 2794. Among other things, CMS established a process by which all proposed rate increases above a defined threshold in the individual and small group markets would be reviewed by a state or by CMS to determine whether or not the rate increases are unreasonable. These rates would be reviewed by the state in states with Effective Rate Review Programs and by CMS in states without Effective Rate Review Programs. For 2011, the review threshold was a rate increase of 10 percent or more. CMS also established a process for a state to set a state-specific threshold for future calendar years.

We are proposing revisions to the rate review program that would standardize and streamline data submission, fulfill the new requirement beginning in 2014 that the Secretary monitor premium increases of health insurance coverage offered through an Exchange and outside of an Exchange, and establish new standards that incorporate the effect of the market reform provisions that take effect in 2014.

III. Provisions of the Proposed Regulations

Collectively, the proposed regulations regarding modified community rating, guaranteed availability, guaranteed renewability, and risk pooling create the foundation for a competitive and accessible health insurance market starting in 2014. The Affordable Care Act allows individuals and employers to obtain and renew health insurance coverage without regard to enrollees' health status. Health insurance premiums will no longer be based on enrollees' pre-existing conditions or gender, and health insurance issuers no longer will be able to divide up their risk pools (also known as blocks of business) in order to discriminate against less healthy individuals. These proposed rules would clarify health insurance issuers' obligations under these reforms.

These proposed rules regarding insurance market reforms are inextricably linked to several other reforms in the Affordable Care Act that function to expand access to and affordability of coverage. For example, subtitle D of title I of the Affordable Care Act authorizes the establishment of Exchanges where individuals and small employers can enroll in QHPs and creates certain premium stabilization programs for the reformed marketplace. Further, Code section 36B provides for premium tax credits for eligible individuals who enroll in QHPs through Exchanges. Similarly, Code section 45R provides for small business tax credits for eligible employers who enroll in health insurance coverage through the Small Business Health Options Program (SHOP). Although these other reforms are not the subjects of this proposed rule, they do influence the options available for implementing this proposed rule.

As noted, the proposed rule would make technical changes to clarify the processes that CMS uses to enforce Affordable Care Act reforms with respect to issuers and non-federal governmental group health plans. The proposed rule also would codify the policies related to catastrophic plans.

A. Fair Health Insurance Premiums (Proposed § 147.102)

PHS Act section 2701 provides that health insurance issuers may vary premium rates for health insurance coverage in the individual and small group markets [28] based on a limited set of specified factors. The factors are, with respect to a particular plan or coverage: (1) Whether the plan or coverage applies to an individual or family; (2) rating area; (3) age, limited to a variation of 3:1 for adults; and (4) tobacco use, limited to a variation of 1.5:1.[29] All other rating factors are prohibited. Thus, PHS Act section 2701 effectively prohibits several factors currently in use today, such as health status, claims experience, gender, industry, occupation, and duration of coverage, among others. Other factors that might be considered for rating purposes, such as eligibility for tax credits, prior source of coverage, and credit worthiness, also are prohibited. The practice of ''re-underwriting'' also is prohibited. Re-underwriting refers to issuers increasing premiums at renewal for existing customers because they incurred claims or experienced worsening health during a policy year.[30]

For purposes of family coverage, any premium variation for age and tobacco use must be applied to the portion of premium attributable to each family member. PHS Act section 2701(a)(2)(A) specifies that states can establish one or more rating areas. PHS Act section 2702(a)(2)(B) provides that CMS may establish rating areas if a state does not establish them. CMS, in consultation with the NAIC, will define permissible age bands. All non-grandfathered health insurance coverage in the individual and small group markets is subject to the requirements in this section.[31] In addition, health insurance coverage in the large group market is subject to these requirements, inside and outside an Exchange, if a state permits such coverage to be offered through an Exchange starting in 2017.[32] As discussed earlier, we welcome comments on whether and how this proposed rule could be modified to simultaneously secure the protections required by law and keep premiums affordable for individuals and small employers purchasing non-grandfathered health insurance coverage in these markets.

1. State and Issuer Flexibility Related to Rating Methodologies

While PHS Act section 2701 limits how issuers may vary premiums, the statute does not specify detailed rating methodologies. By rating methodology, we refer to the array of choices made in setting prices—for example, the age curves an issuer would use to distribute rates within the 3:1 limit on adult rates as enrollees grow older. The rating methodology also could include the method for computing rates in the small group market and the methods for computing family premiums. In current practice, most aspects of rating

[28] Consistent with our later discussion of the single risk pool provision, all non-grandfathered health insurance coverage offered through associations and multiple employer welfare arrangements (MEWAs) is subject to the modified community rating rules applicable to the appropriate market, as defined by PHS Act section 2791(e)(1), (3), and (5) (definitions of individual market, large group market, and small group market, respectively).

[29] The age, tobacco use, and geographic factors are multiplicative. For example, the maximum variation for both age (for adults) and tobacco use is 4.5:1 (3 times 1.5:1), putting aside the issue of wellness discounts, which are discussed later in this preamble. The family rate calculation could be additive or multiplicative, depending on whether a per-member or family tier rating methodology is used, as explained later in this preamble.

[30] In addition, health insurance issuers currently are prohibited from requiring any individual to pay a premium greater than that for another similarly situated individual enrolled in group health insurance coverage on the basis of a health factor. Further, issuers currently are prohibited from charging persons enrolled in group or individual health insurance coverage higher premiums due to genetic information. PHS Act sections 2702, as in effect when the Affordable Care Act was enacted (group market), and 2753 (individual market). In addition to these requirements, starting in policy years beginning on or after January 1, 2014, issuers will be prohibited from requiring any individual enrolled in non-grandfathered individual market coverage to pay a premium greater than that for another similarly situated individual on the basis of a health factor. PHS Act section 2705.

[31] By law, issuers must transition all non-grandfathered small group and individual market coverage issued prior to January 1, 2014, to these adjusted community rating rules in the first plan year (small group market) or the first policy year (individual market) beginning on or after January 1, 2014, even if the issuers previously used other rating rules for products in these markets.

[32] These requirements apply to health insurance coverage and therefore are not applicable to self-insured plans.

methodology are left to the discretion of health insurance issuers, subject to oversight by the states. As discussed later, greater standardization in rating methodologies starting in 2014 is advantageous for a number of reasons, including consumer protection, improved transparency, improved competition, and administrative simplification. We discuss various types of choices in rating methodology in more detail in the succeeding sections of this preamble, and welcome comment on them.

This proposed rule implements our authority under PHS Act section 2701 and would apply to all non-grandfathered health insurance coverage in the individual and small group markets starting in 2014. This rule proposes to standardize rating methodologies, particularly with respect to age rating and certain aspects of family rating, for health insurance coverage in the individual and small group markets when the market reforms go into effect in 2014. This proposed rule allows flexibility for states and issuers in rating methodology when it comes to certain aspects of family, tobacco, age, geography, and small group rating.

More standardization with respect to rating methodologies is advantageous in many respects. First, the risk adjustment methodology under section 1343 of the Affordable Care Act will need to accommodate permissible rating factors under PHS Act section 2701.[33] A standardized rating methodology for all plans within a state would enhance the transparency, predictability, and accuracy of risk adjustment because the risk adjustment methodology would account for rating as it is applied by issuers. For example, without a specified age curve, the risk adjustment methodology would have to rely upon an estimate of a state-level average age curve. This estimate, when applied to specific issuers, could lead to a loss of accuracy in the calculation of a plan's average actuarial risk to the extent the issuer's rating curve varies from the estimated average curve. To the extent there is decreased accuracy in the risk adjustment methodology as a result of such an approximation, its goals of promoting competition based on service and effective care, rather than risk selection, may be undermined and consumers and issuers would be negatively affected.

Furthermore, some core functions of the Exchange, such as calculating rates for QHPs and determining the benchmark plan for purposes of the premium tax credit under Code section 36B, would be simplified if issuers used the same age curves, age bands, and family rating methods. The second lowest cost silver plan is the benchmark plan that will be used to determine the maximum amount an applicant can receive for premium tax credits. If issuers choose their own age curves, age bands, and family rating methods, the definition of the second lowest cost silver plan would likely vary by applicant. In contrast, standardizing rating methodologies will result in all applicants having the same plan from the same issuer as the second lowest cost silver plan, regardless of the applicant's age and family composition, in a given rating area. This will improve price transparency for consumers by facilitating their ability to identify the second lowest cost silver plan. Lastly, allowing differences in rating methodologies between issuers in the same market in a state could provide an avenue for adverse selection.

The following sections discuss the proposed rating methodology. We welcome comments on the areas where and the extent to which state and issuer flexibility in rating methodologies versus a more standardized approach is desirable.

2. Small Group Market Rating

Two rating methods are used currently in the marketplace to generate small group market rates. The first method, known as composite rating, uses the rating characteristics of an entire small group, such as the average employee health risk,[34] average employee age, geography, group size, and industrial code, to determine an average per-employee rate (along with corresponding average family tier rates) for the small group. We understand that a few states require this approach. In states without such requirements, issuers generally use this approach for groups with, for example, more than ten employees. In contrast, under the second method, the issuer calculates a separate rate for each employee's coverage based on the allowable rating factors for that employee and then sums each individual rate to determine the total group premium. This approach is often used for very small groups (for example, those with ten or fewer employees).

Given that PHS Act section 2701 does not distinguish between individual and small group market rating, we propose that issuers would calculate rates for employee and dependent coverage in the small group market on a per-member basis, in the same manner that they would calculate rates for persons in the individual market, as discussed below, and then calculate the group premium by totaling the premiums attributable to each covered individual. Per-member rating is required by PHS Act section 2701(a)(4), which specifies that the age and tobacco use factors be apportioned to each family member. However, as discussed below, this proposed rule does not preclude the possibility that employees and their dependents would be charged amounts based on their group's average, rather than amounts based on their own specific factors, notwithstanding that issuers must base the total premium for a group on its actual current enrollment. We propose that states which anticipate requiring premiums to be based on average enrollee amounts submit information to CMS not later than 30 days after the publication of the final rule to support the accuracy of the risk adjustment methodology.

In the group context, the allowable rating factors, including tobacco use, would be appropriately associated with specific employees and dependents. Additionally, with per-member rating, premium changes for new hires and departures during the year would be priced more accurately, an issue of particular importance in smaller groups. And in the SHOP, when employees are offered choices among plans and issuers, the additional cost or savings resulting from an employee's plan choice would also be priced more accurately, ensuring that each issuer receives appropriate premiums for the individuals choosing its health plans.

The use of per-member rating would give employers flexibility to choose how to allocate their contributions to employees' coverage. PHS Act section 2701 governs the basis upon which an issuer may permissibly charge different groups or individuals different rates for the same insurance product, but it does not specify how an employer will allocate the premium contributions among employees.[35] Although many

[33] For additional background, see CCIIO, *Risk Adjustment Implementation Issues* (2011), pp. 17–23, *available at: http://cciio.cms.gov/resources/files/riskadjustment_whitepaper_web.pdf.*

[34] The HIPAA non-discrimination provisions currently prohibit individual employees enrolled in a group health plan from being required to pay higher premiums or make higher contributions based on their health status (26 CFR 54.9802–1; 29 CFR 2590.702; 45 CFR 146.121).

[35] Employer/employee contribution levels are subject to other laws. PHS Act section 2705(b) prohibits group health plans from discriminating based on health status against similarly situated individuals in terms of contribution amounts. This nondiscrimination requirement generally was carried over to the Affordable Care Act from

variations may be consistent with applicable state and federal law, we anticipate that there are two primary ways employee contributions may be determined.

An employer may choose to set the employee contribution as a percentage of the underlying cost of the employee's coverage. Under this option, older employees and smokers would make higher contributions toward coverage, reflecting their higher risk and permissible rate variation based on age and tobacco use. Younger employees would make lower contributions, which may improve the perceived value of insurance for these employees and increase take-up rates, making it easier for the employer to meet any minimum participation rate requirement that may apply.

Alternatively, after the issuer develops rates using the per-member methodology, an employer may elect to generate a composite rate in which each employee's contribution for a given family composition is the same, as most employers offering coverage do today, by adding the per-member rates and dividing the total by the number of employees to arrive at the group's average rate and determine employer and employee contributions based on that composite rate. This flexibility for small employers would take into account that many employers, states, and issuers are already accustomed to composite rating, it is relatively simple, and this method may be beneficial to older employees. However, this composite method may differ from how composite rates often are developed today. This decision will be up to employers.

We seek comment on the alignment of the method for calculating each employee's rate in the small group market with that used to calculate an individual's rate in the individual market. In particular, we seek comment on the implications of this approach for employers and employees, whether it is more compatible with employee choice in the SHOP, and whether it leads to more accurate pricing of employee choices.

HIPAA. The relevant HIPAA authorities currently in effect for group health plans and group health insurance coverage are Code section 9802, ERISA section 702, and PHS Act section 2702 (prior to being renumbered and amended by the Affordable Care Act), as well as 26 CFR 54.9802–1, 29 CFR 2590.702, and 45 CFR 146.121. Guidance concerning employer/employee contributions has been provided by the Equal Employment Opportunity Commission in connection with the age discrimination requirements (29 CFR 1625.10(d)(4)(ii)).

3. Family Rating

PHS Act section 2701(a)(1)(A)(i) provides that issuers may vary rates based on whether a plan covers an individual or a family. PHS Act section 2701(a)(4) provides that, with respect to family coverage, the rating variation permitted for age and tobacco use must be applied based on the portion of the premium attributable to each family member covered under a plan.

The rule proposes that issuers add up the rate of each family member to arrive at a family premium.[36] However, we propose that the rates of no more than the three oldest family members who are under age 21 would be taken into account in computing the family premium. This policy is intended to mitigate the premium disruption for larger families accustomed to family tier structures, which typically cap the number of children taken into consideration in setting premiums. We propose a cut-off age of 21 for this cap so that it is consistent with the cut-off age used in the proposed rule on age rating, as well as the requirement that child-only policies be available to those under age 21. We do not propose a similar cap on the number of family members age 21 and older whose per-member rates would be added into the family premium.

Consistent with PHS Act section 2701(a)(4), the proposed per-member approach to family rating ensures that any variation in premium by age or tobacco use is applied to the appropriate family member. Per-member rating also simplifies the administration of risk adjustment because the risk associated with each family member would be easily identified. We solicit comments on the use of the per-member build-up methodology for individual and small group market coverage. In addition, we request comments on the appropriate cap, if any, on the number of child and adult family members whose premiums should be taken into account in determining the family premium and the appropriate cut-off age for a per-child cap (for example, whether this should be aligned with the extension of dependent coverage to age 26 instead).

Currently, some issuers apply specified family tier or family composition multipliers to a base premium to arrive at a family rate. Other issuers may determine a family premium rate based upon the policyholder or oldest adult's age. These current practices are impermissible under PHS Act section 2701(a)(4) to the extent that the multipliers or the base premium vary based on age or tobacco use, since some family members would be rated using factors that do not apply to them individually. However, this conflict does not exist in a state that does not permit variation based on age or tobacco use.

Accordingly, the proposed rule would permit a state to require issuers to use a standard family tier methodology (with corresponding multipliers) if the state requires pure community rating, without any adjustments for age or tobacco use. The multipliers for the tiers would need to be actuarially justified to ensure that health insurance issuers could not charge excessively high premiums to individuals or families that would render meaningless their guaranteed availability rights under PHS Act section 2702. PHS Act section 2701 does not require that issuers use a two-tier structure (that is, individual and family). For example, a state would be able to specify a four-tier structure (that is, individual; individual and spouse; individual and child/children; and all other families). If a state anticipates adopting such a policy in the event this proposed approach is finalized, we propose such states submit relevant information on their proposed family tiers to CMS no later than 30 days after the publication of the final rule to support the accuracy of the risk adjustment methodology.

We propose that if a state has pure community rating in place, but does not adopt a uniform family tier methodology (with corresponding multipliers), the per-member rating methodology would apply as the default. In a state that does not require community rating, an issuer that voluntarily uses pure community rating would need to use per-member rating, given the absence of a uniform family tier methodology in that state. We solicit comment on whether, instead of permitting flexibility in the final rule, states with pure community rating should also use the per-member approach that would be used in states that allow age and tobacco use adjustments.

4. Persons Included Under Family Coverage

Currently, issuers have considerable flexibility in determining how to set rates for family policies and in defining which family members may be on the same policy, subject to federal and state laws requiring coverage of certain individuals (for example, dependent

[36] Under this approach, the issuer would charge the same per-member premium for all family members of the same age and tobacco use status. The issuer could not charge different rates for family members of the same age and tobacco use status based on their status, for example, as the policyholder, spouse, or dependent.

children under age 26 pursuant to PHS Act section 2714, if a plan or issuer otherwise offers dependent child coverage). Our research indicates that covered family members typically include the employee or individual market policyholder; a spouse or partner, as defined by state law; biological children; adopted children; and children placed for adoption. Sometimes other classes of people are covered, such as stepchildren, grandchildren, other children related by blood, foster children, and children under guardianship.

We request comments on whether the final rule should specify the minimum categories of family members that health insurance issuers must include in setting rates for family policies, or whether we should defer to the states and health insurance issuers to make this determination. We also request comments on the types of individuals who typically are included under family coverage currently, including types of covered individuals who would not meet the classification of tax dependents. We note that any family member not covered under a family policy would be eligible for an individual policy pursuant to guaranteed availability of coverage under PHS Act section 2702.

5. Rating for Geography

PHS Act section 2701(a)(1)(A)(ii) provides that rates may vary by rating areas. PHS Act section 2701(a)(2) provides that a state must establish one or more rating areas within that state. CMS is charged with reviewing the adequacy of the rating areas established by a state. If the state's rating areas are inadequate (for example, they do not cover a sufficient number of individuals) or a state does not act, CMS may establish such rating areas. Although section 2701 does not specify the maximum variation for a rating area factor, in contrast to its specifying the maximum age factor (3:1 for adults) and the maximum tobacco factor (1.5:1), a rating area factor should be actuarially justified to ensure that issuers do not charge excessively high premiums that would render meaningless the guaranteed availability rights of individuals and employers under PHS Act section 2702.

Currently, in most states, issuers have considerable flexibility in establishing their rating areas. The rule proposes that a state could establish no more than seven rating areas within the state along geographic divisions, generally consistent with the maximum number in states today. The proposed rule makes no distinction between health insurance coverage offered inside or outside an Exchange, so these rating areas would apply equally to all non-grandfathered coverage in the individual or small group market.

The choice of a maximum of seven areas in the proposed rule is based on the higher-end of the number of rating areas that states currently have established in the individual and small group markets (for example, Massachusetts, New Jersey, and Oregon). We believe that setting an upper limit on the number of rating areas provides states with the flexibility needed to designate rating areas that are adequately sized and accommodate local market conditions, while avoiding an excessive number of rating areas that would be confusing to consumers and not reflect significant market differences. We solicit comments on the maximum number of rating areas that may be established within a state and the potential standards for determining an appropriate maximum number.

Taking into account the spectrum of current rating rules regarding geography and the need for state flexibility to account for local market conditions, the proposed rule includes three standards for the geographic divisions based on standards that we understand states and issuers currently use for rating areas. A state could select one of the approved standards that we would presume ''adequate'' or submit its own standard, which would be subject to approval. These are: (1) One rating area for the entire state; (2) rating areas based on counties or three-digit zip codes (that is, areas in which all zip codes share the same first three digits); or (3) rating areas based on metropolitan statistical areas (MSAs) and non-MSAs. The proposed rule would not require that all the sections of a rating area be geographically adjacent. For example, a state could create a rating area comprised of all non-MSA portions of a state that have similar health care costs.

Under the first standard, there would be one rating area for the entire state. While this approach would make it easier to establish and monitor rating areas, it may be most practical in states where there is not significant variation in health care costs among the different regions of the state.

Under the second standard, the rating areas would be based on counties or three-digit zip codes. A state using this method would be expected to use either counties or three-digit zip codes, but not both. In the United States, there are 3,068 counties, varying greatly in size and population. There are approximately 455 three-digit zip codes in the United States. Three-digit zip codes generally cover larger areas than a county. Current NAIC rating guidance notes that many small group plans currently use rating areas based on three-digit zip codes or counties.[37]

Under the third standard, rating areas could be based on the state's MSAs and non-MSAs. MSAs encompass at least one urban core with a population of at least 50,000 people, plus adjacent territory that has a high degree of social and economic integration with the core. MSAs are always established along county boundaries, but may include counties from more than one state. The 367 MSAs in the United States include approximately one-third of the counties and 83 percent of the population of the United States. MSAs could provide a convenient and established method of grouping counties into larger areas. Further, current NAIC rating guidance suggests that MSAs be considered as one possible standard for rating areas. For MSAs that cross state boundaries, we propose that these should be divided between the respective states if the MSA option is adopted. States with counties not encompassed by an MSA could create one or more non-MSA rating areas for those counties. For states with more than seven MSAs and non-MSA areas, we propose that these states combine some of the areas into no more than seven rating areas based on a reasonable methodology, such as cost similarity.

We request comments regarding the use of these proposed standards for rating areas, as well as comments regarding other options for standards for geographic divisions and other relevant factors that could be used for developing rating areas. We request comments from states that already have standard rating areas regarding what changes, if any, would be necessary to meet one or more of the proposed standards and the proposed limit of having no more than seven rating areas. We also request comments on whether the final rule should establish minimum geographic size and minimum population requirements for rating areas and whether state rating areas currently in existence should be deemed in compliance with this provision.

To the extent a state establishes rating areas using the proposed standards, that is one rating area for the entire state, or no more than seven rating areas if counties, three-digit zip codes, or MSAs/non-MSAs are used, we propose that the state's rating areas would be

[37] NAIC, *Guidance Manual in the Evaluation of Rating Manuals and Filings Concerning Small Employer and Individual Health Insurance* (2003), p. 33.

presumed adequate. We propose that CMS would take a more active role in assessing the adequacy of the state's rating areas when a state designates rating areas based on geographic divisions other than those identified in the proposed rule.

In the event that a state does not establish rating areas consistent with the proposed standards, the one-area-per-state standard would apply, unless we applied one of the other standards to designate rating areas in a particular state. In that case, we likely would be inclined to use the MSA/non-MSA standard. To the extent that we establish a state's rating areas, we would work with the state, local issuers, and others to determine how best to establish rating areas responsive to local market conditions.

We recognize that states and issuers need lead time to update pricing models and make related system changes to accommodate potentially new rating areas in 2014. To support the accuracy of the risk adjustment methodology, we propose that states needing such lead time submit relevant information on their rating areas to CMS within 30 days after the publication of the final rule. Lastly, we recognize that states may wish to establish or modify their rating areas after 2014. For example, states might wish to modify rating areas in light of local utilization and cost patterns, issuer service areas, or changes in MSA designations. We request comments on appropriate schedules and procedural considerations related to rating area designations for plan years after 2014.

6. Rating for Age

PHS Act section 2701(a)(1)(A)(iii) provides that the premium rate charged by an issuer for non-grandfathered health insurance coverage in the individual or small group market may vary by age, but may not vary by more than 3:1 for adults. The statute does not specify a premium rating limitation for children, but it provides that the 3:1 adult ratio must be ''consistent with section 2707(c)'' of the PHS Act. Section 2707(c), in turn, requires that child-only plans be made available to individuals under age 21.

We believe the statutory language supports an interpretation that the 3:1 age rating limitation was intended to apply only to adults age 21 and older. Further, we believe that PHS Act section 2702 supports a requirement that issuers set actuarially justifiable child rates using a standard population, to prevent the charging of unjustified premiums that would, in effect, prevent individuals under age 21 from exercising their guaranteed availability rights. Accordingly, we propose to allow rates to vary within a ratio of 3:1 for adults (defined for purposes of this requirement as individuals age 21 and older), and that rates must be actuarially justified based on a standard population for individuals under age 21, consistent with the proposed uniform age curve discussed later in this section. We request comment on this approach.

We propose that enrollees' age factors and bands should be determined based on an enrollee's age at policy issuance and renewal, so that age rating factors are applied on a consistent basis by all issuers and that consumers (including those purchasing policies covering multiple family members) do not receive multiple premium increases each year. This is the same measurement point as the first day of a plan or policy year, which is the age determination point for catastrophic plans. We request comments on whether other measurement points (for example, birthdays) might be more appropriate.

PHS Act section 2701(a)(3) directs CMS, in consultation with the NAIC, to define ''permissible age bands'' for purposes of age rating. Age bands are simply ranges of sequential ages. In the context of health insurance, they are often used to segregate where the slope of premium rate variation by age changes, the most common being that the slope is zero within the band (that is, does not change), and non-zero from one band to the next band in the sequence (for example, persons aged 30 to 34 pay the same premium, but lower than those age 35 to 39, who pay the same premium to each other, and similarly for age 40 to 44, etc.).

In accordance with section 2701(a)(3), we consulted with the NAIC, through its Health Care Reform Actuarial (B) Working Group, concerning the permissible age bands to be defined by CMS. The NAIC Working Group did not make specific recommendations, but provided valuable feedback regarding state regulation of age bands, issuer practices, and important policy considerations related to possible age band standards. Although state standards vary, and issuers that set their own age bands do so using a variety of different methods, our discussions with the industry indicate that bands smaller than five years are common in the individual market. Taking into consideration the feedback we received from NAIC, we propose the following standard age bands for use in all states and markets subject to the rating rules of PHS Act section 2701:

- Children: A single age band covering children 0 to 20 years of age, where all premium rates are the same.
- Adults: One-year age bands starting at age 21 and ending at age 63.
- Older adults: A single age band covering individuals 64 years of age and older, where all premium rates are the same.

We propose these age bands for a number of reasons. First, with respect to children, we are proposing a single age band for child ages 0–20 to reflect the generally small differences in costs between children of various ages (other than newborns and very young children). We believe that a single age band for children will simplify and make risk adjustment methodologies more efficient, and allow consumers to more easily compare and predict costs as children age, particularly if the consumer has children that are several years apart in age. We solicit comments on whether multiple age bands or a single age band for children are appropriate.

Second, with respect to adults ages 21 to 63, we propose one-year age bands so that consumers would experience steady, relatively small premium increases each year due to age. If broader age bands are adopted (for example, five-year bands), consumers would experience larger premium increases when they reach the end of one age band and move into the next. Although five-year bands are currently common in the small group market, we are also proposing to apply the same age-band structure to the small group market to align with our proposal that the per-member rating buildup approach be used in both the individual and the small group markets. We request comment on this approach.

Finally, we propose a single age band for adults age 64 and older largely to facilitate compliance with the Medicare Secondary Payer requirements when per-member rating is used for older individuals in the small group market. Medicare Secondary Payer requirements generally prohibit an employer with 20 or more employees from charging Medicare-eligible employees a premium that is higher than the premium charged to non-Medicare-eligible employees (section 1862(b)(1)(A) of the Social Security Act, 42 U.S.C. 1395y(b)(1)(A); 42 CFR 411.102(b), 411.108(a)(6)). Consequently, we believe that the highest age band used to generate individually rated premiums must begin before age 65, when individuals generally are not eligible for Medicare based on age. We believe this proposed age band is reasonable because individuals age 64 and older represent

only a small proportion of enrollees in the individual and small group markets, and are likely to have similar claims costs despite their age differences. We seek comment on this approach.

This proposed rule would direct health insurance issuers within a market in a state to use a uniform age rating curve. An age curve is a specified distribution of relative rates across all age bands. Reflecting statutory requirements, our proposed age curve anchors the premium amount to age 21, and is expressed as a ratio, for all ages between ages 0 and 64, inclusive. We believe that using uniform age bands and rating curves will simplify identification of the second lowest cost silver plan used to determine premium tax credits, and will provide an incentive for issuers to compete to offer plans that provide the best value across the entire age curve. Doing so will also promote the accuracy of the risk adjustment program established under section 1343 of the Affordable Care Act, which is essential to ensuring market stability in the reformed marketplace, and reduce the potential for adverse selection.[38] A standardized rating methodology for all plans within a state would also enhance the transparency, predictability, and accuracy of the risk adjustment program because the risk adjustment methodology could account for age rating as it is applied by issuers.

We are proposing to apply the same default age rating curve to both the individual and small group markets. Our proposed uniform age curve assumes that issuers will vary premiums to the greatest extent permissible within the 3:1 age rating constraint for adults (or narrower ratios as provided under state law). We have constructed our proposed age curve based on gross premium amounts, which includes administrative, overhead, and marketing costs in addition to the amount attributable to enrollee claims costs, without accounting for any tax credits that may offset a consumer's premium costs. Because our analysis of premiums found evidence that issuers do not vary their age curves across much of the 21–64 age band in significant amounts across geography or product types, we do not believe that applying a uniform rating curve to individual and small group markets would disadvantage issuers according to the geographic region they are licensed in, or the value of the coverage that the product/plan type offers.[39]

Our review of base premium rates for 60,000 covered lives (based on data reported on HealthCare.gov by a sample of regional issuers operating in different regions of the country) has shown that base premium rates vary according to age at a mostly consistent rate, and are largely unaffected by product type/plan design or geographic region.[40] Furthermore, an examination of the large group insurance market demonstrates clear evidence that issuers generally utilize an underlying cost curve that varies by age in a manner that is independent of the value of the plan coverage.[41] The analysis of the large group market is particularly relevant as a predictor of post-2014 individual and small group market rating practices because the large group market is characterized by coverage for most essential benefits, has guaranteed availability of coverage, and does not use person-specific underwriting; these types of rates will likely be more characteristic of those of the reformed 2014 individual and small group market. Consequently, we do not believe that issuers need the flexibility to vary age curves across product/plan designs or geographic regions after taking into account the requirement for a 3:1 rating restriction, or that applying a uniform age curve to issuers in the individual and small group markets will lead to any significant disturbance in issuer pricing practices across different geographic regions or plan designs. Therefore, we are proposing that CMS's uniform age curve would apply by default in a state, unless a state adopted a different uniform age curve. We request comment on the application of a single, default age curve to the individual and small group market based on the above assumptions and the methodology for doing so.

We propose that we would fit our uniform age curve to the 3:1 adult age rating limit by ''flattening'' the ends of the age curve derived from expected claim cost patterns in a manner that accommodates the 3:1 premium ratio limit for the highest and the lowest adult ages. Under this approach, when other factors (for example, mix of gender, tobacco use, geographic region, and plan type) are held constant among ages, the rate of premium change from one age to the next will closely mirror the rate of expected claims costs, except for those ages closest to age 21 and age 64.[42] As compared to an approach that would proportionally compress the curve (that is, the relationship between premiums by age) for all ages, this proposed approach would ensure that the fewest number of individuals (or employees, in the small group market) would be affected by the 3:1 premium ratio constraint, thereby mitigating premium disruption for the largest number of consumers, and reducing the need for significant risk adjustment across age bands. We propose that we would revise our default curve periodically to reflect our most current knowledge of the individual and small group market (for example, enrollment, population distribution, and cost patterns) following implementation of 2014 reforms. We request comment on our proposed approach for fitting the proposed adult age curve to the statutorily specified 3:1 premium ratio.

With respect to the age curve for children's ages, we have constructed a proposed default curve using a single age band for ages 0–20, using the same data sources that we used to derive our proposed adult age curve, as described above. The value of our proposed default age curve for ages 0–20 was supported by the actual experience for those ages. The shift from the child age curve at age 20 to the adult age curve at age 21 could result in a premium differential for these ages that is not reflected in issuers' current rating practices. However, given the low premiums for individuals in these age groups, as well as the relative premium stability from age 21 through early 30s under the standardized age curve, we do not anticipate that this differential would result in a significant financial burden on consumers. While we do not

[38] We have developed our proposed age curve based on our assumptions of the distribution of claims costs by age in the post-2103 market. Although it is difficult to exactly predict the composition of the post-2013 market and the actual claims costs that will be incurred, we developed our proposed age curve using assumptions that are consistent with those utilized for the risk adjustment program, as described in our Premium Stabilization Rule (77 FR 17220).

[39] We measured the value of plan coverage by approximating plan actuarial value (AV) on the same scale that we use to separate plans into four metal tiers. For the purposes of our analysis, we designated plans with AVs of 0.55–0.75 as ''low value'' plan designs, 0.75–0.85 as ''medium value'' plan designs, and 0.85–0.95 for ''high value'' plan designs.

[40] Reporting of base premium rates for the individual market to HealthCare.gov does not take into account any additional premium due to health status, which is commonly added in the individual market. These rates, therefore, are not necessarily the actual premiums paid by the 60,000 enrollees in those plans.

[41] For the purposes of this analysis, we analyzed two separate employer databases with data from a combination of large and small employers. One database consisted of 303,000 individuals with 12 continuous months of coverage (to account for seasonal variation in claims costs) that were employed at firms with 50–250 employees. The second database of large employer coverages (including self-insured employers) was composed of 33 million individuals with 12 months of continuous coverage.

[42] For younger ages near age 21 and older ages closer to 64, the change of premium rates from one age to the next higher age would be lower than the change in expected claims costs for those ages.

believe that this discontinuity undermines the accuracy of the methodology we used to develop our proposed child and adult age curves, we request comment on potential implications that the transition from the proposed child curve to the proposed adult curve may have for issuers and consumers. We also seek comment on the proposed rating curve, including whether it is generally consistent with current insurer rating practices and minimally disruptive to the current market within the confines of the rating restrictions and reforms under the Affordable Care Act.

CMS PROPOSED STANDARD AGE CURVE

Age	Premium ratio	Age	Premium ratio	Age	Premium ratio
0–20	0.635	35	1.222	50	1.786
21	1.000	36	1.230	51	1.865
22	1.000	37	1.238	52	1.952
23	1.000	38	1.246	53	2.040
24	1.000	39	1.262	54	2.135
25	1.004	40	1.278	55	2.230
26	1.024	41	1.302	56	2.333
27	1.048	42	1.325	57	2.437
28	1.087	43	1.357	58	2.548
29	1.119	44	1.397	59	2.603
30	1.135	45	1.444	60	2.714
31	1.159	46	1.500	61	2.810
32	1.183	47	1.563	62	2.873
33	1.198	48	1.635	63	2.952
34	1.214	49	1.706	64 and Older	3.000

Although we are proposing a uniform age rating curve for the reasons described above, our proposed approach would maintain flexibility for states and issuers regarding certain aspects of age rating. In most states, premium rates for health insurance coverage are permitted to vary by age to the extent that issuers can actuarially justify such rates; this practice could continue within the boundaries of the proposed policy. A state law that prescribed a narrower ratio for adults (for example, 2:1) or prohibited different adult rates altogether would not be preempted under PHS Act section 2724(a)(1) since such state law would not ''prevent the application'' of section 2701.[43] To support the accuracy of the risk adjustment methodology, we propose that states using narrower ratios submit relevant information on their ratios to CMS no later than 30 days after the publication of the final rule. We also seek input on the consequences of these choices in terms of the likely percentage premium increases that consumers will face when aging from one age band to another, the impact on the administration and accuracy of risk adjustment, the administration of premium tax credits, and consumer convenience. We propose that states would have the option to designate a uniform age curve other than the CMS age curve. If a state anticipates using its own age curve, we propose the state submit relevant information on its proposed curve to CMS no later than 30 days after the publication of the final rule to support the accuracy of the risk adjustment methodology.

7. Rating for Tobacco Use

PHS Act section 2701(a)(1)(A)(iv) provides that health insurance issuers in the individual and small group markets cannot vary rates based on tobacco use by more than 1.5:1.[44] As mentioned, PHS Act section 2701(a)(4) provides that the rating variation for tobacco use applies based on the portion of premium that is attributable to each family member covered under the plan. A state law that prescribes a narrower ratio (for example, 1.25:1) or prohibits varying rates for tobacco use altogether would not be preempted since such state law would not impose a standard or requirement that conflicts, or makes it impossible to comply, with permissible rating practices under federal law, and thus would not prevent the application of PHS Act section 2701.[45] If a state anticipates adopting narrower ratios for tobacco use, we propose that the state submit relevant information on their ratios to CMS no later than 30 days after the publication of the final rule.

Currently, many states allow health insurance issuers in the individual and small group markets to vary premiums based on tobacco use. In addition, many states limit the amount by which premiums can vary due to tobacco use by allowing use of that factor only within their overall health status limits. For example, the NAIC's Small Employer Health Insurance Availability Model Act (1993 Version) does not specifically identify tobacco use as a permissible rating factor, but allows its use within the overall 1.67:1 ratio for the health status of the employees or dependents of the small employer.

There is not a clear and consistent definition of tobacco use among the states for rating purposes. Numerous states such as Louisiana, Maine, Massachusetts, Minnesota, and New Mexico allow tobacco use to be considered as a rating factor in both the individual and small group markets. While these states provide a definition of what constitutes a tobacco product, they do not specifically define ''tobacco use.''

We understand that issuers typically rely on self-reported data, such as information from applications and health risk assessments, to determine tobacco usage. Since applications and health risk assessments vary from issuer to issuer, there is wide variation in how issuers define tobacco use.

One possible approach for purposes of implementing this provision upon which we invite comment would be to include one or more questions on tobacco use in the single streamlined application under § 155.405, or in connection with other enrollment-related processes for an Exchange. We

[43] In addition, section 1334(c)(5) of the Affordable Care Act, pertaining to multi-state plans, indicates that states may require ''more protective'' age rating requirements that are lower than 3:1 in their individual and small group markets.

[44] The interaction of PHS Act section 2701 with the wellness program rules under PHS Act section 2705(j) is discussed later in this section.

[45] Although not the subject of this NPRM, we note that the tobacco use rating factor is not taken into account in determining the amount of the premium tax credit under Code section 36(b)(3)(C).

specifically invite comment on the possible use of the single streamlined application to collect information concerning tobacco use in connection with a premium surcharge, as well as alternative options for identifying tobacco use, as well as how the information should be collected with respect to health insurance coverage offered outside an Exchange.

The proposed rule does not prohibit issuers from varying the tobacco use factor used for a particular age band, as long as any variation is not greater than 1.5:1, the maximum variation for tobacco use under PHS Act section 2701(a)(1)(A)(iv), and is consistent with other applicable law, including the HIPAA nondiscrimination provisions. In other words, an issuer could use a lower tobacco use factor for a younger individual (for example, 1.3:1) compared to an older individual (for example, 1.4:1), as long as the factor does not exceed 1.5:1 for any age group. In contrast to the age rating factor, where we are proposing that issuers utilize a standard age curve, we are proposing that states or issuers have the flexibility to determine the appropriate tobacco rating factor within a range of 1:1 to 1:1.5, consistent with the wellness requirements discussed below. We seek comments on this approach.

We also considered how the requirements under PHS Act section 2701(a)(1)(A)(iv) would interact with rewards for tobacco cessation offered as part of employer wellness programs. Tobacco cessation programs are a common aspect of employers' wellness programs. Prior to the enactment of the Affordable Care Act, the Departments of HHS, Labor, and the Treasury (jointly, the Departments) published final rules regarding the nondiscrimination and wellness program provisions under HIPAA (71 FR 75014, Dec. 13, 2006, referred to as the 2006 regulations).[46] The HIPAA wellness requirements implemented in these 2006 regulations were set forth in section 2702 of the PHS Act (with parallel provisions contained in ERISA section 702 and Code section 9802). While PHS Act section 2702 did not specifically impose any limit on rewards that could be offered under wellness programs, the 2006 regulations provided that plans and issuers could offer a reward that does not exceed 20 percent of the total cost of coverage in a health-contingent wellness program, provided specified consumer-protection conditions were met.[47]

The Affordable Care Act added a new PHS Act section 2705(j), effective for plan years beginning on or after January 1, 2014. Section 2705(j) largely reflects the wellness provisions from the 2006 regulations, with a few clarifications and modifications. Under PHS Act section 2705(j), plans and issuers generally can offer a reward of up to 30 percent of the cost of coverage[48] for participation in a wellness program that is based on an individual satisfying a standard that is related to a health status-related factor (''health factor''), subject to certain conditions. PHS Act section 2705(j) also authorizes the Departments to increase the maximum reward to as much as 50 percent of the total cost of coverage if they determine such an increase to be appropriate.

Contemporaneously with the publication of this proposed rule, the Departments are publishing a notice of proposed rulemaking (NPRM) under section 2705(j), which proposes to increase the maximum reward under a wellness program in group health coverage from 20 percent to 30 percent of the cost of coverage. The rule further proposes an increase of an additional 20 percentage points (to 50 percent) to the extent that the additional percentage is in connection with a program designed to prevent or reduce tobacco use.

We propose in this rule that the definition of ''tobacco use'' for purposes of section 2701 be consistent with the approach taken with respect to health-contingent programs designed to prevent or reduce tobacco use under section 2705(j). That is, by proposing to raise the maximum permissible reward for participating in a tobacco cessation program in the wellness rule, we are proposing that a health insurance issuer in the small group market would be required to offer a tobacco user the opportunity to avoid paying the full amount of the tobacco use surcharge permitted under PHS Act section 2701 if he or she participates in a wellness program meeting the standards of PHS Act section 2705(j) and its implementing regulations.[49]

There are several positive aspects to implementing PHS Act sections 2701 and 2705(j) in a coordinated manner with respect to tobacco use in the small group market. Rather than have the tobacco use surcharge under PHS Act section 2701 be strictly a negative financial incentive, this approach would encourage tobacco users to pursue tobacco cessation remedies offered under their employers' wellness programs, enhancing their long-term health and potentially reducing health care costs. It also would alleviate underreporting for tobacco use since tobacco users who disclose their tobacco use would not automatically have to pay the premium surcharge, but could instead participate in the employer's cessation program. Finally, group health plans and health insurance issuers with wellness programs may find it administratively more efficient to implement the two provisions concurrently given that employers are familiar with the requirements of wellness programs associated with increased premiums related to a health factor. We welcome comments on this proposal and other ideas for coordinating the implementation of the tobacco surcharge under PHS Act section 2701 and the wellness provisions under PHS Act section 2705(j).

We also invite comment on possible definitions of ''tobacco use'' that could be applied for purposes of sections 2701 and 2705(j). One possible definition would rely on self-reporting as to whether the individual would be considered a tobacco user. Another possibility may be what some issuers use today: a defined amount of tobacco use within a specified look-back period. A third possibility may be to define ''tobacco use'' as regular, and not infrequent or sporadic, tobacco use (perhaps including some standard of frequency). Another option would

[46] See 26 CFR 54.9802–1; 29 CFR 2590.702; 45 CFR 146.121. Prior to the issuance of the final 2006 regulations, the Departments published interim final regulations with request for comment implementing the HIPAA nondiscrimination provisions on April 8, 1997 at 62 FR 16894, followed by proposed regulations regarding wellness programs on January 8, 2001 at 66 FR 1421.

[47] The 2006 regulations also required that a wellness program be reasonably designed to promote health or prevent disease; give eligible individuals an opportunity to qualify for the reward at least once per year; make the reward available to all similarly situated individuals (and offer a reasonable alternative standard to any individual for whom it is unreasonably difficult due to a medical condition to satisfy the otherwise applicable standard during that period (or for whom it is medically inadvisable to attempt to satisfy the otherwise applicable standard)), and, in all plan materials describing the terms of the program, disclose the availability of a reasonable alternative standard.

[48] While this new 30 percent limit is set forth in PHS Act section 2705(j), because the existing 20 percent limits were established by regulation, in the case of grandfathered health plans governed by the old version of section 2702, the 20 percent limit is proposed to be increased by the Departments in proposed regulations published contemporaneously with the publication of this proposed rule.

[49] The wellness program NPRM proposes that the additional increase in the size of the reward for wellness programs designed to prevent tobacco use would not be limited to the small group market, to provide consistency across markets and to provide large group, self-insured, and grandfathered employment-based plans the same additional flexibility to promote tobacco-free workforces as small, insured, non-grandfathered health plans.

define a tobacco user as one who uses tobacco with sufficient frequency so as to be addicted to nicotine. Regardless of how tobacco use is defined, we are proposing that the definition of ''tobacco use'' for purposes of section 2701 be consistent with the approach taken with respect to health-contingent wellness programs designed to prevent or reduce tobacco use under section 2705(j).

PHS Act section 2705(b) also prohibits issuers from charging enrollees in the individual market higher premiums based on health factors. However, PHS Act section 2705(j) does not apply to the individual health insurance market. To the extent there is any conflict between PHS Act sections 2701 and 2705 as applied to the individual market, we think the more specific language of PHS Act section 2701 allowing tobacco use surcharges prevails over the more general language of PHS Act section 2705 prohibiting premium differences based on health factors. In other words, issuers could implement the tobacco use surcharge in the individual market without having to offer wellness programs. However, we solicit comments on whether and how, consistent with PHS Act sections 2701 and 2705, the tobacco surcharge in the individual market could be combined with the same type of incentive to promote tobacco cessation that is available in the group market.

B. Guaranteed Availability of Coverage (Proposed § 147.104)

PHS Act section 2702 provides that health insurance issuers that offer health insurance coverage in the individual or group market in a state must accept every individual and employer in the state that applies for coverage, subject to certain exceptions. These exceptions allow issuers to limit enrollment: (1) To certain open and special enrollment periods; (2) to an employer's eligible individuals who live, work, or reside in the service area of a network plan; and (3) in certain situations involving network capacity and financial capacity.

PHS Act section 2702 generally is based on the HIPAA provision for guaranteed availability in the small group market. Compared to HIPAA, however, the Affordable Care Act: (1) Expands guaranteed availability beyond the small group market to include the individual and large group markets as well; (2) requires the establishment of open enrollment periods; (3) establishes new special enrollment periods in addition to those in HIPAA; and (4) eliminates the guaranteed availability exception for coverage offered only to bona fide association members in the small group market. Accordingly, this proposed rule generally is based on the HIPAA rule for guaranteed availability in the small group market (§ 146.150). In addition, the proposed rule would add a new marketing standard pursuant to PHS Act section 2702 that is identical to that applicable to QHPs established under 45 CFR 156.225.

The proposed rule would direct that issuers offer coverage to and accept any individual or employer in the state that applies for such coverage—regardless of health status, risk, or medical claims and costs—with limited exceptions.[50] Issuers would be required to offer all products that are approved for sale in the applicable market. We believe that the protections of the Affordable Care Act apply to all non-grandfathered health insurance coverage in an applicable state market. Accordingly, beginning in 2014, even non-grandfathered ''closed blocks'' of business would be available to new enrollees, subject to the limited exceptions discussed below. We welcome comments on this proposal.

We propose that issuers offering health insurance coverage in the group market would maintain a year-round open enrollment period for employers to purchase such coverage, while issuers offering coverage in the individual market would offer plans during open enrollment periods (including the initial open enrollment period) consistent with those required by Exchanges for individual market QHPs. The effective dates of such coverage would align with the Exchange standards for the appropriate market (if any, in the case of the large group market). These standards are intended to minimize adverse selection by setting consistent open enrollment periods for the insurance marketplace, regardless of whether individuals or employers choose to purchase outside or through an Exchange. We solicit comments on whether this proposal sufficiently addresses the open enrollment needs of individual market customers whose coverage renews on dates other than January 1 and whether aligning open enrollment periods with policy years (based on a calendar year) in the individual market is more desirable. Given that employer groups generally pose less of an adverse selection risk than individuals and issuers currently are willing to offer them coverage at any point in the year, we believe that a year-round enrollment period for large and small employers will not be burdensome on issuers nor change the status quo in most states.

Prior to the Affordable Care Act, the HIPAA provision for guaranteed availability in the small group market had allowed issuers to establish employer contribution rules and group participation rules that small employers must meet in order to qualify for guaranteed availability, as allowed under applicable state law. PHS Act section 2702 does not include the contribution and participation exception to guaranteed availability; however, PHS Act section 2703 does include such an exception for guaranteed renewability. We are concerned that failing to provide a small employer contribution and participation exception to guaranteed availability by regulation would trigger adverse selection against the small group market, given its year-round open enrollment period, vis-à-vis the individual market, which has a time-limited open enrollment period. In other words, some individuals could use the open-ended enrollment period for small employers to buy insurance only as medical needs arise, thereby creating instability in the small group market and increasing premiums for other small employers. Thus, the proposed rule would allow issuers to condition year-round open enrollment in the small group market on a small employer being able to satisfy the same contribution and participation requirements at issuance that the issuer is permitted to consider at renewal, either as allowed by state law or, in the case of a QHP offered in the SHOP, as permitted by § 156.285(c). Establishing this requirement by rule effectively would preserve the status quo under HIPAA. If the final rule includes this requirement, we would also adopt corresponding changes in § 155.725, which establishes the enrollment periods in the SHOP.

The proposed rule sets forth that issuers make available special enrollment periods in both the individual and group markets for individuals and plan participants and beneficiaries in connection with the events that would trigger eligibility for COBRA coverage under ERISA section 603.[51] This set of special enrollment

[50] Other federal laws may restrict the health insurance coverage products available to certain individuals. For example, individuals must meet certain requirements related to residency, citizenship/immigration status, and non-incarceration in order to buy QHPs through an Exchange (45 CFR 155.305(a)).

[51] For employees, COBRA events include a loss of coverage due to voluntary or involuntary termination of employment for reasons other than gross misconduct and reduction in the number of hours of employment. For spouses of covered employees, these events include a loss of coverage

Continued

events is in addition to the special enrollment events provided under PHS Act section 2704(f) for loss of eligibility for other coverage or dependent special enrollment (that is, the special enrollment rights originally created under HIPAA for group health insurance coverage and group health plans [52]) and § 155.420(d) and § 155.725(a)(3) (the special enrollment rights for QHPs). The proposed rule directs that the election period would be 30 calendar days, which is generally consistent with the HIPAA standard. However, we request comment as to whether another standard, such as 60 calendar days, generally consistent with the Exchange standard, is more appropriate.[53] The proposed rule also would include standards regarding the effective dates of coverage modeled upon the effective dates of coverage provided for the QHP special enrollment events under § 155.420(b). We also request comments on whether health insurance issuers in the individual market should provide to enrollees in their products a notice of special enrollment rights similar to what is currently provided to enrollees in group health plans (§ 146.117(c)).

In addition, the proposed rule would include provisions allowing issuers with network plans to limit guaranteed availability to employers with eligible individuals who live, work, or reside in the plans' service areas. While PHS Act section 2702(c)(1)(A) does not explicitly include a corresponding exception allowing issuers to limit the sale of individual market coverage to individuals who live or reside in the individual market plan's service area, failing to recognize such an exception would eliminate an issuer's ability to define a service area for its individual market business within a state. Moreover, references to persons with individual market coverage in paragraph (c)(1) and subparagraph (c)(1)(B) of PHS Act section 2702 suggest that such persons with individual market coverage also were intended to be described in paragraph (c)(1)(A). Accordingly, the proposed rule would clarify that individual market coverage also may limit enrollment to those individuals who live or reside in a service area.

Issuers with network plans also would not have to offer coverage to employers and individuals if they demonstrated to the appropriate state authority that they lacked the capacity to deliver services adequately to additional groups or individuals due to their existing contractual obligations to current group contract holders and enrollees. Issuers would need to apply the denial of guaranteed availability uniformly to all employers and individuals, without regard to the enrollees' claims experience or health status-related factors. Issuers invoking this exception generally would be barred from offering new coverage for at least 180 calendar days after coverage is denied, as directed by PHS Act section 2702(c)(2).

As noted, PHS Act section 2702 does not include an explicit guaranteed availability exception allowing issuers to limit the offering of certain products to members of bona fide associations. However, in the appropriate circumstances, we think that the network capacity exception to guaranteed availability could be used to provide a basis for limiting enrollment in certain products to bona fide association members. Additionally, while the guaranteed availability exception for bona fide association coverage is not allowed under the statute, we are interested in whether and how a transition or exception process for bona fide association coverage could be structured to minimize disruption while maintaining consumer protections. We seek comment on this issue.

Similarly, issuers would not have to offer coverage to employers and individuals, uniformly and without regard to claims experience, if they demonstrate to their applicable state authority (if required) that they lack the financial capacity to sell additional coverage. Issuers invoking this exception also would be barred from offering new coverage for at least 180 calendar days, as directed by PHS Act section 2702(d)(2).

Lastly, the proposed rule would include as a minimum standard a more detailed marketing standard in connection with guaranteed availability that had not been included in the earlier HIPAA rule. Nonetheless, it is similar to the guidance we provided in Health Care Financing Administration Bulletin No. 98–01 that interpreted the HIPAA provisions related to guaranteed availability in the individual and small group markets. Bulletin No. 98–01 stated that the PHS Act prohibited issuers from setting agent commissions for sales to HIPAA-eligible individuals and small groups so low that they were discouraged from marketing policies to such individuals and groups.[54] Pursuant to section 1311(c)(1)(A) of the Affordable Care Act, QHP issuers are required to comply with applicable state laws and regulations regarding marketing by health insurance issuers and not employ marketing practices or benefit designs that will have the effect of discouraging the enrollment of individuals with significant health needs in QHPs (§ 156.225). The proposed rule would adopt this standard and apply it to the entire marketplace in order to ensure consistency in the marketing of plans inside and outside of the Exchanges and leverage existing state oversight mechanisms.

The intent of this policy is for states to continue their traditional role of regulating marketing activities of issuers, consistent with § 156.225. We reiterated this point in guidance issued on November 29, 2011, where we indicated that we will apply existing state standards on marketing materials in states where a federally-facilitated Exchange operates.[55] We note that the NAIC's Model Unfair Trade Practices Act 880–1 has been adopted in a ''substantially similar manner'' by 46 states, and the NAIC's Advertisements of Accident and Sickness Insurance Model Regulation 40–1 has been adopted in a ''substantially similar manner'' by 44 states. Both the Model Act and Regulation include comprehensive marketing standards for issuers.[56]

due to reasons that would make the employee eligible for COBRA, the employee's becoming entitled to Medicare, divorce or legal separation of the covered employee, and death of the covered employee. For children of covered employees, these events include a loss of coverage due to reasons that would make the employee eligible for COBRA, the employee's becoming entitled to Medicare, divorce or legal separation of the covered employee, death of the covered employee, and loss of dependent child status under plan rules.

[52] The special enrollment framework originally created under HIPAA for special enrollment due to loss of eligibility for other coverage and dependent special enrollment is 30 days. The Children's Health Insurance Program (CHIP) Reauthorization Act of 2009 also added special enrollment rights to ERISA, the PHS Act, and the Code that allow employees to enroll in a group health plan or group health insurance coverage upon termination of Medicaid or CHIP coverage or eligibility for a premium assistance program under Medicaid or CHIP. Under these circumstances, an employee must request special enrollment within 60 days.

[53] See 26 CFR 54.9801–6, 29 CFR 2590.701–6, and 45 CFR 146.117 (HIPAA); and 45 CFR 155.420 (Exchange).

[54] *Available at: http://cciio.cms.gov/resources/files/Files2/10112011/hipaa_98_01_508.pdf.pdf.*

[55] CMS, ''State Exchange Implementation Questions and Answers. *Available at: http://cciio.cms.gov/resources/files/Files2/11282011/exchange_q_and_a.pdf.pdf.*

[56] Section 4 of the NAIC Model Act prohibits ''an advertisement, announcement or statement containing any assertion, representation or statement with respect to the business of insurance or with respect to any insurer in the conduct of its insurance business, which is untrue, deceptive or misleading.'' Section 5 of the NAIC Model Regulation provides that the format and content of advertisements of accident and sickness insurance must ''be sufficiently complete and clear to avoid

We propose these marketing standards to minimize the potential for the adverse selection that could result if plans sold through Exchanges were subject to different marketing standards from plans sold outside of the Exchanges. A common standard covering the entire insurance market can protect the efficient operation of all markets and reduce confusion for consumers. As stated in Bulletin No. 98–01, which interpreted the HIPAA guaranteed availability requirement, marketing practices that fall below these standards represent a failure by issuers to offer required coverage. We propose that all issuers comply with state laws regulating the marketing of insurance unless the state has no laws regulating marketing or has laws which are below the federal minimum standard, in which case the federal minimum standard would govern. We solicit comment on this federal minimum standard.

Concerns have been raised about the ability of individuals to manipulate guaranteed availability each year. While PHS Act section 2703 allows an issuer to nonrenew coverage for an individual who has not paid premiums, PHS Act section 2702 does not include an exception allowing issuers to refuse to cover individuals with histories of non-payment under other policies either with the same issuer or other issuers. Nonetheless, we recognize the concerns that such potential gaming raises in relation to adverse selection, fairness to consumers maintaining continuous coverage, and the financial stability of issuers participating in the individual market. We solicit comments on possible ways to discourage consumers from abusing guaranteed availability rights (for example, by ensuring enrollees cannot use open and special enrollment periods to facilitate such abuses) while ensuring consumers are guaranteed the protections afforded to them under the law.

C. Guaranteed Renewability of Coverage (Proposed § 147.106)

PHS Act section 2703 directs that any health insurance issuer offering health insurance coverage in the individual or group market must renew coverage at the option of the plan sponsor or individual, with certain exceptions, which are more fully discussed below in connection with the proposed rule text. PHS Act section 2703 is based largely on the HIPAA provision for group market guaranteed renewability, but generally expands its scope to include both the group and individual markets.[57] While section 2703 does not include the individual market in its guaranteed renewability exceptions for uniform modifications of coverage and loss of bona fide association membership, nonetheless, we believe PHS Act section 2742 continues to provide a basis for those exceptions. This proposed rule generally is based on the corresponding HIPAA rule (§ 146.152).

The proposed rule would direct health insurance issuers offering health insurance coverage in the individual or group market to renew or continue in force the coverage at the option of the plan sponsor or individual, as applicable, with certain exceptions. These exceptions include: (1) Nonpayment of premiums by the plan sponsor, or individual, as applicable; (2) an act or practice that constitutes fraud or an intentional misrepresentation of material fact under the terms of coverage performed by the plan sponsor or individual, as applicable; (3) in the case of group health insurance coverage, the plan sponsor has failed to comply with a material plan provision relating to employer contribution or group participation rules pursuant to applicable state law; (4) the issuer is ceasing to offer coverage of this type, acting uniformly without regard to claims experience or health status-related factor (an issuer may also modify the health insurance coverage for a plan offered to a group health plan at renewal); (5) for network plans, there is no longer any enrollee under the plan who lives, resides, or works in the service area of the issuer (or in the area for which the issuer is authorized to do business); and in the case of the small group market, the issuer could limit the employers that may apply for coverage to those with eligible individuals who live, work, or reside in the service area for such network plan; and (6) for coverage made available in the small or large group market only through one or more bona fide associations, if the employer's membership in the association ceases, but only if the coverage terminated uniformly without regard to any health status-related factor relating to any covered individual. In the case of health insurance coverage that is made available by a health insurance issuer in the small or large group market to employers only through one or more associations, the reference to ''plan sponsor'' is deemed, with respect to coverage provided to an employer member of the association, to include a reference to such employer.

In addition, the proposed rule would set requirements for issuers closing blocks of business. In any case where an issuer decides to discontinue offering a particular plan offered in the group or individual market, that plan may be discontinued by the issuer in accordance with applicable state law in the particular market under certain circumstances. An issuer who elects to discontinue offering all health insurance coverage in a market (or markets) in a state may not issue coverage in the state's market (or markets) involved during the 5-year period beginning on the date of discontinuation of the last coverage not renewed, as directed by PHS Act section 2703(c)(2)(B).

Only at the time of renewal may issuers modify the health insurance coverage for a plan offered to a group health plan in the large group market, and small group market if, for coverage available in this market (other than only through one or more bona fide associations), the modification is consistent with state law and is effective uniformly among group health plans with that plan.[58]

PHS Act section 2703(b)(6) retains a guaranteed renewability exception for an employer's loss of membership in a bona fide association. Although not the subject of this proposed rule, PHS Act section 2742(b)(5) continues to provide a guaranteed renewability exception for an individual's loss of membership in a bona fide association.

Under § 155.430(b), an Exchange may terminate an enrollee's coverage, and permit a QHP issuer to terminate such coverage, under certain circumstances. These circumstances are: (1) The enrollee is no longer eligible for coverage in a QHP; (2) payments of premiums for coverage of the enrollee cease and any grace period(s) have been exhausted; (3) the enrollee's coverage is rescinded due to fraud or misrepresentation; (4) a QHP terminates or is decertified; or (5) the enrollee changes from one QHP to another

deception or the capacity or tendency to mislead or deceive.''

[57] Prior to being amended and renumbered as PHS Act section 2703 by the Affordable Care Act, the HIPAA guaranteed renewability requirements for the group market were found at PHS Act section 2712. The HIPAA guaranteed renewability requirements continue to apply with respect to grandfathered group market coverage in 2014 and beyond (and with respect to all group market coverage before 2014). Section 1251 of the Affordable Care Act specifically excludes grandfathered health plans from the effect of the amendments in the Affordable Care Act. The Affordable Care Act did not modify PHS Act section 2742, which continues to require guaranteed renewability in the individual market, including with respect to grandfathered health plans in the individual market.

[58] Although PHS Act section 2703 does not contain a corresponding exception for uniform modification of coverage in the individual market, PHS Act section 2742 continues to provide a basis for such an exception in the individual market.

during an annual open enrollment period or special enrollment period. Although some QHP termination of coverage events correspond to PHS Act non-renewal events (for example, nonpayment of premiums), other events do not (for example, a QHP's loss of certification). With respect to those instances, we request comments on whether an issuer would have to renew that coverage on a non-QHP basis, outside the Exchange, if applicable, to affected enrollees.

We are aware that issuers may need to make some plan design changes for non-grandfathered coverage issued between March 23, 2010 and January 1, 2014 in order to comply with the standards of the Affordable Care Act that are effective for the 2014 plan and policy years. In addition, on an ongoing basis, issuers may need to make some cost-sharing adjustments at renewal to ensure that policyholders' plans remain at the same actuarial value level from year to year. We believe that issuers can make these types of policy changes consistent with the uniform modification of coverage requirements under PHS Act sections 2703 and 2742, and solicit comments on whether our interpretation should be explicitly incorporated into text of the final rule.

D. Applicability of the Proposed Rules Under PHS Sections 2701, 2702, and 2703 and Section 1312(c) of the Affordable Care Act to Student Health Insurance Coverage

Section 1560(c) of the Affordable Care Act provides that nothing in title I of the Affordable Care Act, or an amendment made by title I, ''shall be construed to prohibit an institution of higher education (as such term is defined for purposes of the Higher Education Act of 1965) from offering a student health insurance plan, to the extent that such requirement is otherwise permitted under applicable federal, state, or local law.'' Title I of the Affordable Care Act includes the rating, guaranteed availability, guaranteed renewability, and single risk pool provisions that are discussed in this proposed rule.

We have interpreted section 1560(c) to mean that if particular requirements in the Affordable Care Act would have, as a practical matter, the effect of prohibiting an institution of higher education from offering a student health plan otherwise permitted under federal, state or local law, such requirements would be inapplicable pursuant to the rule of construction in section 1560(c).

We previously provided student health insurance coverage with exceptions from the HIPAA guaranteed availability and renewability requirements applicable to the individual market (§ 147.145(b)(1)). Consistent with that policy, this proposed rule would provide student health insurance coverage with exceptions from the Affordable Care Act's guaranteed availability and renewability requirements to ensure that enrollment in these policies is limited to students and their dependents.

Under this proposed rule, student health insurance coverage would be included in an issuer's individual market single risk pool, as described below. Nonetheless, given the differences between the student health insurance market and other forms of individual market coverage, we solicit comment on whether the final rule should allow issuers to maintain a separate risk pool for student health insurance coverage. We also seek comment on whether the final rule should provide any modifications with respect to the generally applicable individual market rating rules in connection with student health insurance coverage.

E. Single Risk Pool (Proposed § 156.80)

Section 1312(c)(1) and (2) of the Affordable Care Act states that a health insurance issuer must consider all of its enrollees in all health plans (other than grandfathered health plans) offered by the issuer to be members of a single risk pool in the individual market and small group market, respectively.[59] This requirement applies to health plans both inside and outside of an Exchange for both markets. Section 1312(c)(3) of the Affordable Care Act provides a state with an option to merge its individual and small group markets, in which case all non-grandfathered plans' risk would be merged. To support the accuracy of the risk adjustment methodology, we propose that states that intend to merge their individual and small group market pools in 2014 inform us no later than 30 days after the publication of the final rule. Lastly, section 1312(c)(4) of the Affordable Care Act renders inapplicable any state law requiring grandfathered health plans to be included in the single risk pool(s).

The proposed rule would largely codify the statutory language and clarify that the single risk pool requirement applies on a state-by-state basis and only to forms of non-grandfathered individual and small group market coverage subject to PHS Act section 2701. Thus, excepted benefit and short-term limited duration policies, for example, would not be subject to the single risk pool requirement. Also, this requirement would not be enforced against health insurance coverage issued to plans with fewer than two participants who are current employees (for example, retiree-only plans) (see 75 FR 34538, 34539–40 (June 17, 2010)).

Section 1312(c) of the Affordable Care Act represents a change from current market practice. Today, issuers often maintain several separate risk pools within their individual and small group market business, often as a way to segment risk and further underwrite premiums. For example, the NAIC's Small Employer Health Insurance Availability Model Act (1993 Version), adopted by a majority of states, allows issuers to maintain up to nine blocks of business in the small group market, subject to a limitation that the index rates between the blocks not vary by more than 20 percent. A 2004 study by the American Academy of Actuaries noted that the current regulatory climate in most states allows issuers to open and close books of business in the individual market at will, effectively causing many long-term policyholders in closed blocks to face very high premium increases at renewal because issuers can refuse to pool their claims experience with that of the newer or healthier policyholders.[60]

Beginning in 2014, issuers are no longer able to deny coverage based on applicants' health status and are limited in the types of rating factors they can apply in setting premiums in the individual and small group markets. Without a single risk pool rule, these prohibitions against traditional underwriting could incentivize issuers to find ways to segment the market into separate risk pools and charge differential premiums based on segmented risk, a de facto mechanism for underwriting. As a result, this statutory requirement that an issuer consider all of its enrollees in all plans (other than grandfathered plans) offered by the issuer to be members of a single risk pool in the individual market or small group market, respectively, prevents issuers from creating separate pools in order to segment high risk and

[59] By law, issuers are required to transition all non-grandfathered small group and individual market coverage issued prior to January 1, 2014, to the appropriate single risk pool in the first plan year (small group market) or the first policy year (individual market) beginning on or after January 1, 2014.

[60] American Academy of Actuaries' Rate Filing Task Force, *Report to the NAIC's A&H Working Group of the Life & Health Actuarial Task Force,* at 3–4. *See also* NAIC, *White Paper: An Exploration of Potential Regulatory Measures Intended to Prevent Individuals at Later Durations of Non-Group Major Medical Products from Receiving Higher Rate Increases than Those at Early Durations* (2008).

low risk enrollees. While risk adjustment will address some risk segmentation, the single risk pool requirement provides another layer of protection against adverse selection among plans and protects consumers by requiring issuers to consider the risk of all enrollees when developing and pricing unique plans.

To implement the single risk pool protection, we propose that the claims experience of the enrollees in all non-grandfathered plans of an health insurance issuer in the individual or small group market within a state (or both, if the risk pools of the individual and small group market are merged within a state) be combined so that the premium rate of a particular plan is not adversely impacted by the health status or claims experience of its enrollees. For rates effective starting January 1, 2014, a health insurance issuer would use the estimated total combined claims experience of all non-grandfathered plans deriving from providing essential health benefits within a state market to establish an index rate (average rate) for the relevant market. The index rate would be utilized to set the rates for all non-grandfathered plans of the issuer in the market. After setting the index rate, an issuer would make a market-wide adjustment to the index rate based on the total expected market-wide payments and charges under the risk adjustment and reinsurance programs in a state.

The premium rate for any given plan could not vary from the resulting index rate, except for the following factors:[61]

- The actuarial value and cost-sharing design of the plan;
- The plan's provider network and delivery system characteristics, as well as utilization management practices. This factor is intended to pass savings onto consumers where issuers are able to negotiate better discounts, construct efficient networks, or manage care more efficiently;
- Plan benefits in addition to the essential health benefits. The additional benefits must be pooled with similar benefits provided in other plans to determine the allowable rate variation for plans that offer these benefits; and
- With respect to catastrophic plans, the expected impact of the specific eligibility categories for those plans.

The index rate, the market-wide adjustment based on total expected payments and charges for the risk adjustment and reinsurance programs, and the variations for individual plans would have to be actuarially justified. Furthermore, all such actuarially justified adjustments would have to be implemented by issuers in a transparent fashion, consistent with state and federal rate review processes. We seek comment on the approach described above, and on the proposed plan-specific adjustments to the index rate. This proposed rule would apply both when rates are initially established for a plan and at renewal. We expect that percentage renewal increases generally would be similar across all plans in the same risk pool, but might differ somewhat due to the permitted product differences described above. We are considering allowing additional flexibility in product pricing in 2016 after issuers have accumulated sufficient claims data. We request comments on this approach.

F. CMS Enforcement in Group and Individual Insurance Market (Various Provisions in Parts 144 and 150)

Part 150 of title 45 of the CFR sets forth our enforcement processes for all of the requirements of title XXVII of the PHS Act with respect to health insurance issuers and non-federal governmental group health plans. The scope of part 150 includes our processes for enforcing the requirements of title XXVII of the PHS Act added by the Affordable Care Act, given that the statutory enforcement provisions that part 150 implements, PHS Act sections 2723 and 2761, apply to all of parts A and B of title XXVII.

This proposed rule would make a number of conforming changes in various sections of parts 144 and 150 intended to clarify the applicability of enforcement procedures to the PHS Act requirements added by the Affordable Care Act. For example, we are proposing to replace the term ''HIPAA requirements'' with ''PHS Act requirements'' throughout part 150 to make clear that the part 150 processes would be used for enforcing not only the requirements emanating from HIPAA, but also the Affordable Care Act and other legislation enacted subsequent to HIPAA. Similarly, the proposed rule would add, where appropriate, references to part 147 (that is, the Affordable Care Act's group and individual market requirements) alongside references to parts 146 and 148 (the group and individual market requirements pre-dating the Affordable Care Act).

While these proposed changes should clarify to stakeholders our interpretation concerning part 150, the lack of these revisions in part 150 currently in no way prejudices our continued use of part 150 in connection with enforcing the requirements of part 147 prior to the issuance of a final rule.

G. Enrollment in Catastrophic Plans (Proposed § 156.155)

Section 1302(e) of the Affordable Care Act outlines standards for offering catastrophic plans, which we propose to codify in § 156.155. In paragraph (a)(1), we propose that a plan is a catastrophic plan if it meets all applicable requirements for health insurance coverage in the individual market (including but not limited to those requirements described in 45 CFR parts 147 and 148) and is offered only in the individual market. In proposed paragraph (a)(2), we specify that a catastrophic plan does not offer coverage at the bronze, silver, gold, or platinum coverage levels described in section 1302(d) of the Affordable Care Act and in proposed paragraph (a)(3), we clarify that a catastrophic plan does not provide coverage of essential health benefits until the enrolled individual reaches the annual limitation in cost sharing in section 1302(c)(1) of the Affordable Care Act. Proposed paragraph (a)(4) codifies the statutory requirement that a catastrophic plan must cover at least three primary care visits per year before reaching the deductible. We do not propose here to prohibit an issuer from imposing cost sharing in connection with these primary care visits so long as other applicable law (for example, PHS Act section 2713) permits.

In paragraph (a)(5), we propose codifying the statutory criteria identified in section 1302(e)(2) of the Affordable Care Act that lists the individuals who are permitted to enroll in a catastrophic plan. In paragraph (a)(5)(i), we propose that individuals younger than age 30 before the beginning of the plan year are eligible to enroll in catastrophic plans. If an individual enrolled in a catastrophic plan reaches age 30 during a plan year, we propose that the individual can remain enrolled in the catastrophic plan for the remainder of the plan year. In paragraph (a)(5)(ii), we propose that the second group of individuals eligible to enroll in a catastrophic plan are those who have been certified as exempt from the individual responsibility payment because they cannot afford minimum essential coverage, or they are eligible for a hardship exemption.

In paragraph (b), we propose to codify the exception found in section 1302(e)(1)(B)(i) of the Affordable Care Act by proposing that a health plan may

[61] However, as described in § 147.102 of this proposed rule, the specific premiums charged for particular enrollees would be permitted to vary based on family size, geographic rating area, and age and tobacco use, within limits.

not impose cost-sharing requirements (such as a copayment, coinsurance, or deductible) for preventive services identified in PHS Act section 2713. We note that a catastrophic plan must provide coverage for such services without regard to whether the enrollee accessing the service has reached the cost-sharing maximum.

In paragraph (c), we propose that if more than one person is covered by a single catastrophic plan, such as a non-self only plan, then each individual enrolled must meet at least one of the two eligibility criteria in proposed paragraph (a)(5). For example, a couple could enroll in a catastrophic family plan if one of them was under age 30 and the other had received a certificate of exemption in accordance with section 1302(e)(2)(B) of the Affordable Care Act.

H. Rate Increase Disclosure and Review (Part 154)

To account for the market changes in 2014, many of which are detailed in this proposed rule; to fulfill the statutory requirement beginning in 2014 that the Secretary, in conjunction with the states, monitor premium increases of health insurance coverage offered through an Exchange and outside of an Exchange; and in an effort to streamline data collection for issuers and states, we propose three changes to the existing rate review program under 45 CFR part 154.

First, we propose to amend § 154.200(a)(2) and (b), so that states seeking state-specific thresholds submit proposals to CMS by August 1 of each year; that the Secretary publish a notice no later than September 1 of each year concerning whether a state-specific threshold applies in a state; and that any state-specific threshold be effective on January 1 of each year following the Secretary's notice. We are proposing these changes in order to align with the timing of rate submissions of QHPs in the Exchanges, as well as market-wide rating rules created by the Affordable Care Act, which are effective January 1, 2014. We welcome comments on these proposed changes in the submission date and the effective date of state-specific thresholds.

Second, we propose to amend § 154.215 to direct health insurance issuers to submit data and documentation regarding rate increases on a standardized form in a manner determined by the Secretary. Beginning in 2014, section 2794(b)(2)(A) of the Affordable Care Act directs that the Secretary, in conjunction with states, ''monitor premium increases of health insurance coverage offered through an Exchange and outside of an Exchange.'' The purpose of this policy is to identify patterns that could indicate market disruption, which could occur given the additional standards that apply to qualified health plans, and to oversee the new, market-wide reforms. To assist the Secretary in carrying out this new monitoring function, we propose modifying the rate review standards by extending the requirement that health insurance issuers report information about rate increases above the review threshold to all rate increases, as is already the policy in the vast majority of states. Under this proposal, each issuer would submit the same set of files for all of their products in the same market, pursuant to work conducted in partnership with the NAIC to ensure consistency between the NAIC's System for Electronic Rate and Form Filing (SERFF) and HHS's Health Insurance Oversight System (HIOS) and to promote efficiency in data collection for states and issuers. The same type of information is currently collected by most states today, but in a variety of non-standardized formats. States would continue to have the authority to collect additional information, above this baseline, to conduct more thorough reviews or rate monitoring. The review threshold, described in § 154.200, would continue to be used to determine which rates must be reviewed rather than just reported.

Under the current rate review program, CMS collects rate filing information from issuers proposing increases of 10 percent or greater, including in states with Effective Rate Review Programs. This data collection allows the Secretary to ensure the public disclosure of information on such increases as required by the statute. Collecting rate filing information on all rate increases in applicable markets would provide CMS, in partnership with states, the necessary data to gauge how 2014 market changes are affecting rate changes for consumers both inside and outside the Exchange and to fulfill its obligation under section 2794(b)(2)(A) of the PHS Act. Additionally, the improved data collection would allow states and CMS, where applicable, to adapt their rate review processes to include the changes to the individual and small group markets that begin in 2014. Primary among these changes to the individual and small group market is the single risk pool requirement. Beginning with rates effective in 2014, pursuant to section 1312(c) of the Affordable Care Act, all rates must be based on claims experience calculated from all claims of all products an issuer has within a state in either the individual or small group market (or both if the state merges the individual and small group markets into a combined risk pool). This means that products can no longer be reviewed as completely unique, but rather must include experience of the entire market (single risk pool). Accordingly, when any product has a rate increase, all other products with enrollment or projected enrollment would be reported to assure the single risk pool requirement was appropriately implemented to promote fair market competition.

Additionally, collecting rate filing data in a standardized format, as proposed, would reduce the burden on issuers because the data would be used for purposes beyond rate review, including Exchange functions like QHP certification and premium tax credit and cost-sharing reduction verification. Rather than requiring multiple data submissions to conduct these various reviews, this proposal would provide state and federal regulators the information they need in one place. CMS incorporated feedback from state regulators facilitated through the NAIC and health plans in developing this proposal.

CMS will propose for comment through the Paperwork Reduction Act of 1995 (PRA) process a standardized data template form for health insurance issuers to use for submitting the data for rate increases. The template was developed with input from the NAIC and other stakeholders. The goal of a standardized data template is to provide state regulators with a baseline of information necessary to conduct the review and approval of products sold inside and outside an Exchange as new market rules go into effect in 2014. In order to help assure a competitive health insurance market, CMS anticipates releasing only information collected that is determined to not include trade secrets and is approved for release under the Freedom of Information Act.

This data collection is intended to create greater uniformity for effective rate review information, creating efficiencies and also providing issuers with a standardized, electronic format for submitting this uniform data. Issuers would no longer be required to submit the same type of data in different formats to different regulators. We request comments through the corresponding PRA comment process on the proposed information collection authorized under § 154.215, as proposed to be amended, and the additional burden, if any, it would impose on health insurance issuers and the states. The improved rate review data and

information collection outlined in the PRA would allow issuers to submit a baseline set of rate review data in a standardized form and format, which should, on net, reduce the burden of providing similar data in multiple formats to each state and the federal government. We also welcome comments on the need for and impact of the extension of the reporting requirement below the review threshold and whether alternative approaches to monitoring and oversight should be considered (*e.g.,* auditing).

Third, we propose to modify the standards for an Effective Rate Review Program in response to the market changes in 2014 for rate filings subject to review. We propose revisions in § 154.301(a)(3) so that a state with an Effective Rate Review Program would review the following additional elements as part of its rate review process: (1) The reasonableness of assumptions used by the health insurance issuer to estimate the rate impact of the federal reinsurance and risk adjustment programs; and (2) The health insurance issuer's data related to implementation and ongoing utilization of a market-wide single risk pool, essential health benefits, actuarial values, and other market reforms rules as required by the Affordable Care Act. The 10 percent review threshold, as finalized in § 154.200 (76 FR 29964), will remain unchanged. Thus, only proposed rate increases of 10 percent or more will be subject to a determination of whether they are unreasonable, unless the Secretary changes the threshold in a time and manner specified in 76 FR 29964, or a state requests (and the Secretary approves) a different threshold under § 154.200.

Additionally, we propose to revise § 154.301(a)(4) by adding additional factors that states must take into consideration when conducting their examinations. Specifically, we propose that, in reviewing the impact of cost-sharing changes, the impact on the actuarial value of the health plan must be considered in light of the requirement under section 1302(d) of the Affordable Care Act that a plan meet one of the metal levels in terms of actuarial value. We also propose that, in reviewing benefit changes to a plan, a state must consider the impact of the changes on the plan's essential health benefits and non-essential health benefits. The impact of the changes on pricing, including the rating limitations on age and tobacco use under PHS Act section 2701, must also be considered.

We also propose to add new paragraphs (xii), (xiv), (xv), and (xvi) to § 154.301(a)(4), to ensure that states take into account, to the extent possible, the following additional factors (which are necessary to carry out some of the market reforms going into effect in 2014) when conducting an examination of a rate review filing:

- Other standardized ratio tests (in addition to the medical loss ratio) recommended or required by statute, regulation, or best practices;
- The impacts of geographic factors and variations;
- The impact of changes within a single risk pool to all products or plans within the risk pool; and
- The impact of federal reinsurance and risk adjustment payments and charges.

The above proposed revisions and additions to § 154.301(a)(4) are driven by provisions of the Affordable Care Act that are effective in 2014. CMS intends to work with states to ensure states continue to have Effective Rate Review Programs. Comments are solicited on the impact on states created by these proposed changes and whether there are additional factors that should be considered in reviewing rate increases starting in 2014.

In § 154.301(b), we propose revisions to ensure that a state with an Effective Rate Review Program makes available on its Web site, at a minimum, the same information in Parts I, II, and III of each Rate Filing Justification that CMS makes available on its Web site. We propose that a state may, instead of providing access to the information contained in Parts I, II, and III of each Rate Filing Justification, provide a link to CMS's Web site where consumers can find such information.

Finally, in § 154.225 and § 154.330, we propose to replace the term ''Preliminary Justification'' with the term ''Rate Filing Justification,'' to reflect more appropriately the rate filing information that would be reported under this proposed rule.

IV. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. This proposed rule contains information collection requirements (ICRs) that are subject to review by OMB. A description of these provisions is given in the following paragraphs with an estimate of the annual burden, summarized in Table IV.1. 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 proposed rule that contain information collection requirements (ICRs).

A. ICRs Regarding State Disclosures [§ 147.102(a)(1)(iii), § 147.102(a)(1)(iv), § 147.102(b)(1), § 147.102(c)(2), § 147.102(c)(3), § 147.102(e), § 156.80 (c)]

The proposed rule would direct states to submit to CMS information on their rating and risk pooling requirements if different than the federal standards. In § 147.102(a)(1)(iii), we propose that a state inform CMS if it adopts a narrower age rating ratio than 3:1, and in § 147.102(a)(1)(iv), we propose that a state inform CMS if it adopts a narrower rating ratio for tobacco use than 1.5:1. In § 147.102(b)(1), we propose that a state submit information to CMS regarding its geographic rating areas. In § 147.102(c)(2), we propose that a state with pure community rating submit information to CMS about its uniform family tiers and corresponding multipliers, if any. In § 147.102(c)(3), we propose that a state inform CMS if it requires premiums to be based on average enrollee amounts in the small group market. In § 147.102(e), we propose that a state submit information on its uniform age rating curve to CMS. Finally, in § 156.80(c), we propose that a state inform CMS if it elects to merge its individual and small group market risk pools. Because we do not know how many states will choose to determine their own geographical rating areas, age rating curves, and family tier structures; adopt narrower age or tobacco rating factors; require premiums to be based on average enrollee amounts in the small group market; or merge their individual and small group market risk pools, we have estimated the burden for one state. We seek comments on how many states are likely to submit their own rating and risk pooling rules.

The burden associated with this requirement is the time involved for states to provide to CMS information on the rating factors and requirements

applicable to their small group and individual markets. If a state adopts narrower rating ratios for age or tobacco use, or chooses to merge their individual and small group market risk pools, the state will inform CMS. We estimate that it will take 20 minutes for a state to prepare and submit a report to CMS for each of these disclosures, for a total burden of one hour and a cost of approximately $31 for all three reports combined. If a state develops geographical rating areas (some states will default to one rating area for the entire state), it will provide a report on the rating areas to CMS. We estimate that it will take one hour for a state to prepare and submit a report to CMS on its geographical rating areas, for a burden of one hour and a cost of approximately $31. If a state develops an age rating curve, the state will report the state's age rating curve to CMS. We anticipate that most states will default to national age curve. For states that designate their own curve, we estimate that it will take three hours for each state to prepare and submit a report on its age rating curve, for a burden of three hours and a cost of $92. If a state is community rated and designates a uniform family tier structure, the state will report family tier structure information to CMS. We estimate that very few states will designate family tier structures and that it will take one hour to prepare and submit a report to CMS. The burden for reporting family tier structure information is estimated to be one hour, and a cost of approximately $31. If a state requires premiums in the small group market to be based on average enrollee amounts, it will submit that information to CMS. We estimate that it will take one hour for a state to prepare and submit the report on small group market premiums to CMS, for a burden of one hour and a cost of approximately $31. The total burden for all disclosures is seven hours and approximately $215 per state, if a state needs to disclose all seven rating requirements.

TABLE IV.1—ANNUAL REPORTING, RECORDKEEPING AND DISCLOSURE BURDEN

Regulation section(s)	OMB Control No.	Number of respondents	Responses	Burden per response (hours)	Total annual burden (hours)	Hourly labor cost of reporting ($)	Total labor cost of reporting ($)	Total capital/maintenance costs ($)	Total cost ($)
Age Ratio: § 147.102(a)(1)(iii); Tobacco Ratio: 147.102(a)(1)(iv); Rating areas: § 147.102(b)(1); Family Tier: § 147.102(c)(2); Small Group Market Premium: § 147.102(c)(3); Age rating curve: § 147.102(e); Risk Pool Merger: § 156.80(c).	N.A	1	7	1	7	30.67	214.69	0	214.69

B. ICRs Regarding Rate Increase Disclosure and Review (§ 154.215, § 154.301)

This proposed rule would require that health insurance issuers use a standardized data form, as specified by the Secretary, to report information about a proposed rate increase. In addition, this proposed rule would direct states with Effective Rate Review Programs to consider additional information (as a baseline) in their rate review processes. The existing information collection requirement (OMB Control Number 0938–1141) includes a data template that is currently used by issuers seeking rate increases to submit data to CMS. CMS is publishing an updated data template for public comment, in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site at *http://www.cms.gov/PaperworkReductionActof1995/PRAL/list.asp#TopOfPage* or email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office at 410–786–1326.

If you comment on these information collection 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–9972–P. Fax: (202) 395–5806; or Email: O*IRA_submission@omb.eop.gov.*

V. Regulatory Impact Analysis

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget.

A. Summary

As stated earlier in this preamble, this proposed rule would implement the Affordable Care Act's requirements on health insurance coverage related to fair health insurance premiums, guaranteed availability, guaranteed renewability, single risk pools, and catastrophic plans. These provisions are generally effective for plan or policy years beginning on or after January 1, 2014. In addition, this proposed rule would amend the standards for health insurance issuers and states regarding reporting, utilization, and collection of data under the rate review program.

CMS has crafted this proposed rule to implement the protections intended by Congress in the most economically efficient manner possible. We have examined the effects of this proposed rule as required by Executive Order 13563 (76 FR 3821, January 21, 2011), Executive Order 12866 (58 FR 51735, September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), Executive Order 13132 on Federalism, and the Congressional Review Act (5 U.S.C. 804(2)). In accordance with OMB Circular A–4, CMS has quantified the benefits, costs and transfers where possible, and has also provided a qualitative discussion of the benefits, costs and transfers that may stem from this proposed rule.

B. Executive Orders 13563 and 12866

Executive Order 12866 (58 FR 51735) directs 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 (76 FR 3821, January 21, 2011) is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review as established in Executive Order 12866.

Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a proposed rule—(1) Having an annual effect on the economy of $100 million or more in any one year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

A regulatory impact analysis (RIA) must be prepared for rules with economically significant effects (*e.g.,* $100 million or more in any 1 year), and a ''significant'' regulatory action is subject to review by the OMB. OMB has designated this proposed rule as a ''significant regulatory action.'' Even though at this time it is uncertain whether it is likely to have economic impacts of $100 million or more in any one year, CMS has provided an assessment of the potential costs, benefits, and transfers associated with this proposed regulation.

1. Need for Regulatory Action

Sections 1302(e) and 1312(c) of the Patient Protection and Affordable Care Act (Affordable Care Act), and sections 2701, 2702, and 2703 of the Public Health Service Act (PHS Act), as added and amended by the Affordable Care Act, create certain standards related to fair health insurance premiums, guaranteed availability, guaranteed renewability, risk pools, and catastrophic plans applicable to non-grandfathered health insurance coverage starting in 2014. These proposed regulations would provide the necessary guidance to implement these important consumer protections. The current individual and small group health insurance markets generally are viewed as dysfunctional, placing consumers at a disadvantage due to the high cost of health insurance coverage, resulting from factors such as lack of competition, adverse selection, and limited transparency. In addition to affordability concerns, many people have difficulty finding and enrolling in coverage options. If employer-based coverage is not available, a person may find that affordable individual market coverage is not available due to medical underwriting. The provisions of this proposed rule, combined with other provisions in the Affordable Care Act, will improve the functioning of both the individual and the small group markets and make insurance affordable and accessible to millions of Americans who currently do not have affordable options available to them. In addition, this proposed rule would amend the existing rate review standards under section 2794 of the PHS Act to reflect the new market conditions in 2014.

2. Summary of Impacts

In accordance with OMB Circular A–4, Table V.1 below depicts an accounting statement summarizing CMS's assessment of the benefits, costs, and transfers associated with this regulatory action. The period covered by the regulatory impact analysis (RIA) is 2013–2017.

CMS anticipates that the provisions of these proposed regulations would ensure increased access and improve affordability of health insurance coverage in the individual and small group markets. Individuals who are currently unable to obtain affordable coverage because of their medical history, their health status, gender or age will be able to obtain such coverage once the proposed rules are in effect along with other provisions of the Affordable Care Act, leading to an increase in the number of people with health insurance. Newly insured individuals and individuals with expanded coverage will have increased access to health care, improving utilization of preventive care and health outcomes and protection from the risk of catastrophic medical expenditures, leading to financial security. In addition, an issuer seeking a rate increase would submit data and documentation about the rate increase using a standardized format, which would provide CMS the data necessary for monitoring rate increases, enable consistent reporting between CMS and the states and eliminate issuer burden arising from having to use different formats for submitting the data to states and to CMS. In accordance with Executive Order 12866, CMS expects that the benefits of this proposed regulatory action would justify the costs.

TABLE V.1—ACCOUNTING TABLE

Benefits:

Qualitative:

* Increase in enrollment in the individual market leading to improved access to health care for the previously uninsured, especially individuals with medical conditions, which will result in improved health and protection from the risk of catastrophic medical expenditures
* Lower premium rates in the individual market due to the improved risk profile of the insured, competition, and pooling
* A common marketing standard covering the entire insurance market, reducing adverse selection, improving market oversight and competition and reducing search costs for consumers
* Decrease in administrative costs for issuers due to elimination of medical underwriting and coverage exclusions
* Prevent duplication of effort for rate review filings subject to review by setting forth a standardized template for both non-QHPs and QHPs
* Provide state departments of insurance with more capacity to conduct meaningful rate review and approval of products sold inside and outside an Exchange by using a standardized data template

Costs	Estimate [62]	Year dollar	Discount rate	Period covered
Annualized Monetized ($/year)	$16 million	2012	7%	2013–2017
	$16 million	2012	3%	2013–2017

Administrative costs related to submission of data by issuers seeking rate increases below the rate review threshold

TABLE V.1—ACCOUNTING TABLE—Continued

Qualitative: * Costs incurred by issuers to comply with provisions in the proposed rule. * Costs incurred by states choosing to establish rating areas and age rating curves. * Costs related to possible increases in utilization of health care for the newly insured. * Costs incurred by states for disclosure of rate increases, if applicable.
Transfers:
Qualitative: * Lower rates for individuals in the individual and small group market who are older and/or in relatively poor health, and women; and potentially higher rates for some young men which will be mitigated by provisions such as premium tax credits, risk stabilization programs, access to catastrophic plans, and the minimum coverage provision. * Reduction in uncompensated care for providers who treat the uninsured and increase in payments from issuers. * Decrease in out-of-pocket expenditures by the newly insured and increase in health care spending by issuers, which will be more than offset by an increase in premium revenue.

3. Anticipated Benefits, Costs and Transfers

In developing this proposed rule, CMS carefully considered its potential effects including both costs and benefits. Because of data limitations, CMS did not attempt to quantify all of the benefits, costs and transfers resulting from this proposed rule. Nonetheless, CMS was able to identify several potential qualitative impacts which are discussed below.

There are diverse state laws and industry practices currently in place that result in a wide variation in premium rates (henceforth referred to as ''rates'') and coverage for individual and group health insurance markets. Regarding the individual market, only five states have both guaranteed issue for at least some products and modified or pure community rating requirements, while in other states, issuers can deny health insurance coverage or charge higher premiums to people with medical conditions.[63] Currently, 11 states and the District of Columbia have rate bands, which allow issuers to vary rates only within a certain range of the average rate, two states bar rating based on age, and five states bar rating based on tobacco use in the individual market.[64] In the small group market, 36 states and the District of Columbia have rate bands, 12 states have community rating requirements, two states do not allow rating based on age and 16 do not allow rating based on tobacco use. In many states, women are charged higher premiums than men—only 14 states bar gender rating in the individual market while 15 states do not allow gender rating in the small group market. Of the states that bar gender rating in the individual market, only three of those states require maternity coverage in all policies, meaning that women in the other states can be charged additional premiums for maternity coverage.

Currently, only five states have guaranteed issue in the individual market. Studies show that 48 states require guaranteed renewability in small group market while all 50 states provide some level of guaranteed renewability in the individual market. In addition, HIPAA already provides guaranteed renewability of coverage to individuals and employers, irrespective of state law. Therefore, this provision is not expected to have any significant effect in that regard.

Starting in 2014, issuers in the individual and small group markets will only be allowed to vary rates based on age and tobacco use within specified ranges, family size, and geography (the fair health insurance premium requirement). Issuers generally will accept every individual and employer that applies for health insurance coverage (the guaranteed availability requirement), and must also renew or continue health insurance coverage at the option of the plan sponsor or individual (the guaranteed renewability requirement). In addition, issuers must have single risk pools for each of the individual and small group markets, or a single merged risk pool, if a state so elects, which will include all individuals enrolled in all non-grandfathered plans in the applicable market (the single risk pool requirement).

The provisions of the proposed rule will affect the characteristics of enrollees, enrollment and premium rates in the individual and small group markets. In addition, there are other provisions of the Affordable Care Act that will be effective by 2014, such as establishment of the Exchanges, premium tax credits, and the minimum coverage provision, that relate to the provisions in this proposed rule. These provisions will improve access to and affordability of health insurance coverage. Therefore, it is appropriate to take into consideration the effect of all these provisions in this analysis, even though not all of them are the focus of this proposed rule. It should be noted that the impact of these provisions may vary between states, because of the differences in current regulatory frameworks.

We solicit information and data on any industry practices and procedures that would be affected by the implementation of these provisions and any related costs and savings, including administrative, operating, and information technology related costs, and anticipated effects on premium rates and financial performance.

The provisions of this proposed rule would also modify the existing Effective Rate Review Program to take into account market rule changes in 2014. Specifically, a state must include additional elements in its rate review process, like a review of the reasonableness of assumptions used by the health insurance issuer to estimate the rate impact of the federal reinsurance and risk adjustment programs and review of the health insurance issuer's data related to implementation and ongoing utilization of a market-wide single risk pool, essential health benefits, actuarial values, and other market reforms rules as required by the law.

a. Benefits

In 2011, 48.6 million people in the United States were uninsured.[65] In

[62] These estimates are exclusive of each other. Therefore, the total cost is estimated to be no higher than $16 million.

[63] GAO, Private Health Insurance: Estimates of Individuals with Preexisting Conditions Range from 36 Million to 122 Million, GAO–12–439, March 2012.

[64] Kaiser Family Foundation, Focus on Health Reform: Health Insurance Market Reforms: Rate Restrictions, June 2012.

[65] Source: U.S. Census Bureau, Current Population Survey, 2012 Annual Social and Economic Supplement, Table HI01. Health

addition, an estimated 29 million adults were underinsured in 2010.[66] Studies have shown that people without health insurance have reduced access to health care, higher out-of-pocket costs, higher mortality rates and receive less preventive care.[67] Uninsured and underinsured people are also more likely to be unable to pay their medical bills, have medical debt, and experience financial difficulties.

The provisions of this proposed rule and other changes implemented by the Affordable Care Act will increase enrollment in the individual and small group markets. According to the Congressional Budget Office (CBO), there will be approximately 23 million enrollees in Exchange coverage by 2016. CBO estimates that, by 2016, the number of uninsured will be reduced to up to 30 million.[68] Access to catastrophic plans is likely to further increase the number of insured. Newly insured individuals and individuals with expanded coverage will have access to better health care and experience a reduction in out-of-pocket costs. Ample research demonstrates that access to insurance coverage improves utilization of preventive care, improves health outcomes, and creates less financial debt, which would lead to better financial security.[69] The State of Massachusetts passed similar health reforms in 2006, and now has the lowest uninsured rate in the country. In 2011, only 3.4 percent of Massachusetts residents were uninsured.[70] This has resulted in increased access to health care, including preventive care and fewer individuals with high out-of-pocket spending.[71]

Research shows that individuals in relatively poor health experience difficulty obtaining health insurance coverage. This results in lack of adequate access to health care and higher out-of-pocket expenses for these individuals. According to a recent study by GAO, between 36 million and 122 million adults age 19 to 64 years old (or between 20 and 66 percent of the adult population) have medical conditions that could result in issuers denying them coverage or charging higher premiums.[72] Of these, an estimated 88–89 percent live in states that do not have insurance protections provided by the fair health insurance premium and guaranteed availability provisions of the Affordable Care Act. The GAO study estimated that health care expenditures for adults with medical conditions are, on average, between $1,504 and $4,844 more per year than for other adults. Similarly, a study by HHS found that there are between 50 million and 129 million non-elderly individuals with a medical condition, including between 4 and 17 million children under age 18, and up to 25 million of these adults and children are uninsured.[73] A 2007 study by the Commonwealth Fund found that 36 percent of adults ages 19 to 64 were denied coverage or charged a higher price because of their medical conditions.[74] Another study found that, in 2010, 35 percent of nonelderly adults who shopped for health insurance coverage in the individual market were denied coverage or received coverage exclusions for medical conditions.[75] The Affordable Care Act's provision on guaranteed availability will bar issuers from denying coverage to individuals based on their health status or any other factor, and the provision on fair insurance premiums will prevent issuers from charging a higher premium to individuals based on health status. The proposed rule will ensure that individuals who would have been denied coverage or charged excessively high premium rates, for reasons such as medical conditions or high expected medical costs, will now be able to obtain health insurance at an affordable cost. In addition, young adults and people for whom coverage would otherwise be unaffordable will have access to a catastrophic plan that will have a lower premium, protect against high out-of-pocket costs, and cover recommended preventive services without cost sharing.

The provisions of this proposed rule and other changes implemented by the Affordable Care Act will increase enrollment in the individual market. An analysis by the Congressional Budget Office (CBO) and the staff of the Joint Committee on Taxation (JCT)[76] estimated that the characteristics of enrollees in the individual market will be significantly different, especially due to the addition of people who would have been uninsured in the absence of the Affordable Care Act. CBO and JCT estimated that relatively more new enrollees in the individual market would be younger and healthier and likely to use less medical care, and the addition of new enrollees would result in average premium rates in the market being 7 to 10 percent lower in 2016 all

Insurance Coverage Status and Type of Coverage by Selected Characteristics: 2011.

[66] Cathy Schoen Michelle M. Doty, Ruth H. Robertson and Sara R. Collins, Affordable Care Act Reforms Could Reduce The Number Of Underinsured U.S. Adults by 70 Percent, Health Affairs, 30, no.9 (2011):1762–1771.

[67] The Henry J. Kaiser Family Foundation, The Uninsured: A Primer, Key Facts About Americans Without Health Insurance, Washington, DC, 2011, citing a number of studies on the effects of being uninsured; ASPE, The Value of Health Insurance: Few of the Uninsured Have Adequate Resources to Pay Potential Hospital Bills, 2011 (*http://aspe.hhs.gov/health/reports/2011/valueofinsurance/rb.shtml*); Sara R. Collins, Ruth Robertson, Tracy Garber, and Michelle M. Doty, The Income Divide in Health Care: How the Affordable Care Act Will Help Restore Fairness to the U.S. Health System, The Commonwealth Fund, February 2012; J. Doyle, Health Insurance, Treatment and Outcomes: Using Auto Accidents as Health Shocks, Review of Economics and Statistics, 87(2): 256–270, 2005; S. Dorn, Uninsured and Dying Because of It: Updating the Institute of Medicine Analysis on the Impact of Uninsurance on Mortality, Urban Institute, 2008; Cathy Schoen, Michelle M. Doty, Ruth H. Robertson and Sara R. Collins, Affordable Care Act Reforms Could Reduce The Number Of Underinsured U.S. Adults by 70 Percent, Health Affairs, 30, no.9 (2011):1762–1771.

[68] ''Estimates for the Insurance Coverage Provisions of the Affordable Care Act Updated for the Recent Supreme Court Decision,'' Congressional Budget Office, July 2012.

[69] T. Gross and Notowidigdo, Health Insurance and the Consumer Bankruptcy Decision: Evidence from Expansions of Medicaid, Journal of Public Economics, 95(7–8):767–778, 2011; J. Doyle, Health Insurance, Treatment and Outcomes: Using Auto Accidents as Health Shocks, Review of Economics and Statistics, 87(2): 256–270, 2005; Amy Finkelstein, et al., The Oregon Health Insurance Experiment: Evidence from the First Year, National Bureau of Economic Research Working Paper No. 17190, July 2011; Institute of Medicine, Care without coverage: too little, too late, National Academies Press, 2002; J. Ayanian et al., Unmet Health Needs of Uninsured Adults in the United States, JAMA 284(16):2061–9, 2000; Andrew P. Wilper, et al., Health Insurance and Mortality in U.S. Adults. American Journal of Public Health, 99(12) 2289–2295, 2009; S. Dorn, Uninsured and Dying Because of It: Updating the Institute of Medicine Analysis on the Impact of Uninsurance on Mortality, Urban Institute, 2008; Jack Hadley, Insurance Coverage, Medical Care Use, and Short-term Health Changes Following an Unintentional Injury or the Onset of a Chronic Condition, JAMA. 2007;297(10):1073–1084. doi: 10.1001/jama.297.10.1073; K. Cook et al., Does major illness cause financial catastrophe?, Health Services Research 45, no. 2, 2010.

[70] Source: U.S. Census Bureau, Current Population Survey, 2012 Annual Social and Economic Supplement, Table HI06. Health Insurance Coverage Status by State for All People: 2011.

[71] Kaiser Family Foundation, Focus on Health Reform: Massachusetts Health Care Reform: Six Years Later, June 2012.

[72] GAO, Private Health Insurance: Estimates of Individuals with Preexisting Conditions Range from 36 Million to 122 Million, GAO–12–439, March 2012.

[73] ASPE, At Risk: Preexisting Conditions Could Affect 1 in 2 Americans: 129 Million People Could Be Denied Affordable Coverage Without Health Reform, November 2011.

[74] Michelle M. Doty et al., Failure to Protect: Why the Individual Insurance Market Is Not a Viable Option for Most U.S. Families: Findings from the Commonwealth Fund Biennial Health Insurance Survey, 2007, The Commonwealth Fund, July 2009.

[75] Sara R. Collins, Invited Testimony: Premium Tax Credits Under The Affordable Care Act: How They Will Help Millions Of Uninsured And Underinsured Americans Gain Affordable, Comprehensive Health Insurance, The Commonwealth Fund, October 27, 2011.

[76] Congressional Budget Office, Letter to Honorable Evan Bayh, providing an Analysis of Health Insurance Premiums Under the Patient Protection and Affordable Care Act, November 30, 2009.

else held constant. According to CBO and JCT, the characteristics of people in the large and small group markets would change slightly, and projected premium rate changes would range from a 1 percent decrease to a 2 percent increase.

Currently, health insurance issuers may maintain several blocks of business, or ''pools,'' for their individual and small group market business. Most states place some restrictions on the number of small group blocks of business. However, the individual market generally has not been subject to similar restrictions. In the past, some issuers used separate pools to segment risks, resulting in large rate increases for less-healthy enrollees. A single risk pool will tend to lower rates in the individual market by including younger, healthier individuals in the pool and ensuring that newer and more long-term policyholders are pooled together. In the small group market, a single risk pool will stabilize rates.

The guaranteed availability provision may result in some adverse selection—individuals with poor health who would have been denied coverage before in some states will now be able to obtain health insurance. However, according to CBO and JCT,[77] adverse selection will be mitigated principally by the minimum coverage provision and the availability of premium tax credits, which will make insurance affordable for millions of Americans for whom it is currently unaffordable. Other factors such as fixed open enrollment periods will also help to mitigate adverse selection. The Affordable Care Act also establishes transitional reinsurance and temporary risk corridor programs and a permanent risk adjustment program, which will provide payments to issuers providing coverage to high-risk individuals, to mitigate the potential effects of adverse selection. These programs will provide payment stability to issuers and reduce uncertainty in insurance risk in the individual market and in the small group market, in the case of the permanent risk adjustment program.

Administrative costs for issuers will be lowered because of the elimination of medical underwriting and banning coverage exclusions. Costs should decrease for processing new applications for coverage and implementing the ban on coverage exclusions in the individual and small group markets. This, in turn, could contribute to lower premium rates.

The proposed rule also would require all health insurance issuers marketing group or individual health insurance coverage to comply with the same marketing standards as issuers offering QHPs within the Exchanges. This minimizes the potential for the adverse selection that could result if plans sold through Exchanges were subject to different marketing standards from plans sold outside of the Exchanges. A common standard covering the entire insurance market would also ensure consistency in market oversight, increase competition and reduce search costs for consumers.[78]

The proposed amendments to the Effective Rate Review Program would help issuers to avoid significant duplication of effort for filings subject to review by using the same standardized template for both non-QHPs and QHPs. Issuers would also no longer be required to submit the same type of data in different formats to different regulators. Additionally, the use of a standardized data template would provide state departments of insurance and CMS as applicable with more information to conduct the review and approval of products sold inside and outside an Exchange, monitor rates to detect patterns that could signal market disruption, and oversee the market-wide rules.

b. Costs

Under the proposed rule, issuers will likely incur some one-time, fixed costs in order to comply with the provisions of the final rule, including administrative expenditures for systems and software updates and changes in marketing. In addition, states may incur costs in order to establish geographic rating areas and uniform age rating curves.

In addition to these administrative costs, insurance coverage can lead to increased utilization of health services for individuals who become newly insured. While a portion of this increased utilization may be economically inefficient, studies that estimated the effects of Medicare found that the cost of this inefficiency is likely more than offset by the benefit of risk reduction.[79] [80]

We solicit data on the timing, nature and magnitude of these potential administrative and other costs and savings associated with the proposed rules relative to current practices, including merging the individual and small group markets into a single risk pool in a state, if the state chooses to do so. We also request information on whether the changes in rating rules would require issuers to undertake any systems and operational changes, and we solicit data on any related costs and potential savings as well as potential effects on premiums and financial performance. We are also soliciting information on how standardizing rating areas could affect rates. In addition, we are requesting information on any potential costs incurred by states to establish rating areas and uniform age rating curves if they choose to do so.

The proposed rule would also direct states to provide information to CMS about their rating and risk pooling practices in several key areas, as applicable. They include: age and tobacco rating factors, age rating curves, family tier structure, composite rating in the small group market, geographical rating areas, and combined individual and small group market risk pools. As discussed in the Collection of Information Requirements section, we estimate a total burden of approximately $215 for a state to submit information in all seven areas.

Health insurance issuers seeking rate increases below the rate review threshold would submit data using the standardized data template and would incur administrative costs to prepare and submit the data. Based on CMS's experience with the 2011 MLR reporting year, there are 2,010 health insurance issuers (company/state combinations) offering coverage in the individual market in all states and 1,050 issuers offering coverage in the small group market in all states, while there are 2,294 unique issuers offering products in one or both markets. Most issuers would already have to provide this information to their respective states. We anticipate a total of 7,650 submissions for rate review increases annually in both markets. Based on past experience, we anticipate that approximately 1,200 of these submissions will be for rate increases at or above the threshold and the remaining 6,450 submissions will be for rate increases below the threshold. We assume that each submission will require 11 hours of work by an actuary (at a cost of $225 per hour), including

[77] Congressional Budget Office, Letter to Honorable Evan Bayh providing An Analysis of Health Insurance Premiums Under the Patient Protection and Affordable Care Act, November 30, 2009.

[78] R. Cebul *et al.,* Unhealthy Insurance Markets: Search Frictions and the Cost and Quality of Health Insurance, American Economic Review 101(5): 1842–1847, 2011.

[79] Finkelstein, A, McKnight R: ''What Did Medicare Do? The Initial Impact of Medicare on Mortality and Out Of Pocket Medical Spending '' Journal of Public Economics 2008, 92:1644–1668.

[80] Finkelstein, A., ''The Aggregate Effects of Health Insurance: Evidence from the Introduction of Medicare,'' National Bureau of Economic Research. Working Paper No. 11619, Sept, 2005.

minimal time required for recordkeeping. Therefore, the increase in administrative costs for all issuers seeking rate increases below the threshold would be approximately $16 million, with an average of $7,000 per issuer. It should be noted that there are administrative efficiencies gained by helping issuers to avoid significant duplication of effort for filings subject to review by using the same standardized template for both non-QHPs and QHPs across all states, and because the vast majority of states currently require all rate increases to be filed; these efficiencies are not quantified in this rule.

Additionally, all issuers seeking rate increases would need to adjust their systems to provide the data required in the standardized data template. We seek comments on the extent of these costs and plan to incorporate an estimate in the final rule.

For filings subject to review, states with Effective Rate Review Programs would be expected to use the data submissions in their reviews; however, it is not expected to increase review costs.

c. Transfers

As discussed elsewhere in the preamble, most aspects of rating methodology today are left to the discretion of health insurance issuers, subject to oversight by the states. In most states, issuers may vary premium rates based on a number of factors such as age, health status, and gender. In 2010, 60 percent of non-elderly adults who shopped for insurance coverage in the individual market had difficulty finding affordable coverage.[81] Also, as a result of current gender rating, premium rates for women are significantly higher than those for men. According to a study by the National Women's Law Center, 92 percent of best-selling plans currently practice gender rating.[82] The provision of fair premiums will allow issuers to vary rates based on only a limited number of factors and within specified ranges. Since rating based on gender and health will no longer be allowed, rates for some older, less healthy adults and women may decrease. While these rules could increase rates for younger, healthier adults and for some men, other factors will mitigate the effects of reformed rating practices, such as choices of and competition among plans on Exchanges, greater pooling of risks through the Exchanges, premium tax credits, the risk stabilization programs, access to catastrophic plans, and the minimum coverage provision.

As people who were previously uninsured obtain coverage, their out-of-pocket expenses are expected to decrease while the issuers' spending will increase, which is expected to be mitigated by an increase in premium revenues. Expansion in health insurance coverage will also reduce the amount of uncompensated care for providers that treat the uninsured. Millions of people without health insurance now use health care services for which they do not fully pay, shifting the uncompensated cost of their care to health care providers, people who do have insurance (in the form of higher premiums), and state and local governments.[83] Providers of uncompensated care try to recover the money by increasing the amounts charged to insurance companies, which results in higher premiums for individuals with private insurance. The cost of uncompensated care for the previously uninsured will be transferred from the providers (for example, hospitals and physicians), governmental programs and charitable organizations to the individuals and issuers of their health insurance coverage. Reduction in the number of uninsured would reduce the amount of uncompensated care and could lead to a decrease in private health insurance rates.

C. Regulatory Alternatives

Under Executive Order 12866, CMS is required to consider alternatives to issuing rules and alternative regulatory approaches.

Under the proposed rule, all issuers in a state would use a uniform age rating curve. CMS considered the alternative of allowing issuers to set their own rating curve. Under the alternative, issuers would have more flexibility and might incur lower upfront, fixed costs (for example, systems and software updates) to comply with the proposed rule. A uniform age rating curve, however, would improve the accuracy of risk adjustment, increase consumer transparency when comparing prices across plans, and make it simpler to identify the second lowest cost silver plan for purposes of obtaining tax credits.

CMS also considered the alternatives of including a tobacco component for the rating curve and keeping the rating factor for tobacco use separate from the wellness program rules. These alternatives would reduce flexibility for the issuers with respect to rating for tobacco use and would provide no alternative to the tobacco surcharge, which could discourage disclosure of tobacco use. Under the proposed rule, a health insurance issuer in the small group market would be able to implement the tobacco use surcharge to employees only in connection with a wellness program that effectively allows tobacco users to reduce their premiums to the level of non-tobacco users by participating in a tobacco cessation program or satisfying another reasonable alternative. This proposal is designed to discourage underreporting of tobacco use and encourage tobacco users to enter cessation programs and improve their health and reduce health care costs.

CMS believes that the provisions of this proposed rule strike the best balance of extending protections of the Affordable Care Act to consumers while preserving the availability of such coverage and minimizing market disruptions to the extent possible.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires agencies that issue a rule to analyze options for regulatory relief of small businesses if a rule has a significant impact on a substantial number of small entities. The RFA generally defines a ''small entity'' as—(1) a proprietary firm meeting the size standards of the Small Business Administration (SBA), (2) a nonprofit organization that is not dominant in its field, or (3) a small government jurisdiction with a population of less than 50,000 (states and individuals are not included in the definition of ''small entity''). CMS uses as its measure of significant economic impact on a substantial number of small entities a change in revenues of more than 3 to 5 percent.

As discussed in the Web Portal final rule published on May 5, 2010 (75 FR 24481), CMS examined the health insurance industry in depth in the Regulatory Impact Analysis we prepared for the proposed rule on establishment of the Medicare Advantage program (69 FR 46866, August 3, 2004). In that analysis it was determined that there were few, if any, insurance firms underwriting comprehensive health insurance policies (in contrast, for

[81] Sara R. Collins, Invited Testimony: Premium Tax Credits Under The Affordable Care Act: How They Will Help Millions Of Uninsured And Underinsured Americans Gain Affordable, Comprehensive Health Insurance, The Commonwealth Fund, October 27, 2011.

[82] National Women's Law Center, Turning to Fairness: Insurance discrimination against women today and the Affordable Care Act, Washington, DC, March 2012.

[83] Families USA, Hidden Health Tax: Americans Pay a Premium (Washington, DC: Families USA, 2009) (*http://familiesusa2.org/assets/pdfs/hidden-health-tax.pdf*).

example, to travel insurance policies or dental discount policies) that fell below the size thresholds for ''small'' business established by the SBA (currently $7 million in annual receipts for health issuers).[84]

In addition, CMS used the data from Medical Loss Ratio annual report submissions for the 2011 MLR reporting year to develop an estimate of the number of small entities that offer comprehensive major medical coverage. These estimates may overstate the actual number of small health insurance issuers that would be affected, since they do not include receipts from these companies' other lines of business. It is estimated that there are 22 small entities each with less than $7 million in earned premiums that offer individual or group health insurance coverage and would therefore be subject to the requirements of this proposed regulation. These small entities account for less than five percent of the estimated 466 issuers that would be affected by the provisions of this rule. Thirty six percent of these small issuers belong to holding groups, and many if not all of these small issuers are likely to have other lines of business that would result in their revenues exceeding $7 million. For these reasons, CMS expects that this proposed rule will not affect small issuers.

This rule proposes requirements that may affect health insurance premiums in the small group market. We expect that many employers that purchase health insurance coverage in the small group market would meet the SBA standard for small entities. As mentioned earlier in the impact analysis, the impact on premiums is likely to be small and may even lead to lower rates in the small group market.

E. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act (UMRA) of 1995 requires that agencies assess anticipated costs and benefits before issuing any proposed rule that includes a Federal mandate that could result in any expenditure in any one year by state, local or tribal governments, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. In 2012, that threshold level is approximately $139 million.

UMRA does not address the total cost of a proposed rule. Rather, it focuses on certain categories of cost, mainly those ''Federal mandate'' costs resulting from—(1) imposing enforceable duties on state, local, or tribal governments, or on the private sector; or (2) increasing the stringency of conditions in, or decreasing the funding of, state, local, or tribal governments under entitlement programs.

This proposed rule would give state governments the option to establish rating areas within the state and uniform age rating curves. There are no mandates on local or tribal governments. State governments may incur administrative cost related to the option of establishing rating areas and uniform age rating curves. However, if the state government does not act, CMS may establish the rating areas and uniform age rating curve in that state. State governments would also incur administrative costs related to disclosure of rating and pooling requirements to CMS, which are estimated to be $215 per state. The private sector (for example, health insurance issuers) will incur administrative costs related to the implementation of the provisions in this proposed rule. This proposed rule would not impose an unfunded mandate on local or tribal governments. However, consistent with policy embodied in UMRA, this proposed rule has been designed to be the least burdensome alternative for state, local and tribal governments, and the private sector while achieving the objectives of the Affordable Care Act.

F. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has Federalism implications.

As discussed earlier in the preamble, states are the primary regulators of health insurance coverage. States would continue to apply state laws regarding health insurance coverage. However, if any state law or requirement prevents the application of a Federal standard, then that particular state law or requirement would be preempted. If CMS determines that a state does not meet the criteria for an Effective Rate Review Program, then CMS would review a rate increase subject to review to determine whether it is unreasonable. If a state does meet the criteria, then CMS would adopt that state's determination of whether a rate increase is unreasonable. States would continue to apply state law requirements regarding rate and policy filings. State requirements that are more stringent than the Federal requirements would be not be preempted by this proposed rule. Accordingly, states have significant latitude to impose requirements with respect to health insurance coverage that are more restrictive than the Federal law.

In compliance with the requirement of Executive Order 13132 that agencies examine closely any policies that may have Federalism implications or limit the policymaking discretion of the states, CMS has engaged in efforts to consult with and work cooperatively with affected states, including consulting with National Association of Insurance Commissioners.

Throughout the process of developing this proposed rule, CMS has attempted to balance the states' interests in regulating health insurance issuers and Congress's intent to provide uniform protections to consumers in every state. By doing so, it is CMS's view that it has complied with the requirements of Executive Order 13132. Under the requirements set forth in section 8(a) of Executive Order 13132, and by the signatures affixed to this rule, HHS certifies that the CMS Center for Consumer Information and Insurance Oversight has complied with the requirements of Executive Order 13132 for the attached proposed rule in a meaningful and timely manner.

G. Congressional Review Act

This proposed rule 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.), which specifies that before a rule can take effect, the Federal agency promulgating the rule shall submit to each House of the Congress and to the Comptroller General a report containing a copy of the rule along with other specified information, and has been transmitted to Congress and the Comptroller General for review.

List of Subjects

45 CFR Part 144

Health care, Health insurance, Reporting and recordkeeping requirements.

45 CFR Part 147

Health care, Health insurance, Reporting and recordkeeping requirements, and state regulation of health insurance.

45 CFR Part 150

Administrative practice and procedure, Health care, Health insurance, Penalties, Reporting and recordkeeping requirements.

[84] Table of Small Business Size Standards Matched to North American Industry Classification System Codes, effective March 26, 2012, U.S. Small Business Administration, available at *www.sba.gov.*

45 CFR Part 154

Administrative practice and procedure, Claims, Health care, Health insurance, Health plans, Penalties, Reporting and recordkeeping requirements.

45 CFR Part 156

Administrative practice and procedure, Advertising, Advisory committees, Brokers, Conflict of interest, Consumer protection, Grant programs-health, Grants administration, Health care, Health insurance, Health maintenance organization (HMO), Health records, Hospitals, Indians, Individuals with disabilities, Loan programs-health, Organization and functions (Government agencies), Medicaid, Public assistance programs, Reporting and recordkeeping requirements, Safety, State and local governments, Sunshine Act, Technical Assistance, Women, and Youth.

For the reasons set forth in the preamble, the Department of Health and Human Services proposes to amend 45 CFR parts 144, 147, 150, 154, and 156 as set forth below:

PART 144—REQUIREMENTS RELATING TO HEALTH INSURANCE COVERAGE

1. The authority citation for part 144 continues to read as follows:

Authority: Secs. 2701 through 2763, 2791, and 2792 of the Public Health Service Act (42 U.S.C. 300gg through 300gg-63, 300gg-91, and 300gg-92).

2. Section 144.101 is amended by revising paragraphs (d)(1) and (d)(2) to read as follows:

§ 144.101 Basis and purpose.

* * * * *

(d) * * *

(1) States that fail to substantially enforce one or more provisions of part 146 concerning group health insurance, one or more provisions of part 147 concerning group or individual health insurance, or the requirements of part 148 of this subchapter concerning individual health insurance.

(2) Insurance issuers in States described in paragraph (d)(1) of this section.

* * * * *

3. Section 144.102 is revised to read as follows:

§ 144.102 Scope and applicability.

(a) For purposes of 45 CFR parts 144 through 148, all health insurance coverage is generally divided into two markets—the group market and the individual market. The group market is further divided into the large group market and the small group market.

(b) The protections afforded under 45 CFR parts 144 through 148 to individuals and employers (and other sponsors of health insurance offered in connection with a group health plan) are determined by whether the coverage involved is obtained in the small group market, the large group market, or the individual market.

(c) Coverage that is provided to associations, but not related to employment, and sold to individuals is not considered group coverage under 45 CFR parts 144 through 148. If the coverage is offered to an association member other than in connection with a group health plan, or is offered to an association's employer-member that is maintaining a group health plan that has fewer than two participants who are current employees on the first day of the plan year, the coverage is considered individual health insurance coverage for purposes of 45 CFR parts 144 through 148. The coverage is considered coverage in the individual market, regardless of whether it is considered group coverage under state law. If the health insurance coverage is offered in connection with a group health plan as defined at 45 CFR 144.103, it is considered group health insurance coverage for purposes of 45 CFR parts 144 through 148.

(d) Provisions relating to CMS enforcement of parts 146, 147, and 148 are contained in part 150 of this subchapter.

PART 147—HEALTH INSURANCE REFORM REQUIREMENTS FOR THE GROUP AND INDIVIDUAL HEALTH INSURANCE MARKETS

4. The authority citation for part 147 continues to read as follows:

Authority: Secs. 2701 through 2763, 2791, and 2792 of the Public Health Service Act (42 U.S.C. 300gg through 300gg-63, 300gg-91, and 300gg-92), as amended.

5. Section 147.102 is added to read as follows:

§ 147.102 Fair health insurance premiums.

(a) *In general.* With respect to the premium rate charged by a health insurance issuer for health insurance coverage offered in the individual or small group market—

(1) The rate may vary with respect to the particular plan or coverage involved only by determining the following:

(i) Whether the plan or coverage covers an individual or family.

(ii) Rating area, as established in accordance with paragraph (b) of this section.

(iii) Age, except that the rate must not vary by more than 3:1 for like individuals of different age who are age 21 and older and that the variation in rate must be actuarially justified for individuals under age 21, consistent with the uniform age rating curve under paragraph (e) of this section. For purposes of identifying the appropriate age adjustment under this paragraph and the age band in paragraph (d) of this section applicable to a specific enrollee, the enrollee's age as of the date of policy issuance or renewal shall be used. Nothing in this paragraph prevents a state from requiring the use of a ratio narrower than 3:1 in connection with establishing rates for individuals who are age 21 and older. A state that uses a narrower ratio shall submit to CMS information on its ratio in accordance with the date and format specified by CMS.

(iv) Tobacco use, except that such rate shall not vary by more than 1.5:1 for like individuals who vary in tobacco usage. (See § 147.110, related to prohibiting discrimination based on health status and programs of health promotion or disease prevention.) Nothing in this paragraph prevents a state from requiring the use of a ratio narrower than 1.5:1 in connection with establishing rates for individuals who vary in tobacco usage. A state that uses a narrower ratio shall submit to CMS information on its ratio in accordance with the date and format specified by CMS.

(2) The rate must not vary with respect to the particular plan or coverage involved by any other factor not described in paragraph (a)(1) of this section.

(b) *Rating area.* (1) A state may establish rating areas within that state for purposes of applying this section and the requirements of title XXVII the Public Health Service Act and title I of the Patient Protection and Affordable Care Act. A state that establishes rating areas shall submit to CMS information on its rating areas in accordance with the date and format specified by CMS.

(2) If a state's rating areas are not consistent with paragraph (b)(3) of this section, or if a state does not establish rating areas, the standard under paragraph (b)(3)(i) of this section shall apply unless CMS establishes rating areas within the state applying one of the standards under paragraph (b)(3)(ii) of this section.

(3) A state's rating areas will be presumed adequate if one of the following requirements are met:

(i) There is only one rating area within the state.

(ii) There are no more than seven rating areas based on the one of the following geographic divisions: counties, three-digit zip codes, or metropolitan statistical areas/non-metropolitan statistical areas.

(4) Notwithstanding paragraph (b)(3) of this section, a state may propose to CMS for approval other existing geographic divisions on which to base rating areas or a number of rating areas greater than seven.

(c) *Application of variations based on age or tobacco use.* With respect to family coverage under health insurance coverage, the rating variations permitted under paragraphs (a)(1)(iii) and (a)(1)(iv) of this section must be applied based on the portion of the premium attributable to each family member covered under the coverage.

(1) *Per-member rating.* The total premium for family coverage must be determined by summing the premiums for each individual family member. In determining the total premium for family members, premiums for no more than the three oldest family members who are under age 21 must be taken into account.

(2) *Family tiers under community rating.* If a state does not permit any rating variation for factors that otherwise would be permitted under paragraphs (a)(1)(iii) and (a)(1)(iv) of this section, the state may elect to require that premiums for family coverage be determined by using uniform family tiers and the corresponding multipliers established by the state. A state that establishes uniform family tiers and corresponding multipliers shall submit to CMS information on its uniform family tiers and corresponding multipliers in accordance with the date and format specified by CMS. If a state does not establish uniform family tiers and the corresponding multipliers, the per-member rating methodology under paragraph (c)(1) of this section will apply in that state.

(3) *Application to small group market.* In the case of the small group market, the total premium charged to the group shall be determined by summing the premiums of covered participants and beneficiaries in accordance with paragraph (c)(1) or (c)(2) of this section, as applicable. Nothing in this section shall preclude a state from requiring issuers to offer, or an issuer from voluntarily offering, to a group premiums that are based on average enrollee amounts, provided that the total group premium is the same total amount derived in accordance with paragraph (c)(1) or (c)(2) of this section, as applicable. A state that requires premiums based on average enrollee amounts shall submit to CMS information on its election in accordance with the date and format specified by CMS.

(d) *Uniform age bands.* The following uniform age bands apply for rating purposes under paragraph (a)(1)(iii) of this section:

(1) *Child age bands.* A single age band for individuals age 0 to 20.

(2) *Adult age bands.* One-year age bands starting at age 21 and ending at age 63.

(3) *Older adult age bands.* A single age band for individuals age 64 and older.

(e) *Uniform age rating curves.* Each state must establish a uniform age rating curve for rating purposes under paragraph (a)(1)(iii) of this section and submit to CMS information on its uniform age rating curve in accordance with the date and format specified by CMS. If a state does not establish a uniform age rating curve by a date specified by CMS, a default uniform age rating curve established by CMS shall apply in that state which takes into account the rating variation permitted for age under state law.

(f) *Special rule for large group market.* If a state permits health insurance issuers that offer coverage in the large group market in the state to offer such coverage through an Exchange starting in 2017, the provisions of this section applicable to coverage in the small group market shall apply to all coverage offered in the large group market in the state.

(g) *Applicability date.* The provisions of this section apply for plan years (in the individual market, for policy years) beginning on or after January 1, 2014.

(h) *Grandfathered health plans.* This section does not apply to grandfathered health plans.

6. Section 147.104 is added to read as follows:

§ 147.104 Guaranteed availability of coverage.

(a) *Guaranteed availability of coverage in the individual and group market.* Subject to paragraphs (b) through (d) of this section, a health insurance issuer that offers health insurance coverage in the individual or group market in a state must offer to any individual or employer in the state all products that are approved for sale in the applicable market, and must accept any individual or employer that applies for any of those products.

(b) *Enrollment periods.* A health insurance issuer may restrict enrollment in health insurance coverage to open or special enrollment periods.

(1) *Open enrollment periods*—(i) *Group market.* A health insurance issuer in the group market must permit an employer to purchase health insurance coverage for a group health plan at any point during the year. In the case of health insurance coverage offered in the small group market, a health insurance issuer may decline to offer coverage to a plan sponsor that is unable to comply with a material plan provision relating to employer contribution or group participation rules, as defined in § 147.106(b)(3), pursuant to applicable state law and, in the case of a QHP offered in the SHOP, as permitted by § 156.285(c) of this subchapter. With respect to coverage in the small group market, and in the large group market if such coverage is offered in a Small Business Health Options Program (SHOP) in a state, coverage shall become effective consistent with the dates described in § 155.725(h) of this subchapter.

(ii) *Individual market.* A health insurance issuer in the individual market must permit an individual to purchase health insurance coverage during the initial and annual open enrollment periods described in § 155.410(b) and (e) of this subchapter, with such coverage becoming effective consistent with the dates described in § 155.410(c) and (f) of this subchapter.

(2) *Special enrollment periods.* A health insurance issuer in the group market and individual market shall establish special enrollment periods for qualifying events as defined under section 603 of the Employee Retirement Income Security Act of 1974, as amended. Enrollees shall be provided 30 calendar days after the date of the qualifying event to elect coverage, with such coverage becoming effective consistent with the dates described in § 155.420(b) of this subchapter. These special enrollment periods are in addition to any other special enrollment periods that are required under federal and state law.

(c) *Special rules for network plans.* (1) In the case of a health insurance issuer that offers health insurance coverage in the group and individual market through a network plan, the issuer may do the following:

(i) Limit the employers that may apply for the coverage to those with eligible individuals in the group market who live, work, or reside in the service area for the network plan, and limit the individuals who may apply for the coverage in the individual market to those who live or reside in the service area for the network plan.

(ii) Within the service area of the plan, deny coverage to employers and

individuals if the issuer has demonstrated to the applicable state authority (if required by the state authority) the following:

(A) It will not have the capacity to deliver services adequately to enrollees of any additional groups or any additional individuals because of its obligations to existing group contract holders and enrollees.

(B) It is applying paragraph (c)(1) of this section uniformly to all employers and individuals without regard to the claims experience of those individuals, employers and their employees (and their dependents) or any health status-related factor relating to such individuals, employees, and dependents.

(2) An issuer that denies health insurance coverage to an individual or an employer in any service area, in accordance with paragraph (c)(1)(ii) of this section, may not offer coverage in the individual or group market, as applicable, within the service area to any individual or employer, as applicable, for a period of 180 calendar days after the date the coverage is denied. This paragraph (c)(2) does not limit the issuer's ability to renew coverage already in force or relieve the issuer of the responsibility to renew that coverage.

(3) Coverage offered within a service area after the 180-day period specified in paragraph (c)(2) of this section is subject to the requirements of this section.

(d) *Application of financial capacity limits.* (1) A health insurance issuer may deny health insurance coverage in the group or individual market if the issuer has demonstrated to the applicable state authority (if required by the state authority) the following:

(i) It does not have the financial reserves necessary to underwrite additional coverage.

(ii) Is applying this paragraph (d)(1) uniformly to all employers or individuals in the group or individual market, as applicable, in the state consistent with applicable state law and without regard to the claims experience of those individuals, employers and their employees (and their dependents) or any health status-related factor relating to such individuals, employees, and dependents.

(2) An issuer that denies group health insurance coverage to any employer or individual in a state under paragraph (d)(1) of this section may not offer coverage in the group or individual market, as applicable, in the state before the later of either of the following dates:

(i) The 181st day after the date the issuer denies coverage.

(ii) The date the issuer demonstrates to the applicable state authority, if required under applicable state law, that the issuer has sufficient financial reserves to underwrite additional coverage.

(3) Paragraph (d)(2) of this section does not limit the issuer's ability to renew coverage already in force or relieve the issuer of the responsibility to renew that coverage.

(4) Coverage offered after the 180-day period specified in paragraph (d)(2) of this section is subject to the requirements of this section.

(5) An applicable state authority may provide for the application of this paragraph (d) on a service-area-specific basis.

(e) *Marketing.* A health insurance issuer and its officials, employees, agents and representatives must comply with any applicable state laws and regulations regarding marketing by health insurance issuers and cannot employ marketing practices or benefit designs that will have the effect of discouraging the enrollment of individuals with significant health needs in health insurance coverage.

(f) *Applicability date.* The provisions of this section apply for plan years (in the individual market, for policy years) beginning on or after January 1, 2014.

(g) *Grandfathered health plans.* This section does not apply to grandfathered health plans.

7. Section 147.106 is added to read as follows:

§ 147.106 Guaranteed renewability of coverage.

(a) *General rule.* Subject to paragraphs (b) through (d) of this section, a health insurance issuer offering health insurance coverage in the individual or group market is required to renew or continue in force the coverage at the option of the plan sponsor or the individual, as applicable.

(b) *Exceptions.* An issuer may nonrenew or discontinue health insurance coverage offered in the group or individual market based only on one or more of the following:

(1) *Nonpayment of premiums.* The plan sponsor or individual, as applicable, has failed to pay premiums or contributions in accordance with the terms of the health insurance coverage, including any timeliness requirements.

(2) *Fraud.* The plan sponsor or individual, as applicable, has performed an act or practice that constitutes fraud or made an intentional misrepresentation of material fact in connection with the coverage.

(3) *Violation of participation or contribution rules.* In the case of group health insurance coverage, the plan sponsor has failed to comply with a material plan provision relating to employer contribution or group participation rules, pursuant to applicable state law. For purposes of this paragraph (b) the following apply:

(i) The term ''employer contribution rule'' means a requirement relating to the minimum level or amount of employer contribution toward the premium for enrollment of participants and beneficiaries.

(ii) The term ''group participation rule'' means a requirement relating to the minimum number of participants or beneficiaries that must be enrolled in relation to a specified percentage or number of eligible individuals or employees of an employer.

(4) *Termination of plan.* The issuer is ceasing to offer coverage in the market in accordance with paragraph (c) or (d) of this section and applicable state law.

(5) *Enrollees' movement outside service area.* For network plans, there is no longer any enrollee under the plan who lives, resides, or works in the service area of the issuer (or in the area for which the issuer is authorized to do business); and in the case of the small group market, the issuer applies the same criteria it would apply in denying enrollment in the plan under § 147.104(c)(1)(i).

(6) *Association membership ceases.* For coverage made available in the small or large group market only through one or more bona fide associations, if the employer's membership in the bona fide association ceases, but only if the coverage is terminated uniformly without regard to any health status-related factor relating to any covered individual.

(c) *Discontinuing a particular product.* In any case in which an issuer decides to discontinue offering a particular product offered in the group or individual market, that product may be discontinued by the issuer in accordance with applicable state law in the applicable market only if the following occurs:

(1) The issuer provides notice in writing to each plan sponsor or individual, as applicable, provided that particular product in that market (and to all participants and beneficiaries covered under such coverage) of the discontinuation at least 90 calendar days before the date the coverage will be discontinued.

(2) The issuer offers to each plan sponsor or individual, as applicable, provided that particular product the option, on a guaranteed issue basis, to purchase all (or, in the case of the large group market, any) other health

insurance coverage currently being offered by the issuer to a group health plan or individual health insurance coverage in that market.

(3) In exercising the option to discontinue that product and in offering the option of coverage under paragraph (c)(2) of this section, the issuer acts uniformly without regard to the claims experience of those sponsors or individuals, as applicable, or any health status-related factor relating to any participants or beneficiaries covered or new participants or beneficiaries who may become eligible for such coverage.

(d) *Discontinuing all coverage.* (1) An issuer may elect to discontinue offering all health insurance coverage in the individual or group market, or all markets, in a state in accordance with applicable state law only if the issuer meets all of the following conditions:

(i) The issuer provides notice in writing to the applicable state authority and to each plan sponsor or individual, as applicable, (and all participants and beneficiaries covered under the coverage) of the discontinuation at least 180 calendar days prior to the date the coverage will be discontinued.

(ii) All health insurance policies issued or delivered for issuance in the state in the applicable market (or markets) are discontinued and not renewed.

(2) An issuer that elects to discontinue offering all health insurance coverage in a market (or markets) in a state as described in this paragraph (d) may not issue coverage in the applicable market (or markets) and state involved during the 5-year period beginning on the date of discontinuation of the last coverage not renewed.

(e) *Exception for uniform modification of coverage.* Only at the time of coverage renewal may issuers modify the health insurance coverage for a product offered to a group health plan in the following:

(1) Large group market.

(2) Small group market if, for coverage available in this market (other than only through one or more bona fide associations), the modification is consistent with state law and is effective uniformly among group health plans with that product.

(f) *Application to coverage offered only through associations.* In the case of health insurance coverage that is made available by a health insurance issuer in the small or large group market to employers only through one or more associations, the reference to ''plan sponsor'' is deemed, with respect to coverage provided to an employer member of the association, to include a reference to the employer.

(g) *Applicability date.* The provisions of this section apply for plan years (in the individual market, for policy years) beginning on or after January 1, 2014.

(h) *Grandfathered health plans.* This section does not apply to grandfathered health plans.

8. Section 147.145 is amended by revising paragraph (b)(1) to read as follows:

§ 147.145 Student health insurance coverage.

* * * * *

(b) *Exemptions from the Public Health Service Act*— (1) *Guaranteed availability and guaranteed renewability.* (i) For purposes of sections 2741(e)(1) and 2742(b)(5) of the Public Health Service Act, student health insurance coverage is deemed to be available only through a bona fide association.

(ii) For purposes of section 2702(a) of the Public Health Service Act, a health insurance issuer that offers student health insurance coverage shall not be required to accept persons who are not students or dependents of students in such coverage.

(iii) For purposes of section 2703(a) of the Public Health Service Act, a health insurance issuer that offers student health insurance coverage shall not be required to renew or continue coverage for individuals who are no longer students or dependents of students.

* * * * *

PART 150—CMS ENFORCEMENT IN GROUP AND INDIVIDUAL INSURANCE MARKETS

9. The authority citation for part 150 continues to read as follows:

Authority: Secs. 2701 through 2763, 2791, and 2792 of the Public Health Service Act (42 U.S.C. 300gg through 300gg–63, 300gg–91, and 300gg–92), as amended.

10. Section 150.101 is amended by revising paragraphs (a) and (b)(2) to read as follows:

§ 150.101 Basis and scope.

(a) *Basis.* CMS's enforcement authority under sections 2723 and 2761 of the PHS Act and its rulemaking authority under section 2792 of the PHS Act provide the basis for issuing regulations under this part 150.

(b) * * *

(2) *Enforcement with respect to health insurance issuers.* The states have primary enforcement authority with respect to the requirements of title XXVII of the PHS Act that apply to health insurance issuers offering coverage in the group or individual health insurance market. If CMS determines under subpart B of this part that a state is not substantially enforcing title XXVII of the PHS Act, including the implementing regulations in parts 146, 147, and 148 of this subchapter, CMS enforces them under subpart C of this part.

11. Section 150.103 is amended by—

a. Removing the definition of ''HIPAA requirements;''

b. Revising the definition of ''Individual health insurance policy or individual policy;'' and

c. Adding the definition of ''PHS Act requirements'' in alphabetical order.

The revision and addition read as follows:

§ 150.103 Definitions.

* * * * *

Individual health insurance policy or individual policy means the legal document or contract issued by the issuer to an individual that contains the conditions and terms of the insurance. Any association or trust arrangement that is not a group health plan as defined in § 144.103 of this subchapter or does not provide coverage in connection with one or more group health plans is individual coverage subject to the requirements of parts 147 and 148 of this subchapter. The term ''individual health insurance policy'' includes a policy that is –

(1) Issued to an association that makes coverage available to individuals other than in connection with one or more group health plans; or

(2) Administered, or placed in a trust, and is not sold in connection with a group health plan subject to the provisions of parts 146 and 147 of this subchapter.

PHS Act requirements means the requirements of title XXVII of the PHS Act and its implementing regulations in parts 146, 147, and 148 of this subchapter.

* * * * *

12. In 45 CFR part 150, remove the words ''HIPAA requirement'' or ''HIPAA requirements,'' and add in their place ''PHS Act requirement'' or ''PHS Act requirements,'' respectively, wherever they appear in the following places.

a. Section 150.103, in the definition of ''Complaint''.

b. In the heading of subpart B of part 150.

c. Section 150.201.

d. Section 150.203, in the introductory text and paragraphs (a) and (b).

e. Section 150.205(d) and (e)(1).

f. Section 150.207, in the section heading and text.

g. Section 150.209.

h. Section 150.211, in the introductory text.
i. Section 150.213(b) and (c).
j. Section 150.217, in the introductory text.
k. Section 150.219(a).
l. Section 150.221(a).
m. Section 150.301.
n. Section 150.303(a) introductory text, (a)(3), and (b).
o. Section 150.305(a)(1), (b)(2), and (c)(2).
p. Section 150.309.
q. Section 150.311, in the introductory text and paragraphs (d), (f) introductory text, (f)(3), and (g).
r. Section 150.313(a) and (e)(3)(iv).
s. Section 150.317(a)(1) and (a)(3).
t. Section 150.319(b)(1) introductory text, (b)(1)(ii), and (b)(1)(iii).
u. Section 150.343(a).
v. Section 150.465(c).

PART 154—HEALTH INSURANCE ISSUER RATE INCREASES: DISCLOSURE AND REVIEW REQUIREMENTS

13. The authority citation for part 154 continues to read as follows:

Authority: Section 2794 of the Public Health Service Act (42 U.S.C. 300gg–94).

14. Section 154.200 is amended by revising paragraphs (a)(2) and (b) to read as follows:

§ 154.200 Rate increases subject to review.

(a) * * *

(2) * * * A State-specific threshold shall be based on factors impacting rate increases in a State to the extent that the data relating to such State-specific factors is available by August 1. States interested in proposing a State-specific threshold for approval are required to submit a proposal to the Secretary by August 1.

(b) The Secretary will publish a notice no later than September 1 of each year, to be effective on January 1 of the following year, concerning whether a threshold under paragraph (a)(1) or (a)(2) of this section applies to the State; except that, with respect to the 12-month period that begins on September 1, 2011, the threshold under paragraph (a)(1) of this section applies.

* * * * *

15. Section 154.215 is revised to read as follows:

§ 154.215 Submission of rate filing justification.

(a) If any product is subject to a rate increase, a health insurance issuer must submit a Rate Filing Justification for all products on a form and in a manner prescribed by the Secretary.

(b) The Rate Filing Justification must consist of the following Parts:

(1) Standardized data template (Part I), as described in paragraph (d) of this section.

(2) Written description justifying the rate increase (Part II), as described in paragraph (e) of this section.

(3) Rating filing documentation (Part III), as described in paragraph (f) of this section.

(c) A health insurance issuer must complete and submit Parts I and III of the Rate Filing Justification described in paragraphs (b)(1) and (b)(3) of this section to CMS and, as long as the applicable State accepts such submissions, to the applicable State for any rate increase. If a rate increase is subject to review, then the health insurance issuer must also complete and submit to CMS and, if applicable, the State Part II of the Rate Filing Justification described in paragraph (b)(2) of this section.

(d) Content of standardized data template (Part I): The standardized data template must include the following as determined appropriate by the Secretary:

(1) Historical and projected claims experience.

(2) Trend projections related to utilization, and service or unit cost.

(3) Any claims assumptions related to benefit changes.

(4) Allocation of the overall rate increase to claims and non-claims costs.

(5) Per enrollee per month allocation of current and projected premium.

(6) Three year history of rate increases for the product associated with the rate increase.

(e) Content of written description justifying the rate increase (Part II): The written description of the rate increase must include a simple and brief narrative describing the data and assumptions that were used to develop the rate increase and including the following:

(1) Explanation of the most significant factors causing the rate increase, including a brief description of the relevant claims and non-claims expense increases reported in the rate increase summary.

(2) Brief description of the overall experience of the policy, including historical and projected expenses, and loss ratios.

(f) Content of rate filing documentation (Part III): The rate filing documentation must include an actuarial memorandum that contains the reasoning and assumptions supporting the data contained in Part I of the Rate Filing Justification. Parts I and III must be sufficient to conduct an examination satisfying the requirements of § 154.301(a)(3) and (4) and determine whether the rate increase is an unreasonable increase. Instructions concerning the requirements for the rate filing documentation will be provided in guidance issued by CMS.

(g) If the level of detail provided by the issuer for the information under paragraphs (d) and (f) of this section does not provide sufficient basis for CMS to determine whether the rate increase is an unreasonable rate increase when CMS reviews a rate increase subject to review under § 154.210(a), CMS will request the additional information necessary to make its determination. The health insurance issuer must provide the requested information to CMS within 10 business days following its receipt of the request.

(h) Posting of the disclosure on the CMS Web site:

(1) CMS promptly will make available to the public on its Web site the information contained in Part II of each Rate Filing Justification.

(2) CMS will make available to the public on its Web site the information contained in Parts I and III of each Rate Filing Justification that is not a trade secret or confidential commercial or financial information as defined in CMS's Freedom of Information Act regulations, 45 CFR 5.65.

(3) CMS will include a disclaimer on its Web site with the information made available to the public that explains the purpose and role of the Rate Filing Justification.

(i) CMS will include information on its Web site concerning how the public can submit comments on the proposed rate increases that CMS reviews.

16. Section 154.220 is revised to read as follows:

§ 154.220 Timing of providing the rate filing justification.

A health insurance issuer must submit a Rate Filing Justification for all rate increases that are filed in a State on or after April 1, 2013, or effective on or after January 1, 2014 in a State that does not require the rate increase to be filed, as follows:

(a) If a State requires that a proposed rate increase be filed with the State prior to the implementation of the rate, the health insurance issuer must submit to CMS and the applicable State the Rate Filing Justification on the date on which the health insurance issuer submits the proposed rate increase to the State.

(b) For all other States, the health insurance issuer must submit to CMS and the State the Rate Filing

Justification prior to the implementation of the rate increase.

§ 154.225 [Amended]

17a. In § 154.225(a),introductory text, remove the words ''Preliminary Justification'' and add in their place ''Rate Filing Justification.''

§ 154.230 [Amended]

17b. In § 154.230(b) and (c)(1), remove the words ''Preliminary Justification'' and add in their place ''Rate Filing Justification.''

18. Section 154.301 is amended as follows:

a. Amending paragraph (a)(3)(i) by removing ''; and'' and adding in its place a period.

b. Amending paragraphs (a)(4)(i), (a)(4)(ii), and (a)(4)(vi) through (a)(4)(x) by removing the semicolons and replacing them with periods.

c. Amending paragraph (a)(3)(xi) by removing ''; and'' and adding in its place a period.

d. Revising paragraphs (a)(4)(iii) through (a)(4)(v), and (b).

e. Redesignating paragraph (a)(4)(xii) as paragraph (a)(4)(xiii) and adding new paragraphs (a)(3)(iii), (a)(3)(iv), (a)(4)(xii), and (a)(4)(xiv) through (a)(4)(xvi).

The revisions and additions read as follows:

§ 154.301 CMS's determinations of effective rate review programs.

(a) * * *

(3) * * *

(iii) The reasonableness of assumptions used by the health insurance issuer to estimate the rate impact of the Federal reinsurance and risk adjustment programs under sections 1341 and 1343 of the Affordable Care Act.

(iv) The health insurance issuer's data related to implementation and ongoing utilization of a market-wide single risk pool, essential health benefits, actuarial values and other market reforms rules as required by the Affordable Care Act.

(4) * * *

(iii) The impact of cost-sharing changes by major service categories, including actuarial values.

(iv) The impact of benefit changes, including essential health benefits and non-essential health benefits.

(v) The impact of changes in enrollee risk profile and pricing, including rating limitations for age and tobacco use under section 2701 of the Public Health Service Act.

* * * * *

(xii) Other standardized ratio tests recommended or required by statute, regulation, or best practices.

* * * * *

(xiv) The impacts of geographic factors and variations.

(xv) The impact of changes within a single risk pool to all products or plans within the risk pool.

(xvi) The impact of Federal reinsurance and risk adjustment payments and charges under sections 1341 and 1343 of the Affordable Care Act.

* * * * *

(b) *Public disclosure and input.* In addition to satisfying the provisions in paragraph (a) of this section, a State with an Effective Rate Review Program must provide, for the rate increases it reviews, access from its Web site to at least the information contained in Parts I, II, and III of the Rate Filing Justification that CMS makes available on its Web site (or provide CMS's Web address for such information) and have a mechanism for receiving public comments on those proposed rate increases.

* * * * *

PART 156—HEALTH INSURANCE ISSUER STANDARDS UNDER THE AFFORDABLE CARE ACT, INCLUDING STANDARDS RELATED TO EXCHANGES

19. The authority citation for part 156 continues to read as follows:

Authority: Title I of the Affordable Care Act, sections 1301–1304, 1311–1312, 1321, 1322, 1324, 1334, 1342–1343, and 1401–1402, Pub. L. 111–148, 124 Stat. 119 (42 U.S.C. 18042).

20. Section 156.80 is added to subpart A to read as follows:

§ 156.80 Single risk pool.

(a) *Individual market.* A health insurance issuer shall consider the claims experience of all enrollees in all health plans (other than grandfathered health plans) subject to section 2701 of the Public Health Service Act and offered by such issuer in the individual market in a state, including those enrollees who do not enroll in such plans through the Exchange, to be members of a single risk pool.

(b) *Small group market.* A health insurance issuer shall consider the claims experience of all enrollees in all health plans (other than grandfathered health plans) subject to section 2701 of the Public Health Service Act and offered by such issuer in the small group market in a state, including those enrollees who do not enroll in such plans through the Exchange, to be members of a single risk pool.

(c) *Merger of the individual and small group markets.* A state may require the individual and small group insurance markets within a state to be merged into a single risk pool if the state determines appropriate. A state that requires such merger of risk pools shall submit to CMS information on its election in accordance with the date and format specified by CMS.

(d) *Index rate*—(1) *In general.* Each plan year or policy year, as applicable, a health insurance issuer shall establish an index rate for a state market based on the total combined claims costs for providing essential health benefits within the single risk pool of that state market. The index rate shall be adjusted on a market-wide basis based on the total expected market-wide payments and charges under the risk adjustment and reinsurance programs in the state. The premium rate for all of the health insurance issuer's plans in the relevant state market must use the applicable index rate, as adjusted for total expected market-wide payments and charges under the risk adjustment and reinsurance programs, subject only to the adjustments permitted in paragraph (d)(2) of this section.

(2) *Permitted plan-level adjustments to the index rate.* For plan years or policy years beginning on or after January 1, 2014, a health insurance issuer may vary premium rates for a particular plan from its index rate for a relevant state market based only on the following actuarially justified plan-specific factors:

(i) The actuarial value and cost-sharing design of the plan.

(ii) The plan's provider network, delivery system characteristics, and utilization management practices.

(iii) The benefits provided under the plan that are in addition to the essential health benefits. These additional benefits must be pooled with similar benefits within the single risk pool and the claims experience from those benefits must be utilized to determine rate variations for plans that offer those benefits in addition to essential health benefits.

(iv) With respect to catastrophic plans, the expected impact of the specific eligibility categories for those plans.

(e) *Grandfathered health plans in the individual and small group market.* A state law requiring grandfathered health plans to be included in a single risk pool described in paragraph (a) or (b) of this section shall not apply.

(f) *Applicability date.* The provisions of this section apply for plan years (as that term is defined in § 144.103 of this subchapter) in the group market, and for policy years (as that term is defined in § 144.103 of this subchapter) in the

individual market, beginning on or after January 1, 2014.

21. Section 156.155 is added to subpart B to read as follows:

§ 156.155 Enrollment in catastrophic plans.

(a) *General rule.* A health plan is a catastrophic plan if it meets the following conditions:

(1) Meets all applicable requirements for health insurance coverage in the individual market (including but not limited to those requirements described in parts 147 and 148 of this subchapter), and is offered only in the individual market.

(2) Does not provide a bronze, silver, gold, or platinum level of coverage described in section 1302(d) of the Affordable Care Act.

(3) Provides coverage of the essential health benefits under section 1302(b) of the Affordable Care Act once the annual limitation on cost sharing in section 1302(c)(1) of the Affordable Care Act is reached.

(4) Provides coverage for at least three primary care visits per year before reaching the deductible.

(5) Covers only individuals who meet either of the following conditions:

(i) Have not attained the age of 30 prior to the first day of the plan year.

(ii) Have received a certificate of exemption for the reasons identified in section 1302(e)(2)(B)(i) or (ii) of the Affordable Care Act.

(b) *Coverage of preventive health services.* A catastrophic plan may not impose any cost-sharing requirements (such as a copayment, coinsurance, or deductible) for preventive services, in accordance with section 2713 of the Public Health Service Act.

(c) *Application for family coverage.* For other than self-only coverage, each individual enrolled must meet the requirements of paragraph (a)(4) of this section.

Dated: May 15, 2012.

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: August 6, 2012.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

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26 CFR Part 54

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Employee Benefits Security Administration

29 CFR Part 2590

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Incentives for Nondiscriminatory Wellness Programs in Group Health Plans; Proposed Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

[REG–122707–12]

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2590

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Parts 146 and 147

[CMS–9979–P]

RIN 0938–AR48

Incentives for Nondiscriminatory Wellness Programs in Group Health Plans

AGENCY: Internal Revenue Service, Department of the Treasury; Employee Benefits Security Administration, Department of Labor; Centers for Medicare & Medicaid Services, Department of Health and Human Services.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes amendments to regulations, consistent with the Affordable Care Act, regarding nondiscriminatory wellness programs in group health coverage. Specifically, these proposed regulations would increase the maximum permissible reward under a health-contingent wellness program offered in connection with a group health plan (and any related health insurance coverage) from 20 percent to 30 percent of the cost of coverage. The proposed regulations would further increase the maximum permissible reward to 50 percent for wellness programs designed to prevent or reduce tobacco use. These regulations also include other proposed clarifications regarding the reasonable design of health-contingent wellness programs and the reasonable alternatives they must offer in order to avoid prohibited discrimination.

DATES: Comments are due on or before January 25, 2013.

ADDRESSES: Written comments may be submitted to the Department of Labor as specified below. Any comment that is submitted will be shared with the other Departments and will also be made available to the public. Warning: Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines. No deletions, modifications, or redactions will be made to the comments received, as they are public records. Comments may be submitted anonymously.

Comments, identified by ''Wellness Programs'', may be submitted by one of the following methods:

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

Mail or Hand Delivery: Office of Health Plan Standards and Compliance Assistance, Employee Benefits Security Administration, Room N–5653, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, *Attention:* Wellness Programs.

Comments received will be posted without change to *www.regulations.gov* and *www.dol.gov/ebsa,* and available for public inspection at the Public Disclosure Room, N–1513, Employee Benefits Security Administration, 200 Constitution Avenue NW., Washington, DC 20210, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Amy Turner or Beth Baum, Employee Benefits Security Administration, Department of Labor, at (202) 693–8335; Karen Levin, Internal Revenue Service, Department of the Treasury, at (202) 622–6080; or Jacob Ackerman, Centers for Medicare & Medicaid Services, Department of Health and Human Services, at (410) 786–1565.

Customer Service Information: Individuals interested in obtaining information from the Department of Labor concerning employment-based health coverage laws may call the EBSA Toll-Free Hotline at 1–866–444–EBSA (3272) or visit the Department of Labor's Web site (*www.dol.gov/ebsa*). In addition, information from HHS on private health insurance for consumers can be found on the Centers for Medicare & Medicaid Services (CMS) Web site (*www.cciio.cms.gov/*) and information on health reform can be found at *www.HealthCare.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

The Patient Protection and Affordable Care Act, Public Law 111–148, was enacted on March 23, 2010; the Health Care and Education Reconciliation Act, Public Law 111–152, was enacted on March 30, 2010 (these are collectively known as the ''Affordable Care Act''). The Affordable Care Act reorganizes, amends, and adds to the provisions of part A of title XXVII of the Public Health Service Act (PHS Act) relating to group health plans and health insurance issuers in the group and individual markets. The term ''group health plan'' includes both insured and self-insured group health plans.[1] The Affordable Care Act adds section 715(a)(1) to the Employee Retirement Income Security Act (ERISA) and section 9815(a)(1) to the Internal Revenue Code (the Code) to incorporate the provisions of part A of title XXVII of the PHS Act into ERISA and the Code, and to make them applicable to group health plans and health insurance issuers providing health insurance coverage in connection with group health plans. The PHS Act sections incorporated by these references are sections 2701 through 2728.

B. Wellness Exception to HIPAA Nondiscrimination Provisions

Prior to the enactment of the Affordable Care Act, Titles I and IV of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104–191, added section 9802 of the Code, section 702 of ERISA, and section 2702 of the PHS Act (HIPAA nondiscrimination and wellness provisions). These provisions generally prohibit group health plans and group health insurance issuers from discriminating against individual participants and beneficiaries in eligibility, benefits, or premiums based on a health factor.[2] An exception to the general rule allows premium discounts or rebates or modification to otherwise applicable cost sharing (including copayments, deductibles or coinsurance) in return for adherence to certain programs of health promotion and disease prevention. The Departments of Labor, Health and Human Services (HHS), and the

[1] The term ''group health plan'' is used in title XXVII of the PHS Act, part 7 of ERISA, and chapter 100 of the Code, and is distinct from the term ''health plan,'' as used in other provisions of title I of the Affordable Care Act. The term ''health plan'' does not include self-insured group health plans.

[2] The HIPAA nondiscrimination provisions set forth eight health status-related factors, which the December 13, 2006 final regulations on nondiscrimination and wellness programs refer to as ''health factors.'' Under HIPAA and the 2006 regulations, the eight health factors are health status, medical condition (including both physical and mental illnesses), claims experience, receipt of health care, medical history, genetic information, evidence of insurability (including conditions arising out of acts of domestic violence), and disability. *See* 66 FR 1379, January 8, 2001.

Treasury (collectively, the Departments) have implemented this exception by allowing benefits (including cost sharing), premiums, or contributions to vary based on participation in a wellness program if such a program adheres to certain conditions set forth in regulations.

The Departments published joint final regulations on December 13, 2006 at 71 FR 75014 (the 2006 regulations) regarding the HIPAA nondiscrimination and wellness provisions.[3] The 2006 regulations divide wellness programs into two general categories. The first category is programs that either do not require an individual to meet a standard related to a health factor in order to obtain a reward or that do not offer a reward at all (''participatory wellness programs''). Participatory wellness programs comply with the nondiscrimination requirements without having to satisfy any additional standards if participation in the program is made available to all similarly situated individuals.[4] Examples of participatory wellness programs in the 2006 regulations include a fitness center reimbursement program,[5] a diagnostic testing program that does not base any reward on test outcomes, a program that waives cost sharing for prenatal or well-baby visits,[6] a program that reimburses employees for the costs of smoking cessation programs regardless of whether the employee quits smoking, and a program that provides rewards for attending a free health education seminar. There is no limit on the financial incentives for participatory wellness programs.

The second category of wellness programs under the 2006 regulations consists of programs that require individuals to satisfy a standard related to a health factor in order to obtain a reward (''health-contingent wellness programs''). This category includes wellness programs that require an individual to attain or maintain a certain health outcome in order to obtain a reward (such as not smoking, attaining certain results on biometric screenings, or meeting targets for exercise). As outlined in the 2006 regulations,[7] plans and issuers may vary benefits (including cost-sharing mechanisms), premiums, or contributions based on whether an individual has met the standards of a wellness program that meets the requirements of paragraph (f). Paragraph (f)(2) of the 2006 regulations prescribes the following consumer-protection conditions for health-contingent wellness programs:

1. The total reward for such wellness programs offered by a plan sponsor does not exceed 20 percent of the total cost of coverage under the plan.

2. The program is reasonably designed to promote health or prevent disease. For this purpose, it must have a reasonable chance of improving health or preventing disease, not be overly burdensome, not be a subterfuge for discriminating based on a health factor, and not be highly suspect in method.

3. The program gives eligible individuals an opportunity to qualify for the reward at least once per year.

4. The reward is available to all similarly situated individuals. For this purpose, a reasonable alternative standard (or waiver of the otherwise applicable standard) must be made available to any individual for whom it is unreasonably difficult due to a medical condition to satisfy the otherwise applicable standard during that period (or for whom it is medically inadvisable to attempt to satisfy the otherwise applicable standard).

5. In all plan materials describing the terms of the program, the availability of a reasonable alternative standard (or the possibility of waiver of the otherwise applicable standard) is disclosed.

C. Amendments Made by the Affordable Care Act

The Affordable Care Act (section 1201) amended the nondiscrimination and wellness program provisions of the PHS Act (but not of ERISA section 702 or Code section 9802). (Affordable Care Act section 1201 also moved those provisions from PHS Act section 2702 to PHS Act section 2705). As amended by the Affordable Care Act, the nondiscrimination and wellness provisions of PHS Act section 2705 largely reflect the 2006 regulations (except as discussed later in this preamble), and extend the nondiscrimination protections to the individual market.[8] The wellness program exception to the prohibition on discrimination under PHS Act section 2705 applies with respect to group health plans (and any health insurance coverage offered in connection with such plans). Section 2705(l) separately provides for a 10-State wellness program demonstration project in the individual market, to be established not later than July 1, 2014 (as such, this proposed rule does not include wellness program policy for the individual market).

D. Application to Grandfathered Plans

Section 1251 of the Affordable Care Act provides that certain amendments made by the Affordable Care Act generally do not apply to plans or health insurance coverage that are in effect on the date of enactment (and that are not changed in ways specified in implementing regulations),[9] except as specified in section 1251(a)(3) and (4) of the Affordable Care Act. Specifically, section 1251(a)(2) of the Affordable Care Act provides that subtitles A and C of title I of the Affordable Care Act, and the amendments made by such subtitles, ''shall not apply'' to such grandfathered health plans.

Because the amendments made to the PHS Act in section 1201 of the Affordable Care Act do not apply to grandfathered health plans, the version of PHS Act section 2702 in effect at the time of enactment of the Affordable Care Act (and the 2006 regulations under that section) continues to apply to

[3] *See* 26 CFR 54.9802–1; 29 CFR 2590.702; 45 CFR 146.121. Prior to issuance of the final 2006 regulations, the Departments published interim final regulations with request for comment implementing the HIPAA nondiscrimination provisions on April 8, 1997 at 62 FR 16894, followed by proposed regulations regarding wellness programs on January 8, 2001 at 66 FR 1421.

[4] *See* paragraph (f)(1) of the 2006 regulations. *See also* 26 CFR 54.9802–1(d), 29 CFR 2590.702(d), and 45 CFR 146.121(d), which provide that, generally, distinctions among groups of similarly situated participants in a health plan must be based on bona fide employment-based classifications consistent with the employer's usual business practice. A plan may also distinguish between beneficiaries based on, for example, their relationship to the plan participant (such as spouse or dependent child) or based on the age of dependent children. Distinctions are not permitted to be based on any of the health factors noted earlier.

[5] The Treasury and the IRS note that satisfying the rules for wellness programs does not determine the tax treatment of benefits provided by the wellness program. For example, fitness center fees are generally considered expenses for general good health and thus payment of the fee by the employer is not excluded from income as the reimbursement of a medical expense.

[6] Note that section 2713 of the PHS Act, as added by the Affordable Care Act, and the Departments' interim final regulations at 26 CFR 54.9815–2713T, 29 CFR 2590.715–2713, and 45 CFR 147.130 require non-grandfathered group health plans and health insurance issuers offering non-grandfathered group or individual health insurance coverage to provide benefits for certain preventive health services without the imposition of cost sharing. *See also* 26 CFR 54.9815–1251T, 29 CFR 2590.715–1251, and 45 CFR 147.140 (regarding the definition of grandfathered health plan coverage).

[7] *See* 26 CFR 54.9802–1(b)(2)(ii) and (c)(3); 29 CFR 2590.702(b)(2)(ii) and (c)(3); and 45 CFR 146.121(b)(2)(ii) and (c)(3).

[8] Section 1201 of the Affordable Care Act also moved the guaranteed availability provisions that were previously codified in PHS Act section 2711 to PHS Act section 2702, and extended those requirements to the individual market.

[9] *See* 26 CFR 54.9815–1251T, 29 CFR 2590.715–1251, and 45 CFR 147.140 (75 FR 34538, June 17, 2010), as amended (75 FR 70114, November 17, 2010). *See also* Q5 of Affordable Care Act Implementation FAQs Part II (October 8, 2010), available at http://www.dol.gov/ebsa/faqs/faq-aca2.html and *http://cciio.cms.gov/resources/factsheets/aca_implementation_faqs2.html.*

grandfathered health plans, while the provisions of the new PHS Act section 2705 apply to non-grandfathered health plans for plan years (in the individual market, policy years) beginning on or after January 1, 2014.[10] ERISA section 702 and Code section 9802 continue to govern all group health plans, including grandfathered health plans, and, for plan years beginning on or after January 1, 2014, ERISA section 715(a)(1) and Code section 9815(a)(1) will also apply new PHS Act section 2705 to non-grandfathered health plans.

However, because the Departments believe that the provisions of these proposed regulations would be authorized under either HIPAA or the Affordable Care Act, the Departments are proposing in this rulemaking to apply the same set of standards to both grandfathered and non-grandfathered health plans. As noted, PHS Act section 2705(j) largely adopts the wellness program provisions of the 2006 regulations with some modification and clarification. Consistent with the statutory approach, these proposed regulations would apply the rules of PHS Act section 2705, governing rewards for adherence to certain wellness programs, to grandfathered health plans by regulation under authority in the HIPAA nondiscrimination and wellness provisions as was done in the 2006 regulations. This approach is intended to avoid inconsistency across group health coverage and to provide grandfathered plans the same flexibility to promote health and prevent disease as non-grandfathered plans.

II. Overview of the Proposed Rule

These regulations generally propose standards for group health plans and health insurance issuers offering group health insurance coverage with respect to wellness programs. These proposed regulations would replace the wellness program provisions of paragraph (f) of the 2006 regulations and would apply to both grandfathered and non-grandfathered group health plans and group health insurance coverage for plan years beginning on or after January 1, 2014. These regulations also propose to implement the nondiscrimination provisions made applicable to the individual market by section 1201 of the Affordable Care Act. This rulemaking does not propose to modify provisions of the 2006 regulations other than paragraph (f).

A. Two Categories of Wellness Programs

Consistent with the 2006 regulations and PHS Act section 2705(j), these proposed regulations would continue to divide wellness programs into two categories: ''Participatory wellness programs'', which are a majority of wellness programs (as noted below) and ''health-contingent wellness programs.'' Participatory wellness programs are programs that are made available to all similarly situated individuals and that either do not provide a reward or do not include any conditions for obtaining a reward that are based on an individual satisfying a standard that is related to a health factor. Several examples of participatory wellness programs are provided in these proposed regulations, including: (1) A program that reimburses for all or part of the cost of membership in a fitness center; and (2) a program that provides a reward to employees for attending a monthly, no-cost health education seminar. Participatory programs are not required to meet the five requirements applicable to health-contingent wellness programs.

In contrast, health-contingent wellness programs require an individual to satisfy a standard related to a health factor to obtain a reward (or require an individual to do more than a similarly situated individual based on a health factor in order to obtain the same reward). Like the 2006 regulations, these proposed regulations would continue to permit rewards to be in the form of a discount or rebate of a premium or contribution, a waiver of all or part of a cost-sharing mechanism (such as deductibles, copayments, or coinsurance), the absence of a surcharge, the value of a benefit that otherwise would not be provided under the plan, or other financial or nonfinancial incentives or disincentives. Examples of health-contingent wellness programs in these proposed regulations are: (1) A program that imposes a premium surcharge based on tobacco use; and (2) a program that uses a biometric screening or a health risk assessment to identify employees with specified medical conditions or risk factors (such as high cholesterol, high blood pressure, abnormal body mass index, or high glucose level) and provides a reward to employees identified as within a normal or healthy range (or at low risk for certain medical conditions), while requiring employees who are identified as outside the normal or healthy range (or at risk) to take additional steps (such as meeting with a health coach, taking a health or fitness course, adhering to a health improvement action plan, or complying with a health care provider's plan of care) to obtain the same reward. Under paragraphs (b)(2)(ii) and (c)(3) of the 2006 regulations (which remain unchanged),[11] health-contingent wellness programs are permissible only if they comply with the provisions of paragraph (f)(3), which are proposed to be amended in this rulemaking.[12]

The Departments believe that appropriately designed wellness programs have the potential to contribute importantly to promoting health and preventing disease. Even after the issuance of the 2006 regulations and the enactment of the Affordable Care Act wellness provisions, however, stakeholder feedback suggests that there continues to be a degree of confusion regarding the scope of the rules governing wellness programs. The Departments hope that these proposed regulations will help dispel the confusion by reiterating that the five regulatory requirements relating to frequency of opportunity to qualify, size of reward, uniform availability and reasonable alternative standards, reasonable design, and notice of other means of qualifying for the reward (summarized below and contained in paragraph (f)(3) of the proposed regulations) apply only to those wellness programs that meet the definition of ''health-contingent'' programs. As discussed above, these are wellness programs that both provide a reward and condition the reward on satisfying a standard that is related to a health factor. Many wellness programs (those characterized in these regulations as ''participatory wellness programs'') do not both provide a reward and condition the reward on satisfying a standard that is related to a health factor. Accordingly, as noted, participatory wellness programs are not required to meet the five enumerated requirements applicable to health-contingent wellness programs, but they are required to be made available to all similarly situated individuals.

[10] *See* 26 CFR 54.9815–1251T(c)(2), 29 CFR 2590.715–1251(c)(2), and 45 CFR 147.140(c)(2), providing that a grandfathered health plan must comply with the requirements of the PHS Act, ERISA, and the Code applicable prior to the changes enacted by the Affordable Care Act, to the extent not inconsistent with the rules applicable to a grandfathered health plan (75 FR 34538, June 17, 2010).

[11] 26 CFR 54.9802–1(b)(2)(ii) and (c)(3); 29 CFR 2590.702(b)(2)(ii) and (c)(3); and 45 CFR 146.121(b)(2)(ii) and (c)(3).

[12] Until these proposed regulations are finalized and effective, the provisions of the 2006 regulations, at 26 CFR 54.9802–1(f), 29 CFR 2590.702(f), and 45 CFR 146.121(f) generally remain applicable to group health plans and group health insurance issuers.

B. Requirements for Health-Contingent Wellness Programs

Consistent with the 2006 regulations, these proposed regulations generally would maintain the five requirements for health-contingent wellness programs with one significant modification relating to the size of the reward. In addition, several regulatory provisions have been re-ordered, and clarifications are proposed to address questions and issues raised by stakeholders since the 2006 regulations were issued and to be consistent with the amendments made by the Affordable Care Act, as discussed below.

(1) *Frequency of Opportunity to Qualify.*

These proposed regulations would, consistent with the 2006 regulations and the amendments made by the Affordable Care Act, require health-contingent wellness programs to give individuals eligible for the program the opportunity to qualify for the reward at least once per year. As stated in the preamble to the 2006 regulations, the once-per-year requirement was included as a bright-line standard for determining the minimum frequency that is consistent with a reasonable design for promoting good health or preventing disease.[13]

(2) *Size of Reward.*

Like the 2006 regulations, these proposed regulations would continue to limit the total amount of the reward for health-contingent wellness programs with respect to a plan, whether offered alone or coupled with the reward for other health-contingent wellness programs. Specifically, the total reward offered to an individual under an employer's health-contingent wellness programs could not exceed a specified percentage (referred to as the ''applicable percentage'' in the proposed regulations) of the total cost of employee-only coverage under the plan, taking into account both employer and employee contributions towards the cost of coverage. If, in addition to employees, any class of dependents (such as spouses, or spouses and dependent children) may participate in the health-contingent wellness program, the reward could not exceed the applicable percentage of the total cost of the coverage in which the employee and any dependents are enrolled (such as family coverage or employee-plus-one coverage).

Some stakeholders have raised questions about health-contingent wellness programs that allow dependents to participate, and what portion of the reward should be attributable to each participating dependent. If a class of dependents may participate in a health-contingent wellness program, some have suggested that there be a maximum reward attributable to the employee's participation in the wellness program, such as an amount that does not exceed the applicable percentage of the cost of employee-only coverage. The proposed regulation being issued contemporaneously by HHS proposes that, to comply with PHS Act section 2701, with respect to family coverage, any premium variation for tobacco use must be applied to the portion of premium attributable to each family member. The Departments invite comments on apportionment of rewards in health-contingent wellness programs (which may involve tobacco use and/or other health factors)—for example, should the reward be prorated if only one family member fails to qualify for it.

The 2006 regulations specify 20 percent as the maximum permissible reward for participation in a health-contingent wellness program. PHS Act section 2705(j)(3)(A), effective for plan years beginning on or after January 1, 2014, increases the maximum reward to 30 percent and authorizes the Departments to increase the maximum reward to as much as 50 percent if the Departments determine that such an increase is appropriate. In these proposed regulations, the increase in the applicable percentage from 20 percent to 30 percent, which is effective for plan years beginning on or after January 1, 2014, conforms to the new PHS Act section 2705(j)(3)(A). In addition, the Departments have determined that an increase of an additional 20 percentage points (to 50 percent) for health-contingent wellness programs designed to prevent or reduce tobacco use is warranted to conform to the new PHS Act section 2701, to avoid inconsistency across group health coverage, whether insured or self-insured, or offered in the small group or large group market, and to provide grandfathered plans the same flexibility to promote health and prevent disease as non-grandfathered plans.

Specifically, PHS Act section 2701, the ''fair health insurance premium'' provision, sets forth the factors that issuers may use to vary premium rates in the individual or small group market.[14] PHS Act section 2701(a)(1)(A)(iv) provides that issuers in the individual and small group markets cannot vary rates for tobacco use by more than a ratio of 1.5 to 1 (that is, allowing up to a 50 percent premium surcharge for tobacco use). Contemporaneously with the publication of these proposed wellness program regulations, HHS is publishing a proposed regulation that would implement PHS Act section 2701. HHS proposes that a health insurance issuer in the small group market would be able to implement the tobacco use surcharge under PHS Act section 2701 to employees only in connection with a wellness program meeting the standards of PHS Act section 2705(j) and its implementing regulations. As discussed in the preamble to the proposed regulation implementing PHS Act section 2701, HHS is proposing in that rule that the definition of ''tobacco use'' for purposes of section 2701 be consistent with the approach taken with respect to health-contingent wellness programs designed to prevent or reduce tobacco use under section 2705(j). Comments are solicited in the preamble to the proposed rules implementing section 2701 on possible definitions of ''tobacco use'' that would be applied for purposes of PHS Act sections 2701 and 2705(j).

To coordinate these proposed regulations with the tobacco use rating provisions of PHS Act section 2701, as proposed by HHS, these proposed wellness program regulations would use the new authority in PHS Act section 2705(j)(3)(A) (and, with respect to grandfathered health plans, the preexisting authority in the HIPAA nondiscrimination and wellness provisions) to increase the applicable percentage for determining the size of the reward for participating in a health-contingent wellness program by an additional 20 percentage points (to 50 percent) to the extent that the additional percentage is attributed to tobacco use prevention or reduction. Applying these proposed regulations to all group health plans would provide consistency across markets, giving large, self-insured, and grandfathered employment-based health

[13] *See* 71 FR at 75018.

[14] Small group market means the health insurance market under which individuals obtain health insurance coverage (directly or through any arrangement) on behalf of themselves (and their dependents) through a group health plan maintained by a small employer. *See* PHS Act section 2791(e)(5); 45 CFR 144.103. For plan years beginning on or after January 1, 2014, amendments made by the Affordable Care Act provide that the term ''small employer'' means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least 1 but not more than 100 employees on business days during the preceding calendar year and who employs at least 1 employee on the first day of the plan year. *See* PHS Act section 2791(e)(4). In the case of plan years beginning before January 1, 2016, a State may elect to substitute ''50 employees'' for ''100 employees'' in its definition of a small employer. *See* section 1304(b)(3) of the Affordable Care Act.

plans the same added flexibility to promote tobacco-free workforces as small, insured, non-grandfathered health plans.

Examples included in these proposed regulations illustrate how to calculate the applicable percentage. The Departments invite comments on the proposed approach in general and other ideas for coordinating the implementation of the tobacco rating factor under PHS Act section 2701 with the nondiscrimination and wellness program provisions. The Departments also invite comments as to whether additional rules or examples would be helpful to demonstrate compliance with the limitation on the size of the reward when the amount of the reward is variable and is not determinable at the time the reward is established (for example, when the reward is waiver of a copayment for outpatient office visits, the frequency of which will not be predictable for any particular participant or beneficiary under the plan).

(3) *Uniform Availability and Reasonable Alternative Standards.*

A critical element of these proposed regulations is the requirement that the reward under a health-contingent wellness program be available to all similarly situated individuals. To meet this requirement, a ''reasonable alternative standard'' (or waiver of the otherwise applicable standard) for obtaining the reward must be provided for any individual for whom, for that period, it is either unreasonably difficult due to a medical condition to meet the otherwise applicable standard, or for whom it is medically inadvisable to attempt to satisfy the otherwise applicable standard. That is, the same, full reward must be available to individuals who qualify by satisfying a reasonable alternative standard as is provided to individuals who qualify by satisfying the program's otherwise applicable standard. These proposed regulations would generally reiterate the requirements set forth in the 2006 regulations and codified in PHS Act section 2705(j), and provide several additional clarifications.

First, under these proposed regulations, as under the 2006 regulations, in lieu of providing a reasonable alternative standard, a plan or issuer may always waive the otherwise applicable standard and provide the reward. The plan or issuer may waive the otherwise applicable standard and provide a reward for an entire class of individuals or may do so on an individual-by-individual basis based on the facts and circumstances presented.

Second, these proposed regulations would not require plans and issuers to establish a particular alternative standard in advance of an individual's specific request for one. However, a reasonable alternative standard would have to be provided by the plan or issuer (or the condition for obtaining the reward would be required to be waived) upon an individual's request. In this connection, the Departments note that, as stated in the preamble to the 2006 regulations with respect to tobacco cessation, ''overcoming an addiction sometimes requires a cycle of failure and renewed effort.'' [15] Plans and issuers cannot cease to provide a reasonable alternative standard merely because one was not successful before; they must continue to offer a reasonable alternative standard, whether it is the same standard or a new reasonable alternative standard (such as a new weight-loss class or a new nicotine replacement therapy).[16]

All the facts and circumstances would be taken into account in determining whether a plan or issuer has provided a reasonable alternative standard, including but not limited to the following proposed factors:

- If the reasonable alternative standard is completion of an educational program, the plan or issuer must make the educational program available instead of requiring an individual to find such a program unassisted, and may not require an individual to pay for the cost of the program.
- If the reasonable alternative standard is a diet program, the plan or issuer is not required to pay for the cost of food but must pay any membership or participation fee.
- If the reasonable alternative standard is compliance with the recommendations of a medical professional who is an employee or agent of the plan or issuer, and an individual's personal physician states that the medical professional's recommendations are not medically appropriate for that individual, the plan or issuer must provide a reasonable alternative standard that accommodates the recommendations of the individual's physician with regard to medical appropriateness.[17] Plans and issuers may impose standard cost sharing under the plan or coverage for medical items and services furnished in accordance with the physician's recommendations.

The Departments intend that these clarifications with respect to offering reasonable alternative standards will help prevent health-contingent wellness programs that provide little to no support to enrollees to improve individuals' health. In addition, as explained later in this preamble, clarifications are proposed to ensure that a health-contingent wellness program is reasonably designed to improve health and is not a subterfuge for underwriting or reducing benefits based on health status. Comments are invited on these provisions, as well as whether other facts and circumstances should be specifically addressed. For example, the Departments seek comment on whether any additional rules or clarifications are needed with respect to the process for determining a reasonable alternative standard.

Finally, the 2006 regulations provided that it is permissible for a plan or issuer to seek verification, such as a statement from the individual's personal physician, that a health factor makes it unreasonably difficult for the individual to satisfy, or medically inadvisable for the individual to attempt to satisfy, the otherwise applicable standard. The Affordable Care Act amendments codified this provision with one modification: PHS Act section 2705(j)(3)(D)(ii) makes clear that physician verification may be required by a plan or issuer ''if reasonable under the circumstances.'' These proposed regulations clarify that it would not be reasonable for a plan or issuer to seek verification of a claim that is obviously valid based on the nature of the individual's medical condition that is known to the plan or issuer. Plans and issuers are permitted under the proposed regulations to seek verification of claims that require the use of medical judgment to evaluate. The Departments solicit comments on whether additional clarifications would be helpful regarding the reasonableness of physician verification.

(4) *Reasonable Design.*

Consistent with the 2006 regulations and PHS Act section 2705(j), these proposed regulations would continue to require that health-contingent wellness programs be reasonably designed to promote health or prevent disease, not be overly burdensome, not be a subterfuge for discrimination based on a health factor, and not be highly suspect

[15] *See* 71 FR 75019.

[16] *Id.*

[17] As stated in the preamble to the Departments' regulations on internal claims and appeals and external review processes, adverse benefit determinations based on whether a participant or beneficiary is entitled to a reasonable alternative standard for a reward under a plan's wellness program are situations in which a claim is considered to involve medical judgment and therefore is eligible for Federal external review. *See* 76 FR 37216.

in the method chosen to promote health or prevent disease. The preamble to the 2006 regulations stated that the ''reasonably designed'' standard was designed to prevent abuse, but otherwise was ''intended to be an easy standard to satisfy * * *. There does not need to be a scientific record that the method promotes wellness to satisfy this standard. The standard is intended to allow experimentation in diverse ways of promoting wellness.'' [18] The preamble also stated that the Departments did not ''want plans and issuers to be constrained by a narrow range of programs * * * but want plans and issuers to feel free to consider innovative programs for motivating individuals to make efforts to improve their health.'' [19] These proposed regulations would continue to provide plans and issuers flexibility and encourage innovation. Also, as discussed later in this preamble, the regulations include several clarifications to ensure against subterfuge and discrimination. Comments are welcome on whether certain standards, including evidence- or practice-based standards, are needed to ensure that wellness programs are reasonably designed to promote health or prevent disease. The Departments also welcome comments on best practices guidance regarding evidence- and practice-based strategies in order to increase the likelihood of wellness program success. Resources for employers and plans include the Healthier Worksite Initiative of the Centers for Disease Control and Prevention (CDC) at *http://www.cdc.gov/nccdphp/dnpao/hwi/.*

Under the proposed regulations, the determination of whether a health-contingent wellness program is reasonably designed is based on all the relevant facts and circumstances. To ensure that programs are not a subterfuge for discrimination or underwriting based on health factors such as weight, blood pressure, glucose levels, cholesterol levels, or tobacco use with no or insufficient support to improve individuals' health, the Departments propose that, to the extent a plan's initial standard for obtaining a reward (or a portion of a reward) is based on results of a measurement, test, or screening that is related to a health factor (such as a biometric examination or a health risk assessment), the plan is not reasonably designed unless it makes available to all individuals who do not meet the standard based on the measurement, test, or screening a different, reasonable means of qualifying for the reward. Accordingly, the general approach that was adopted in the 2006 regulations is preserved, which allows plans and issuers to conduct screenings and employ measurement techniques in order to target wellness programs effectively. For example, plans and issuers could target individuals with high cholesterol for participation in cholesterol reduction programs, or individuals who use tobacco for participation in tobacco cessation programs, rather than the entire population of participants and beneficiaries if individuals who do not meet a plan's target biometrics (or similar standards) are provided a different, reasonable means of qualifying for the same reward. The Departments invite comments on this approach, including on ways to ensure that employees will not be subjected to an unreasonable ''one-size-fits-all'' approach to designing the different means of qualifying for the reward that would fail to take an employee's circumstances into account to the extent that, as a practical matter, they would make it unreasonably difficult for the employee to access those different means of qualifying. Comments also are invited on whether any other consumer protections are needed to ensure that wellness programs are reasonably designed to promote health or prevent disease.

(5) *Notice of Other Means of Qualifying for the Reward.*

These proposed regulations, consistent with the 2006 regulations and the amendments made by the Affordable Care Act, would require plans and issuers to disclose the availability of other means of qualifying for the reward or the possibility of waiver of the otherwise applicable standard in all plan materials describing the terms of a health-contingent wellness program. If plan materials merely mention that a program is available, without describing its terms, this disclosure is not required. For example, a summary of benefits and coverage (SBC) required under section 2715 of the PHS Act that notes that cost sharing may vary based on participation in a diabetes wellness program, without describing the standards of the program, would not trigger this disclosure.

The 2006 regulations provided sample language that could be used to satisfy this requirement in both the regulatory text and in several examples. However, feedback and experience since the 2006 regulations were published have indicated that the sample language was complicated and confusing to some individuals and may have led fewer individuals to seek a reasonable alternative standard than were eligible. Accordingly, these proposed regulations provide new sample language in the regulatory text and in examples that is intended to be simpler for individuals to understand and to increase the likelihood that those who qualify for a different means of obtaining a reward will contact the plan or issuer to request it. The Departments invite comment on the sample language in both the regulatory text and in the examples.

C. Application to the Individual Health Insurance Market

PHS Act sections 2705(a) and (b), as added by section 1201 of the Affordable Care Act, apply the HIPAA nondiscrimination requirements to health insurance issuers in the individual health insurance market. Accordingly, the HHS proposed regulations include a new § 147.110 which applies the nondiscrimination protections of the 2006 regulations to non-grandfathered, individual health insurance coverage, effective for policy years beginning on or after January 1, 2014. By their terms, the wellness program provisions of PHS Act section 2705(j), however, do not apply to health insurance coverage in the individual market. Accordingly, the wellness program provisions of § 146.121(f) apply only to group health plans and group health insurance coverage, not individual market coverage.

D. Applicability Date

These proposed regulations would apply for plan years (in the individual market, policy years) beginning on or after January 1, 2014, consistent with the statutory effective date of PHS Act section 2705, as well as PHS Act section 2701. Comments are invited on this proposed applicability date.

III. Economic Impact and Paperwork Burden

A. Executive Orders 12866 and 13563—Department of Labor and Department of Health and Human Services

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, reducing costs, harmonizing rules, and promoting flexibility. The Office of Management and Budget (OMB) has determined that this proposed rule is a

[18] 71 FR 75018.

[19] 71 FR 75019.

''significant regulatory action'' under section 3(f)(4) of Executive Order 12866, because it raises novel legal or policy issues arising from the President's priorities. Accordingly, the rule has been reviewed by the OMB.

TABLE 1—*Accounting Table*

Benefits	Quantified: Minimal due to low expected use of higher reward limits. Qualitative: Benefits include the ability to increase the reward based on a health factor to incentivize individuals to meet a health standard associated with improved health, which could reduce health care costs. Improved standards could reduce the use of wellness programs as a subterfuge for discrimination based on a health factor.
Costs	Quantified: Minimal since employers are expected to create or expand wellness programs only if the expected benefit exceeds the cost as well as due to low expected use of higher reward limits. Qualitative: Costs of the rule include clarifications regarding what costs individuals may pay as part of an alternative means of complying with the health standard. To the extent an individual faces an increased cost for not meeting a health standard, the individual would have reduced resources to use for other purposes.
Transfers	Quantified: Minimal due to low expected use of higher reward limits. Qualitative: Transfers resulting from the rule include transfers from those who do not meet a health standard to those who do meet the standard or the associated alternative standard.

Based on the Departments' review of the most recent literature and studies regarding wellness programs, the Departments reached the conclusion that the impact of the benefits, costs, and transfers associated with the proposed rules will be minimal. As discussed in this analysis, few health-contingent wellness programs today come close to meeting the 20 percent limit (based on the data, the usual reward percentage ranges from three to 11 percent); therefore, the Departments do not believe that expanding the limit to 30 percent (or 50 percent for programs designed to prevent or reduce tobacco use) will result in significantly higher participation of employers in such programs. The Departments provide a qualitative discussion below and cite the survey data used to substantiate this conclusion. Moreover, most wellness programs appear to be participatory programs that do not require an individual to meet a standard related to a health factor in order to obtain a reward. As stated earlier in this preamble, these participatory wellness programs are not required to meet the five requirements that apply to health-contingent wellness programs, but they are required to be made available to all similarly situated individuals.

Although the Departments believe few plans will expand the reward percentage, the Departments provide a qualitative discussion regarding the sources of benefits, costs, and transfers that could occur if plans were to expand the reward beyond the current maximum of 20 percent. Currently, insufficient broad-based evidence makes it difficult to definitively assess the impact of workplace wellness programs on health outcomes and cost, although, overall, employers largely report that workplace wellness programs in general (participatory programs and health-contingent programs) are delivering on their intended benefit of improving health and reducing costs.

The one source of potential additional cost discussed in the impact analysis is the clarification that plans must provide a reasonable alternative means of satisfying the otherwise applicable standard. The Departments present evidence that currently employers not only allow a reasonable alternative standard, but that most employers already pay for these alternatives. The Departments do not have an estimate of how many plans are not currently paying for alternatives consistent with the clarifications set forth in the proposed regulations, but the number appears to be small. The Departments also employ economic logic to conclude that employers will create or expand their wellness program and provide reasonable alternatives only if the expected benefits exceed the expected costs. Therefore, the Departments believe that the benefits of the proposed rule will justify the costs. The Departments invite comments on these conclusions and request input for improving the analysis, including additional data, surveys, or studies.

B. Background and Need for Regulatory Action—Department of Labor and Department of Health and Human Services

As discussed earlier in this preamble, on December 13, 2006, the Departments issued joint final regulations regarding the HIPAA nondiscrimination and wellness provisions. The 2006 regulations set forth the requirements for wellness programs that provide a reward to individuals who satisfy a standard related to a health factor or provide a reward to individuals to do more than a similarly situated individual based on a health factor. *See* section I.B. of this preamble for a detailed discussion of the HIPAA nondiscrimination and wellness provisions and the 2006 regulations.

PHS Act section 2705 largely reflects the provisions of the 2006 regulations with some modification and clarification. Most notably, it increased the maximum reward that can be provided under a health-contingent wellness program from 20 percent to 30 percent of the total cost of coverage under the plan and authorized the Departments to increase this percentage to as much as 50 percent of the total cost of coverage under the plan, if the Departments determine that such an increase is appropriate. Accordingly, as discussed in section II.B of this preamble, these proposed regulations increase the applicable percentage for the maximum reward from 20 percent to 30 percent, with an additional increase of 20 percentage points (to 50 percent) for health-contingent wellness programs designed to prevent or reduce tobacco use. The additional increase is warranted to conform to PHS Act section 2701, to avoid inconsistency across group health coverage, whether insured or self-insured, or offered in the small group or large group market, and to provide grandfathered plans the same flexibility to promote health and prevent disease as non-grandfathered plans.[20]

C. Regulatory Alternatives—Department of Labor and Department of Health and Human Services

As stated earlier in this preamble, the 2006 regulations prescribed several requirements for health-contingent wellness programs, including a limitation on the maximum reward of 20 percent of the total cost of coverage

[20] For a discussion of PHS Act section 2701 and the HHS proposed regulation being published contemporaneously with these proposed regulations, see section II.B.2. of this preamble.

under the plan.[21] PHS Act section 2705 largely reflects the requirements for wellness programs from the 2006 regulations with some modification and clarification. Most notably, it increased the maximum reward that can be provided under a health-contingent wellness program from 20 percent to 30 percent of the total cost of coverage under the plan and authorized the Departments to increase this percentage to as much as 50 percent, if the Departments determine that such an increase is appropriate.

PHS Act section 2701(a)(1)(A)(iv) provides that issuers in the individual and small group markets cannot vary rates for tobacco use by more than a ratio of 1.5 to 1 (that is, allowing up to a 50 percent rating factor for tobacco use) for non-grandfathered plans. PHS Act section 2701 applies to the individual market and the small group market, but does not apply in the large group market or to self-insured plans. Contemporaneously with the publication of these proposed regulations, HHS is publishing a proposed rule that would provide that an issuer in the small group market would not be able to impose the tobacco rating factor on an individual in the plan under PHS Act section 2701 unless it was imposed as part of a wellness program meeting the standards of PHS Act section 2705(j) and its implementing regulations.

An important policy goal of the Departments is to provide the large group market and self-insured plans and grandfathered health plans with the same flexibility as non-grandfathered plans in the small group market to promote tobacco-free workforces. The Departments considered several regulatory alternatives to meet this objective, including the following:

(1) *Stacking premium differentials.* One alternative considered was to permit a 50 percent premium differential for tobacco use in the small group market under PHS Act section 2701 without requiring a reasonable alternative standard. Under PHS Act section 2705, an additional 30 percent premium differential would also be permitted if the five criteria for a health-contingent wellness program are met (including the offering of a reasonable alternative standard). Under this option, an 80 percent premium differential would have been allowable in the small group market based on factors related to health status. Large and self-insured plans would have been limited to the 30 percent maximum reward. Allowing such a substantial difference between what was permissible in the small group market and the large group market was not in line with the Departments' policy goal of providing consistency in flexibility for plans.

(2) *Concurrent premium differentials with no reasonable alternative required to be offered for tobacco use.* Another alternative would be to read sections 2701 and 2705 together such that, for non-grandfathered health plans in the small group market, up to a 50 percent premium differential would be permitted based on tobacco use, as authorized under PHS Act section 2701(a)(1)(A)(iv), with no reasonable alternative standard required for the tobacco use program. With respect to non-tobacco-related wellness programs, a reward could be offered only to the extent that a tobacco use wellness program were less than 30 percent of the cost of coverage because the two provisions apply concurrently, and a reward would not be permitted under PHS Act section 2705 if the maximum reward already were exceeded by virtue of PHS Act section 2701. Thus, the 50 percent tobacco surcharge under PHS Act section 2701 would be available only to non-grandfathered, insured, small group plans. The chosen approach is intended to avoid inconsistency and to provide grandfathered plans the same flexibility to promote health and prevent disease as non-grandfathered plans.

D. Current Use of Wellness Programs and Economic Impacts—Department of Labor and Department of Health and Human Services

The current use of wellness programs and economic impacts of these proposed regulations are discussed in this analysis.

Wellness programs[22] have become common among employers in the United States. The 2012 Kaiser/HRET survey indicates that 63 percent of all employers who offered health benefits also offered at least one wellness program.[23] The uptake of wellness programs continues to be more common among large employers. For example, the 2012 Kaiser/HRET survey found that health risk assessments are offered by 38 percent of large employers offering health benefits, but only 18 percent of employers with fewer than 200 workers.

The Kaiser/HRET survey indicates that 29 percent of all firms and 53 percent of large firms offered weight loss programs, while 30 percent and 64 percent, respectively, offered gym memberships or on-site exercise facilities. Meanwhile, 32 percent of all employers and 63 percent of large employers offered smoking cessation resources. Despite widespread availability, actual participation of employees in wellness programs remains limited. While no nationally representative data exist, a 2010 non-representative survey suggests that typically less than 20 percent of eligible employees participate in wellness interventions such as smoking cessation.[24]

Currently, insufficient broad-based evidence makes it difficult to definitively assess the impact of workplace wellness on health outcomes and cost. Yet, overall, employers largely report that workplace wellness programs are delivering on their intended benefit of improving health and reducing costs. According to the 2011 Kaiser/HRET survey, 65 percent of respondents that offered wellness programs stated that these programs improved employee health, and 53 percent believed that they reduced costs. Larger firms (defined as those with more than 200 workers in the Kaiser/HRET survey) were significantly more positive, as 74 percent affirmed that workplace wellness programs improved health and 65 percent said that it reduced cost, as opposed to 65 percent and 52 percent, respectively, among smaller firms.[25] Forty percent of respondents to a survey by Buck Consultants indicated that they had measured the impact of their wellness program on the growth trend of their health care costs, and of these, 45 percent reported a reduction in that growth trend. The majority of these employers, 61 percent, reported that the reduction in growth trend of their health care costs was between two and five percentage points per year.[26] There are numerous accounts of the positive impact of workplace wellness programs in many industries, regions, and types of employers. For example, a recent

[21] *See* section I.B, earlier in this preamble.

[22] On behalf of the Departments, RAND researchers did a review of the current literature on this topic. ''A Review of the U.S. Workplace Wellness Market'' February 2012. The report can be found at *http://www.dol.gov/ebsa/pdf/workplacewellnessmarketreview2012.pdf.*

[23] Kaiser Family Foundation, *Employer Health Benefits: 2011 Annual Survey.* 2011, The Kaiser Family Foundation, Menlo Park, CA; Health Research & Educational Trust, Chicago, IL.

[24] Nyce, S. *Boosting Wellness Participation Without Breaking the Bank.* TowersWatson Insider. July, 2010:1–9.

[25] Kaiser Family Foundation, Employer Health Benefits: 2010 Annual Survey. 2010, The Kaiser Family Foundation, Menlo Park, CA; Health Research & Educational Trust, Chicago, IL.

[26] Buck Consultants, Working Well: A Global Survey of Health Promotion and Workplace Wellness Strategies. 2010, Buck Consultants: San Francisco, CA.

article published by the *Harvard Business Review* cited positive outcomes reported by private-sector employers along several different dimensions, including health care savings, reduced absenteeism, and employee satisfaction.[27]

Several studies that looked at the impact of smoking cessation programs found significantly higher quit rates or less tobacco use.[28] [29] Smoking cessation programs typically offered education and counseling to increase social support.[30] Two studies reported that individuals in the intervention group quit smoking at a rate approximately 10 percentage points higher than those in the control group, and another reported that participants were almost four times as likely as nonparticipants to reduce tobacco use.[31] [32] However, these effects should be interpreted with caution. One study showed significant differences in smoking rates at a one-month follow-up, but showed no significant differences in quit rates at six months, highlighting the importance of long-term follow-up to investigate the sustainability of results.[33]

While employer sponsors generally are satisfied with the results, more than half stated in a recent survey that they do not know their programs' return on investment.[34] The peer-reviewed literature, while predominantly positive, covers only a small proportion of the universe of programs, limiting the generalizability of the reported findings. Evaluating such complex interventions is difficult and poses substantial methodological challenges that can invalidate findings.

Overall, surveys suggest that a relatively small percentage of employers use incentives, dollar or otherwise, for wellness programs, although incentive use is more prevalent among larger employers. Data from the 2011 Kaiser/HRET Survey of Employer Health Benefits indicate that 14 percent of all employers offered cash, gift cards, merchandise, or travel as incentives for wellness program participation. Among large firms (greater than 200 workers), only 27 percent offered these kinds of incentives. Mercer Consulting's 2009 National Survey of Employer-Sponsored Health Plans found similar patterns, estimating that six percent of all firms and 21 percent of those with 500 or more employees provided financial incentives for participating in at least one program.[35] Employers are also looking to continue to add incentives to their wellness programs, for example 17 percent intend to add a reward or penalty based on tobacco-use status.[36] The use of incentives to promote employee engagement remains poorly understood, so it is not clear how type (e.g., cash or non-cash), direction (reward versus penalty), and strength of incentive are related to employee engagement and outcomes. The Health Enhancement Research Organization and associated organizations also recognized this deficiency and provided seven questions for future research.[37] There are also no data on potential unintended effects, such as discrimination against employees based on their health or health behaviors.

Currently, the most commonly incentivized program appears to be associated with completion of a health risk assessment. According to the 2009 Mercer survey, 10 percent of all firms and 23 percent of large employers that offered a health risk assessment provided an incentive for completing the assessment. For other types of health management programs that the survey assessed, only two to four percent of all employers and 13 to 19 percent of large employers offered incentives.[38] The 2011 Kaiser/HRET survey found that 10 percent of all employers and 42 percent of large firms that offered a health risk assessment provided a financial incentive to employees who completed it.

Incentives are offered in a variety of forms, such as cash, gift cards, merchandise, time off, awards, recognition, raffles or lotteries, reduced health plan premiums and co-pays, and contributions to flexible spending or health savings accounts. As noted previously, the Kaiser/HRET 2011 survey reported that among firms offering health benefits with more than 200 workers, 27 percent offered cash or cash equivalent incentives (including gift cards, merchandise, or travel incentives). In addition, 11 percent of these firms offered lower employee health plan premiums to wellness participants, two percent offered lower deductibles, and 11 percent offered higher health reimbursement account or health savings account contributions. Meanwhile, 13 percent of firms with fewer than 200 workers offered cash or equivalent incentives, and each of the other types of incentives were offered by only two percent or less of firms.

Cash and cash-equivalent incentives remain the most popular incentive for completion of a health risk assessment. The Kaiser/HRET 2011 survey reports that among employers incentivizing completion of a health risk assessment, 41 percent offered cash, gift cards, merchandise or travel, 23 percent allowed workers to pay a smaller proportion of premiums, 12 percent offered lower deductibles, and one percent offered lower coinsurance. Among large employers, 57 percent

[27] Berry, L., A. Mirabito, and W. Baun, What's the Hard Return on Employee Wellness Programs? Harvard Business Review, 2010. 88(12): p. 104.

[28] Heirich, M. and C.J. Sieck, Worksite cardiovascular wellness programs as a route to substance abuse prevention. J Occup Environ Med, 2000. 42(1): p. 47–56; 40; McMahon, S.D. and L.A. Jason, Social support in a worksite smoking intervention. A test of theoretical models. Behav Modif, 2000. 24(2): p. 184–201; Okechukwu, C.A., et al., MassBuilt: Effectiveness of an apprenticeship site-based smoking cessation intervention for unionized building trades workers. Cancer Causes Control, 2009. 20(6): p. 887–94; Sorensen, G., et al., A comprehensive worksite cancer prevention intervention: Behavior change results from a randomized controlled trial (United States). J Public Health Policy, 2003. 24(1): p. 5–25.

[29] Gold, D.B., D.R. Anderson, and S.A. Serxner, *Impact of a telephone-based intervention on the reduction of health risks.* Am J Health Promot, 2000. 15(2): p. 97–106; Herman, C.W., et al., *Effectiveness of an incentive-based online physical activity intervention on employee health status.* Journal of Occupational and Environmental Medicine, 2006. 48(9): p. 889–895; Ozminkowski, R.J., et al., *The impact of the Citibank, NA, health management program on changes in employee health risks over time.* J Occup Environ Med, 2000. 42(5): p. 502–11.

[30] Heirich, M. and C.J. Sieck, Worksite cardiovascular wellness programs as a route to substance abuse prevention. J Occup Environ Med, 2000. 42(1): p. 47–56; McMahon, S.D. and L.A. Jason, Social support in a worksite smoking intervention. A test of theoretical models. Behav Modif, 2000. 24(2): p. 184–201.

[31] Heirich, M. and C.J. Sieck, Worksite cardiovascular wellness programs as a route to substance abuse prevention. J Occup Environ Med, 2000. 42(1): p. 47–56; Okechukwu, C.A., et al., MassBuilt: Effectiveness of an apprenticeship site-based smoking cessation intervention for unionized building trades workers. Cancer Causes Control, 2009. 20(6): p. 887–94.

[32] In the study, 42% of participants reduced their risk for tobacco use. See Gold, D.B., D.R. Anderson, and S.A. Serxner, Impact of a telephone-based intervention on the reduction of health risks. Am J Health Promot, 2000. 15(2): p. 97–106.

[33] Kechukwu, C.A., et al., MassBuilt: Effectiveness of an apprenticeship site-based smoking cessation intervention for unionized building trades workers. Cancer Causes Control, 2009. 20(6): p. 887–94.

[34] Buck Consultants, Working Well: A Global Survey of Health Promotion and Workplace Wellness Strategies. 2010, Buck Consultants: San Francisco, CA.

[35] Mercer, National Survey of Employer-Sponsored Health Plans: 2009 Survey Report. 2010, Mercer.

[36] ''Employer Survey on Purchasing Value in Health Care,'' 17th Annual Towers Watson/National Business Group on Health Employer Survey on Purchasing Value in Health Care.

[37] ''Guidance for a Reasonably Designed, Employer-Sponsored Wellness Program Using Outcomes-Based Incentives,'' joint consensus statement of the Health Enhancement Research Organization, American College of Occupational and Environmental Medicine, American Cancer Society and American Cancer Society Cancer Action Network, American Diabetes Association, and American Heart Association.

[38] Mercer, National Survey of Employer-Sponsored Health Plans: 2009 Survey Report. 2010, Mercer.

utilized cash incentives, 34 percent offered smaller premiums, six percent provided lower deductibles, and three percent provided lower coinsurance. Findings from Mercer's 2009 survey suggest similar trends, with five percent of all employers and ten percent of those with 500 or more workers providing cash incentives for completion of a health risk assessment; one percent and two percent, respectively, offering lower cost sharing; and two percent and seven percent, respectively, offering lower premium contributions.[39] Note that in the Mercer survey, the results cited reflect the incentives provided by all firms that offer a health risk assessment, while the Kaiser/HRET results previously mentioned reflect only firms that incentivize completion of a health risk assessment.

Incentives may be triggered by a range of different levels of employee engagement. The simplest incentives are triggered by program enrollment—that is, by merely signing up for a wellness program. At the next level, incentives are triggered by program participation—for instance, attending a class or initiating a program, such as a smoking cessation intervention. Other incentive programs may require completion of a program, whether or not any particular health-related goals are achieved, to earn an incentive. The health-contingent incentive programs require successfully meeting a specific health outcome (or an alternative standard) to trigger an incentive, such as verifiably quitting smoking. There is little representative data indicating the relative prevalence of these different types of triggers. The most common form of outcome-based incentives is reportedly awarded for smoking cessation. The 2010 survey by NBGH and TowersWatson indicated that while 25 percent of responding employers offered a financial incentive for employees to become tobacco-free, only four percent offered financial incentives for maintaining a BMI within target levels, three percent did so for maintaining blood pressure within targets, and three percent for maintaining targeted cholesterol levels.[40]

The value of incentives can vary widely. Estimates from representative surveys of the average value of incentives per year range between $152[41] and $557,[42] or between three and 11 percent of the $5,049 average cost of individual coverage in 2010,[43] among employees who receive them. This suggests that companies typically are not close to reaching the 20 percent of the total cost of coverage threshold set forth in the 2006 regulations. These findings indicate that based on currently available data, increasing the maximum reward for particpating in a health-contingent wellness program to 30 percent (and the Departments' decision to propose an additional 20 percentage points for programs designed to prevent or reduce tobacco use) is unlikely to have a significant impact. Additionally, as discussed earlier in this preamble, today most incentive-based wellness programs are associated with completion of a health risk assessment irrespective of the results, and therefore are not subject to the limitation, because such programs are not health-contingent wellness programs.

The Departments lack sufficient information to assess how firms that currently are at the 20 percent limit will respond to the increased limits and welcome public comments regarding this issue. If firms already viewed the current 20 percent reward limit as sufficient, then the Depatments would not expect that increasing the limit would provide an incentive for program design changes.

It is possible that the increased wellness program reward limits will incentivize firms without health-contingent wellness programs to establish them. The Departments, however, do not expect a significant number of new programs to be created as a result of this change because firms without health-contingent wellness programs could already have provided rewards up to the 20 percent limit before the enactment of the Affordable Care Act, but did not.

Two critical elements of these proposed regulations are (1) the standard that the reward under a health-contingent wellness program be available to all similarly situated individuals and (2) the standard that a program be reasonably designed to promote health or prevent disease.[44]

As discussed earlier in this preamble, the regulation does not prescribe a particular type of alternative standard that must be provided. Instead, it permits plan sponsors flexibility to provide any reasonable alternative. The Departments expect that plan sponsors will select alternatives that entail the minimum net costs (or, stated differently, the maximum net benefits) that are possible to achieve derive offsetting benefits, such as a higher smoking cessation success rate.

It seems reasonable to presume that the net cost plan sponsors will incur in the provision of alternatives, including transfers as well as new economic costs and benefits, will not exceed the transfer cost of waiving surcharges for all plan participants who qualify for alternatives. The Departments expect that many plan sponsors will find more cost effective ways to satisfy this requirement, should they exercise the option to provide incentives through a health-contingent wellness program and that the true net cost to them will therefore be much smaller than the transfer cost of waiving surcharges for all plan participants who qualify for alternatives. The Departments have no basis for estimating the magnitude of the cost of providing alternative standards or of potential offsetting benefits, however, and therefore solicit comments from the public on this question.

The Departments note that plan sponsors will have strong motivation to identify and provide alternative standards that have positive net economic effects. Plan sponsors will be disinclined to provide alternatives that undermine their overall wellness program and worsen behavioral and health outcomes, or that make financial rewards available absent meaningful efforts by participants to improve their health habits and overall health. Instead plan sponsors will be inclined to provide alternatives that sustain or reinforce plan participants' incentive to improve their health habits and overall health, and/or that help participants make such improvements. It therefore seems likely that gains in economic welfare from this requirement will equal or outweigh losses. The Departments intend that the requirement to provide reasonable alternatives will reduce instances where wellness programs serve only to shift costs to higher risk individuals and increase instances where programs succeed at helping high risk individuals improve their health. The Departments solicit comments on its assumption.

In considering the transfers that might derive from the availability of (and participants' satisfaction with) alternative means of qualifying for the

[39] Mercer, National Survey of Employer-Sponsored Health Plans: 2009 Survey Report. 2010, Mercer.

[40] TowersWatson, Raising the Bar on Health Care: Moving Beyond Incremental Change.

[41] Mercer, *National Survey of Employer-Sponsored Health Plans: 2009 Survey Report.* 2010, Mercer.

[42] Linnan, L., et al., *Results of the 2004 national worksite health promotion survey.* American Journal of Public Health, 2008. 98(8): p. 1503–1509.

[43] Kaiser Family Foundation, *Employer Health Benefits: 2010 Annual Survey.*

[44] *See* section II.B, earlier in this preamble for a more detailed discussion of these requirements.

reward, the transfers arising from this requirement may take the form of transfers to participants who satisfy new alternative wellness program standards from plan sponsors, to such participants from other participants, or some combination of these. The existence of a wellness program with a reward contingent on meeting a standard related to a health factor creates a transfer from those who do not meet the standard to those who do meet the standard. Allowing individuals to meet an alternative standard to receive the reward is a transfer to those who use the alternative standard from everyone else in the risk pool.

The reward associated with the wellness program is an incentive to encourage individuals to meet health standards associated with better or improved health, which in turn is associated with lower health care costs. If the rewards are effective, health care costs will be reduced as an individual's health improves. Some of these lower health care costs could translate into lower premiums paid by employers and employees, which could offset some of the transfers. To the extent larger rewards are more effective at improving health and lowering costs, these proposed regulations would produce more benefits than the current regulations.

Rewards also could create costs to individuals and to the extent the new larger rewards create more costs than smaller rewards, these proposed regulations could increase the costs relative to the existing regulations. To the extent an individual does not meet a standard or satisfy an alternative standard, they could face higher costs, for example in the case of a surcharge for smoking they could face up to a 50 percent increase in their premiums.

Based on the foregoing discussion, the Departments expect the benefits, costs, and transfers associated with these proposed regulations to be minimal. However, the Departments are not able to provide aggregate estimates, because they do not have sufficent data to estimate the number of plans that will take advantage of the new limits.

E. Regulatory Flexibility Act—Department of Labor and Department of Health and Human Services

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) applies to most Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*). Unless an agency certifies that such a rule will not have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires the agency to present an initial regulatory flexibility analysis at the time of the publication of the notice of proposed rulemaking describing the impact of the rule on small entities. Small entities include small businesses, organizations and governmental jurisdictions.

For purposes of analysis under the RFA, the Departments propose to continue to consider a small entity to be an employee benefit plan with fewer than 100 participants. The basis of this definition is found in section 104(a)(3) of ERISA, which permits the Secretary of Labor to prescribe simplified annual reports for welfare benefit plans that cover fewer than 100 participants.[45]

Further, while some large employers may have small plans, in general, small employers maintain most small plans. Thus, the Departments believe that assessing the impact of these proposed regulations on small plans is an appropriate substitute for evaluating the effect on small entities.

The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business that is based on size standards promulgated by the Small Business Administration (SBA) (13 CFR 121.201) pursuant to the Small Business Act (15 U.S.C. 631 *et seq.*). The Departments therefore request comments on the appropriateness of the size standard used in evaluating the impact of these proposed regulations on small entities. The Departments have consulted with the SBA Office of Advocacy concerning use of this participant count standard for RFA purposes. *See* 13 CFR 121.902(b)(4).

The Departments expect that these proposed regulations will affect few small plans. While a large number of small plans offer a wellness program, the 2011 Kaiser/HRET survey reported that only 13 percent of employers with fewer than 200 employees had a wellness program that offered cash or cash equivalent incentives (including gift cards, merchandise, or travel incentives).[46] In addition, only two percent of these firms offered lower employee health plan premiums to wellness participants, one percent offered lower deductibles, and one percent offered higher health reimbursement account or health savings account contributions. Therefore, the Departments expect that few small plans will be affected by increasing the rewards threshold from 20 percent to 30 percent (50 percent for programs targeting tobacco use prevention or reduction), because a small percentage of plans have rewards-based wellness programs. Moreover, as discussed in the Economic Impacts section earlier in this preamble, few plans that offer rewards-based wellness programs come close to reaching the 20 percent limit, and most incentive-based wellness programs are associated with completing the health risk assessment irrespective of the results, which are not subject to the limitation.

The Kaiser/HRET survey also reports that about 88 percent of small plans had their wellness programs provided by the health plan provider. Industry experts indicated to the Departments that when wellness programs are offered by the health plan provider, they typically supply alternative education programs and offer them free of charge. This finding indicates that the requirement in the proposed rule for rewards-based wellness programs to provide and pay for a reasonable alternative standard for individuals for whom it is either unreasonably difficult or medically inadvisable to meet the original standard will impose little new costs or transfers to the affected plans.

Based on the foregoing, the Departments herby certify that these proposed regulations will not have a significant economic impact on a substantial number of small entities.

F. Paperwork Reduction Act—Department of Labor and Department of the Treasury

The 2006 final regulations regarding wellness programs did not include an information collection request (ICR). These proposed regulations, like the 2006 final regulations, provide that if a plan's wellness program requires individuals to meet a standard related to a health factor in order to qualify for a reward and if the plan materials describe this standard, the materials must also disclose the availability of other means of qualifying for the reward or the possibility of waiver of the otherwise applicable standard. If plan materials merely mention that a program is available, the disclosure relating to alternatives is not required. These proposed regulations include

[45] Under ERISA section 104(a)(2), the Secretary may also provide exemptions or simplified reporting and disclosure requirements for pension plans. Pursuant to the authority of ERISA section 104(a)(3), the Department of Labor has previously issued at 29 CFR 2520.104–20, 2520.104–21, 2520.104–41, 2520.104–46, and 2520.104b–10 certain simplified reporting provisions and limited exemptions from reporting and disclosure requirements for small plans, including unfunded or insured welfare plans, that cover fewer than 100 participants and satisfy certain other requirements.

[46] Kaiser Family Foundation, *Employer Health Benefits: 2011 Annual Survey.* 2011, The Kaiser Family Foundation, Menlo Park, CA; Health Research & Educational Trust, Chicago, IL.

samples of disclosures that could be used to satisfy this requirement.

In concluding that these proposed regulations did not include an ICR, the Departments reasoned that much of the information required was likely already provided as a result of state and local requirements or the usual business practices of group health plans and group health insurance issuers in connection with the offer and promotion of health care coverage. In addition, the sample disclosures would enable group health plans to make any necessary modifications with minimal effort.

Finally, although the proposed regulations do not include an ICR, the regulations could be interpreted to require a revision to an existing collection of information. Administrators of group health plans covered under Title I of ERISA are generally required to make certain disclosures about the terms of a plan and material changes in terms through a Summary Plan Description (SPD) or Summary of Material Modifications (SMM) pursuant to sections 101(a) and 102(a) of ERISA and related regulations. The ICR related to the SPD and SMM is currently approved by OMB under OMB control number 1210–0039, which is currently scheduled to expire on April 30, 2013. While these materials may in some cases require revisions to comply with the proposed regulations, the associated burden is expected to be negligible, and is already accounted for in the SPD, SMM, and the ICR by a burden estimation methodology, which anticipates ongoing revisions. Based on the foregoing, the Departments do not expect that any change to the existing ICR arising from these proposed regulations will be substantive or material. Accordingly, the Departments have not filed an application for approval of a revision to the existing ICR with OMB in connection with these proposed regulations.

G. Paperwork Reduction Act—Department of Health and Human Services

Under the Paperwork Reduction Act of 1995, the Department is required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to 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 the Department to 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 techniques.

Section 146.121(f)(1)(iv) stipulates that the plan or issuer disclose in all plan materials describing the terms of the program the availability of a reasonable alternative standard to qualify for the reward under a wellness program. However, for plan materials that merely mention that a program is available, without describing its terms, the disclosure is not required. The burden associated with this requirement was previously approved under OMB control number 0938–0819. We are not seeking reinstatement of the information collection request under the aforementioned OMB control number, since we believe that much of the information required is likely already provided as a result of state and local requirements or the usual business practices of group health plans and group health insurance issuers in connection with the offer and promotion of health care coverage. In addition, the sample disclosures would enable group health plans to make any necessary modifications with minimal effort.

H. Special Analyses—Department of the Treasury

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

I. Congressional Review Act

These proposed regulations are 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, if finalized, will be transmitted to Congress and the Comptroller General for review. These regulations, do not constitute a ''major rule,'' as that term is defined in 5 U.S.C. 804 because they are unlikely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

J. Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, these proposed regulations do not include any federal mandate that may result in expenditures by state, local, or tribal governments, nor does it include mandates which may impose an annual burden of $100 million, adjusted for inflation,[47] or more on the private sector.

K. Federalism Statement—Department of Labor and Department of Health and Human Services

Executive Order 13132 outlines fundamental principles of federalism, and requires the adherence to specific criteria by federal agencies in the process of their formulation and implementation of policies that have ''substantial direct effects'' on the States, the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies promulgating regulations that have these federalism implications must consult with State and local officials, and describe the extent of their consultation and the nature of the concerns of State and local officials in the preamble to the regulation.

In the Departments' view, these proposed regulations have federalism implications, however, in the Departments' view, the federalism implications of these final regulations are substantially mitigated because, with respect to health insurance issuers, the vast majority of States have enacted laws, which meet or exceed the federal HIPAA standards prohibiting discrimination based on health factors.

[47] In 2012, that threshold level is approximately $139 million.

Therefore, the regulations are not likely to require substantial additional oversight of States by the Department of HHS.

In general, through section 514, ERISA supersedes State laws to the extent that they relate to any covered employee benefit plan, and preserves State laws that regulate insurance, banking, or securities. While ERISA prohibits States from regulating a plan as an insurance or investment company or bank, HIPAA added a new preemption provision to ERISA (as well as to the PHS Act) narrowly preempting State requirements for group health insurance coverage. With respect to the HIPAA nondiscrimination provisions, States may continue to apply State law requirements except to the extent that such requirements prevent the application of the portability, access, and renewability requirements of HIPAA, which include HIPAA's nondiscrimination requirements provisions. HIPAA's Conference Report states that the conferees intended the narrowest preemption of State laws with regard to health insurance issuers (H.R. Conf. Rep. No. 736, 104th Cong. 2d Session 205, 1996). State insurance laws that are more stringent than the federal requirements are unlikely to ''prevent the application of'' the HIPAA nondiscrimination provisions, and therefore are not preempted. Accordingly, States have significant latitude to impose requirements on health insurance issuers that are more restrictive than the federal law.

Guidance conveying this interpretation was published in the **Federal Register** on April 8, 1997 (62 FR 16904) and on December 30, 2004 (69 FR 78720), and these proposed regulations clarify and implement the statute's minimum standards and do not significantly reduce the discretion given the States by the statute. Moreover, the Departments understand that the vast majority of States have requirements that meet or exceed the minimum requirements of the HIPAA nondiscrimination provisions.

HIPAA provides that the States may enforce the provisions of HIPAA as they pertain to issuers, but that the Secretary of HHS must enforce any provisions that a State chooses not to or fails to substantially enforce. When exercising its responsibility to enforce provisions of HIPAA, HHS works cooperatively with the State for the purpose of addressing the State's concerns and avoiding conflicts with the exercise of State authority.[48] HHS has developed procedures to implement its enforcement responsibilities, and to afford the States the maximum opportunity to enforce HIPAA's requirements in the first instance. In compliance with Executive Order 13132's requirement that agencies examine closely any policies that may have federalism implications or limit the policy making discretion of the States, DOL and HHS have engaged in numerous efforts to consult with and work cooperatively with affected State and local officials.

In conclusion, throughout the process of developing these regulations, to the extent feasible within the specific preemption provisions of HIPAA, the Departments have attempted to balance the States' interests in regulating health plans and health insurance issuers, and the rights of those individuals that Congress intended to protect through the enactment of HIPAA.

IV. Statutory Authority

The Department of the Treasury regulations are proposed to be adopted pursuant to the authority contained in sections 7805 and 9833 of the Code.

The Department of Labor regulations are proposed to be adopted pursuant to the authority contained in 29 U.S.C. 1027, 1059, 1135, 1161–1168, 1169, 1181–1183, 1181 note, 1185, 1185a, 1185b, 1185d, 1191, 1191a, 1191b, and 1191c; sec. 101(g), Public Law 104–191, 110 Stat. 1936; sec. 401(b), Public Law 105–200, 112 Stat. 645 (42 U.S.C. 651 note); sec. 512(d), Public Law 110–343, 122 Stat. 3881; sec. 1001, 1201, and 1562(e), Public Law 111–148, 124 Stat. 119, as amended by Public Law 111–152, 124 Stat. 1029; Secretary of Labor's Order 3–2010, 75 FR 55354 (September 10, 2010).

The Department of Health and Human Services regulations are proposed to be adopted, with respect to 45 CFR part 146, pursuant to the authority contained in sections 2702 through 2705, 2711 through 2723, 2791, and 2792 of the PHS Act (42 U.S.C. 300gg–1 through 300gg–5, 300gg–11 through 300gg–23, 300gg–91, and 300gg–92) prior to the amendments made by the Affordable Care Act and sections 2701 through 2763, 2791, and 2792 of the Public Health Service Act (42 U.S.C. 300gg through 300gg–63, 300gg–91, and 300gg–92), as amended by the Affordable Care Act; with respect to 45 CFR part 147, pursuant to the authority contained in sections 2701 through 2763, 2791, and 2792 of the PHS Act (42 U.S.C. 300gg through 300gg–63, 300gg–91, and 300gg–92), as amended by the Affordable Care Act.

List of Subjects

26 CFR Part 54

Excise taxes, Health care, Health insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 2590

Continuation coverage, Disclosure, Employee benefit plans, Group health plans, Health care, Health insurance, Medical child support, Reporting and recordkeeping requirements.

45 CFR Parts 146 and 147

Health care, Health insurance, Reporting and recordkeeping requirements, and State regulation of health insurance.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement, Internal Revenue Service.

Signed this 8th day of November, 2012.

Phyllis C. Borzi,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

Dated: August 1, 2012.

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

Dated: August 7, 2012.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

Department of the Treasury

Internal Revenue Service

26 CFR Chapter I

Accordingly, 26 CFR part 54 is proposed to be amended as follows:

PART 54—PENSION EXCISE TAXES

Paragraph 1. The authority citation for Part 54 is amended by adding an entry for § 54.9815–2705 in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

Section 54.9815–2705 also issued under 26 U.S.C. 9833.

Par. 2. In § 54.9802–1, paragraph (f) is revised to read as follows:

§ 54.9802–1 Prohibiting discrimination against participants and beneficiaries based on a health factor.

* * * * *

(f) *Nondiscriminatory wellness programs—in general.* A wellness program is a program of health

[48] This authority applies to insurance issued with respect to group health plans generally, including plans covering employees of church organizations. Thus, this discussion of federalism applies to all group health insurance coverage that is subject to the PHS Act, including those church plans that provide coverage through a health insurance issuer (but not to church plans that do not provide coverage through a health insurance issuer).

promotion or disease prevention. Paragraphs (b)(2)(ii) and (c)(3) of this section provide exceptions to the general prohibitions against discrimination based on a health factor for plan provisions that vary benefits (including cost-sharing mechanisms) or the premium or contribution for similarly situated individuals in connection with a wellness program that satisfies the requirements of this paragraph (f). If a wellness program is a participatory wellness program, as defined in paragraph (f)(1) of this section, that paragraph also makes clear that the wellness program does not violate this section if participation in the program is made available to all similarly situated individuals. If a wellness program is a health-contingent wellness program, as defined in paragraph (f)(2) of this section, the wellness program does not violate this section if the requirements of paragraph (f)(3) of this section are met. Except where expressly provided otherwise, references in this section to an individual obtaining a reward include both obtaining a reward (such as a premium discount or rebate, a waiver of all or part of a cost-sharing mechanism, an additional benefit, or any financial or other incentive) and avoiding a penalty (such as the absence of a premium surcharge, or other financial or nonfinancial disincentive). References in this section to a plan providing a reward include both providing a reward (such as a premium discount or rebate, a waiver of all or part of a cost-sharing mechanism, an additional benefit, or any financial or other incentive) and imposing a penalty (such as a surcharge or other financial or nonfinancial disincentive).

(1) *Participatory wellness programs defined.* If none of the conditions for obtaining a reward under a wellness program is based on an individual satisfying a standard that is related to a health factor (or if a wellness program does not provide a reward), the wellness program is a participatory wellness program and, if participation in the program is made available to all similarly situated individuals, does not violate this section. Examples of participatory wellness programs are:

(i) A program that reimburses all or part of the cost for membership in a fitness center.

(ii) A diagnostic testing program that provides a reward for participation and does not base any part of the reward on outcomes.

(iii) A program that encourages preventive care through the waiver of the copayment or deductible requirement under a group health plan for the costs of, for example, prenatal care or well-baby visits. (Note that, with respect to non-grandfathered plans, § 54.9815–2713T requires benefits for certain preventive health services without the imposition of cost sharing.)

(iv) A program that reimburses employees for the costs of participating, or that otherwise provides a reward for participating, in a smoking cessation program without regard to whether the employee quits smoking.

(v) A program that provides a reward to employees for attending a monthly no-cost health education seminar.

(vi) A program that provides a reward to employees who complete a health risk assessment regarding current health status, without any further action (educational or otherwise) required by the employee with regard to the health issues identified as part of the assessment. (*See also* § 54.9802–3T for rules prohibiting collection of genetic information).

(2) *Health-contingent wellness programs defined.* If any of the conditions for obtaining a reward under a wellness program is based on an individual satisfying a standard that is related to a health factor, the wellness program is a health-contingent wellness program and the program is permissible under this section only if all of the requirements of paragraph (f)(3) of this section are satisfied. Examples of health-contingent wellness programs are:

(i) A program that imposes a premium surcharge based on tobacco use.

(ii) A program that uses a biometric screening or a health risk assessment to identify employees with specified medical conditions or risk factors (such as high cholesterol, high blood pressure, unhealthy body mass index, or high glucose level) and provides a reward to employees identified as within a normal or healthy range for biometrics (or at low risk for certain medical conditions), while requiring employees who are identified as outside the normal or healthy range (or at risk) to take additional steps (such as meeting with a health coach, taking a health or fitness course, adhering to a health improvement action plan, or complying with a health care provider's plan of care) to obtain the same reward.

(3) *Requirements for health-contingent wellness programs.* A health-contingent wellness program does not violate this section if all of the following requirements are satisfied:

(i) *Frequency of opportunity to qualify.* The program must give individuals eligible for the program the opportunity to qualify for the reward under the program at least once per year.

(ii) *Size of reward.* The reward for a health-contingent wellness program, together with the reward for other health-contingent wellness programs with respect to the plan, must not exceed the applicable percentage of the total cost of employee-only coverage under the plan, as defined in this paragraph (f)(3)(ii). However, if, in addition to employees, any class of dependents (such as spouses, or spouses and dependent children) may participate in the wellness program, the reward must not exceed the applicable percentage of the total cost of the coverage in which an employee and any dependents are enrolled. For purposes of this paragraph (f)(3)(ii), the cost of coverage is determined based on the total amount of employer and employee contributions for the benefit package under which the employee is (or the employee and any dependents are) receiving coverage.

(A) *Applicable percentage.* For purposes of this paragraph (f)(3)(ii), the applicable percentage is 30 percent, except that the applicable percentage is increased an additional 20 percentage points (to 50 percent) to the extent that the additional percentage is in connection with a program designed to prevent or reduce tobacco use.

(B) *Examples.* The rules of this paragraph (f)(3)(ii) are illustrated by the following examples:

Example 1. (i) *Facts.* An employer sponsors a group health plan. The annual premium for employee-only coverage is $6,000 (of which the employer pays $4,500 per year and the employee pays $1,500 per year). The plan offers employees a health-contingent wellness program focused on exercise, blood sugar, weight, cholesterol, and blood pressure. The reward for compliance is an annual premium rebate of $600.

(ii) *Conclusion.* In this *Example 1,* the program satisfies the requirements of this paragraph (f)(3)(ii) because the reward for the wellness program, $600, does not exceed 30 percent of the total annual cost of employee-only coverage, $1,800. ($6,000 × 30% = $1,800.)

Example 2. (i) *Facts.* Same facts as *Example 1,* except the wellness program is exclusively a tobacco prevention program. Employees who have used tobacco in the last 12 months and who are not enrolled in the plan's tobacco cessation program are charged a $1,000 premium surcharge (in addition to their employee contribution towards the coverage). (Those who participate in the plan's tobacco cessation program are not assessed the $1,000 surcharge.)

(ii) *Conclusion.* In this *Example 2,* the program satisfies the requirements of this paragraph (f)(3)(ii) because the reward for the wellness program (absence of a $1,000 surcharge), does not exceed 50 percent of the

total annual cost of employee-only coverage, $3,000. ($6,000 × 50% = $3,000.)

Example 3. (i) *Facts.* Same facts as *Example 1,* except that, in addition to the $600 reward for compliance with the health-contingent wellness program, the plan also imposes an additional $2,000 tobacco premium surcharge on employees who have used tobacco in the last 12 months and who are not enrolled in the plan's tobacco cessation program. (Those who participate in the plan's tobacco cessation program are not assessed the $2,000 surcharge.)

(ii) *Conclusion.* In this *Example 3,* the program satisfies the requirements of this paragraph (f)(3)(ii) because both: The total of all rewards (including absence of a surcharge for participating in the tobacco program) is $2,600 ($600 + $2,000 = $2,600), which does not exceed 50 percent of the total annual cost of employee-only coverage ($3,000); and, tested separately, the $600 reward for the wellness program unrelated to tobacco use does not exceed 30 percent of the total annual cost of employee-only coverage, $1,800.

Example 4. (i) *Facts.* An employer sponsors a group health plan. The total annual premium for employee-only coverage (including both employer and employee contributions towards the coverage) is $5,000. The plan provides a $250 reward to employees who complete a health risk assessment, without regard to the health issues identified as part of the assessment. The plan also offers a Healthy Heart program, which is a health-contingent wellness program under paragraph (f)(2) of this section, with an opportunity to earn a $1,500 reward.

(ii) *Conclusion.* In this *Example 4,* the plan satisfies the requirements of this paragraph (f)(3)(ii). Even though the total reward for all wellness programs under the plan is $1,750 ($250 + $1,500 = $1,750, which exceeds 30 percent of the cost of the annual premium for employee-only coverage ($5,000 × 30% = $1,500)), only the reward offered for compliance with the health-contingent wellness program ($1,500) is taken into account in determining whether the rules of this paragraph (f)(3)(ii) are met. (The $250 reward is offered in connection with a participatory wellness program and therefore is not taken into account under this paragraph (f)(3)(ii)). The health-contingent wellness program offers a reward that does not exceed 30 percent of the total annual cost of employee-only coverage.

(iii) *Uniform availability and reasonable alternative standards.* The reward under the program must be available to all similarly situated individuals.

(A) Under this paragraph (f)(3)(iii), a reward under a program is not available to all similarly situated individuals for a period unless the program meets both of the following requirements:

(*1*) The program allows a reasonable alternative standard (or waiver of the otherwise applicable standard) for obtaining the reward for any individual for whom, for that period, it is unreasonably difficult due to a medical condition to satisfy the otherwise applicable standard; and

(*2*) The program allows a reasonable alternative standard (or waiver of the otherwise applicable standard) for obtaining the reward for any individual for whom, for that period, it is medically inadvisable to attempt to satisfy the otherwise applicable standard.

(B) While plans are not required to determine a particular alternative standard in advance of an individual's request for one, if an individual is described in either paragraph (f)(3)(iii)(A)(*1*) or (*2*) of this section, a reasonable alternative standard must be furnished by the plan upon the individual's request or the condition for obtaining the reward must be waived. All the facts and circumstances are taken into account in determining whether a plan has furnished a reasonable alternative standard, including but not limited to the following:

(*1*) If the reasonable alternative standard is completion of an educational program, the plan must make the educational program available instead of requiring an individual to find such a program unassisted, and may not require an individual to pay for the cost of the program.

(*2*) If the reasonable alternative standard is a diet program, plans are not required to pay for the cost of food but must pay any membership or participation fee.

(*3*) If the reasonable alternative standard is compliance with the recommendations of a medical professional who is an employee or agent of the plan, and an individual's personal physician states that the plan's recommendations are not medically appropriate for that individual, the plan must provide a reasonable alternative standard that accommodates the recommendations of the individual's personal physician with regard to medical appropriateness. Plans may impose standard cost sharing under the plan or coverage for medical items and services furnished pursuant to the physician's recommendations.

(C) If reasonable under the circumstances, a plan may seek verification, such as a statement from an individual's personal physician, that a health factor makes it unreasonably difficult for the individual to satisfy, or medically inadvisable for the individual to attempt to satisfy, the otherwise applicable standard. It would not be reasonable, for example, for a plan to seek verification of a claim that is obviously valid based on the nature of the individual's medical condition that is known to the plan. However, plans may seek verification in the case of claims for which it is reasonable to determine that medical judgment is required to evaluate the validity of the claim.

(iv) *Reasonable design.* The program must be reasonably designed to promote health or prevent disease. A program satisfies this standard if it has a reasonable chance of improving the health of, or preventing disease in, participating individuals and it is not overly burdensome, is not a subterfuge for discriminating based on a health factor, and is not highly suspect in the method chosen to promote health or prevent disease. This determination is based on all the relevant facts and circumstances. To the extent a plan's initial standard for obtaining a reward (including a portion of a reward) is based on the results of a measurement, test, or screening relating to a health factor (such as a biometric examination or a health risk assessment), the plan must make available to any individual who does not meet the standard based on the measurement, test, or screening a different, reasonable means of qualifying for the reward.

(v) *Notice of availability of other means of qualifying for the reward.* (A) The plan must disclose in all plan materials describing the terms of the program the availability of other means of qualifying for the reward or the possibility of waiver of the otherwise applicable standard. If plan materials merely mention that a program is available, without describing its terms, this disclosure is not required.

(B) The following language, or substantially similar language, can be used to satisfy the notice requirement of this paragraph (f)(3)(v): ''Your health plan is committed to helping you achieve your best health status. Rewards for participating in a wellness program are available to all employees. If you think you might be unable to meet a standard for a reward under this wellness program, you might qualify for an opportunity to earn the same reward by different means. Contact us at [insert contact information] and we will work with you to find a wellness program with the same reward that is right for you in light of your health status.'' Additional sample language is provided in the examples of paragraph (f)(4) of this section.

(4) *Examples.* The rules of paragraphs (f)(3)(iii), (iv), and (v) of this section are illustrated by the following examples:

Example 1. (i) *Facts.* A group health plan provides a reward to individuals who

participate in a reasonable specified walking program. If it is unreasonably difficult due to a medical condition for an individual to participate (or if it is medically inadvisable for an individual to participate), the plan will waive the walking program requirement and provide the reward. All materials describing the terms of the walking program disclose the availability of the waiver.

(ii) *Conclusion.* The program satisfies the requirements of paragraph (f)(3)(iii) of this section because the reward under the program is available to all similarly situated individuals because it accommodates individuals who cannot participate in the walking program due to a medical condition (or for whom it would be medically inadvisable to attempt to participate) by providing them the reward even if they do not participate in the walking program (that is, by waiving the condition). The program satisfies the requirements of paragraph (f)(3)(iv) of this section because the walking program is reasonably designed to promote health and prevent disease. Last, the plan complies with the disclosure requirement of paragraph (f)(3)(v) of this section. Thus, the plan satisfies paragraphs (f)(3)(iii), (iv), and (v) of this section.

Example 2. (i) *Facts.* A group health plan offers a reward to individuals who achieve a count under 200 on a cholesterol test. If a participant does not achieve the targeted cholesterol count, the plan will make available a different, reasonable means of qualifying for the reward. In addition, all plan materials describing the terms of the program include the following statement: ''Your health plan wants to help you take charge of your health. Rewards are available to all employees who participate in our Cholesterol Awareness Wellness Program. If your cholesterol count is under 200, you will receive the reward. If not, you will still have an opportunity to qualify for the reward. We will work with you to find a Health Smart program that is right for you.'' Individual *D* is identified as having a cholesterol count above 200. The plan partners *D* with a nurse who makes recommendations regarding diet and exercise, with which it is not unreasonably difficult due to a medical condition of *D* or medically inadvisable for *D* to comply, and which is otherwise reasonably designed, based on all the relevant facts and circumstances. In addition, the plan makes available to all other individuals who do not meet the cholesterol standard a different, reasonable means of qualifying for the reward which is not unreasonably burdensome or impractical. *D* will qualify for the discount if *D* follows the recommendations regardless of whether *D* achieves a cholesterol count that is under 200.

(ii) *Conclusion.* In this *Example 2,* the program satisfies the requirements of paragraphs (f)(3)(iii), (iv), and (v) of this section. The program's initial standard for obtaining a reward is dependent on the results of a cholesterol screening, which is related to a health factor. However, the program is reasonably designed under paragraphs (f)(3)(iii) and (iv) of this section because the plan makes available to all individuals who do not meet the cholesterol standard a different, reasonable means of qualifying for the reward and because the program is otherwise reasonably designed based on all the relevant facts and circumstances. The plan also discloses in all materials describing the terms of the program the opportunity to qualify for the reward through other means. Thus, the program satisfies paragraphs (f)(3)(iii), (iv), and (v) of this section.

Example 3. (i) *Facts.* Same facts as *Example 2,* except that, following diet and exercise, *D* again fails to achieve a cholesterol count that is under 200, and the program requires *D* to visit a doctor and follow any additional recommendations of *D*'s doctor with respect to *D*'s cholesterol. The program permits *D* to select *D*'s own doctor for this purpose. *D* visits *D*'s doctor, who determines *D* should take a prescription medication for cholesterol. In addition, the doctor determines that *D* must be monitored through periodic blood tests to continually reevaluate *D*'s health status. The plan accommodates *D* by making the discount available to *D,* but only if *D* actually follows the advice of *D*'s doctor's regarding medication and blood tests.

(ii) *Conclusion.* In this *Example 3,* the program's requirements to follow up with, and follow the recommendations of, *D*'s doctor do not make the program unreasonable under paragraph (f)(3)(iii) or (iv) of this section. The program continues to satisfy the conditions of paragraph (f)(3)(iii), (iv), and (v) of this section.

Example 4. (i) *Facts.* A group health plan will provide a reward to participants who have a body mass index (BMI) that is 26 or lower, determined shortly before the beginning of the year. Any participant who does not meet the target BMI is given the same discount if the participant complies with an exercise program that consists of walking 150 minutes a week. Any participant for whom it is unreasonably difficult due to a medical condition to comply with this walking program (and any participant for whom it is medically inadvisable to attempt to comply with the walking program) during the year is given the same discount if the individual satisfies an alternative standard that is reasonable taking into consideration the individual's medical situation, is not unreasonably burdensome or impractical to comply with, and is otherwise reasonably designed based on all the relevant facts and circumstances. All plan materials describing the terms of the wellness program include the following statement: ''Fitness is Easy! Start Walking! Your health plan cares about your health. If you are overweight, our Start Walking program will help you lose weight and feel better. We will help you enroll. (** If your doctor says that walking isn't right for you, that's okay too. We will develop a wellness program that is.)'' Individual is unable to achieve a BMI that is 26 or lower within the plan's timeframe and is also not reasonably able to comply with the walking program. *E* proposes a program based on the recommendations of *E*'s physician. The plan agrees to make the discount available to *E,* but only if *E* actually follows the physician's recommendations.

(ii) *Conclusion.* In this *Example 4,* the program satisfies the requirements of paragraphs (f)(3)(iii), (iv), and (v) of this section. The program's initial standard for obtaining a reward is dependent on the results of a BMI screening, which is related to a health factor. However, the plan complies with the requirements of paragraph (f)(3)(iv) of this section because it makes available to all individuals who do not satisfy the BMI standard a different reasonable means of qualifying for the reward (a walking program that is not unreasonably burdensome or impractical for individuals to comply with and that is otherwise reasonably designed based on all the relevant facts and circumstances). In addition, the plan complies with the requirements of paragraph (f)(3)(iii) of this section because, if there are individuals for whom it is unreasonably difficult due to a medical condition to comply, or for whom it is medically inadvisable to attempt to comply, with the walking program, the plan provides a reasonable alternative to those individuals. Moreover, the plan satisfies the requirements of paragraph (f)(3)(v) of this section because it discloses, in all materials describing the terms of the program, the availability of other means of qualifying for the reward or the possibility of waiver of the otherwise applicable standard. Thus, the plan satisfies paragraphs (f)(3)(iii), (iv), and (v) of this section.

Example 5. (i) *Facts.* In conjunction with an annual open enrollment period, a group health plan provides a premium differential based on tobacco use, determined using a health risk assessment. The following statement is included in all plan materials describing the tobacco premium differential: ''Stop smoking today! We can help! If you are a smoker, we offer a smoking cessation program. If you complete the program, you can avoid this surcharge.'' The plan accommodates participants who smoke by facilitating their enrollment in a smoking cessation program that requires participation at a time and place that are not unreasonably burdensome or impractical for participants, and that is otherwise reasonably designed based on all the relevant facts and circumstances. The plan pays the cost of the program. Any participant can avoid the surcharge by participating in the program, regardless of whether the participant stops smoking.

(ii) *Conclusion.* In this *Example 5,* the premium differential satisfies the requirements of paragraphs (f)(3)(iii), (iv), and (v) of this section. The program's initial standard for obtaining a reward is dependent on the results of a health risk assessment, which is a screening. However, the plan is reasonably designed under paragraph (f)(3)(iv) because the plan provides a different, reasonable means of qualifying for the reward to all tobacco users. The plan discloses, in all materials describing the terms of the program, the availability of other means of qualifying for the reward. Thus, the plan satisfies paragraphs (f)(3)(iii), (iv), and (v) of this section.

Example 6. (i) *Facts.* Same facts as *Example 5,* except the plan does not facilitate *F*'s enrollment in any program. Instead the plan advises *F* to find a program, pay for it, and provide a certificate of completion to the plan.

(ii) *Conclusion.* In this *Example 6,* the requirement for *F* to find and pay for *F's* own smoking cessation program means that the alternative program is not reasonable. Accordingly, the plan has not offered a reasonable alternative standard that complies with paragraphs (f)(3)(iii) and (iv) of this section and the premium differential violates paragraph (c) of this section.

* * * * *

Par. 3. Section 54.9815–2705 is added to read as follows:

§ 54.9815–2705 Prohibiting discrimination against participants and beneficiaries based on a health factor.

(a) *In general.* A group health plan and a health insurance issuer offering group health insurance coverage must comply with the requirements of § 54.9802–1. Accordingly, with respect to health insurance issuers offering group health insurance coverage, the issuer is subject to the requirements of § 54.9802–1 to the same extent as a group health plan.

(b) *Applicability date.* This section is applicable to group health plans and health insurance issuers offering group health insurance coverage for plan years beginning on or after January 1, 2014. *See* § 54.9815–1251T, which provides that the rules of this section do not apply to grandfathered health plans.

Department of Labor

Employee Benefits Security Administration

29 CFR Chapter XXV

29 CFR Part 2590 is proposed to be amended as follows:

PART 2590—RULES AND REGULATIONS FOR GROUP HEALTH PLANS

1. The authority citation for Part 2590 continues to read as follows:

Authority: 29 U.S.C. 1027, 1059, 1135, 1161–1168, 1169, 1181–1183, 1181 note, 1185, 1185a, 1185b, 1185d, 1191, 1191a, 1191b, and 1191c; sec. 101(g), Pub. L. 104–191, 110 Stat. 1936; sec. 401(b), Pub. L. 105–200, 112 Stat. 645 (42 U.S.C. 651 note); sec. 12(d), Pub. L. 110–343, 122 Stat. 3881; sec. 1001, 1201, and 1562(e), Pub. L. 111–148, 124 Stat. 119, as amended by Pub. L. 111–152, 124 Stat. 1029; Secretary of Labor's Order 3–2010, 75 FR 55354 (September 10, 2010).

Subpart B—Health Coverage Portability, Nondiscrimination, and Renewability

2. Section 2590.702 is amended by revising paragraph (f) to read as follows:

§ 2590.702 Prohibiting discrimination against participants and beneficiaries based on a health factor.

* * * * *

(f) *Nondiscriminatory wellness programs—in general.* A wellness program is a program of health promotion or disease prevention. Paragraphs (b)(2)(ii) and (c)(3) of this section provide exceptions to the general prohibitions against discrimination based on a health factor for plan provisions that vary benefits (including cost-sharing mechanisms) or the premium or contribution for similarly situated individuals in connection with a wellness program that satisfies the requirements of this paragraph (f). If a wellness program is a participatory wellness program, as defined in paragraph (f)(1) of this section, that paragraph also makes clear that the wellness program does not violate this section if participation in the program is made available to all similarly situated individuals. If a wellness program is a health-contingent wellness program, as defined in paragraph (f)(2) of this section, the wellness program does not violate this section if the requirements of paragraph (f)(3) of this section are met. Except where expressly provided otherwise, references in this section to an individual obtaining a reward include both obtaining a reward (such as a premium discount or rebate, a waiver of all or part of a cost-sharing mechanism, an additional benefit, or any financial or other incentive) and avoiding a penalty (such as the absence of a premium surcharge, or other financial or nonfinancial disincentive). References in this section to a plan providing a reward include both providing a reward (such as a premium discount or rebate, a waiver of all or part of a cost-sharing mechanism, an additional benefit, or any financial or other incentive) and imposing a penalty (such as a surcharge or other financial or nonfinancial disincentive).

(1) *Participatory wellness programs defined.* If none of the conditions for obtaining a reward under a wellness program is based on an individual satisfying a standard that is related to a health factor (or if a wellness program does not provide a reward), the wellness program is a participatory wellness program and, if participation in the program is made available to all similarly situated individuals, does not violate this section. Examples of participatory wellness programs are:

(i) A program that reimburses all or part of the cost for membership in a fitness center.

(ii) A diagnostic testing program that provides a reward for participation and does not base any part of the reward on outcomes.

(iii) A program that encourages preventive care through the waiver of the copayment or deductible requirement under a group health plan for the costs of, for example, prenatal care or well-baby visits. (Note that, with respect to non-grandfathered plans, section 2590.715–2713 of this Part requires benefits for certain preventive health services without the imposition of cost sharing.)

(iv) A program that reimburses employees for the costs of participating, or that otherwise provides a reward for participating, in a smoking cessation program without regard to whether the employee quits smoking.

(v) A program that provides a reward to employees for attending a monthly no-cost health education seminar.

(vi) A program that provides a reward to employees who complete a health risk assessment regarding current health status, without any further action (educational or otherwise) required by the employee with regard to the health issues identified as part of the assessment. (*See also* § 2590.702–1 for rules prohibiting collection of genetic information).

(2) *Health-contingent wellness programs defined.* If any of the conditions for obtaining a reward under a wellness program is based on an individual satisfying a standard that is related to a health factor, the wellness program is a health-contingent wellness program and the program is permissible under this section only if all of the requirements of paragraph (f)(3) of this section are satisfied. Examples of health-contingent wellness programs are:

(i) A program that imposes a premium surcharge based on tobacco use.

(ii) A program that uses a biometric screening or a health risk assessment to identify employees with specified medical conditions or risk factors (such as high cholesterol, high blood pressure, unhealthy body mass index, or high glucose level) and provides a reward to employees identified as within a normal or healthy range for biometrics (or at low risk for certain medical conditions), while requiring employees who are identified as outside the normal or healthy range (or at risk) to take additional steps (such as meeting with a health coach, taking a health or fitness course, adhering to a health improvement action plan, or complying with a health care provider's plan of care) to obtain the same reward.

(3) *Requirements for health-contingent wellness programs.* A health-contingent wellness program does not violate this section if all of the following requirements are satisfied:

(i) *Frequency of opportunity to qualify.* The program must give individuals eligible for the program the opportunity to qualify for the reward under the program at least once per year.

(ii) *Size of reward.* The reward for a health-contingent wellness program, together with the reward for other health-contingent wellness programs with respect to the plan, must not exceed the applicable percentage of the total cost of employee-only coverage under the plan, as defined in this paragraph (f)(3)(ii). However, if, in addition to employees, any class of dependents (such as spouses, or spouses and dependent children) may participate in the wellness program, the reward must not exceed the applicable percentage of the total cost of the coverage in which an employee and any dependents are enrolled. For purposes of this paragraph (f)(3)(ii), the cost of coverage is determined based on the total amount of employer and employee contributions for the benefit package under which the employee is (or the employee and any dependents are) receiving coverage.

(A) *Applicable percentage.* For purposes of this paragraph (f)(3)(ii), the applicable percentage is 30 percent, except that the applicable percentage is increased an additional 20 percentage points (to 50 percent) to the extent that the additional percentage is in connection with a program designed to prevent or reduce tobacco use.

(B) *Examples.* The rules of this paragraph (f)(3)(ii) are illustrated by the following examples:

Example 1. (i) *Facts.* An employer sponsors a group health plan. The annual premium for employee-only coverage is $6,000 (of which the employer pays $4,500 per year and the employee pays $1,500 per year). The plan offers employees a health-contingent wellness program focused on exercise, blood sugar, weight, cholesterol, and blood pressure. The reward for compliance is an annual premium rebate of $600.

(ii) *Conclusion.* In this *Example 1,* the program satisfies the requirements of this paragraph (f)(3)(ii) because the reward for the wellness program, $600, does not exceed 30 percent of the total annual cost of employee-only coverage, $1,800. ($6,000 × 30% = $1,800.)

Example 2. (i) *Facts.* Same facts as *Example 1,* except the wellness program is exclusively a tobacco prevention program. Employees who have used tobacco in the last 12 months and who are not enrolled in the plan's tobacco cessation program are charged a $1,000 premium surcharge (in addition to their employee contribution towards the coverage). (Those who participate in the plan's tobacco cessation program are not assessed the $1,000 surcharge.)

(ii) *Conclusion.* In this *Example 2,* the program satisfies the requirements of this paragraph (f)(3)(ii) because the reward for the wellness program (absence of a $1,000 surcharge), does not exceed 50 percent of the total annual cost of employee-only coverage, $3,000. ($6,000 × 50% = $3,000.)

Example 3. (i) *Facts.* Same facts as *Example 1,* except that, in addition to the $600 reward for compliance with the health-contingent wellness program, the plan also imposes an additional $2,000 tobacco premium surcharge on employees who have used tobacco in the last 12 months and who are not enrolled in the plan's tobacco cessation program. (Those who participate in the plan's tobacco cessation program are not assessed the $2,000 surcharge.)

(ii) *Conclusion.* In this *Example 3,* the program satisfies the requirements of this paragraph (f)(3)(ii) because: Both the total of all rewards (including absence of a surcharge for participating in the tobacco program) is $2,600 ($600 + $2,000 = $2,600), which does not exceed 50 percent of the total annual cost of employee-only coverage ($3,000); and, tested separately, the $600 reward for the wellness program unrelated to tobacco use does not exceed 30 percent of the total annual cost of employee-only coverage, $1,800.

Example 4. (i) *Facts.* An employer sponsors a group health plan. The total annual premium for employee-only coverage (including both employer and employee contributions towards the coverage) is $5,000. The plan provides a $250 reward to employees who complete a health risk assessment, without regard to the health issues identified as part of the assessment. The plan also offers a Healthy Heart program, which is a health-contingent wellness program under paragraph (f)(2) of this section, with an opportunity to earn a $1,500 reward.

(ii) *Conclusion.* In this *Example 4,* the plan satisfies the requirements of this paragraph (f)(3)(ii). Even though the total reward for all wellness programs under the plan is $1,750 ($250 + $1,500 = $1,750, which exceeds 30 percent of the cost of the annual premium for employee-only coverage ($5,000 × 30% = $1,500)), only the reward offered for compliance with the health-contingent wellness program ($1,500) is taken into account in determining whether the rules of this paragraph (f)(3)(ii) are met. (The $250 reward is offered in connection with a participatory wellness program and therefore is not taken into account under this paragraph (f)(3)(ii)). The health-contingent wellness program offers a reward that does not exceed 30 percent of the total annual cost of employee-only coverage.

(iii) *Uniform availability and reasonable alternative standards.* The reward under the program must be available to all similarly situated individuals.

(A) Under this paragraph (f)(3)(iii), a reward under a program is not available to all similarly situated individuals for a period unless the program meets both of the following requirements:

(*1*) The program allows a reasonable alternative standard (or waiver of the otherwise applicable standard) for obtaining the reward for any individual for whom, for that period, it is unreasonably difficult due to a medical condition to satisfy the otherwise applicable standard; and

(*2*) The program allows a reasonable alternative standard (or waiver of the otherwise applicable standard) for obtaining the reward for any individual for whom, for that period, it is medically inadvisable to attempt to satisfy the otherwise applicable standard.

(B) While plans and issuers are not required to determine a particular alternative standard in advance of an individual's request for one, if an individual is described in either paragraph (f)(3)(iii)(A)(*1*) or (*2*) of this section, a reasonable alternative standard must be furnished by the plan or issuer upon the individual's request or the condition for obtaining the reward must be waived. All the facts and circumstances are taken into account in determining whether a plan or issuer has furnished a reasonable alternative standard, including but not limited to the following:

(*1*) If the reasonable alternative standard is completion of an educational program, the plan or issuer must make the educational program available instead of requiring an individual to find such a program unassisted, and may not require an individual to pay for the cost of the program.

(*2*) If the reasonable alternative standard is a diet program, plans and issuers are not required to pay for the cost of food but must pay any membership or participation fee.

(*3*) If the reasonable alternative standard is compliance with the recommendations of a medical professional who is an employee or agent of the plan or issuer, and an individual's personal physician states that the plan's recommendations are not medically appropriate for that individual, the plan or issuer must provide a reasonable alternative standard that accommodates the recommendations of the individual's personal physician with regard to medical appropriateness. Plans and issuers may impose standard cost sharing under the plan or coverage for medical items and services furnished pursuant to the physician's recommendations.

(C) If reasonable under the circumstances, a plan or issuer may seek verification, such as a statement from an individual's personal physician, that a health factor makes it unreasonably difficult for the individual to satisfy, or

medically inadvisable for the individual to attempt to satisfy, the otherwise applicable standard. It would not be reasonable, for example, for a plan and issuer to seek verification of a claim that is obviously valid based on the nature of the individual's medical condition that is known to the plan or issuer. However, plans and issuers may seek verification in the case of claims for which it is reasonable to determine that medical judgment is required to evaluate the validity of the claim.

(iv) *Reasonable design.* The program must be reasonably designed to promote health or prevent disease. A program satisfies this standard if it has a reasonable chance of improving the health of, or preventing disease in, participating individuals and it is not overly burdensome, is not a subterfuge for discriminating based on a health factor, and is not highly suspect in the method chosen to promote health or prevent disease. This determination is based on all the relevant facts and circumstances. To the extent a plan's initial standard for obtaining a reward (including a portion of a reward) is based on the results of a measurement, test, or screening relating to a health factor (such as a biometric examination or a health risk assessment), the plan must make available to any individual who does not meet the standard based on the measurement, test, or screening a different, reasonable means of qualifying for the reward.

(v) *Notice of availability of other means of qualifying for the reward.* (A) The plan or issuer must disclose in all plan materials describing the terms of the program the availability of other means of qualifying for the reward or the possibility of waiver of the otherwise applicable standard. If plan materials merely mention that a program is available, without describing its terms, this disclosure is not required.

(B) The following language, or substantially similar language, can be used to satisfy the notice requirement of this paragraph (f)(3)(v): ''Your health plan is committed to helping you achieve your best health status. Rewards for participating in a wellness program are available to all employees. If you think you might be unable to meet a standard for a reward under this wellness program, you might qualify for an opportunity to earn the same reward by different means. Contact us at [insert contact information] and we will work with you to find a wellness program with the same reward that is right for you in light of your health status.'' Additional sample language is provided in the examples of paragraph (f)(4) of this section.

(4) *Examples.* The rules of paragraphs (f)(3)(iii), (iv), and (v) of this section are illustrated by the following examples:

Example 1. (i) *Facts.* A group health plan provides a reward to individuals who participate in a reasonable specified walking program. If it is unreasonably difficult due to a medical condition for an individual to participate (or if it is medically inadvisable for an individual to participate), the plan will waive the walking program requirement and provide the reward. All materials describing the terms of the walking program disclose the availability of the waiver.

(ii) *Conclusion.* The program satisfies the requirements of paragraph (f)(3)(iii) of this section because the reward under the program is available to all similarly situated individuals because it accommodates individuals who cannot participate in the walking program due to a medical condition (or for whom it would be medically inadvisable to attempt to participate) by providing them the reward even if they do not participate in the walking program (that is, by waiving the condition). The program satisfies the requirements of paragraph (f)(3)(iv) of this section because the walking program is reasonably designed to promote health and prevent disease. Last, the plan complies with the disclosure requirement of paragraph (f)(3)(v) of this section. Thus, the plan satisfies paragraphs (f)(3)(iii), (iv), and (v) of this section.

Example 2. (i) *Facts.* A group health plan offers a reward to individuals who achieve a count under 200 on a cholesterol test. If a participant does not achieve the targeted cholesterol count, the plan will make available a different, reasonable means of qualifying for the reward. In addition, all plan materials describing the terms of the program include the following statement: ''Your health plan wants to help you take charge of your health. Rewards are available to all employees who participate in our Cholesterol Awareness Wellness Program. If your cholesterol count is under 200, you will receive the reward. If not, you will still have an opportunity to qualify for the reward. We will work with you to find a Health Smart program that is right for you.'' Individual *D* is identified as having a cholesterol count above 200. The plan partners *D* with a nurse who makes recommendations regarding diet and exercise, with which it is not unreasonably difficult due to a medical condition of *D* or medically inadvisable for *D* to comply, and which is otherwise reasonably designed, based on all the relevant facts and circumstances. In addition, the plan makes available to all other individuals who do not meet the cholesterol standard a different, reasonable means of qualifying for the reward which is not unreasonably burdensome or impractical. *D* will qualify for the discount if *D* follows the recommendations regardless of whether *D* achieves a cholesterol count that is under 200.

(ii) *Conclusion.* In this *Example 2,* the program satisfies the requirements of paragraphs (f)(3)(iii), (iv), and (v) of this section. The program's initial standard for obtaining a reward is dependent on the results of a cholesterol screening, which is related to a health factor. However, the program is reasonably designed under paragraphs (f)(3)(iii) and (iv) of this section because the plan makes available to all individuals who do not meet the cholesterol standard a different, reasonable means of qualifying for the reward and because the program is otherwise reasonably designed based on all the relevant facts and circumstances. The plan also discloses in all materials describing the terms of the program the opportunity to qualify for the reward through other means. Thus, the program satisfies paragraphs (f)(3)(iii), (iv), and (v) of this section.

Example 3. (i) *Facts.* Same facts as *Example 2,* except that, following diet and exercise, *D* again fails to achieve a cholesterol count that is under 200, and the program requires *D* to visit a doctor and follow any additional recommendations of *D*'s doctor with respect to *D*'s cholesterol. The program permits *D* to select *D*'s own doctor for this purpose. *D* visits *D*'s doctor, who determines *D* should take a prescription medication for cholesterol. In addition, the doctor determines that *D* must be monitored through periodic blood tests to continually reevaluate *D*'s health status. The plan accommodates *D* by making the discount available to *D,* but only if *D* actually follows the advice of *D*'s doctor's regarding medication and blood tests.

(ii) *Conclusion.* In this *Example 3,* the program's requirements to follow up with, and follow the recommendations of, *D*'s doctor do not make the program unreasonable under paragraphs (f)(3)(iii) or (iv) of this section. The program continues to satisfy the conditions of paragraphs (f)(3)(iii), (iv), and (v) of this section.

Example 4. (i) *Facts.* A group health plan will provide a reward to participants who have a body mass index (BMI) that is 26 or lower, determined shortly before the beginning of the year. Any participant who does not meet the target BMI is given the same discount if the participant complies with an exercise program that consists of walking 150 minutes a week. Any participant for whom it is unreasonably difficult due to a medical condition to comply with this walking program (and any participant for whom it is medically inadvisable to attempt to comply with the walking program) during the year is given the same discount if the individual satisfies an alternative standard that is reasonable taking into consideration the individual's medical situation, is not unreasonably burdensome or impractical to comply with, and is otherwise reasonably designed based on all the relevant facts and circumstances. All plan materials describing the terms of the wellness program include the following statement: ''Fitness is Easy! Start Walking! Your health plan cares about your health. If you are overweight, our Start Walking program will help you lose weight and feel better. We will help you enroll. (**If your doctor says that walking isn't right for you, that's okay too. We will develop a wellness program that is.)'' Individual *E* is unable to achieve a BMI that is 26 or lower within the plan's timeframe and is also not reasonably able to comply with the walking

program. *E* proposes a program based on the recommendations of *E*'s physician. The plan agrees to make the discount available to *E,* but only if *E* actually follows the physician's recommendations.

(ii) *Conclusion.* In this *Example 4,* the program satisfies the requirements of paragraphs (f)(3)(iii), (iv), and (v) of this section. The program's initial standard for obtaining a reward is dependent on the results of a BMI screening, which is related to a health factor. However, the plan complies with the requirements of paragraph (f)(3)(iv) of this section because it makes available to all individuals who do not satisfy the BMI standard a different reasonable means of qualifying for the reward (a walking program that is not unreasonably burdensome or impractical for individuals to comply with and that is otherwise reasonably designed based on all the relevant facts and circumstances). In addition, the plan complies with the requirements of paragraph (f)(3)(iii) of this section because, if there are individuals for whom it is unreasonably difficult due to a medical condition to comply, or for whom it is medically inadvisable to attempt to comply, with the walking program, the plan provides a reasonable alternative to those individuals. Moreover, the plan satisfies the requirements of paragraph (f)(3)(v) of this section because it discloses, in all materials describing the terms of the program, the availability of other means of qualifying for the reward or the possibility of waiver of the otherwise applicable standard. Thus, the plan satisfies paragraphs (f)(3)(iii), (iv), and (v) of this section.

Example 5. (i) *Facts.* In conjunction with an annual open enrollment period, a group health plan provides a premium differential based on tobacco use, determined using a health risk assessment. The following statement is included in all plan materials describing the tobacco premium differential: ''Stop smoking today! We can help! If you are a smoker, we offer a smoking cessation program. If you complete the program, you can avoid this surcharge.'' The plan accommodates participants who smoke by facilitating their enrollment in a smoking cessation program that requires participation at a time and place that are not unreasonably burdensome or impractical for participants, and that is otherwise reasonably designed based on all the relevant facts and circumstances. The plan pays the cost of the program. Any participant can avoid the surcharge by participating in the program, regardless of whether the participant stops smoking.

(ii) *Conclusion.* In this *Example 5,* the premium differential satisfies the requirements of paragraphs (f)(3)(iii), (iv), and (v) of this section. The program's initial standard for obtaining a reward is dependent on the results of a health risk assessment, which is a screening. However, the plan is reasonably designed under paragraph (f)(3)(iv) because the plan provides a different, reasonable means of qualifying for the reward to all tobacco users. The plan discloses, in all materials describing the terms of the program, the availability of other means of qualifying for the reward. Thus, the plan satisfies paragraphs (f)(3)(iii), (iv), and (v) of this section.

Example 6. (i) *Facts.* Same facts as *Example 5,* except the plan does not facilitate *F*'s enrollment in any program. Instead the plan advises *F* to find a program, pay for it, and provide a certificate of completion to the plan.

(ii) *Conclusion.* In this *Example 6,* the requirement for *F* to find and pay for *F*'s own smoking cessation program means that the alternative program is not reasonable. Accordingly, the plan has not offered a reasonable alternative standard that complies with paragraphs (f)(3)(iii) and (iv) of this section and the premium differential violates paragraph (c) of this section.

* * * * *

Subpart C—Other Requirements

3. Section 2590.715–2705 is added to read as follows:

§ 2590.715–2705 Prohibiting discrimination against participants and beneficiaries based on a health factor.

(a) *In general.* A group health plan and a health insurance issuer offering group health insurance coverage must comply with the requirements of § 2590.702.

(b) *Applicability date.* This section is applicable to group health plans and health insurance issuers offering group health insurance coverage for plan years beginning on or after January 1, 2014. *See* § 2590.715–1251, which provides that the rules of this section do not apply to grandfathered health plans.

Department of Health and Human Services

45 CFR Subtitle A

For the reasons stated in the preamble, the Department of Health and Human Services proposes to amend 45 CFR Parts 146 and 147 as follows:

PART 146—REQUIREMENTS FOR THE GROUP HEALTH INSURANCE MARKET

1. The authority citation for Part 146 continues to read as follows:

Authority: Secs. 2702 through 2705, 2711 through 2723, 2791, and 2792 of the PHS Act (42 U.S.C. 300gg–1 through 300gg–5, 300gg–11 through 300gg–23, 300gg–91, and 300gg–92) (1996).

Section 146.121 is also issued under secs. 2701 through 2763, 2791, and 2792 of the Public Health Service Act (42 U.S.C. 300gg through 300gg–63, 300gg–91, and 300gg–92), as amended (2010).

2. In § 146.121, paragraph (f) is revised to read as follows:

§ 146.121 Prohibiting discrimination against participants and beneficiaries based on a health factor.

* * * * *

(f) *Nondiscriminatory wellness programs—in general.* A wellness program is a program of health promotion or disease prevention. Paragraphs (b)(2)(ii) and (c)(3) of this section provide exceptions to the general prohibitions against discrimination based on a health factor for plan provisions that vary benefits (including cost-sharing mechanisms) or the premium or contribution for similarly situated individuals in connection with a wellness program that satisfies the requirements of this paragraph (f). If a wellness program is a participatory wellness program, as defined in paragraph (f)(1) of this section, that paragraph also makes clear that the wellness program does not violate this section if participation in the program is made available to all similarly situated individuals. If a wellness program is a health-contingent wellness program, as defined in paragraph (f)(2) of this section, the wellness program does not violate this section if the requirements of paragraph (f)(3) of this section are met. Except where expressly provided otherwise, references in this section to an individual obtaining a reward include both obtaining a reward (such as a premium discount or rebate, a waiver of all or part of a cost-sharing mechanism, an additional benefit, or any financial or other incentive) and avoiding a penalty (such as the absence of a premium surcharge, or other financial or nonfinancial disincentive). References in this section to a plan providing a reward include both providing a reward (such as a premium discount or rebate, a waiver of all or part of a cost-sharing mechanism, an additional benefit, or any financial or other incentive) and imposing a penalty (such as a surcharge or other financial or nonfinancial disincentive).

(1) *Participatory wellness programs defined.* If none of the conditions for obtaining a reward under a wellness program is based on an individual satisfying a standard that is related to a health factor (or if a wellness program does not provide a reward), the wellness program is a participatory wellness program and, if participation in the program is made available to all similarly situated individuals, does not violate this section. Examples of participatory wellness programs are:

(i) A program that reimburses all or part of the cost for membership in a fitness center.

(ii) A diagnostic testing program that provides a reward for participation and does not base any part of the reward on outcomes.

(iii) A program that encourages preventive care through the waiver of the copayment or deductible requirement under a group health plan for the costs of, for example, prenatal care or well-baby visits. (Note that, with respect to non-grandfathered plans, § 147.130 of this subchapter requires benefits for certain preventive health services without the imposition of cost sharing.)

(iv) A program that reimburses employees for the costs of participating, or that otherwise provides a reward for participating, in a smoking cessation program without regard to whether the employee quits smoking.

(v) A program that provides a reward to employees for attending a monthly no-cost health education seminar.

(vi) A program that provides a reward to employees who complete a health risk assessment regarding current health status, without any further action (educational or otherwise) required by the employee with regard to the health issues identified as part of the assessment. (*See also* § 146.122 for rules prohibiting collection of genetic information).

(2) *Health-contingent wellness programs defined.* If any of the conditions for obtaining a reward under a wellness program is based on an individual satisfying a standard that is related to a health factor, the wellness program is a health-contingent wellness program and the program is permissible under this section only if all of the requirements of paragraph (f)(3) of this section are satisfied. Examples of health-contingent wellness programs are:

(i) A program that imposes a premium surcharge based on tobacco use.

(ii) A program that uses a biometric screening or a health risk assessment to identify employees with specified medical conditions or risk factors (such as high cholesterol, high blood pressure, unhealthy body mass index, or high glucose level) and provides a reward to employees identified as within a normal or healthy range for biometrics (or at low risk for certain medical conditions), while requiring employees who are identified as outside the normal or healthy range (or at risk) to take additional steps (such as meeting with a health coach, taking a health or fitness course, adhering to a health improvement action plan, or complying with a health care provider's plan of care) to obtain the same reward.

(3) *Requirements for health-contingent wellness programs.* A health-contingent wellness program does not violate this section if all of the following requirements are satisfied:

(i) *Frequency of opportunity to qualify.* The program must give individuals eligible for the program the opportunity to qualify for the reward under the program at least once per year.

(ii) *Size of reward.* The reward for a health-contingent wellness program, together with the reward for other health-contingent wellness programs with respect to the plan, must not exceed the applicable percentage of the total cost of employee-only coverage under the plan, as defined in this paragraph (f)(3)(ii). However, if, in addition to employees, any class of dependents (such as spouses, or spouses and dependent children) may participate in the wellness program, the reward must not exceed the applicable percentage of the total cost of the coverage in which an employee and any dependents are enrolled. For purposes of this paragraph (f)(3)(ii), the cost of coverage is determined based on the total amount of employer and employee contributions for the benefit package under which the employee is (or the employee and any dependents are) receiving coverage.

(A) *Applicable percentage.* For purposes of this paragraph (f)(3)(ii), the applicable percentage is 30 percent, except that the applicable percentage is increased an additional 20 percentage points (to 50 percent) to the extent that the additional percentage is in connection with a program designed to prevent or reduce tobacco use.

(B) *Examples.* The rules of this paragraph (f)(3)(ii) are illustrated by the following examples:

Example 1. (i) *Facts.* An employer sponsors a group health plan. The annual premium for employee-only coverage is $6,000 (of which the employer pays $4,500 per year and the employee pays $1,500 per year). The plan offers employees a health-contingent wellness program focused on exercise, blood sugar, weight, cholesterol, and blood pressure. The reward for compliance is an annual premium rebate of $600.

(ii) *Conclusion.* In this *Example 1,* the program satisfies the requirements of this paragraph (f)(3)(ii) because the reward for the wellness program, $600, does not exceed 30 percent of the total annual cost of employee-only coverage, $1,800. ($6,000 × 30% = $1,800.)

Example 2. (i) *Facts.* Same facts as *Example 1,* except the wellness program is exclusively a tobacco prevention program. Employees who have used tobacco in the last 12 months and who are not enrolled in the plan's tobacco cessation program are charged a $1,000 premium surcharge (in addition to their employee contribution towards the coverage). (Those who participate in the plan's tobacco cessation program are not assessed the $1,000 surcharge.)

(ii) *Conclusion.* In this *Example 2,* the program satisfies the requirements of this paragraph (f)(3)(ii) because the reward for the wellness program (absence of a $1,000 surcharge), does not exceed 50 percent of the total annual cost of employee-only coverage, $3,000. ($6,000 × 50% = $3,000.)

Example 3. (i) *Facts.* Same facts as *Example 1,* except that, in addition to the $600 reward for compliance with the health-contingent wellness program, the plan also imposes an additional $2,000 tobacco premium surcharge on employees who have used tobacco in the last 12 months and who are not enrolled in the plan's tobacco cessation program. (Those who participate in the plan's tobacco cessation program are not assessed the $2,000 surcharge.)

(ii) *Conclusion.* In this *Example 3,* the program satisfies the requirements of this paragraph (f)(3)(ii) because both: The total of all rewards (including absence of a surcharge for participating in the tobacco program) is $2,600 ($600 + $2,000 = $2,600), which does not exceed 50 percent of the total annual cost of employee-only coverage ($3,000); and, tested separately, the $600 reward for the wellness program unrelated to tobacco use does not exceed 30 percent of the total annual cost of employee-only coverage, $1,800.

Example 4. (i) *Facts.* An employer sponsors a group health plan. The total annual premium for employee-only coverage (including both employer and employee contributions towards the coverage) is $5,000. The plan provides a $250 reward to employees who complete a health risk assessment, without regard to the health issues identified as part of the assessment. The plan also offers a Healthy Heart program, which is a health-contingent wellness program under paragraph (f)(2) of this section, with an opportunity to earn a $1,500 reward.

(ii) *Conclusion.* In this *Example 4,* the plan satisfies the requirements of this paragraph (f)(3)(ii). Even though the total reward for all wellness programs under the plan is $1,750 ($250 + $1,500 = $1,750, which exceeds 30 percent of the cost of the annual premium for employee-only coverage ($5,000 × 30% = $1,500)), only the reward offered for compliance with the health-contingent wellness program ($1,500) is taken into account in determining whether the rules of this paragraph (f)(3)(ii) are met. (The $250 reward is offered in connection with a participatory wellness program and therefore is not taken into account under this paragraph (f)(3)(ii)). The health-contingent wellness program offers a reward that does not exceed 30 percent of the total annual cost of employee-only coverage.

(iii) *Uniform availability and reasonable alternative standards.* The reward under the program must be available to all similarly situated individuals.

(A) Under this paragraph (f)(3)(iii), a reward under a program is not available to all similarly situated individuals for a period unless the program meets both of the following requirements:

(*1*) The program allows a reasonable alternative standard (or waiver of the

otherwise applicable standard) for obtaining the reward for any individual for whom, for that period, it is unreasonably difficult due to a medical condition to satisfy the otherwise applicable standard; and

(*2*) The program allows a reasonable alternative standard (or waiver of the otherwise applicable standard) for obtaining the reward for any individual for whom, for that period, it is medically inadvisable to attempt to satisfy the otherwise applicable standard.

(B) While plans and issuers are not required to determine a particular alternative standard in advance of an individual's request for one, if an individual is described in either paragraph (f)(3)(iii)(A)(*1*) or (*2*) of this section, a reasonable alternative standard must be furnished by the plan or issuer upon the individual's request or the condition for obtaining the reward must be waived. All the facts and circumstances are taken into account in determining whether a plan or issuer has furnished a reasonable alternative standard, including but not limited to the following:

(*1*) If the reasonable alternative standard is completion of an educational program, the plan or issuer must make the educational program available instead of requiring an individual to find such a program unassisted, and may not require an individual to pay for the cost of the program.

(*2*) If the reasonable alternative standard is a diet program, plans and issuers are not required to pay for the cost of food but must pay any membership or participation fee.

(*3*) If the reasonable alternative standard is compliance with the recommendations of a medical professional who is an employee or agent of the plan or issuer, and an individual's personal physician states that the plan's recommendations are not medically appropriate for that individual, the plan or issuer must provide a reasonable alternative standard that accommodates the recommendations of the individual's personal physician with regard to medical appropriateness. Plans and issuers may impose standard cost sharing under the plan or coverage for medical items and services furnished pursuant to the physician's recommendations.

(C) If reasonable under the circumstances, a plan or issuer may seek verification, such as a statement from an individual's personal physician, that a health factor makes it unreasonably difficult for the individual to satisfy, or medically inadvisable for the individual to attempt to satisfy, the otherwise applicable standard. It would not be reasonable, for example, for a plan and issuer to seek verification of a claim that is obviously valid based on the nature of the individual's medical condition that is known to the plan or issuer. However, plans and issuers may seek verification in the case of claims for which it is reasonable to determine that medical judgment is required to evaluate the validity of the claim.

(iv) *Reasonable design.* The program must be reasonably designed to promote health or prevent disease. A program satisfies this standard if it has a reasonable chance of improving the health of, or preventing disease in, participating individuals and it is not overly burdensome, is not a subterfuge for discriminating based on a health factor, and is not highly suspect in the method chosen to promote health or prevent disease. This determination is based on all the relevant facts and circumstances. To the extent a plan's initial standard for obtaining a reward (including a portion of a reward) is based on the results of a measurement, test, or screening relating to a health factor (such as a biometric examination or a health risk assessment), the plan must make available to any individual who does not meet the standard based on the measurement, test, or screening a different, reasonable means of qualifying for the reward.

(v) *Notice of availability of other means of qualifying for the reward.* (A) The plan or issuer must disclose in all plan materials describing the terms of the program the availability of other means of qualifying for the reward or the possibility of waiver of the otherwise applicable standard. If plan materials merely mention that a program is available, without describing its terms, this disclosure is not required.

(B) The following language, or substantially similar language, can be used to satisfy the notice requirement of this paragraph (f)(3)(v): ''Your health plan is committed to helping you achieve your best health status. Rewards for participating in a wellness program are available to all employees. If you think you might be unable to meet a standard for a reward under this wellness program, you might qualify for an opportunity to earn the same reward by different means. Contact us at [insert contact information] and we will work with you to find a wellness program with the same reward that is right for you in light of your health status.'' Additional sample language is provided in the examples of paragraph (f)(4) of this section.

(4) *Examples.* The rules of paragraphs (f)(3)(iii), (iv), and (v) of this section are illustrated by the following examples:

Example 1. (i) *Facts.* A group health plan provides a reward to individuals who participate in a reasonable specified walking program. If it is unreasonably difficult due to a medical condition for an individual to participate (or if it is medically inadvisable for an individual to participate), the plan will waive the walking program requirement and provide the reward. All materials describing the terms of the walking program disclose the availability of the waiver.

(ii) *Conclusion.* The program satisfies the requirements of paragraph (f)(3)(iii) of this section because the reward under the program is available to all similarly situated individuals because it accommodates individuals who cannot participate in the walking program due to a medical condition (or for whom it would be medically inadvisable to attempt to participate) by providing them the reward even if they do not participate in the walking program (that is, by waiving the condition). The program satisfies the requirements of paragraph (f)(3)(iv) of this section because the walking program is reasonably designed to promote health and prevent disease. Last, the plan complies with the disclosure requirement of paragraph (f)(3)(v) of this section. Thus, the plan satisfies paragraphs (f)(3)(iii), (iv), and (v) of this section.

Example 2. (i) *Facts.* A group health plan offers a reward to individuals who achieve a count under 200 on a cholesterol test. If a participant does not achieve the targeted cholesterol count, the plan will make available a different, reasonable means of qualifying for the reward. In addition, all plan materials describing the terms of the program include the following statement: ''Your health plan wants to help you take charge of your health. Rewards are available to all employees who participate in our Cholesterol Awareness Wellness Program. If your cholesterol count is under 200, you will receive the reward. If not, you will still have an opportunity to qualify for the reward. We will work with you to find a Health Smart program that is right for you.'' Individual *D* is identified as having a cholesterol count above 200. The plan partners *D* with a nurse who makes recommendations regarding diet and exercise, with which it is not unreasonably difficult due to a medical condition of *D* or medically inadvisable for *D* to comply, and which is otherwise reasonably designed, based on all the relevant facts and circumstances. In addition, the plan makes available to all other individuals who do not meet the cholesterol standard a different, reasonable means of qualifying for the reward which is not unreasonably burdensome or impractical. *D* will qualify for the discount if *D* follows the recommendations regardless of whether *D* achieves a cholesterol count that is under 200.

(ii) *Conclusion.* In this *Example 2,* the program satisfies the requirements of paragraphs (f)(3)(iii), (iv), and (v) of this section. The program's initial standard for obtaining a reward is dependent on the

results of a cholesterol screening, which is related to a health factor. However, the program is reasonably designed under paragraphs (f)(3)(iii) and (iv) of this section because the plan makes available to all individuals who do not meet the cholesterol standard a different, reasonable means of qualifying for the reward and because the program is otherwise reasonably designed based on all the relevant facts and circumstances. The plan also discloses in all materials describing the terms of the program the opportunity to qualify for the reward through other means. Thus, the program satisfies paragraphs (f)(3)(iii), (iv), and (v) of this section.

Example 3. (i) *Facts.* Same facts as *Example 2,* except that, following diet and exercise, *D* again fails to achieve a cholesterol count that is under 200, and the program requires *D* to visit a doctor and follow any additional recommendations of *D*'s doctor with respect to *D*'s cholesterol. The program permits *D* to select *D*'s own doctor for this purpose. *D* visits *D*'s doctor, who determines *D* should take a prescription medication for cholesterol. In addition, the doctor determines that *D* must be monitored through periodic blood tests to continually reevaluate *D*'s health status. The plan accommodates *D* by making the discount available to *D,* but only if *D* actually follows the advice of *D*'s doctor's regarding medication and blood tests.

(ii) *Conclusion.* In this *Example 3,* the program's requirements to follow up with, and follow the recommendations of, *D*'s doctor do not make the program unreasonable under paragraphs (f)(3)(iii) or (iv) of this section. The program continues to satisfy the conditions of paragraphs (f)(3)(iii), (iv), and (v) of this section.

Example 4. (i) *Facts.* A group health plan will provide a reward to participants who have a body mass index (BMI) that is 26 or lower, determined shortly before the beginning of the year. Any participant who does not meet the target BMI is given the same discount if the participant complies with an exercise program that consists of walking 150 minutes a week. Any participant for whom it is unreasonably difficult due to a medical condition to comply with this walking program (and any participant for whom it is medically inadvisable to attempt to comply with the walking program) during the year is given the same discount if the individual satisfies an alternative standard that is reasonable taking into consideration the individual's medical situation, is not unreasonably burdensome or impractical to comply with, and is otherwise reasonably designed based on all the relevant facts and circumstances. All plan materials describing the terms of the wellness program include the following statement: ''Fitness is Easy! Start Walking! Your health plan cares about your health. If you are overweight, our Start Walking program will help you lose weight and feel better. We will help you enroll. (**If your doctor says that walking isn't right for you, that's okay too. We will develop a wellness program that is.)'' Individual *E* is unable to achieve a BMI that is 26 or lower within the plan's timeframe and is also not reasonably able to comply with the walking program. *E* proposes a program based on the recommendations of *E*'s physician. The plan agrees to make the discount available to *E,* but only if *E* actually follows the physician's recommendations.

(ii) *Conclusion.* In this *Example 4,* the program satisfies the requirements of paragraphs (f)(3)(iii), (iv), and (v) of this section. The program's initial standard for obtaining a reward is dependent on the results of a BMI screening, which is related to a health factor. However, the plan complies with the requirements of paragraph (f)(3)(iv) of this section because it makes available to all individuals who do not satisfy the BMI standard a different reasonable means of qualifying for the reward (a walking program that is not unreasonably burdensome or impractical for individuals to comply with and that is otherwise reasonably designed based on all the relevant facts and circumstances). In addition, the plan complies with the requirements of paragraph (f)(3)(iii) of this section because, if there are individuals for whom it is unreasonably difficult due to a medical condition to comply, or for whom it is medically inadvisable to attempt to comply, with the walking program, the plan provides a reasonable alternative to those individuals. Moreover, the plan satisfies the requirements of paragraph (f)(3)(v) of this section because it discloses, in all materials describing the terms of the program, the availability of other means of qualifying for the reward or the possibility of waiver of the otherwise applicable standard. Thus, the plan satisfies paragraphs (f)(3)(iii), (iv), and (v) of this section.

Example 5. (i) *Facts.* In conjunction with an annual open enrollment period, a group health plan provides a premium differential based on tobacco use, determined using a health risk assessment. The following statement is included in all plan materials describing the tobacco premium differential: ''Stop smoking today! We can help! If you are a smoker, we offer a smoking cessation program. If you complete the program, you can avoid this surcharge.'' The plan accommodates participants who smoke by facilitating their enrollment in a smoking cessation program that requires participation at a time and place that are not unreasonably burdensome or impractical for participants, and that is otherwise reasonably designed based on all the relevant facts and circumstances. The plan pays the cost of the program. Any participant can avoid the surcharge by participating in the program, regardless of whether the participant stops smoking.

(ii) *Conclusion.* In this *Example 5,* the premium differential satisfies the requirements of paragraphs (f)(3)(iii), (iv), and (v) of this section. The program's initial standard for obtaining a reward is dependent on the results of a health risk assessment, which is a screening. However, the plan is reasonably designed under paragraph (f)(3)(iv) because the plan provides a different, reasonable means of qualifying for the reward to all tobacco users. The plan discloses, in all materials describing the terms of the program, the availability of other means of qualifying for the reward. Thus, the plan satisfies paragraphs (f)(3)(iii), (iv), and (v) of this section.

Example 6. (i) *Facts.* Same facts as *Example 5,* except the plan does not facilitate *F*'s enrollment in any program. Instead the plan advises *F* to find a program, pay for it, and provide a certificate of completion to the plan.

(ii) *Conclusion.* In this *Example 6,* the requirement for *F* to find and pay for *F*'s own smoking cessation program means that the alternative program is not reasonable. Accordingly, the plan has not offered a reasonable alternative standard that complies with paragraphs (f)(3)(iii) and (iv) of this section and the premium differential violates paragraph (c) of this section.

* * * * *

PART 147—HEALTH INSURANCE REFORM REQUIREMENTS FOR THE GROUP AND INDIVIDUAL HEALTH INSURANCE MARKETS

3. The authority citation for Part 147 continues to read as follows:

Authority: Secs. 2701 through 2763, 2791, and 2792 of the Public Health Service Act (42 U.S.C. 300gg through 300gg–63, 300gg–91, and 300gg–92), as amended (2010).

4. Section 147.110 is added to read as follows:

§ 147.110 Prohibiting discrimination against participants, beneficiaries, and individuals based on a health factor.

(a) *In general.* A group health plan and a health insurance issuer offering group or individual health insurance coverage must comply with all the requirements under 45 CFR 146.121 applicable to a group health plan and a health insurance issuer offering group health insurance coverage. Accordingly, with respect to an issuer offering health insurance coverage in the individual market, the issuer is subject to the requirements of § 146.121 to the same extent as an issuer offering group health insurance coverage, except that the exception contained in § 146.121(f) does not apply.

(b) *Applicability date.* This section is applicable to a group health plan and a health insurance issuer offering group or individual health insurance coverage for plan years (in the individual market, policy years) beginning on or after January 1, 2014. *See* § 147.140, which provides that the rules of this section do not apply to grandfathered health plans.

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Part V

Department of Health and Human Services

45 CFR Parts 147, 155, and 156

Patient Protection and Affordable Care Act; Standards Related to Essential Health Benefits, Actuarial Value, and Accreditation; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Parts 147, 155, and 156

[CMS–9980–P]

RIN 0938–AR03

Patient Protection and Affordable Care Act; Standards Related to Essential Health Benefits, Actuarial Value, and Accreditation

AGENCY: Department of Health and Human Services.

ACTION: Proposed rule.

SUMMARY: This proposed rule details standards for health insurance issuers consistent with title I of the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010, referred to collectively as the Affordable Care Act. Specifically, this proposed rule outlines Exchange and issuer standards related to coverage of essential health benefits and actuarial value. This proposed rule also proposes a timeline for qualified health plans to be accredited in Federally-facilitated Exchanges and an amendment which provides an application process for the recognition of additional accrediting entities for purposes of certification of qualified health plans.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. Eastern Standard Time (EST) on December 26, 2012.

ADDRESSES: In commenting, please refer to file code CMS–9980–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 ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–9980–P, P.O. Box 8010, Baltimore, MD 21244–8010.

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–9980–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments only to the following addresses prior to the close of the comment period:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:

Leigha Basini at (301) 492–4307 for general information.

Adam Block at (410) 786–1698 for matters related to essential health benefits, actuarial value, and minimum value.

Tara Oakman at (301) 492–4253 for matters related to accreditation.

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.

Electronic Access

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Acronym List

Because of the many organizations and terms to which we refer by acronym in this proposed rule, we are listing these acronyms and their corresponding terms in alphabetical order below:

AV Actuarial Value
CHIP Children's Health Insurance Program
CMS Centers for Medicare & Medicaid Services
DOL U.S. Department of Labor
EHB Essential Health Benefits
ERISA Employee Retirement Income Security Act (29 U.S.C. section 1001, et seq.)
FDA U.S. Food and Drug Administration
FEDVIP Federal Employee Dental and Vision Insurance Program
FEHBP Federal Employees Health Benefits Program

HEDIS Healthcare Effectiveness Data and Information Set
HHS U.S. Department of Health and Human Services
HIOS Health Insurance Oversight System
HMO Health Maintenance Organization
HSA Health Savings Account
HRA Health Reimbursement Account
IOM Institute of Medicine
IRS Internal Revenue Service
MV Minimum Value
NAIC National Association of Insurance Commissioners
OMB Office of Management and Budget
OPM U.S. Office of Personnel Management
PHS Act Public Health Service Act
PRA Paperwork Reduction Act
QHP Qualified Health Plan
SSA Social Security Administration
SHOP Small Business Health Options Program
The Act Social Security Act
The Code Internal Revenue Code of 1986
USP United States Pharmacopeia

Executive Summary: Beginning in 2014, all non-grandfathered health insurance coverage [1] in the individual and small group markets, Medicaid benchmark and benchmark-equivalent plans, and Basic Health Programs (if applicable) will be required to cover essential health benefits (EHB), which include items and services in 10 statutory benefit categories, such as hospitalization, prescription drugs, and maternity and newborn care, and are equal in scope to a typical employer health plan. In addition to offering EHB, these health plans will meet specific actuarial values (AVs): 60 percent for a bronze plan, 70 percent for a silver plan, 80 percent for a gold plan, and 90 percent for a platinum plan. These AVs, called ''metal levels,'' will assist consumers in comparing and selecting health plans by allowing a potential enrollee to compare the relative payment generosity of available plans. Taken together, EHB and AV will significantly increase consumers' ability to compare and make an informed choice about health plans.

The Department of Health and Human Services (HHS) has provided information on EHB and AV standards in several phases. On December 16, 2011, HHS released a bulletin [2] (the ''EHB Bulletin''), following a report from the U.S. Department of Labor (DOL) describing the scope of benefits typically covered under employer-sponsored coverage and an HHS-commissioned study from the Institute of Medicine (IOM) [3] recommending the criteria and methods for determining and updating the EHB. The EHB Bulletin outlined an intended regulatory approach for defining EHB, including a benchmark-based framework. Shortly thereafter, on January 25, 2012, HHS released an illustrative list of the largest three small group market products by state, which were updated on July 2, 2012.[4] HHS further clarified the approach described in the EHB Bulletin through a series of Frequently Asked Questions (FAQs), released on February 17, 2012. On July 20, 2012, HHS published a final rule [5] authorizing the collection of data to be used under the intended process for states to select from among several benchmark options to define EHB.

HHS also published a bulletin [6] outlining an intended regulatory approach to calculations of AV and implementation of cost-sharing reductions on February 24, 2012 (the ''AV/CSR Bulletin''). Specifically, HHS outlined an intended regulatory approach for the calculation of AV, de minimis variation standards, and silver plan variations for individuals eligible for cost-sharing reductions among other topics. As described in section IB of this preamble, ''Stakeholder Consultation and Input,'' HHS reviewed and considered comments on both the EHB and AV/CSR Bulletins in developing this proposed rule.

In addition, this rule proposes to amend 45 CFR 156.275, as published on July 20, 2012 (77 FR 42658), which established the first phase of an intended two-phase approach to recognizing accrediting entities. As directed under law, recognized entities will implement the standards established under the Affordable Care Act for qualified health plans (QHPs) to be accredited on the basis of local performance on a timeline established by the Exchange. The amendment to phase one included herein would not alter recognition of the National Committee for Quality Assurance (NCQA) and URAC on the terms outlined in the final rule (and as provided in the **Federal Register** Notice being released concurrently with this proposed rule) and would provide an opportunity for additional accrediting entities meeting the conditions in § 156.275 to be recognized by the Secretary, until phase two is in effect. This opportunity would include an application and review process. This rule also proposes a timeline for the accreditation standard for the purposes of QHP certification in Federally-facilitated Exchanges.

I. Background

A. Legislative Overview

Section 1302 of the Affordable Care Act provides for the establishment of an EHB package that includes coverage of EHB (as defined by the Secretary of the Department of Health and Human Services (the Secretary)) and AV requirements. The law directs that EHB be equal in scope to the benefits covered by a typical employer plan and cover at least the following 10 general categories: Ambulatory patient services; emergency services; hospitalization; maternity and newborn care; mental health and substance use disorder services, including behavioral health treatment; prescription drugs; rehabilitative and habilitative services and devices; laboratory services; preventive and wellness services and chronic disease management; and pediatric services, including oral and vision care. Sections 1302(b)(4)(A) through (D) establish that the Secretary must define EHB in a manner that (1) Reflects appropriate balance among the 10 categories; (2) is not designed in such a way as to discriminate based on age, disability, or expected length of life; (3) takes into account the health care needs of diverse segments of the population; and (4) does not allow denials of EHB based on age, life expectancy, or disability. Sections 1302(b)(4)(E) and (F) further direct the Secretary to consider the provision of emergency services and dental benefits when determining whether a particular health plan covers EHB. Finally, sections 1302(b)(4)(G) and (H) specify that the Secretary periodically review the EHB, report the findings of such review to the Congress and to the public, and update the EHB as needed to address any gaps in access to care or advances in the relevant evidence base. Section 1311(d)(3)(B) establishes that states may require a QHP to cover additional benefits beyond those in the EHB, provided that the state defrays the costs of such required benefits.

Section 1301(a)(1)(B) of the Affordable Care Act directs all issuers of QHPs to cover the EHB package described in section 1302(a) of the Affordable Care Act, including coverage of the services described in section

[1] For more information on status as a grandfathered health plans under the Affordable Care Act, please see Interim Final Rule, ''Group Health Plans and Health Insurance Coverage Relating to Status as a Grandfathered Health Plan Under the Patient Protection and Affordable Care Act.'' Available at: *http://cciio.cms.gov/resources/regulations/index.html#gp.*

[2] Available at: *http://cciio.cms.gov/resources/files/Files2/12162011/essential_health_benefits_bulletin.pdf.*

[3] ''Essential Health Benefits: Balancing Coverage and Cost.'' October 6, 2011. Available at: *http://www.iom.edu/Reports/2011/Essential-Health-Benefits-Balancing-Coverage-and-Cost.aspx.*

[4] Available at: *http://cciio.cms.gov/resources/files/largest-smgroup-products-7-2-2012.pdf.PDF.*

[5] 77 FR 42658 (July 20, 2012).

[6] Available at: *http://cciio.cms.gov/resources/files/Files2/02242012/Av-csr-bulletin.pdf.*

1302(b), adhering to the cost-sharing limits described in section 1302(c), and subject to 1302(e), meeting the AV levels established in section 1302(d). Section 2707(a) of the Public Health Service (PHS) Act extends the coverage of the EHB package to issuers of non-grandfathered individual and small group policies beginning with plan years starting on or after January 1, 2014, irrespective of whether such issuers offer coverage through an Exchange. In addition, section 2707(b) of the PHS Act directs non-grandfathered group health plans to ensure that cost-sharing under the plan does not exceed the limitations described in sections 1302(c)(1) and (2) of the Affordable Care Act.

Section 1302(d)(2) of the Affordable Care Act describes the levels of coverage that section 1302(a)(3) includes in the EHB package: 60 percent for a bronze plan, 70 percent for a silver plan, 80 percent for a gold plan, and 90 percent for a platinum plan. Section 1302(d)(3) directs the Secretary to develop guidelines that allow for de minimis variation in AV calculations.

Section 1311(c)(1)(D)(i) of the Affordable Care Act directs a health plan to ''be accredited with respect to local performance on clinical quality measures * * * by any entity recognized by the Secretary for the accreditation of health insurance issuers or plans (so long as any such entity has transparent and rigorous methodological and scoring criteria).'' Section 1311(c)(1)(D)(ii) requires that QHPs ''receive such accreditation within a period established by an Exchange * * *.'' In a final rule published on July 20, 2012 (77 FR 42658), because the NCQA and URAC already met the statutory requirements, they were recognized as accrediting entities on an interim basis, subject to the submission of documentation required in 45 CFR 156.275(c)(4). This recognition is now effective as indicated in a **Federal Register** notice being published concurrently with this proposed rule. In this proposed rule, HHS introduces a new process by which accrediting entities that are not already recognized can submit an application to be recognized and establishes a proposed notice and final notice process for recognizing any new accrediting entities. HHS intends, through future rulemaking, to establish a phase two recognition process which may establish additional criteria for the recognition of accrediting entities. This rule also proposes a timeline for the accreditation requirement in a Federally-facilitated Exchange.

B. Stakeholder Consultation and Input

HHS has consulted with interested stakeholders on several policies related to EHB, AV, and Exchange functions. HHS held a number of listening sessions with consumers, providers, employers, health plans, and state representatives to gather public input, and released several documents for public review and comment. As described previously, HHS released two Bulletins that outlined our intended regulatory approach to defining EHB and calculating AV and sought public comment on the specific approaches.

In addition to the listening sessions, HHS considered the findings of an IOM study, as well as a report conducted by the DOL [7] on typical benefits offered by employer-sponsored coverage before releasing the Bulletins.

Finally, HHS consulted with stakeholders through regular meetings with the National Association of Insurance Commissioners (NAIC), regular contact with states through the Exchange grant process, Medicaid consultation, and meetings with tribal leaders and representatives, health insurance issuers, trade groups, consumer advocates, employers, and other interested parties.

HHS received approximately 11,000 comments in response to the EHB Bulletin. Commenters represented a wide variety of stakeholders, including health insurance issuers, consumers, health providers, states, employers, employees, and Members of Congress.

We considered all of these comments as we developed the policies in this proposed rule. Though we do not address each comment received, we discuss many of the comments throughout the proposed rule. In addition, HHS will be consulting with federally recognized tribes on the provisions of this proposed rule that impact tribes.

C. Structure of the Proposed Rule

The regulations outlined in this proposed rule would be codified in 45 CFR parts 147, 155, and 156. Part 147 outlines proposed standards for health insurance issuers in the small group and individual markets related to health insurance reforms. Part 155 outlines the proposed standards for states relative to the establishment of Exchanges and outlines the proposed standards for Exchanges related to minimum Exchange functions. Part 156 outlines the proposed standards for issuers of QHPs, including with respect to participation in an Exchange. The standards proposed to be codified in Part 156 as laid out in this NPRM apply only in the individual and small group markets, and not to Medicaid benchmark or benchmark-equivalent plans. EHB applicability to Medicaid will be defined in a separate regulation.

II. Provisions of the Proposed Regulation

A. Part 147—Health Insurance Reform Requirements for the Group and Individual Health Insurance Markets

1. Subpart B—Requirements Relating to Health Care Access

a. Coverage of EHB (§ 147.150)

Section 2707(a) of the Public Health Service Act (PHS Act), as added by the Affordable Care Act, directs health insurance issuers that offer non-grandfathered health insurance coverage in the individual or small group market to ensure that such coverage includes the EHB package defined under section 1302(a) of the Affordable Care Act that includes the coverage of EHB, application of cost-sharing limitations, and AV requirements (plans must be a bronze, silver, gold, or platinum plan or a catastrophic plan).

Section 1255 of the Affordable Care Act provides that this EHB package standard applies starting the first plan year for the small group market or policy year for the individual market beginning on or after January 1, 2014. In § 147.150(a), we propose that a health insurance issuer that offers health insurance coverage in the individual or small group market—inside or outside of the Exchange—ensure that such coverage offers the EHB package.

PHS Act section 2707(b) provides that a group health plan shall ensure that any annual cost-sharing imposed under the plan does not exceed the limitations provided for under section 1302(c)(1) and (c)(2) of the Affordable Care Act. Section 715(a)(1) of the Employee Retirement Income Security Act (ERISA) and section 9815(a)(1) of the Internal Revenue Code (Code) incorporates section 2707(b) of the Public Health Service Act into ERISA and the Code. HHS, DOL, and the Department of the Treasury read the limitations on the scope of section 1302(c) of the Affordable Care Act to apply also to the scope of PHS Act section 2707(b). Therefore, these deductible limitations apply only to plans and issuers in the small group market and do not apply to self-insured plans or health insurance issuers offering health insurance

[7] ''Selected Medical Benefits: A Report from the Department of Labor to the Department of Health and Human Services.'' April 15, 2011. Available at: *http://www.bls.gov/ncs/ebs/sp/selmedbensreport.pdf.*

coverage in the large group market. Section 147.150(b) is reserved at this time.

In addition, section 2707(c) of the PHS Act provides that an issuer offering any level of coverage specified under section 1302(d) of the Affordable Care Act offer coverage in that level to individuals who have not attained the age of 21. We propose to codify this standard in § 147.150(c). An issuer could satisfy this standard by offering the same product to applicants seeking child-only coverage that it offers to applicants seeking coverage solely for adults or for families including both adults and children, as long as the child-only coverage is priced in accordance with the applicable rating rules.

B. Part 155—Exchange Establishment Standards and Other Related Standards Under the Affordable Care Act

State Required Benefits

Section 1311(d)(3)(B) of the Affordable Care Act explicitly permits a state to require QHPs to offer benefits in addition to EHB, but requires the state to make payments, either to the individual enrollee or to the issuer on behalf of the enrollee, to defray the cost of these additional benefits. We propose that state-required benefits enacted on or before December 31, 2011 (even if not effective until a later date) may be considered EHB, which would obviate the requirement for the state to pay for these state-required benefits. We also propose that state-required benefits that are not included in the benchmark would apply to QHP markets in the same way they apply in the current market. For example, a benefit that is only required in the individual market by a state law enacted prior to December 31, 2011 would only be considered EHB (and exempt from the requirement that the state pay the cost of the benefit) with respect to the individual QHP market in 2014. This policy regarding state-required benefits is intended to apply for at least plan years 2014 and 2015.

HHS received many comments in response to the EHB Bulletin about how state-required benefits beyond EHB could be identified and how states would defray the cost of those benefits. In this proposed rule, we interpret state-required benefits to be specific to the care, treatment, and services that a state requires issuers to offer to its enrollees. Therefore, state rules related to provider types, cost-sharing, or reimbursement methods would not fall under our interpretation of state-required benefits. Even though plans must comply with those state requirements, there would be no federal obligation for states to defray the costs associated with those requirements.[8]

Under the Affordable Care Act, state payment for state-required benefits only applies to QHPs. Since the Exchange is responsible for certifying QHPs, we propose that the Exchange identify which additional state-required benefits, if any, are in excess of the EHB. HHS intends to publish a list of state-required benefits for Exchanges to use as a reference tool.

After consideration of four possible entities to conduct the cost calculation for additional coverage (QHP issuers, the state, the Exchange, or HHS), we believe that the QHP issuer should conduct the calculation for the cost of additional benefits, because the QHP generates the necessary data regarding claims, utilization, trend, and other issuer-specific data typically used to calculate the cost of a benefit. Because QHP issuers will offer state-required benefits to every enrollee, the cost of the benefit will be built into the overall premium and spread across all enrollees. We believe that the best method to calculate the state's cost, if applicable, is to have the QHP issuer quantify the amount of premium attributable to each additional benefit.

We additionally propose that the calculations of the cost of additional benefits be made by a member of the American Academy of Actuaries, based on an analysis performed in accordance with generally accepted actuarial principles and methodologies. We also propose the calculation be done prospectively to allow for the offset of an enrollee's share of premium and for purposes of calculating the premium tax credit and reduced cost sharing.[9] We request comment on whether the state should make payments based on the statewide average cost or make payments based on each QHP issuer's actual cost if different issuers report that a particular additional required benefit costs a different amount. We note that we expect there will be few, if any, payments made for state-required benefits since required benefits enacted prior to December 31, 2011 will be part of EHB, and therefore will not require the state to incur any costs.

Accreditation Timeline (§ 155.1045)

HHS proposes to amend § 155.1045 to redesignate the existing paragraph as paragraph (a) and add a new paragraph (b) to set forth the timeline for QHP accreditation in Federally-facilitated Exchanges (including State Partnership Exchanges). HHS proposes a phased approach to the requirement that QHP issuers be accredited in Federally-facilitated Exchanges. This approach is in part modeled after the one used by some states that require accreditation as part of issuer licensing. Further, this approach will accommodate new issuers—including Consumer Operated and Oriented Plans—and those that have not previously been accredited, while ensuring that all QHP issuers make a commitment to ensure the delivery of high quality care to consumers.

The proposed accreditation timeline to be used in Federally-facilitated Exchanges is as follows:

- During certification for an issuer's initial year of QHP certification (for example, in 2013 for the 2014 coverage year), a QHP issuer without existing commercial, Medicaid, or Exchange health plan accreditation granted by a recognized accrediting entity for the same state in which the issuer is applying to offer coverage must have scheduled or plan to schedule a review of QHP policies and procedures of the applying QHP issuer with a recognized accrediting entity.
- Prior to a QHP issuer's second year and third year of QHP certification (for example, in 2014 for the 2015 coverage year and 2015 for the 2016 coverage year), a QHP issuer must be accredited by a recognized accrediting entity on the policies and procedures that are applicable to their Exchange products or, a QHP issuer must have commercial or Medicaid health plan accreditation granted by a recognized accrediting entity for the same state in which the issuer is offering Exchange coverage and the administrative policies and procedures underlying that accreditation must be the same or similar to the administrative policies and procedures used in connection with the QHP.
- Prior to a QHP issuer's fourth year of QHP certification and in every subsequent year of certification (for example, in 2016 for the 2017 coverage year and forward), a QHP issuer must be accredited in accordance with 45 CFR 156.275.

[8] For example, a state statute requiring issuers to pay the same for a physician consultation in the office and via telemedicine would not be a state-required benefit. The physician consultation is the service; the requirement to pay for telemedicine relates to payment for the service delivery method. Since the requirement addresses a specific delivery method, not the underlying care, treatment, or service being delivered, there is no requirement to defray the cost.

[9] Section 36B1401(b)(3)(D) of the Code specifies that the portion of the premium allocable to required additional benefits shall not be taken into account in determining a premium tax credit. Likewise, section 1402(c) of the Affordable Care Act specifies that cost-sharing reductions do not apply to required additional benefits.

C. Part 156—Health Insurance Issuer Standards Under the Affordable Care Act, Including Standards Related to Exchanges

1. Subpart A—General Provisions

In § 156.20, we propose to add definitions as follows:

Actuarial Value and Percentage of the Total Allowed Costs of Benefits

We propose to define ''AV'' as the percentage paid by a health plan of the total allowed costs of benefits (using the term ''percentage of the total allowed costs of benefits'' that we also propose to define here).

In general, AV can be considered a general summary measure of health plan generosity. We propose to define the ''percentage of the total allowed costs of benefits'' as the anticipated covered medical spending for EHB coverage (as defined in § 156.110 (a)) paid by a health plan for a standard population, computed in accordance with the health plan's cost sharing, divided by the total anticipated allowed charges for EHB coverage provided to the standard population, and expressed as a percentage.

Because section 1302(d)(2) of the Affordable Care Act refers to AV relative to coverage of the EHB for a standard population, we propose these definitions together in order to provide that AV is the percentage that represents the total allowed costs of benefits paid by the health plan, based on the provision of EHB as defined for that plan according to § 156.115.

Benchmark Plans

Under the benchmark selection and standards proposed in § 156.100 and § 156.110, we believe it is important to differentiate between the plan selected by a state (or through the default process in § 156.100(c)), which we are proposing to call the ''base-benchmark plan,'' and the benchmark standard that EHB plans will need to meet, which we are proposing to call the ''EHB-benchmark plan.''

We propose that ''base-benchmark plan'' means the plan that is selected by a state from the options described in § 156.100(a), or a default benchmark plan, as described in § 156.100(c), prior to any adjustments made to meet the benchmark standards described in § 156.110.

We propose that ''EHB-benchmark plan'' means the standardized set of EHB that must be met by a QHP or other issuer as required by § 147.150.

We propose that ''EHB package'' means the scope of covered benefits and associated limits of a health plan offered by an issuer, as set forth in section 1302(a) of the Affordable Care Act. The EHB package provides at least the ten statutory categories of benefits, as described in § 156.110(a); provides benefits in the manner described in § 156.115; limits cost-sharing for such coverage as described in § 156.130; and subject to offering catastrophic plans as described in section 1302(e) of the Affordable Care Act, provides distinct levels of coverage as described in § 156.140.

2. Subpart B—EHB Package

a. State Selection of Benchmark (§ 156.100)

In § 156.100, we propose criteria for the selection process if a state chooses to select a benchmark plan. As we note in § 156.20, the plan selected by a state is known as the base-benchmark plan. After the application of any adjustments described in § 156.110, the plan will be known as the EHB-benchmark plan. The EHB-benchmark plan would apply to non-grandfathered health insurance coverage offered in the individual or small group markets. The EHB-benchmark plan would serve as a reference plan, reflecting both the scope of services and limits offered by a typical employer plan in that state. This approach and benchmark selection, which would apply for at least the 2014 and 2015 benefit years, would allow states to build on coverage that is already widely available, minimize market disruption, and provide consumers with familiar products. This approach is intended to balance consumers' needs for comprehensiveness and affordability, as recommended by IOM in its report on the EHB.[10] In developing these proposed guidelines, we considered the comments on the EHB Bulletin, which urged an open and transparent benchmark selection process with an opportunity for public input.

Consistent with the approach outlined in the EHB Bulletin, we propose in § 156.100(a) that the state may select its base-benchmark plan from among four types of health plans. These are (1) The largest plan by enrollment in any of the three largest small group insurance products in the state's small group market as defined in § 155.20; (2) any of the largest three state employee health benefit plans by enrollment; (3) any of the largest three national Federal Employees Health Benefits Program (FEHBP) plan options by enrollment that are open to Federal employees; or (4) the largest insured commercial non-Medicaid Health Maintenance Organization (HMO) operating in the state. As we discussed in the EHB Bulletin, we use enrollment data from the first quarter two years prior to the coverage year to determine plan enrollment. To help states make their benchmark selections, HHS has provided states with benefit data on the largest plans by enrollment in the three largest small group insurance products in each state's small group market as of the first quarter of calendar year 2012.[11] States can use that information, which we collected from issuers through HealthCare.gov, to inform their EHB benchmark selections. In addition to the data available on HealthCare.gov for insurance products in the states' small group markets, in Appendix B, HHS is also making available benefit data for the single largest Federal Employees Dental and Vision Insurance Program (FEDVIP) dental and vision plans respectively, based on enrollment.

Proposed paragraph (a)(1) of § 156.100 would reflect a typical plan in the state's small group market and provide state flexibility as recommended by the IOM in its report.[12] The remaining proposed benchmark plan options, in paragraphs (a)(2) through (a)(4), reflect the benchmark approach in Medicaid defined in 42 CFR 440.330 and in the Children's Health Insurance Program (CHIP) in 42 CFR 457.410 and 457.420. We believe these options reflect both the scope of services and any limits offered by a ''typical employer plan'' as specified by section 1302(b)(2)(A) of the Affordable Care Act. Based on commenters' requests for an open and transparent selection process, we encourage states to solicit public input prior to their selection and confirmation of a state benchmark plan.

We believe that our proposed approach and the benchmark options available to states for defining EHB best reflect the balance between comprehensiveness, affordability, and state flexibility as recommended by the IOM.

Because the PHS Act defines ''state'' to include the U.S. territories (Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands), the EHB requirements established by section 1302 of the Affordable Care Act apply to the territories. Given the smaller size and unique nature of the territories' health insurance markets, we seek comment as to whether the benchmark default

[10] Institute of Medicine, ''Essential Health Benefits: Balancing Coverage and Cost'' (2011).

[11] *http://cciio.cms.gov/resources/files/largest-smgroup-products-7-2-2012.pdf.PDF*

[12] Institute of Medicine, ''Essential Health Benefits: Balancing Coverage and Cost'' (2011).

process described in proposed § 156.100(c) is appropriate for the territories. In particular, we seek comment as to whether the default base-benchmark plan that will apply to the states—the largest plan by enrollment in the largest product in the state's small group market—is an appropriate default base-benchmark plan for the territories; or whether one of the other four types of health plans outlined in the EHB Bulletin, such as the largest FEHBP plan, would provide a more appropriate default base-benchmark. We note that the territories have the same opportunity as states to select a benchmark plan and we encourage them to do so.

In Appendix A: List of Proposed EHB Benchmarks, we provide a list of proposed benchmarks either selected by states or, for states that have not selected, we propose what the default benchmark plan would look like if the benchmark was determined by the Secretary in accordance with § 156.100(c). States were encouraged to submit their selections by October 1, 2012 to serve as the benchmarks for 2014 and 2015. If a state wishes to make a selection or change its previous selection it must do so by the end of the comment period of this proposed rule. Pending publication of a final rule, we are proposing that the default benchmark option will apply in cases where a state does not voluntarily select a benchmark. Issuers have commented that early selection is important to provide them with sufficient time to develop and receive certification for QHPs in advance of the QHP application review scheduled for early 2013.

At § 156.100(b), we propose the standard for approval of a state-selected EHB-benchmark plan. Section 156.100(b) specifies that to become an EHB-benchmark plan, a base-benchmark plan must meet the specifications in § 156.110, which include, coverage of at least the 10 categories of benefits outlined in the Affordable Care Act.

Sections 1302(b)(4)(G) and (H) of the Affordable Care Act direct the Secretary to periodically review the definition of EHB, report the findings of such review to the Congress and the public, and update the EHB definition as needed to address gaps in access to care or advances in the relevant evidence base. In response to the EHB Bulletin, we received different comments from stakeholders on the frequency with which updates to the EHB should occur. Some commenters favored annual updates, while others recommended less frequent updates, including initially waiting until 2016 or 2017. We propose that the state's benchmark plan selection in 2012 would be applicable for the 2014 and 2015 benefit years, and be based on plan benefits offered by the selected benchmark at the time of selection, including any applicable state-required benefits enacted prior to December 31, 2011. We intend to revisit this policy for subsequent years. We chose this approach for establishing a consistent set of benefits for two years in order to directly reflect current market offerings and limit market disruption in the first years of the Exchanges. We invite comment on the process that HHS should use to update EHB over time.

We intend to use the enforcement processes and standards established in 45 CFR part 150 to ensure that plans adhere to the EHB standards incorporated under the PHS Act. Part 150 sets forth HHS's enforcement processes under sections 2723 and 2761 of the PHS Act, with respect to the requirements of title XXVII of the PHS Act. Section 2723 generally provides that states have primary enforcement authority over health insurance issuers, but allows HHS to take enforcement actions against issuers in a state if a state has notified HHS that it has not enacted legislation to enforce or that it is not otherwise enforcing, or when HHS has determined that a state is not substantially enforcing one or more provisions of part A of title XXVII of the PHS Act. HHS may also take direct enforcement action against issuers in a state if HHS determines, pursuant to the process set forth in45 CFR part 150, that a state is not substantially enforcing a provision of part A of title XXVII of the PHS Act. This enforcement authority is extended through section 1321(c)(2) of the Affordable Care Act to apply to enforcement of the requirements under title I of the Affordable Care Act, including section 1302.

In § 156.100(c), we propose that if a state does not make a selection using the process defined in this section, the default base-benchmark plan will be the largest plan by enrollment in the largest product in the state's small group market.

b. Determination of EHB for Multi-State Plans (§ 156.105)

In § 156.105, we propose an alternative way of complying with the EHB requirement for multi-state plans offered under contract with U.S. Office of Personnel Management (OPM) pursuant to section 1334 of the Affordable Care Act. We propose that multi-state plans must meet benchmark standards set by OPM, which will promulgate forthcoming regulations and guidance related to its Multi-State Plan Program (MSPP).

c. EHB Benchmark Plan Standards (§ 156.110)

Many commenters urged HHS to establish standards or a process to ensure that an EHB-benchmark plan contains all 10 statutory EHB categories, reflects an appropriate balance among the categories, and is non-discriminatory. In addition, a number of commenters suggested factors for consideration in selecting an EHB-benchmark plan, including plan comprehensiveness, affordability, administrative simplicity, evidence-based practice, ethics, population health, inclusion of value-based insurance design, and continuity of coverage.

To clarify the relationship between the 10 statutory categories and the EHB-benchmark plan, in paragraph (a) we propose that the EHB-benchmark plan must provide coverage of at least the following categories of benefits described in section 1302(b)(1) of the Affordable Care Act: (1) Ambulatory patient services; (2) emergency services; (3) hospitalization; (4) maternity and newborn care; (5) mental health and substance use disorder services, including behavioral health treatment; (6) prescription drugs; (7) rehabilitative and habilitative services and devices; (8) laboratory services; (9) preventive and wellness services and chronic disease management; and (10) pediatric services, including oral and vision care.

With respect to the tenth category, we interpret ''pediatric services'' to mean services for individuals under the age of 19 years. Several states have asked HHS to define the age for coverage of ''pediatric services'' to ensure comprehensive and consistent treatment in every state. This interpretation is consistent with the age stated in the Affordable Care Act's prohibition on preexisting conditions for children, and the age limit for eligibility to enroll in the CHIP. While we recommend coverage of pediatric services up to age 19, states have the flexibility to extend pediatric coverage beyond the proposed 19 year age limit.

Since some base-benchmark plan options may not cover all 10 of the statutorily required EHB categories, in paragraph (b), we propose standards for supplementing a base-benchmark plan that does not provide coverage of one or more of the categories described in paragraph (a). In paragraph (b)(1), we propose that if a base-benchmark plan option does not cover any items and services within an EHB category, the base-benchmark plan must be

supplemented by adding that particular category in its entirety from another base-benchmark plan option. The resulting plan, which would reflect a base-benchmark that covers all 10 EHB categories, would be required to meet standards for non-discrimination and balance defined in paragraphs (d) and (e) of this section. After meeting all of these requirements, it would be considered the EHB-benchmark plan.

In paragraphs (b)(2) and (b)(3), we discuss two categories of benefits that may not currently be included in some major medical benefit plans, but which will be included in the EHB defined in § 156.110(a), based on section 1302(b)(1) of the Affordable Care Act. In our review of research on employer-sponsored plan benefits, including small employer products, HHS found that a number of potential benchmarks do not include coverage for pediatric oral and vision services, as they are often covered under stand-alone policies. To address these gaps, we propose targeted policy options for each of these benefit categories.

In paragraph (b)(2), we provide states with two options for supplementing base-benchmark plans that do not include benefits for pediatric oral care coverage. The first option, described in paragraph (b)(2)(i), is to supplement with pediatric coverage included in the FEDVIP dental plan with the largest enrollment. The second option, described in paragraph (b)(2)(ii), is to supplement with the benefits available under that state's separate CHIP program, if applicable.

Similarly, in paragraph (b)(3), we propose that if the base-benchmark plan does not include pediatric vision services, then these benefits may be supplemented from one of two options. The first option, described in (b)(3)(i), is to supplement pediatric vision coverage included in the FEDVIP vision plan with the largest national enrollment offered to Federal employees under 5 U.S.C. 8982. The second option, described in (b)(3)(ii), is to supplement pediatric vision coverage with the state's separate CHIP plan, if applicable. We believe that this additional option—an expansion of the policy presented in the EHB Bulletin—will provide states with valuable flexibility as they select their EHB benchmark plans. HHS will make benefit data available to facilitate any supplementation by states of their base-benchmark plans with benefits from FEDVIP dental and vision plans prior to the publication of this final rule.

In paragraph (c), we propose the process by which HHS would supplement a default base-benchmark plan, if necessary. We clarify that to the extent that the default base-benchmark plan option does not cover any items and services within an EHB category, the category must be added by supplementing the base-benchmark plan with that particular category in its entirety from another base-benchmark plan option. Specifically, we propose that HHS would supplement the category of benefits in the default base-benchmark plan with the first of the following options that offer benefits in that particular EHB category: (1) The largest plan by enrollment in the second largest product in the state's small group market as defined in § 155.20; (2) the largest plan by enrollment in the third largest product in the state's small group market as defined in § 155.20; (3) the largest national FEHBP plan by enrollment across states that is described in and offered to Federal employees under 5 U.S.C. 8903; (4) the plan described in paragraph (b)(2)(i) to cover pediatric oral care benefits; (5) the plan described in (b)(3)(i) to cover pediatric vision care benefits; and (6) habilitative services as described in § 156.110 (f) or § 156.115(a)(4).

In paragraph (d), we propose that the EHB-benchmark plan must not include discriminatory benefit designs. As set forth in § 156.125, those standards would prohibit benefit and network designs that discriminate on the basis of an individual's medical condition, or against specific populations as described in the statute. This proposed standard would apply both to benefit designs that limit enrollment, and those that prohibit access to care for enrollees. While we believe that it is unlikely that an EHB-benchmark plan will include discriminatory benefit offerings, this section proposes that any EHB-benchmark plan that does include discriminatory benefit designs must be adjusted to eliminate such discrimination in benefit design.

In paragraph (e), we propose implementing section 1302(b)(4) of the Affordable Care Act by proposing that the EHB-benchmark plan be required to ensure an appropriate balance among the categories of EHB so that benefits are not unduly weighted toward any category. We solicit comments on potential approaches to ensuring that the EHB-benchmark plans do not include discriminatory benefit designs and reflect an appropriate balance among the categories of EHB. In conducting research on employer-sponsored plan benefits and state-required benefits, HHS found that many health insurance plans do not identify habilitative services as a distinct group of services.[13] Accordingly, we are proposing a transitional policy for coverage of habilitative services that would provide states with the opportunity to define these benefits if not included in the base-benchmark plan. Specifically, in paragraph (f), we propose that in order to define EHB, if the base-benchmark plan does not include coverage of habilitative services the state may determine the services included in the habilitative services category. We believe that this transitional policy—which provides states with additional flexibility beyond what was initially outlined in the EHB Bulletin will provide a valuable opportunity for states to lead the development of policy in this area and welcome comments on this proposed approach to providing habilitative services. If states choose not to define the habilitative services category, plans must provide these benefits as defined in § 156.115.

Because states may propose benchmarks in formal comments on this proposed rule other than those tentatively proposed, HHS is requesting public comment on all possible EHB-benchmark plans, not just those included in Appendix A as proposed benchmarks. This would also include each potential base-benchmark plan available to a state for selection and all potential combinations of benefits used to supplement the base-benchmark plans to ensure coverage of at least the 10 statutory benefit categories as set forth in § 156.110. As an example, a state may select its largest small group product and, if the product is missing maternity coverage and pediatric dental coverage, supplement for missing maternity coverage with the second largest small group market product and for pediatric dental coverage with the state's CHIP dental plan. However, according to the process described in proposed § 156.110, the state may choose to supplement using the maternity benefit from any of the base-benchmark plan options in the state that offer maternity coverage, and the pediatric dental benefit from either FEDVIP or CHIP dental. In this example, commenters should consider: the state-selected EHB-benchmark plan as supplemented, the state-selected plan with other permissible supplementing options, and all other base-benchmark plans the state has the opportunity to

[13] ASPE Research Brief, ''Essential Health Benefits: Comparing Benefits in Small Group Products and State and Federal Employee Plans.'' December 16, 2011. Available at: *http://aspe.hhs.gov/health/reports/2011/MarketComparison/rb.shtml.*

select, as supplemented by any of the options available to that state.

d. Provision of EHB (§ 156.115)

In paragraph (a)(1), we propose that plans may have limitations on coverage that differ from the EHB-benchmark plan, but covered benefits must remain substantially equal to those covered by the EHB-benchmark plan. This standard applies to the covered benefits, limitations on coverage (including limits on the amount, duration, and scope of covered benefits), and prescription drug benefits that meet the requirements of § 156.120.

As previously noted, the Affordable Care Act identifies coverage of mental health and substance use disorder benefits as one of the 10 statutory benefit categories, and therefore as an EHB for non-grandfathered health insurance coverage in both the individual and small group markets. In paragraph (a)(2), under our authority to define EHB, we propose that in order to satisfy the requirement to offer EHB, mental health and substance use disorder services, including behavioral health treatment services required under § 156.110(a)(5), must be provided in a manner that complies with the parity standards set forth in § 146.136 of this chapter, implementing the requirements under the Mental Health Parity and Addiction Equity Act of 2008.

In paragraph (a)(3), we further propose that a plan does not provide EHB unless it provides all preventive services described in section 2713 of the PHS Act, as added by section 1001 of the Affordable Care Act. As codified in § 147.130, PHS Act section 2713 requires all non-grandfathered group health plans and non-grandfathered individual and group market plans that are not exempt from the coverage requirement to offer certain preventive services without cost-sharing. We believe it is appropriate to include a requirement for coverage of these services under the definition of EHB. Setting forth this explicit application of PHS Act section 2713 in regulation is necessary because EHB-benchmark plan benefits are based on 2012 plan designs and therefore could be based on a grandfathered plan not subject to PHS Act section 2713.

As an alternative to the transitional approach outlined in § 156.110(f), some states may prefer to provide issuers with the opportunity to define the specific benefits included in the habilitative services category if it is missing from the base-benchmark plan. Accordingly, we are proposing that a state may allow issuers time and experience to define these benefits. Specifically, in paragraph (a)(4), we propose that if the EHB-benchmark plan does not include coverage for habilitative services and the state does not determine habilitative benefits, a health insurance issuer must either: (1) Provide parity by covering habilitative services benefits that are similar in scope, amount, and duration to benefits covered for rehabilitative services; or (2) Decide which habilitative services to cover and report on that coverage to HHS. With regard to option (2), HHS intends to evaluate the habilitative services reported and further define habilitative services in the future. The issuer only has to supplement habilitative services when there are no habilitative services at all offered in the base benchmark plan and the state has not exercised its option to define habilitative services under § 156.110(f). We believe that this alternative approach would provide a valuable window of opportunity for review and development of policy in this area and welcome comments on this proposed approach.

We first introduced the concept of benefit substitution in the EHB Bulletin, which suggested that a plan offering the EHB could substitute a benefit or set of benefits for another benefit or set of similar benefits subject to certain constraints—for example, that the two sets of benefits be actuarially equivalent. In this proposed rule, we propose this policy for the substitution of benefits relative to the benefits defined by the EHB benchmark plan consistent with what HHS outlined in the EHB Bulletin. As outlined in paragraph (b)(1)(i), we propose that issuers may substitute benefits, or sets of benefits, that are actuarially equivalent to the benefits being replaced. We further propose in paragraph (b)(1)(ii) that substitution of benefits would be allowed in each of the 10 statutorily required benefit categories, meaning that substitution could only occur within benefit categories, not between different benefit categories. In paragraph (b)(1)(iii), we clarify that our proposed benefit substitution policy does not apply to prescription drug benefits. In paragraph (b)(2), we outline standards for an actuarial certification that must be submitted by an issuer to a state, which demonstrates that any substituted benefit, or group thereof, is actuarially equivalent to the original benefit or benefits contained in the EHB-benchmark for that state. Specifically, we propose that the report must: (i) Be conducted by a member of the American Academy of Actuaries; (ii) based on an analysis performed in accordance with generally accepted actuarial principles and methodologies; and (iii) use a standardized plan population. Lastly, in paragraph (b)(3), we propose that actuarial equivalence of benefits be determined based on the value of the service without regard to cost-sharing, as cost sharing will be considered in the actuarial value calculation described in § 156.135. We note that the resulting plan benefits would be subject to requirements of non-discrimination described in § 156.125. In addition, we clarify that under this approach, states have the option to enforce a stricter standard on benefit substitution or prohibit it completely. With the exception of the EHB category of coverage for pediatric services, a plan may not exclude an enrollee from coverage in an entire EHB category covered by the plan. For example, a plan may not exclude dependent children from the category of maternity and newborn coverage.

In response to our proposed approach to benefit substitution, we seek additional comment on the tradeoff between comparability of benefits and opportunities for plan innovation and benefit choice.

In paragraph (c), we propose to clarify that a plan does not fail to provide the EHB solely because it does not offer the services described in § 156.280(d). Here we extend the statutory provision in section 1303(b)(1)(A), that allows a QHP to meet the standards for EHB even if it does not offer the services described in § 156.280(d), to health insurance issuers that offer non-grandfathered coverage in the individual or small group market. We note that this provision applies to all section 1303 services, including pharmacological services.

In paragraph (d), we propose that an issuer of a plan offering EHB may not include routine non-pediatric dental services, routine non-pediatric eye exam services, and long-term/custodial nursing home care benefits as EHB. As previously noted, section 1302 of the Affordable Care Act requires that the EHB package include at least the 10 statutorily required categories of EHB, and be equal to the scope of benefits provided under a typical employer plan. In contrast with the benefits covered by a typical employer health plan, non-pediatric dental services, non-pediatric eye exam services, cosmetic orthodontia, and long-term/custodial nursing home care benefits often qualify as excepted benefits.[14] Pursuant to the direction provided in section 1302 to define benefits equal in scope to a

[14] For more information on excepted benefits, see 26 CFR 54.9831–1, 29 CFR 2590.732, 45 CFR 146.145, and 45 CFR 148.220.

typical employer plan, we propose that issuers of plans offering EHB may not include these benefits as EHB. We solicit comment on the exclusion of these specific benefits from EHB coverage.

e. Prescription Drug Benefits (§ 156.120)

In the EHB Bulletin, we indicated that we were considering an option under which, in order to be considered substantially equal to the EHB-benchmark plan, issuers would be required to cover at least one drug in each category and class in which the EHB-benchmark plan covered at least one drug. The specific drugs on each plan's drug list could vary under this approach, as long as a drug in each category and class was covered.

In response to the EHB Bulletin, a large number of commenters raised concerns about the comprehensiveness of prescription drug benefits under this potential approach. Specifically, many commenters indicated that a requirement to offer one drug per category and class could result in insufficient access to medications for individuals with certain conditions. Several commenters additionally recommended that the definition of EHB adopt the standards used in Medicare Part D, including the protected class policy under which all drugs in certain classes must be covered.[15] Conversely, other commenters emphasized the importance of flexibility for issuers to design a drug benefit that maximizes value for consumers. Based on these comments and the need to balance access with affordability, we propose the following approach, on which we solicit comment.

In paragraph (a)(1) we propose that in order to comply with the requirement to cover EHB, a plan would cover at least the greater of: (1) One drug in every category and class; or (2) the same number of drugs in each category and class as the EHB-benchmark plan. As such, if the EHB-benchmark drug list offers more than one drug in a category or class, then plans covering EHB would offer at least the number of drugs in the EHB-benchmark plan for that class. Research suggests that this is consistent with coverage in the small group market today: one study found that most existing small group plans cover more than one drug in each class.[16] In paragraph (a)(2) we propose that a QHP must report its drug list to the Exchange, an EHB plan operating outside of the Exchange must report its drug list to the state, and a multi-state plan must report its drug list to OPM. In paragraph (b) we clarify that a health plan does not fail to provide EHB prescription drug benefits solely because it does not offer drugs that are § 156.280(d) services.

We are considering using the most recent version of the United States Pharmacopeia's (USP) classification system as a common organizational tool for plans to report drug coverage because it is publically available, widely used, and comprehensive. A classification system functions as an organizational tool, similar to an outline or taxonomy. Directing plans to submit their drug list using the same classification system would facilitate review, analysis, and comparison of the number of drugs on the QHP's list to the number of drugs on the EHB Benchmark Plan's list. If adopted in the final rule, we will continue to assess the need for and value of such a tool and intend to work with states and the NAIC to facilitate state use of the USP classification system as a comparison tool.[17]

In general, each EHB plan would be able to cover different drugs than are covered by the EHB-benchmark plan, but those drugs must be presented using the USP classification system. This approach permits plan flexibility in the drug benefit design and the use of medical management tools, while ensuring that plans offer drug coverage consistent with that of the typical employer plan. An EHB plan would be able to cover any drugs subject to meeting the minimum number per category and class.

We also propose that drugs listed must be chemically distinct.[18] For example, offering two dosage forms or strengths of the same drug would not be offering drugs that are chemically distinct. Offering a brand name drug and its generic equivalent is another example of drugs that are not chemically distinct.

In paragraph (c), we propose that a plan offering EHB have procedures in place to ensure that enrollees have access to clinically appropriate drugs that are prescribed by a provider but are not included on the plan's drug list, which is consistent with private plan practice today. We solicit comments on this proposed requirement.

As discussed below, § 156.125 implements section 1302(b)(4)(B) of the Affordable Care Act, which directs the Secretary to ensure that EHBs are not designed in a discriminatory manner. In implementing § 156.125 in the context of prescription drug benefits, we encourage states to monitor and identify discriminatory benefit designs, or the implementation thereof and to test for such discriminatory prescription drug benefit designs. We will use information on complaints and appeals and data on drug lists to refine our prescription drug benefit review policy for future years.

f. Prohibition on Discrimination (§ 156.125)

Section 1302(b)(4) of the Affordable Care Act directs the Secretary to address certain standards in defining EHB, including elements related to balance, discrimination, the needs of diverse sections of the population, and denial of benefits. Section 1302(b)(4)(B) of the Affordable Care Act provides that the Secretary ensure that in terms of the benefits covered, payment rates provided, or incentives built into the definition of EHB, there is no discrimination based on age, disability, or expected length of life. Similarly, section 1302(b)(4)(C) of the Affordable Care Act provides that the Secretary take into account the health care needs of diverse segments of the population, including women, children, persons with disabilities, and other groups. In addition, section 1302(b)(4)(D) of the Affordable Care Act provides that the Secretary ensure that the EHB not be subject to denial to individuals against their wishes on the basis of the individuals' age or expected length of life, or of the individuals' present or predicted disability, degree of medical dependency, or quality of life. Taken collectively, we interpret these provisions as a prohibition on discrimination by issuers. To inform the development of the policy on discrimination in the EHB, we sought stakeholder feedback, and considered guidance provided by the IOM. Many commenters expressed concern about the potential for benefit designs that might discriminate against certain populations or consumers with significant health needs. Commenters also recommended that HHS establish an explicit non-discrimination policy for benefit design. Based on this information, in § 156.125, we propose an approach to addressing discrimination that would allow states

[15] CMS has identified certain ''protected categories and classes.'' In those protected categories and classes, Plan D formularies must include substantially all drugs that are FDA-approved.

[16] Available at: *http://www.avalerehealth.net/pdfs/Avalere_EHB_Formulary_Analysis.pdf.*

[17] The requirement to use USP classification applies only to submission of formulary for review/certification. Plans may continue to use any classification system they choose in marketing and other plan materials.

[18] The concept of chemically distinct is also described in the Medicare Part D Manual, Chapter 6, Section 30.2.1. More information is available at: *https://www.cms.gov/Medicare/Prescription-Drug-Coverage/PrescriptionDrugCovContra/downloads//Chapter6.pdf.*

to monitor and identify discriminatory benefit designs, or the implementation thereof. Under this approach, consistent with section 1563(d) of the Affordable Care Act, we would not prohibit issuers implementing the EHB standards from applying utilization management techniques. However, issuers could not use such techniques to discriminate against certain groups of people. For example, an issuer could use prior authorization, but could not implement prior authorization in a manner that discriminates on the basis of factors including age, disability, or length of life (for example, in terms of whether prior authorization is required, or when authorization is granted).

To address potentially discriminatory practices, based on the authority in section 1302(b)(4) of the Affordable Care Act, we propose in paragraph (a) that an issuer does not provide EHB if its benefit design, or the implementation of its benefit design, discriminates based on an individual's age, expected length of life, or present or predicted disability, degree of medical dependency, quality of life, or other health conditions. In paragraph (b), we reiterate that § 156.200 and § 156.225 also apply to plans providing EHB. Section 156.200 prohibits discrimination based on factors including but not limited to race, disability, and age. Section 156.225 prohibits marketing practices and benefit designs that result in discrimination against individuals with significant or high cost health care needs.

This proposal is intended to develop the framework for analysis tools to facilitate testing for discriminatory plan benefits. The IOM, in its report on the EHB, suggests that states have an important role in monitoring to ensure that issuers' plans do not contain outlier practices that would undermine EHB coverage. We believe that discrimination analyses could include evaluations to identify significant deviation from typical plan offerings including unusual cost sharing and limitations for benefits with specific characteristics. We also note that Medicare Advantage Program cost-sharing designs are subjected to this type of analysis for potential discriminatory effects. We welcome comments on our proposed approach to prohibiting discriminatory benefit design.

g. Cost-Sharing Requirements (§ 156.130)

Section 1302(c)(1) of the Affordable Care Act identifies an annual limitation on enrollee cost sharing. Section 1301(a)(1)(B) of the Affordable Care Act requires all qualified health plans to comply with these limits, and section 2707(a) of the Public Health Service Act requires compliance by issuers offering non-grandfathered health insurance coverage in the individual and small group markets. Standards proposed here, at § 156.130, would be applicable to QHPs pursuant to 45 CFR 156.200(b)(3), which requires QHPs to offer the essential health benefits package described at section 1302(a) of the Affordable Care Act. Similarly, these standards would be applicable to health insurance coverage offered by health insurance issuers in the individual and small group markets pursuant to § 147.150 of these regulations, as discussed earlier.

Cost sharing is defined in § 156.20 as any expenditure required by or on behalf of an enrollee with respect to essential health benefits. The term includes deductibles, coinsurance, copayments, or similar charges, but excludes premiums, balance billing amounts for non-network providers, and spending for non-covered services. We discuss here the implications and rationale of setting these standards in the context of their application to QHPs and issuers of health plans in the individual and small group markets.

In § 156.130(a), we codify the Affordable Care Act's annual limitation on cost sharing for 2014 and in subsequent years. Section 1302(c)(1)(A) of the Affordable Care Act identifies the limit on total enrollee cost-sharing that can be incurred. The annual limitation on cost sharing ensures that health plans pay for significant health expenses associated with EHB and the risk of medical debt or bankruptcy for individuals insured by such plans is limited. Once the limitation on cost sharing is reached for the year, the enrollee is not responsible for additional cost sharing for EHBs for the remainder of the plan year.

Section 156.130(a)(1) ties the annual limitation on cost sharing for plan years beginning on or after January 1, 2014, to the enrollee out-of-pocket limit for high-deductible health plans (HDHP), as calculated pursuant to section 223(c)(2)(A)(ii) of Internal Revenue Code of 1986 (the Code) based on section 1302(c)(1)(A) of the Affordable Care Act. Paragraph (a)(1)(i) addresses the limitation for self-only coverage and paragraph (a)(1)(ii) addresses the limitation for coverage other than self-only coverage; the practical effect for coverage other than self-only coverage is that the annual limitation will be double the limitation applicable to self-only coverage. For illustrative purposes only, for the year 2013 these amounts will be $6,250 in 2013 for self-only and $12,500 for non-self only coverage.[19] In § 156.130(a)(2)(i), we propose that the annual limitation on cost sharing is increased by the premium adjustment percentage, which is set by HHS as described in § 156.130(e), in years after 2014 for self-only coverage. In § 156.130(a)(2)(ii), we propose that the annual limitation on cost sharing in years after 2014 for non-self only coverage is double the annual limitation on cost sharing for self-only coverage for that year. These proposed rules basically codify the statute.

Sections 1302(c)(2)(A)(i) and 1302(c)(2)(A)(ii) of the Affordable Care Act define and § 156.130(b) codifies the annual limitation on deductibles for health plans offered in the small group market. This limitation on cost-sharing is imposed on QHPs by section 1301(a)(1)(B) of the Affordable Care Act and 45 CFR 156.200(b)(3). The limitation is also imposed on non-grandfathered coverage in the small group market by section 2707(b) of the PHS Act, which we propose here to implement in proposed 45 CFR 147.150(a). In § 156.130(b)(1)(i), we propose that the annual limitation on deductibles for the year 2014 are $2,000 for self-only coverage and in § 156.160(b)(1)(ii), $4,000 for non self-only coverage. In § 156.130(b)(2) we propose that in years beyond 2014, the annual deductible limits for self-only plans are increased by the premium adjustment percentage described in paragraph (e) based on section 1302(c)(2)(B) of the Affordable Care Act. In § 156.130(b)(2)(i), we specify this for self-only coverage and in § 156.130(b)(2)(ii), we specify this is doubled for family coverage or coverage of any type other than self-only.

Section 1302(c)(2)(C) of the Affordable Care Act directs that the limit on deductibles described in section 1302(c)(2)(A) for a health plan offered in the small group market be applied so as to not affect the actuarial value of any health plan. We interpret and implement this provision through our proposal at § 156.130(b)(3) by authorizing a health insurance issuer to make adjustments to its deductible to maintain the specified actuarial value for the applicable level of coverage required under proposed § 156.140 and annual limitation on cost sharing. In § 156.130(b)(3), we propose that a plan may exceed the annual deductible limit if it cannot reasonably reach a given level of coverage (metal tier) without doing so.

[19] *http://www.irs.gov/pub/irs-drop/rp-12-26.pdf.*

We propose to use a ''reasonableness'' standard and request comment on what evidence or factors should be required from an issuer and considered in determining whether this standard is met with respect to health insurance coverage subject to 2707(b) of the PHS Act. While it may be possible to develop plan designs to meet all of these constraints, we believe it could be difficult to develop plans with reasonable coinsurance or equivalent cost sharing rates in the future, for example in bronze plans. An alternative would be to use the actuarial value calculator described in § 156.135 to determine a reasonable increase to the amounts described in paragraph (b) that can be used by all plans in the small group market. We solicit comment on this approach on whether a specific variation threshold should be identified, and if so, how any such threshold should be established.

Section 1302(c)(2)(A) of the Affordable Care Act provides that in certain circumstances, the deductible maximums described in § 156.130(b)(1) may be increased by the maximum amount of reimbursement ''reasonably available'' to an employee under a flexible spending arrangement (FSA) described in section 106(c)(2) of the Code. We considered permitting the maximum deductible to increase by the amount available to each employee under the FSA. Permitting such variability in the maximum deductible by employee would require different deductible plans to be available to different employees based on an FSA decision made during the open enrollment process. Because we interpret section 1302(c)(2)(A) of the Affordable Care Act as permitting but not requiring FSAs to be taken into account when determining the deductible maximum, we propose to standardize the maximum deductible for all health plans in the small group market at $2,000 for self-only coverage and $4,000 for non-self-only coverage, as described in § 156.130(b)(1) and potentially adjusted in § 156.130(b)(3), and not increase the deductible levels by the amount available under the FSA. However, we welcome comments on permitting such an adjustment, including permitting an employer to attest to the amount available to employees in an FSA as the basis for increasing the maximum permissible deductible for employees.

In § 156.130(c), we propose a special rule for network plans. Under our proposal, cost- sharing requirements for benefits from a provider outside of a plan's network do not count towards the annual limitation on cost sharing, as defined in paragraph (a) of this section, or the annual limitation on deductibles, as defined in paragraph (b) of this section. We consider an out-of-network provider to be a provider with whom the issuer does not have a contractual arrangement with respect to the applicable plan. For example, if an issuer offers a three-tiered network plan, with the third tier considered to be ''out-of-network'' (that is, providers without contractual relationships for providing services), only the cost sharing that an enrollee pays for benefits provided under the first and second tiers would count towards the annual limitation on cost sharing (and, if the plan is one offered in the small group market, the annual limitation on deductibles). Therefore, an enrollee who utilizes many services could reach the annual limitation on cost sharing, but still be required to pay cost sharing if the enrollee chooses to purchase services outside of the plan's network that year. This policy aligns with the definition of the enrollee out-of-pocket limit for high deductible health plans, articulated in section 223(c)(2)(D) of the Code. We believe this policy would allow issuers greater flexibility to design innovative plan benefit structures. We note that nothing in this proposal explicitly prohibits an issuer from voluntarily establishing a maximum out-of-pocket limit applicable to out-of-network services, or a state from requiring that issuers do so. We welcome comment on this approach.

In § 156.130(d), we codify sections 1302(c)(1)(B) and 1302(c)(2)(B) of the Affordable Care Act by requiring that the annual limitation on cost sharing and the annual limitation on deductibles for a plan year beginning after calendar year 2014 only increase by multiples of $50 and must be rounded to the next lowest multiple of $50.

In paragraph (e), we codify section 1302(c)(4) of the Affordable Care Act, which specifies that the premium adjustment percentage is calculated as the percentage (if any) by which the average per capita premium for health insurance coverage for the preceding calendar year exceeds such average per capita premium for health insurance for 2013. This ensures that the annual limitation on cost sharing and the annual limitation on deductibles change with health insurance market premiums over time. HHS will publish the methodology and annual premium adjustment percentage in the annual HHS notice of benefit and payment parameters.[20]

In paragraph (f), we codify section 1302(c)(2)(D) of the Affordable Care Act, which states that the annual deductibles do not apply to preventive care described in § 147.130. In paragraph (g), under our authority in section 1302(b)(4)(B) of the Affordable Care Act prohibiting EHBs from discriminating against individuals based on age, disability, or expected length of life, and our general authority under section 1321(a)(1)(D) of the Affordable Care Act to establish appropriate requirements by regulation, we propose to require that cost-sharing requirements conform with the anti-discrimination provisions of § 156.125.

Paragraph (h) would implement the requirements in section 1302(b)(4)(E) of the Affordable Care Act that (1) emergency department services will be provided out-of-network[21] without imposing any requirement under the plan for prior authorization of services, or any limitation on coverage for the provision of services, that is more restrictive than the requirements or limitations that apply to emergency department services received from network providers, and (2) cost sharing in the form of a copayment or coinsurance for emergency department services amount for an out-of-network provider is the same as would apply to an in-network provider. Because we have already promulgated regulations at § 147.138(b)(3) implementing identical statutory language in section 2719A(b)(1)(C)(ii)(II) of the Public Health Service Act regarding limitations on cost-sharing in the emergency room context, we are proposing to require in paragraph (h) that an issuer comply with the cost-sharing requirements at 45 CFR147.138(b)(3). This treatment of out-of-network emergency services extends the in-network treatment of cost-sharing payments and limitations to out-of-network emergency services as a part of the annual limit on cost sharing defined in paragraph (a).

h. AV Calculation for Determining Level of Coverage (§ 156.135)

As we stated previously in connection with § 156.20, AV is a measure of the percentage of expected health care costs a health plan will cover for a standard

[20] The annual HHS notice of benefit and payment parameters will first be published this year, as discussed in the Standards Related to Reinsurance, Risk Corridors and Risk Adjustment, final rule (77 FR 17220 (March 23, 2012)).

[21] For consistency, we are using the term ''out-of-network'' here to refer to services where the ''provider of services does not have a contractual relationship with the plan,'' as this phrase is used in section 1302(b)(4)(E).

population and can be considered a general summary measure of health plan generosity. The Affordable Care Act directs issuers offering non-grandfathered health insurance coverage in the individual and small group markets to ensure that plans meet a level of coverage specified in section 1302(a)(3) of the Affordable Care Act and defined in § 156.140(b). Under the statute, each level of coverage corresponds to an AV calculated based on the cost-sharing features of the plan as described above. In this section, we propose an approach for issuer calculation of AV as discussed in the AV/CSR Bulletin.[22] In paragraph (a), we propose that an issuer would use the AV calculator developed by HHS to determine its level of coverage as proposed in § 156.140(b), subject to the exception in paragraph (b).

The AV calculator, as proposed here, has been developed using a set of claims data weighted to reflect the standard population projected to enroll in the individual and small group markets for the identified year of enrollment. Plans would input information on cost-sharing parameters. A methodology document including both the logic behind the calculator and a description of the development of the standard population, represented in the calculator as tables of aggregated data called continuance tables, is available and proposed at *http://cciio.cms.gov/resources/regulations/index.html#pm* to promote transparency. The document is part of the proposal for the use of the AV calculator in determining actuarial value of an applicable plan.

We solicit comment on the methodology for the development of the AV calculator and the continuance tables, which were developed based on the standard population. The consistent methodology in AV calculation ensures a consistent set of assumptions and methods in AV calculation for all health plans using the calculator, resulting in comparability for consumers since plans with the same cost-sharing design would have the same AV. Because empirically only a small percentage of total costs come from out-of-network utilization, the difference in a plan's AV resulting from the inclusion of out-of-network utilization in the AV calculation is small. Therefore, the proposal for determining AV and, thus, the calculator only considers in-network utilization. Comments from the American Academy of Actuaries to the AV Bulletin confirmed that, for the majority of plans, estimations only including in-network cost sharing are appropriate even if some plans offer in-network services only, while other plans offer out-of-network services with higher cost-sharing, because in general, out-of-network costs are a very small percentage of total medical spending. The calculator and accompanying continuance tables are available at *http://cciio.cms.gov/resources/regulations/index.html#pm* and are subject to comment.

Under this proposal, the AV calculator will be available for both formal and informal calculations and could be used as a tool to assist in the design of health plans. The calculator will allow health plan issuers to devise a compliant plan without the burden of making the assumptions needed or paying for the analysis for an AV calculation. Thus, the calculator would reduce issuer burden in calculating AV. We solicit comment on this proposal to direct the use of the AV calculator and on the parameters described here for development of the AV calculator.

Consistent with section 1302(d)(2)(A) of the Affordable Care Act, that AV be calculated based on the provision of the EHB to a standard population, we propose that the AV calculator will use one or more sets of national claims data reflecting plans of various levels of generosity as the underlying standard population. We considered distributing a standard set of de-identified individual-level claims data to issuers as the standard population and allowing them to estimate the AV of their plans by comparing that standard set of claims against their plan designs. However, we are not aware at this time of a sufficiently robust person-level data set that could be made publicly available. As another alternative, we considered distributing only the continuance tables, representing the standard population and its utilization, to issuers to perform AV calculations. Under this method, the set of assumptions would be more uniform, but there would still be inconsistency and variation among issuers depending on the specific calculation method and logic used by each issuer. Comments on the AV/CSR Bulletin were generally supportive of the approach we propose here to develop a publicly available and transparent AV calculator based on a standard population represented through continuance tables.

In paragraph (b), we propose options for an issuer whose plan designs do not permit the calculator to provide an accurate summary of plan generosity. Although HHS anticipates that the vast majority of plans will be able to use the calculator in 2014 and beyond, no uniform calculator can accommodate the entire potential universe of plan designs. Therefore, there may be a small subset of plans whose design would not be compatible with the calculator. We intend to interpret this standard as dependent on whether the calculator takes into account or accommodates all material aspects of a plan's cost sharing structure. For example, we expect that the calculator will not be able to accommodate plan designs with multiple coinsurance rates as different levels of out-of-pocket spending are met or a multi-tier network with substantial amounts of utilization expected in tiers other than the lowest-priced tier. As proposed in paragraph (b)(1), these plans would need to submit to the appropriate entity (the state, HHS, the Exchange, or OPM) documentation in the form of actuarial certification that they have complied with one of the methods described below.

Paragraph (b)(2) proposes two options to accommodate plans with benefit designs that cannot be accommodated by the AV calculator. In paragraph (b)(2)(i), we propose that a health plan issuer be permitted to decide how to adjust the plan benefit design (for calculation purposes only) to fit the parameters of the calculator and then, pursuant to paragraph (b)(2)(ii), have an actuary who is a member of the American Academy of Actuaries certify that the methodology is in accordance with generally accepted actuarial principles and methodologies. In paragraph (b)(3), we propose a second option, that the plan may use the calculator for the plan design provisions that correspond to the parameters of the calculator and then have a member of the American Academy of Actuaries calculate appropriate adjustments to the AV as determined by the AV calculator for plan design features that deviate substantially, in accordance with generally accepted actuarial principles and methodologies. We propose in paragraph (b)(4) that, to align with the AV calculator and the rules proposed here for how AV is determined, plans using one of these methods would exclude out-of-network costs when using additional calculation methods. We also note, however, that a multi-tiered plan should consider all network tiers in its AV calculation and exclude only costs that are truly out-of-network (providers with which the plan has no contractual relationship).

In paragraph (c), we propose a standard for the treatment of small group market HDHPs offered with a health savings account (HSA) or a health plan in the small group market integrated with a health reimbursement

[22] Available at *http://cciio.cms.gov/resources/files/Files2/02242012/Av-csr-bulletin.pdf.*

arrangement (HRA), so that HDHP and HSAs/HRAs are integrated. Recognizing that simply calculating the AV of the HDHP based on the insurance plan alone could understate the value of coverage if the values of the employer contribution to such accounts are not included, and that employer-provided HSAs and HRAs are generally the equivalent of first dollar coverage for any cost-sharing requirements encountered by the enrollee, in paragraph (c)(1), we propose that the annual employer contributions to HSAs and amounts newly made available under HRAs for the current year should count within the plan design. This treatment of HSA and HRA contributions is similar to how other employer contributions toward cost-sharing are treated within the plan design, such that a plan with a $0 deductible has the same AV as a plan with a $1,000 deductible plus a $1,000 HSA or HRA.

Section 1302(d)(2)(B) of the Affordable Care Act directs the Secretary to issue regulations under which employer contributions to an HSA (within the meaning of section 223 of the Internal Revenue Code of 1986) may be taken into account in determining the level of coverage for a plan of the employer. HHS is interpreting the statute to allow for a similar treatment of HRAs because amounts newly made available under an HRA integrated with a small group market plan have a similar impact on AV calculation as employer contributions to an HSA when adjusted as described below in the discussion of paragraphs (c)(2)(i) and (c)(2)(ii). In paragraph (c)(2), we propose that these contributions be applied to the plan design to account for the fact that HSA and HRA contributions are the equivalent of first dollar coverage for any cost-sharing requirements encountered by the enrollee and similar to other employer cost-sharing contributions to plan design.

In paragraphs (c)(2)(i) and (c)(2)(ii), we propose that the AV calculator would include any current year HSA contributions or amounts newly made available under an HRA for the current year as an input into the calculator that can be used to determine the AV of an employer health benefit plan. We note that employee HSA contributions will not count towards AV, nor do these provisions apply to the coverage offered by issuers in the individual market because HSAs in the individual market are funded directly by the enrollee.

Paragraph (d) proposes that in years 2015 and after, a state-specific data set may be used as the standard population (i.e. in place of the HHS-issued continuance tables) for AV calculations if approved by HHS. Issuers in such a state would still use the AV calculator logic, but the underlying data used for generating the AV would be specific to the state. Paragraphs (d)(1) through (5) propose criteria for acceptable state claims data and their use. The proposed criteria are based on our review of a July, 2011 American Academy of Actuaries issue brief.[23] Paragraph (d)(1) proposes that the data support the calculation of AVs for the full range of health plans available in the market, meaning that the structure and definitions for the data set must be standardized and clearly documented. Paragraph (d)(2) proposes that the underlying population must be derived from the non-elderly population likely to be covered by private plans in the 2014 market and beyond. For example, the underlying population cannot be based primarily on Medicaid or Medicare enrollees. This criterion is also intended to ensure that the data set represents members in the then current small group and individual markets for the state. Paragraph (d)(3) proposes that the data set must be large enough so that (i) demographic patterns and spending patterns are stable over time to accommodate periodic updates and (ii) a substantial majority of the state's insured population is included, subject to the requirement in paragraph (2) to cover the expected insured population in 2014. Paragraph (d)(4) proposes that, if a state intends to reflect geographic differences within the state, the data set must be sufficiently large and geographically diverse for area-specific calculations. Paragraph (d)(5) proposes that the data set must capture a wide range of health care services typically offered, including those that fall within EHB and are at the time of submission offered in a typical employer plan. For example the data set must include claims for maternity, prescription drugs, and mental health benefits. Comments on the AV/CSR Bulletin[24] generally supported the proposal to allow states the flexibility to provide their own data sets. Some groups commented that the state data would need to be at least as robust as the national data set. HHS believes that the parameters outlined above, and adopted from the American Academy of Actuaries' recommendations, will ensure that state specific data are sufficiently robust. We solicit comment on this proposal and our adoption of criteria identified by the American Academy of Actuaries.

In paragraph (e), HHS proposes that the default standard population provided by HHS, which is described in paragraph (f) and represented in the continuance tables incorporated into this regulatory proposal by reference, would be used unless the state submits its own standard population consistent with paragraphs (d) and (e). In paragraph (e), HHS proposes that the state data set be submitted in a format that can support the AV calculator described in paragraph (a). Because HHS will use continuance tables to support the development of the AV calculator, we anticipate that states will also submit any state-specific data sets in the form of continuance tables. HHS intends to provide a template and instructions for these submissions.

Several comments on the AV/CSR Bulletin requested additional guidance on the process and timeline for state submission of data. We remain open to comments on the use of state data for 2014, but given timing constraints, we propose that the option for states to submit a state-specific standard population will begin for plan years starting in 2015. We expect that submissions will be due in the second quarter of the year prior to the benefit year.

Paragraph (f) proposes that HHS will develop the standard population to be used to calculate AV in accordance with section 1302(d)(2)(A) of the Affordable Care Act, which requires that AV be calculated using a standard population. This standard population will be used for AV calculation under § 156.135. Comments on the AV/CSR Bulletin were generally supportive of the proposal to use a standard data set developed by HHS, with the option of state flexibility to provide a state-specific data set for AV calculations. We solicit comment on whether the AV calculator should allow for this variation between states. We also solicit comment on whether we should consider including up to three regional adjustments for geographic price differences as described in the AV/CSR Bulletin.

i. Levels of Coverage (§ 156.140)

This section describes standards for meeting the Affordable Care Act provisions that issuers offering QHPs or non-grandfathered health plans in the individual and small group markets offer plans that meet distinct levels of coverage; we note that an applicable issuer may offer a catastrophic plan, as described in section 1302(e) of the Affordable Care Act, in lieu of a health plan that meets one of these levels of

[23] Available at *http://www.actuary.org/pdf/health/Actuarial_Value_Issue_Brief_072211.pdf.*

[24] *http://cciio.cms.gov/resources/files/Files2/02242012/Av-csr-bulletin.pdf.*

coverage. Section 1302(d)(2) of the Affordable Care Act directs the Secretary to issue regulations on the calculation of AV and its application to the levels of coverage.

Paragraph (a) proposes the general requirement that the AV of a plan must be calculated according to § 156.135, within de minimis variation, in order to determine a plan's level of coverage.

Paragraph (b) proposes to codify section 1302(d)(1) of the Affordable Care Act, which requires that a bronze plan has an AV of 60 percent; a silver plan, 70 percent; a gold plan, 80 percent; and a platinum plan, 90 percent.

Paragraph (c) proposes standards for de minimis variation. Section 1302(d)(3) of the Affordable Care Act authorizes the Secretary to determine a reasonable de minimis variation in the AVs used to determine levels of coverage. In paragraph (c), we propose a de minimis variation of +/- 2 percentage points for all non-grandfathered plans. For example, a silver plan could have an AV between 68 and 72 percent. We believe that a de minimis amount of +/- 2 percentage points strikes the right balance between ensuring comparability of plans within each metal level and allowing plans the flexibility to use convenient cost-sharing metrics. Comments on this proposal in the AV/CSR Bulletin were generally supportive of this approach.

j. Determination of Minimum Value (§ 156.145)

Section 1302(d)(2)(C) of the Affordable Care Act sets forth the rules for calculating the percentage of the total allowed costs of benefits provided under a group health plan or health insurance coverage. Section 36B(c)(2)(C)(ii) of the Code provides that an employer-sponsored plan provides minimum value (MV) if this percentage is no less than 60 percent. For the purpose of determining that a given plan provides MV, we propose in paragraph (a) that the percentage of the total allowed cost of benefits will be determined using one of the main methodologies as described in Treasury Notice 2012–31, released on May 14, 2012 (''MV Notice''). We also propose, in paragraph (c), that MV for employer-sponsored self-insured group health plans and insured large group health plans will be determined using a standard population that is based upon large self-insured group health plans. We also propose that employer contributions to an HSA and amounts newly made available under an HRA will be taken into account in determining MV in accordance with the principles applied in taking such amounts into account in determining AV.

In applying this approach to determining MV, in paragraph (a)(1), we propose that employer-sponsored self-insured and insured large group plans will be able to use the MV calculator, which will be made available by HHS and the Internal Revenue Service. Under this proposal, the MV calculator will be similar in design to the AV calculator but based on continuance tables and a standard population reflecting claims data of typical self-insured employer plans. This will be a better reflection of the typical employer plan that will use the MV calculator, resulting in a similar or higher actuarial value than the AV calculator for the same benefit designs. This approach would permit an employer-sponsored plan to enter information about the plan's cost sharing to determine whether the plan provides MV.

As an alternative to using the MV calculator, we propose in paragraph (a)(2) that an employer-sponsored plan would be able to use an array of design-based safe harbors published by HHS and the Internal Revenue Service in the form of checklists to determine whether the plan provides MV. Each safe harbor checklist would describe the cost sharing attributes of a plan that apply to the following four core categories of benefits and services which comprise the vast majority of group health plan spending as described in the MV Notice: physician and mid-level practitioner care, hospital and emergency room services, pharmacy benefits, and laboratory and imaging services.

Finally, if an employer-sponsored plan contains non-standard features that are not suitable for the use of the calculator and do not fit the safe harbor checklists, we propose in paragraph (a)(3) to permit MV to be determined through certification by an actuary without the use of the MV calculator. The actuary would make this determination based on the plan's benefits and coverage data and the standard population, utilization, and pricing tables available for purposes of the valuation of employer-sponsored plans. This final option would be available only when one of the other methodologies is not applicable to the employer-sponsored plan. We propose that the determination of MV must be made by a member of the American Academy of Actuaries, based on an analysis performed in accordance with generally accepted actuarial principles and methodologies. We intend to issue applicable guidance concerning the actuarial analysis.

In the event that a plan uses the MV calculator and offers an EHB outside of the parameters of the MV calculator, we propose in paragraph (b)(1) that an actuary who is a member of the American Academy of Actuaries will be permitted to determine the value of that benefit and add it to the result derived from the MV calculator in accordance with the generally accepted actuarial principles and methodologies. This aims to consider the value of benefits that are among the EHB options, but not necessarily in a state benchmark because there is no EHB standard for employer-sponsored self-insured group health plans or insured large group health plans. There is no requirement that employer-sponsored self-insured and insured large group health plans offer all categories of EHB or conform to any of the EHB benchmarks. For clarity, alignment, and administrative ease, we propose in paragraph (b)(2), for purposes of determining that a group health plan provides MV, that such plans will be permitted to take into account all benefits provided by the plan that are included in any of the EHB benchmarks.

We also propose, in paragraph (c), that MV determinations under § 156.145(a) will be based on a standard population based on data from self-insured group health plans.

k. Application to Stand-alone Dental Plans inside the Exchange (§ 156.150)

Section 1302 of the Affordable Care Act outlines the standards for health plans to cover the ten categories of the EHB. Section 1311(d)(2)(B)(ii) of the Affordable Care Act, as codified in § 155.1065 of this subchapter, allows the pediatric dental component of the EHB to be offered through a stand-alone dental plan in an Exchange. If stand-alone dental plans are available in an Exchange, section 1302(b)(4)(F) of the Affordable Care Act permits QHPs offered in that Exchange to exclude coverage of the pediatric dental component of the EHB. This is the only exception to EHB coverage permitted under section 1302. Section 1311 also outlines how cost-sharing limits and AV would apply to such stand-alone dental plans.

In paragraph (a), we propose that stand-alone dental plans would have a separate annual limitation on cost sharing from QHPs covering the remaining EHBs. While the annual limitation on cost-sharing for a QHP must be consistent with § 156.130, the annual limitation on cost sharing for a stand-alone dental plan would be considered separately. We propose that the plan must demonstrate the annual

limitation on cost sharing for the stand-alone dental plan is reasonable for coverage of the pediatric dental EHB. We request comment on this proposal and what parameters should be considered a ''reasonable'' annual limitation on cost sharing. We note that the annual limitation on cost sharing would be applicable to in-network services only, consistent with § 156.130(c).

We considered applying the full annual limitation on cost sharing described in section 1302(c) of the Affordable Care Act separately to stand-alone dental plans. However, if a person purchased pediatric dental benefits through a stand-alone plan, it would effectively double the potential out-of-pocket costs, putting individuals with similar coverage, but purchasing pediatric dental through a stand-alone plan, at much greater financial risk.

Another alternative would be to exclude the pediatric dental benefit entirely from the annual limitation on cost sharing, whether it is offered through a health plan or through a stand-alone dental plan. However, we were concerned that not applying any annual limitation on cost sharing to stand-alone dental plans would treat such benefits differently than plans offering an embedded pediatric dental benefit, which could create a price advantage over medical plans.

We also considered requiring that the combination of the annual limitations on cost-sharing in the QHP and the stand-alone dental plan must not exceed the limitations identified in § 156.130, regardless of whether the person received coverage through a health plan that covers all of the 10 EHB categories including dental, or received coverage through a combination of a QHP and a stand-alone dental policy. However, this approach would entail a high level of coordination between an Exchange, QHP issuers, and issuers of stand-alone dental plans to track an enrollee's cost sharing and notify the issuers if the limit was reached, which we are concerned may be difficult to administer.

We request comment generally on whether this approach to applying the annual limitations on cost-sharing standard is appropriate for stand-alone dental plans.

In paragraph (b), we propose actuarial value standards for stand-alone dental plans. The calculator developed by HHS under § 156.135 would be inappropriate for stand-alone dental plans because the standard population that underlies the HHS-developed calculator cannot be reasonably adapted to reflect a pediatric-only population that utilizes dental services. Accordingly, in paragraph (b)(1), we propose that stand-alone dental plans may not use the HHS-developed AV calculator. Instead, given the unique and narrow focus of the stand-alone dental plan market, we propose in paragraph (b)(2) that any stand-alone dental plan certified to meet an 75 percent AV, with a de minimis range of +/- 2 percentage points, be considered a ''low'' plan and anything with an AV of 85 percent, with a de minimis range of +/- 2 percentage points, be considered a ''high'' plan. We request comment on whether a de minimis variation of +/- 2 percentage points is feasible for stand-alone dental plans. The ''high/low'' actuarial value standard would apply to the pediatric dental EHB only in a stand-alone dental plan. We note that when the pediatric dental EHB is included in a health plan, the AV calculator would apply to the pediatric dental EHB. In order to meet this standard we propose in paragraph (b)(3) that the issuer of a stand-alone plan demonstrate that the plan meets the ''high'' or ''low'' level of coverage as certified by a member of the American Academy of Actuaries using generally accepted actuarial principles. This proposal would provide a means of comparison for consumers as well as providing a comparable method of fulfilling the offering requirements laid out in § 156.200(c)(1). We request comment on this proposal and whether the actuarial value standards for a ''high'' and ''low'' plan are appropriate.

As an alternative, we considered requiring that a stand-alone dental plan meet at least a silver or gold level of coverage as certified by a member of the American Academy of Actuaries using generally accepted actuarial principles. However, some commenters noted that because pediatric dental coverage is comprised largely of preventive services with 100 percent cost-sharing covered by the plan, in order to meet a 70 percent AV, issuers of stand-alone dental plans would need to add a deductible that is not currently included in plans. In contrast, our proposal would be more in line with current industry practices and would result in fewer out-of-pocket costs for consumers.

3. Subpart C—Accreditation

Accreditation of QHP Issuers (§ 156.275)

Recognition of Accrediting Entity by HHS (§ 156.275(c)(1) and § 156.275(c)(4))

This proposed rule would amend the current (''phase one'') recognition process and provide additional accrediting entities the opportunity to apply and demonstrate how they meet the conditions for recognition articulated in section 1311(c)(1)(D) of the Affordable Care Act and 45 CFR 156.275(c)(2) through (c)(5).[25] HHS intends, through future rulemaking, to establish a phase two recognition process which may establish additional criteria for recognized accrediting entities.

HHS's initial survey of the market showed that two entities, NCQA and URAC, met the statutory requirements for accreditation. During the public comment period for 45 CFR 156.275, additional accrediting entities indicated that they may soon meet the accreditation conditions specified in 45 CFR 156.275 (c)(2) and (c)(3). HHS believes that opening up the phase one recognition process to provide other entities an opportunity to apply would provide expanded choices regarding QHP accreditation for Exchanges, states and issuers.

Therefore, HHS proposes to amend § 156.275(c)(1) to provide an application and review process for phase one recognition of accrediting entities. Under this proposal, accrediting entities could apply and demonstrate how they meet the requirements for recognition as established in 45 CFR 156.275 (c)(2) and (c)(3). Such applications must include the documentation described in 45 CFR 156.275(c)(4), including current accreditation standards and requirements, processes, and measure specifications for performance measures, and a document that illustrates how (via a crosswalk) the accrediting entity meets the standards established in § 156.275(c)(2) and (c)(3). This proposal would require HHS, within 60 days of receiving the complete application, to publish a notice in the **Federal Register** identifying the accrediting entity making the request for phase one recognition, summarizing HHS's analysis of whether the applicant meets the criteria for recognition, and providing no less than a 30-day public comment period on this applicant accrediting entity. HHS will compare the applicant accrediting entity's standards and processes to the requirements for recognition established in 45 CFR 156.275(c)(2) and (3). This assessment will be the same as that underlying the recognition of NCQA and URAC. After the close of the comment period, HHS will notify the public in the **Federal Register** of the names of the accrediting entities

[25] Patient Protection and Affordable Care Act; Data Collection to Support Standards Related to Essential Health Benefits; Recognition of Entities for the Accreditation of Qualified Health Plans (CMS–9965–F), 77 FR 42,658 (July 20, 2012).

recognized and not recognized to provide accreditation of QHPs for the purposes of QHP certification. If an accrediting entities is not recognized, then it may re-apply for recognition following the same application procedure as proposed in § 156.275(c)(1).

HHS is also amending § 156.275(c)(4)(i) to delete the timeframe of submitting the documentation within 60 days of publication of this final rule. Under the amended application and review process proposed in § 156.275(c)(1), accrediting entities must provide the documentation described in § 156.275(c)(4)(i) with their application for review.

In a **Federal Register** notice being published concurrently with this proposed rule, we are notifying the public that NCQA and URAC are recognized as accrediting entities for the purposes of QHP certification consistent with the final rule published on July 20, 2012. NCQA and URAC do not need to reapply under this proposal but remain subject to the requirements of 45 CFR 156.275(c), including (c)(4)(ii), which requires recognized accrediting entities to provide to HHS any proposed changes or updates to the accreditation standards and requirements, processes, and measure specifications for performance measures with 60 days' notice prior to public notification. This proposed amendment of § 156.275(c) only renumbers the applicable portion of the regulation recognizing NCQA and URAC. As discussed in the preamble to the final rule published on July 20, 2012, the recognition of accrediting entities in phase one is effective until it is rescinded or this interim phase one process is replaced by the phase two process.

III. Collection of Information

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before an information collection request 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.

Below is a summary of the proposed information collection requirements outlined in this regulation. Throughout this section we assume that each data collection will occur on an annual basis unless otherwise noted. We used the Bureau of Labor Statistics (BLS) Web site to identify salary data, unless otherwise indicated. Fringe benefit estimates were taken from the BLS March 2011 Employer Costs for Employee Compensation report. These compensation estimates were selected to align with the burden estimates for the data collections described in the ''Establishment of Exchanges and Qualified Health Plans Final Rule'' (77 FR 18310 (March 27, 2012)). For purposes of presenting an estimate of paperwork burden, we reflect the operation of an Exchange in fifty states and the District of Columbia. Similarly, we estimate the burden for issuers participating in all 51 Exchanges. Therefore, these estimates should be considered an upper bound of burden estimates. These estimates may be adjusted in future Paperwork Reduction Act (PRA) packages. We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements (ICRs):

A. ICRs Regarding Additional Required Benefits (§ 155.170(c))

In § 155.170(c), we direct issuers to quantify and report to the Exchange the cost attributable to required benefits in addition to EHB. This is a third-party disclosure requirement. Issuers will use a uniform rate template in a revision to the Rate Increase Disclosure and Review Reporting Requirements PRA package (CMS–10379) (Rate Review PRA package) to report this information. The burden associated with meeting this data collection is included in the Rate Review PRA package. A **Federal Register** notice seeking comments on this PRA package is being published concurrently with this proposed rule.

As noted in the Rate Review PRA package, we estimate that a total of 2,010 issuers in the individual market and 1,050 issuers in the small group market will offer products and that each issuer will have an average of 2.5 submissions per year. We anticipate that it will take an actuary a total of 11 hours to complete the uniform rate template, at $225 per hour for an actuary. The total annual burden is estimated to be $18,933,750. Of this total amount, only a fraction can be attributable to the portion of the uniform rate template that pertains to benefits in addition to EHB. We estimate that of the total 11 hours it will take an actuary to complete the uniform rate template, it will take an actuary 1 hour to complete the portion pertaining to benefits in addition to EHB. Therefore, we estimate the burden attributable to the collection of information regarding benefits in addition to EHB to be $1,721,250. Given the policies included in this proposed rule regarding state required benefits, we seek comment on this estimated time for additional benefits.

B. ICRs Regarding State Selection of Benchmark (§ 156.100) and EHB Benchmark Plan Standards (§ 156.110)

In § 156.100, we propose that a state may select a base-benchmark plan to serve as a reference plan to define EHB in that state. We also propose that if a state does not select a benchmark plan, its base-benchmark will be the largest plan by enrollment in the largest product in the state's small group market. In § 156.110, we propose that a state-selected or default benchmark plan must offer coverage in each EHB category, as required by the Affordable Care Act. We propose that if a base-benchmark plan does not offer coverage in a category, it must be supplemented to include those missing benefit categories.

We do not believe that this is a change to the information collection associated with state selection and submission of a benchmark plan and associated benefits and the data collection to establish default benchmark plans, including any required supplementing, which is already captured in the collection approved under OMB Control Number 0938–1174.

C. ICRs Regarding AV Calculation for Determining Level of Coverage (§ 156.135)

In § 156.135(b), we propose to create an exception to using the AV calculator for issuers with health plans that are not designed in a way that is compatible with the AV calculator. To take advantage of this exception, issuers must submit an actuarial certification on their alternative method to the state, HHS, the Exchange, or OPM. This is a third-party disclosure requirement when the issuers submit to the state or the Exchange, and this is a reporting requirement when the issuers submit to HHS, OPM, or a Federally-facilitated Exchange. We account for this collection in the Initial Plan Data Collection to Support Qualified Health Plan Certification and Other Financial Management and Exchange Operations

PRA package (CMS–10433) (QHP Certification PRA package). A **Federal Register** notice regarding this PRA package is being published concurrently with this proposed rule.

In the QHP Certification PRA package, we estimate that 1,200 issuers will each offer 15 potential QHPs, for a total of 18,000 potential QHPs, and that the per-issuer burden will be 175 hours. We estimate the cost per issuer in the first year of operations to be $13,475, which represents an aggregation of several staff, including actuarial staff. This PRA package includes data collections for QHP certification, risk adjustment, and reinsurance. We believe that only 5 percent of issuers will be unable to use the AV calculator, thus use the process proposed in § 156.135(b) and that it will take each issuer 8 of the total 175 hours to provide the requested information. We further assume that the 8 hours of work would be performed by an actuary, at $225 per hour. Therefore, we estimate the total cost attributable to § 156.135(b) to be $1,800 per QHP and $1,620,000 in total.

In § 156.135(d), we propose that beginning in 2015, a state may submit a state-specific standard population, to be used for AV calculation, so long as the criteria described in § 156.135(d)(1) through (6) are met. This will require the state to submit to HHS summary evidence that the requirements described in the proposed rule are met and the dataset in a format that will support the use of the AV calculator. We expect that for each state choosing this option, the data submission will require 15 hours from a database administrator at $47.70 an hour, 4 hours of actuarial work at $56.89 an hour, and 1 hour of management review at $75.15 an hour. Therefore, the total burden associated with the reporting requirement for each state choosing this option will be $1,018. We assume that states opting to develop a state-specific standard population will provide new data every three to five years.

D. ICRs Regarding Stand-Alone Dental Plans Inside the Exchange (§ 156.150(a))

In § 156.150(a), we propose that stand-alone dental plans covering the pediatric dental EHB under § 155.1065 must demonstrate to the Exchange that they have a reasonable annual limitation on cost sharing. This is a third-party disclosure requirement.

We account for this collection in the QHP Certification PRA package, where we estimate that 40 issuers will each offer a stand-alone dental plan, and that the burden for certification will be 6 hours per issuer, at a total hourly billing rate of $77, for a total cost of $462 per issuer. We estimate that of those 8 hours, 1 will be attributable to demonstrating that the annual limitation on cost sharing is reasonable, at a cost of $77 per plan. Therefore, across 40 plans, we estimate the total annual cost to be $3,080.

E. ICRs Regarding Accreditation (§ 156.275)

In § 156.275, HHS proposes an amendment to the phase one process by which accrediting entities can submit an application to be recognized by HHS for purposes of accrediting QHPs. HHS previously sought OMB approval for recognition of two specific entities under § 156.275(c)(1); this was approved under OMB Control Number 0938–1176. Under this proposed rule, this same process will be open to additional applicants; therefore, we propose to revise our estimate of the number of applicants to four. We will revise the information collection request approved under OMB Control Number 0938–1176 to account for the adjustment in the number of respondents and the corresponding adjustment to the burden. If you comment on these information collection 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, [insert filecode], Fax: (202) 395–6974; or Email: *OIRA_submission@omb.eop.gov*.

IV. Regulatory Impact Analysis

HHS has examined the impacts of this proposed regulation under Executive Order 12866 on Regulatory Planning and Review (September 30, 1993) and Executive Order 13563 on Improving Regulation and Regulatory Review (February 2, 2011).

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 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review as established in Executive Order 12866—emphasizing the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

A regulatory impact analysis (RIA) must be prepared for rules with economically significant effects ($100 million or more in any 1 year), and a ''significant'' regulatory action is subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action.'' In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget as an economically significant regulatory action.

A. Summary

As stated earlier in this preamble, this proposed regulation would implement the requirements related to EHB and AV levels of coverage, and establish the timeline according to which QHP issuers participating in FFEs must be accredited. We note that the Exchange regulation (45 CFR 156.200) established that QHPs will cover essential health benefits, as defined by the Secretary, and that QHPs be accredited on the basis of local performance. The cost to health plans of obtaining QHP certification and participating in Exchanges are already accounted for in the regulatory impact analysis that accompanies that regulation.[26] Therefore, this analysis describes the incremental costs, benefits, and transfers associated with provisions in this proposed rule, for example that health plans cover the essential health benefits as specifically defined herein, and that health plans use the HHS-developed AV calculator.

This proposed rule also contains details relating to the establishment of a timeline by which QHPs seeking certification by FFEs must be accredited. We do not believe that this results in incremental benefits, costs, or transfers.

HHS has proposed this regulation to implement the protections intended by the Congress in the most economically efficient manner possible. In accordance with OMB Circular A–4, HHS has quantified the benefits, costs and transfers where possible, and has also provided a qualitative discussion of some of the benefits, costs and transfers that may stem from this proposed regulation.

[26] ''Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans, Exchange Standards for Employers (CMS–9989–FWP) and Standards Related to Reinsurance, Risk Corridors and Risk Adjustment (CMS–9975–F): Regulatory Impact Analysis.'' Centers for Medicare & Medicaid Services. Available at: *http://cciio.cms.gov/resources/files/Files2/03162012/hie3r-ria-032012.pdf*.

B. Overview of Key Provisions in the Proposed Rule

As described earlier in this proposed rule, the Affordable Care Act directs the Secretary of the Department of Health and Human Services (the Secretary) to define EHB such that EHB includes at least and reflects an appropriate balance among 10 benefit categories, and is equal in scope to benefits offered by a typical employer plan. Non-grandfathered plans in the individual and small group markets both inside and outside of the Exchanges, including multi-state plans, Medicaid benchmark and benchmark-equivalent, and Basic Health Programs, if applicable, must cover EHB beginning in 2014. This proposed rule establishes how the Secretary will define EHB based on a state-specific benchmark plan and lays out standards for the EHB-benchmark plan and for issuers that cover EHB.

In addition, the Affordable Care Act directs issuers offering non-grandfathered health in the individual and small group markets to ensure that any offered plan meets specific AVs. The proposed rule outlines a process for computing plan AV using an HHS-developed AV calculator, as well as standards and flexibility for issuers in meeting the metal tiers.

C. Need for Regulatory Action

This rule proposes standards related to EHB and AV consistent with the Affordable Care Act. HHS believes that the provisions that are included in this proposed rule are necessary to fulfill the Secretary's obligations under sections 1302 and 1311 of the Affordable Care Act. Establishing specific approaches for defining EHB and calculating AV will bring needed clarity for states, issuers, and other stakeholders. Absent the provisions outlined in this proposed rule, states, issuers, and consumers would face significant uncertainty about how coverage of EHB should be defined and evaluated. Similarly, failing to specify a method for calculating AV could result in significant inconsistency across states and issuers. Finally, establishing a clear timeline for potential QHPs to become accredited is essential to successful issuer participation in FFEs.

D. Summary of Impacts and Accounting Table

In accordance with OMB Circular A–4, Table IV.1 below depicts an accounting statement summarizing HHS's assessment of the benefits, costs, and transfers associated with this regulatory action.

HHS anticipates that the provisions of this proposed rule will assure consumers that they will have health insurance coverage for essential health benefits, and significantly increase consumers' ability to compare health plans, make an informed selection by promoting consistency across covered benefits and levels of coverage, and more efficiently purchase coverage. This proposed rule ensures that consumers can shop on the basis of issues that are important to them such as price, network physicians, and quality, and be confident that the plan they choose does not include unexpected coverage gaps, like hidden benefit exclusions. It also allows for some flexibility for plans to promote innovation in benefit design.

Insurance contracts are extremely complicated documents; therefore, many consumers may not understand the content of the contracts they purchase.[27] This complexity has two undesirable results. First, consumers may unknowingly purchase a product that does not meet their basic needs—the product may not cover benefits that the consumer needs to restore or maintain good health, or may result in more financial exposure than the consumer anticipated. Second, the complexity reduces competitive pressure on insurers, and blunts insurer incentives to improve the quality and value of the products they offer. As a result of complexity and information gaps, some consumers cannot purchase health insurance efficiently. This inefficiency may reduce incentives for insurers to improve the value of their products.

The specific approach to defining EHB in this proposed rule realizes the benefits of simplicity and transparency by allowing each state to choose a benchmark from a set of plans that are typical of the benefits offered by employers in that state. The proposed rule allows that EHB in each state reflect the choices made by employers and employees in that state today, and minimizes disruption in existing coverage in the small group market. In addition, the proposed provisions addressing specific benefit categories, such as habilitative services and pediatric dental and vision services, will improve access to care for consumers who require these benefits.

The approach to defining AV in this proposed rule uses standard assumptions about utilization and prices, and, for most products, directs issuers to use an AV calculator created by the Department to compute AV. This approach will ensure that two plans with the same cost-sharing parameters (that is, deductibles, copayments, and coinsurance features) will have the same AVs. This approach is intended to lower consumer information costs and drive competition in the market by enabling consumers to easily compare the relative generosity of plans, knowing that the AV of each plan has been calculated in the same manner.

In accordance with Executive Order 12866, HHS believes that the benefits of this regulatory action justify the costs.

TABLE IV.1—ACCOUNTING TABLE

Category	Estimates	Units		
		Year dollar	Discount rate (percent)	Period covered
Benefits:				
Annualized Monetized ($millions/year)	Not Estimated	2012	7	2012–2016
	Not Estimated	2012	3	2012–2016
Qualitative:	(1) Improved coverage in benefit categories less typically available. Expanded access to coverage of benefits, particularly in the individual market, including maternity and prescription drug coverage. (2) Alignment with current consumer and employer choices. Flexibility for states; limited market disruption; allowance for health plan innovation (e.g., substitution within benefit categories; de minimis variation for AV).			

[27] Consumers Union. (2012). ''What's Behind the Door: Consumers' Difficulties Selecting Health Plans.'' Available at: *http://www.consumersunion.org/pub/pdf/Consumer%20Difficulties%20Selecting%20Health%20Plans%20Jan%202012.pdf.*

TABLE IV.1—ACCOUNTING TABLE—Continued

Category	Estimates	Units		
		Year dollar	Discount rate (percent)	Period covered
	(3) Efficiency due to greater transparency. Increased transparency and consumer ability to compare coverage.			
Costs:				
Annualized Monetized ($millions/year)	$1.7 *	2012	7	2012–2016
	$1.5 *	2012	3	2012–2016
Qualitative	(1) Administrative costs. Insurers will incur administrative costs associated with altering benefit packages to ensure compliance with the definition of EHB established in this proposed rule. Issuers may also incur minor administrative costs related to computing AV. (2) Costs due to higher service utilization. As consumers gain additional coverage for benefits that previously did not meet the standards outlined in this proposed rule (for example, pediatric dental or vision coverage), utilization, and thus costs, may increase. A portion of this increased utilization and costs will be economically inefficient, as insurance coverage creates a tendency to overuse health care. Further, there may be incremental costs to consumers associated with greater service utilization.			
Transfers:				
Federal Annualized Monetized ($millions/year)	Not Estimated	2012	7	2012–2016
	Not Estimated	2012	3	2012–2016

* **Note:** Administrative costs include costs associated with Information Collection Requirements as described in section III of this proposed rule.

E. Methods and Limitations of Analysis

There are many provisions of the Affordable Care Act that are integral to the goal of expanding access to affordable insurance coverage, including the provisions of this proposed rule relating to EHB and AV. Because it is often difficult to isolate the effects associated with each particular provision of the Affordable Care Act, we discuss the evidence relating to the provisions of this proposed rule, as well as related provisions of the Affordable Care Act, in this regulatory impact analysis. We present quantitative evidence where it is possible and supplement with qualitative discussion.

F. Estimated Number of Affected Entities

As discussed elsewhere in the preamble, standards relating to EHB and AV will apply to all health insurance issuers offering non-grandfathered coverage in the individual and small group markets—both inside and outside of the Exchanges. The following sections summarize HHS's estimates of the number of entities that will be affected by this proposed regulation.

a. Issuers

For purposes of the regulatory impact analysis, we have estimated the total number of health insurance issuers that will be affected by this proposed regulation at the company level because this is the level at which issuers currently submit their annual financial reports to the National Association of Insurance Commissioners (NAIC). Table IV.2 shows the estimated distribution of issuers offering comprehensive major medical coverage in the individual and small group markets based on data submitted on the National Association of Insurance Commissioners' 2011 Supplemental Health Care Exhibit (SHCE).[28] Additionally, because many issuers are licensed in more than one state, we have also included data by ''licensed entity'' (company/state combination) for each market.

TABLE IV.2—ESTIMATED NUMBER OF ISSUERS AND LICENSED ENTITIES AFFECTED BY THE EHB AND AV REQUIREMENTS BY MARKET, 2011

Description	Issuers (1) offering comprehensive major medical coverage		Licensed entities (2) offering comprehensive major medical coverage	
	Number	Percent of total	Number	Percent of total
Total Issuers Offering Comprehensive Major Medical Coverage (3)	446	100.0	2,107	100.0
By Market: (4)				
Individual Market	355	79.6	1,663	78.9
Small Group Market (5)	366	82.1	1,039	49.3
Large Group Market	375	84.1	922	43.8

[28] The most complete source of data on the number of entities offering fully insured, private comprehensive major medical coverage in the individual and group markets is the National Association of Insurance Commissioners (NAIC) Annual Financial Statements and Policy Experience Exhibits database. These data contain information that issuers submit to the NAIC through State insurance regulators on four different financial exhibits (the Health, Life, Property & Casualty, and Fraternal ''Blanks''). The 2011 SHCE captures data on individual, small group and large group comprehensive major medical coverage at the State level in a consistent manner across all Blanks, providing more extensive information about this market than was previously available. We note that issuers electing not to offer non-grandfathered individual or small group market policies would not be affected by the proposed rule.

TABLE IV.2—ESTIMATED NUMBER OF ISSUERS AND LICENSED ENTITIES AFFECTED BY THE EHB AND AV REQUIREMENTS BY MARKET, 2011—Continued

Description	Issuers (1) offering comprehensive major medical coverage		Licensed entities (2) offering comprehensive major medical coverage	
	Number	Percent of total	Number	Percent of total
Individual and/or Small Group Markets (6)	427	95.7	1,993	94.6
Individual Market Only	82	18.4	904	42.9
Small Group Market Only	39	8.7	117	5.6
Individual & Small Group Markets Only	29	6.5	164	7.8
All Three Markets	279	62.6	545	25.9

Notes: (1) Issuers represents companies (for example, NAIC company codes). (2) Licensed Entities represents company/state combinations. (3) Total issuers excludes data for companies that are regulated by the California Department of Managed Health Care. (4) To be counted as offering coverage in a particular comprehensive major medical market, the issuer must have reported non-zero premiums and claims and had at least $1,000 in total premiums per life year for at least one state. (5) Small group is defined based on the current definition in the PHS Act. (6) Subcategories do not add to the total because other categories are not shown separately such as those entities in the large group and small group markets, but not in the individual market.

Source: ASPE analysis of 2011 NAIC Supplemental Health Care Exhibit data.

b. Individuals

Persons enrolled in non-grandfathered individual or small group market coverage inside or outside of the Exchanges beginning in 2014 will be affected by the provisions of this proposed rule.[29]

In July 2012, CBO estimated that there will be approximately 23 million enrollees in Exchange coverage by 2016.[30] Participation rates among potential enrollees are expected to be lower in the first few years of Exchange availability as employers and individuals adjust to the features of the Exchanges.[31] Additionally, the EHB and AV provisions of this proposed rule will also affect enrollees in non-grandfathered individual and small group coverage outside of the Exchanges.

G. Anticipated Benefits

The Affordable Care Act ensures non-grandfathered health plans offered in the individual and small group markets offer a basic package of items and services. The benefits of health insurance coverage are well documented and discussed at length in previous RIAs,[32] including improvement in clinical outcomes, financial security, and decreased uncompensated care.[33, 34] This proposed rule applies a definition to EHB and proposes other standards that are required of health plans, as directed under the statute.

In the market today, it is difficult for consumers to make well-informed choices when choosing among competing health plans. The benefits offered are complicated and can vary widely across plans, making it difficult for consumers to understand which benefits are covered.[35] Further, wide variation in deductibles, coinsurance, and other cost sharing features make it difficult for consumers to understand the relative levels of financial protection they will receive under competing plans.[36, 37]

Under the provisions in this proposed rule, the EHB-benchmark plan will reflect both the scope of services and any limits offered by a ''typical employer plan'' in that state. This approach, applying for the 2014 and 2015 benefit years, will allow states to build on coverage that is already widely available, minimize market disruption, and provide consumers with familiar products. This should heighten consumer understanding of plan options and may facilitate consumers' abilities to make choices that better suit their needs. In addition, by ensuring that all plans cover a core set of benefits and services that will be compared against other plans that offer the same financial protection to the consumer, this proposed rule is expected to improve the quality and value of the coverage that is available for EHB.

Information on AV is expected to be used by consumers to compare non-grandfathered individual and small group market plans, and provides a method for consumers to understand relative plan value. Proposing standard pricing and utilization assumptions for AV calculations for QHPs and non-grandfathered health plans in the individual and small group markets will promote transparency and simplicity in the consumer shopping experience, as well as offer issuers the flexibility to set cost-sharing rates that are simple and competitive. Without this approach,

[29] As discussed earlier, the provisions in this proposed regulation could also potentially affect some enrollees with non-grandfathered large group market coverage in States that choose to give larger employers the option of purchasing coverage through the Exchange starting in 2017. However, the Congressional Budget Office (CBO) and Joint Committee on Taxation (JCT) ''expect that few large firms would take [advantage of] that option if offered because their administrative costs would generally be lower than those of nongroup policies that would be available in the exchanges.'' (For more information, see Congressional Budget Office, ''Letter to the Honorable Evan Bayh: An Analysis of Health Insurance Premiums under the Patient Protection and Affordable Care Act,'' Washington, DC, 2009).

[30] ''Estimates for the Insurance Coverage Provisions of the Affordable Care Act Updated for the Recent Supreme Court Decision,'' Congressional Budget Office, July 2012.

[31] Congressional Budget Office, ''Letter to the Honorable Evan Bayh: An Analysis of Health Insurance Premiums under the Patient Protection and Affordable Care Act,'' Washington, DC, 2009.

[32] Available at: *http://cciio.cms.gov/resources/files/Files2/03162012/hie3r-ria-032012.pdf.*

[33] Institute of Medicine (2001). *Coverage Matters: Insurance and Health Care.* National Academies Press: Washington, DC. Burstin HR, Swartz K, O'Neil AC, Orav EJ, Brennan TA. 1999. The effect of change of health insurance on access to care. *Inquiry; 35:* 389–97. Finkelstein A et al. 2011. The Oregon health insurance experiment: Evidence from the first year. NBER Working Paper No. 17190

[34] Institute of Medicine (2002). *Care without coverage: too little, too late.* National Academies Press. Ayanian J, et al. ''Unmet Health Needs of Uninsured Adults in the United States.'' *JAMA.* 284(16). 2000:2061–9. 27; Roetzheim R, et al. ''Effects of Health Insurance and Race on Colorectal Cancer Treatments and Outcomes.'' *American Journal of Public Health* 90(11). 2000: 1746–54; Wilper, et al. ''Health Insurance and Mortality in US Adults.'' *American Journal of Public Health.* 99(12). 2009: 2289–2295.

[35] Garnick, D.W. et al. (1993). ''How well do Americans understand their health coverage?'' *Health Affairs,* 12(3); 204–212.

[36] Consumers Union. (2012). ''What's Behind the Door: Consumers' Difficulties Selecting Health Plans.'' Available at: *http://www.consumersunion.org/pub/pdf/Consumer%20Difficulties%20Selecting%20Health%20Plans%20Jan%202012.pdf.*

[37] Isaacs, S.L. (2006). Consumer's information needs: results of a national survey. *Health Affairs,* 15(4): 31–41.

plans with the same cost-sharing provisions could have different AVs making it difficult for consumers to compare and choose among health plans. It also fosters plan competition based on price, quality, and service—rather than variations in benefit design.

H. Anticipated Costs and Transfers

In addition to the administrative costs described in the Information Collection Requirements section of this proposed rule, HHS anticipates that the provisions of this proposed regulation will likely result in increased costs related to increased utilization of health care services by people receiving coverage for previously uncovered benefits.

States have primary enforcement authority over health insurance issuers and this proposed rule extends this primary enforcement authority for compliance with EHB and AV requirements defined in this rule. In addition, states must defray the cost of any state-required benefits in excess of the EHB that apply to QHPs and multi-state plans offered through Exchanges. As stated earlier, we expect that this will rarely occur, if at all, in 2014 and 2015, the period coverage by the benchmark policy.

The anticipated effects on enrollees in the individual market are expected to be larger than the effects on enrollees in the small group market. Coverage in the small group market is much more likely to include EHB and, in fact, is included in the choice of benchmark plans.[38] Second, almost all products in the group market have AV above 60 percent,[39] while there are likely to be changes to products in the individual market due to the provisions of this proposed rule.

Impact on Issuers

Commonly purchased products in the small group market, state employee plans, and the FEHBP Blue Cross Blue Shield (BCBS) Standard and Basic Options and Government Employees Health Association (GEHA) plans do not differ significantly in the range of services they cover.[40] Because one of these plans will be chosen as the reference plan for EHB, most small group plans will provide benefits that are similar to EHB, and changes in benefits offered to comply with EHB provisions will be relatively minor.

Notwithstanding this general conclusion, there are four types of benefits where changes are expected in the small group market: Mental health and substance use disorder, habilitative services, pediatric dental care, and pediatric vision services. In addition, individual health plans are less likely than small group health plans to cover all of the 10 categories of EHB. Below we discuss two categories of benefits and services that are less likely to be covered in the market today: Mental health and substance use disorder services, and habilitative services.

The coverage of additional benefits results in a transfer from out-of-pocket payments to premium payments. Increased access to insurance coverage for previously excluded benefits will make medical care for those benefit categories more affordable for consumers by covering a portion of the costs of those services. While out of pocket costs would decline, consumers could purchase benefits and services inefficiently—that is, purchase more than the efficient amount of the previously excluded benefits and services. However, studies of the Medicare program suggest that the costs of this inefficiency are likely more than offset by the benefits of risk reduction.[41] Because the standards outlined in this proposed rule will likely result in incremental gains in access, rather than changes in status from uninsured to insured, any costs associated with any inefficiency, should be further reduced. As discussed previously, many other provisions of the Affordable Care Act, including healthier risk pools, greater administrative efficiencies, premium tax credits, and the transitional reinsurance program will lower premiums in the individual market and Exchanges.

The statute requires that all plans covering EHB must offer mental health and substance use disorder service benefits, including behavioral health treatment and services. The preamble of this rule proposes that coverage must provide parity in treatment limitations between medical and surgical benefits and the mental health and substance use disorder benefits required to be covered as EHB in both the individual and small group markets. Many states[42] [43] have already added some form of mental health parity in some or all insured markets.[44] About 95 percent of those with coverage through the three largest small group products in each state had substance use disorder and mental health benefits.[45] Additionally, a study of implementation of parity in the FEHBP plans[46] as well as research into state-passed mental health parity laws[47] have shown little or no increase in utilization of mental health services, but found that parity reduced out-of-pocket spending among those who used mental health and substance abuse services.

As indicated in the preamble, many health insurance plans do not identify habilitative services as a distinct group of services.[48] By proposing a transitional policy for coverage of habilitative services, this rule allows issuers time for review and development of policy in this area, and to gain experience to define these benefits. To the extent that states

[38] A study conducted by the Assistant Secretary for Planning and Evaluation (ASPE) found that commonly purchased products in the small group market, state employee plans, and federal employee plans do not differ significantly in the range of services they cover. Because one of these plans will be chosen as the reference plan for EHB, most small group plans will provide benefits that are similar to EHB. (ASPE Issue Brief (2011). ''EHB: Comparing Benefits in Small Group Products and State and Federal Employee Plans,'' U.S. Department of Health & Human Services.) In contrast, another ASPE study found that many current subscribers in the individual market lack coverage for some EHB benefits and services, such as maternity care and prescription drugs. (ASPE Research Brief (2011). ''EHB: Individual Market Coverage'' U.S. Department of Health & Human Services.)

[39] ASPE Research Brief (2011). ''AV and Employer Sponsored Insurance,'' available at: *http://aspe.hhs.gov/health/reports/2011/AV-ESI/rb.pdf.* Similar results were found in a recent study by Gabel and colleagues. Jon R. Gabel, Ryan Lore, Roland D. McDevitt, Jeremy D. Pickreign, Heidi Whitmore, Michael Slover and Ethan Levy-Forsythe, ''More Than Half Of Individual Health Plans Offer Coverage That Falls Short Of What Can Be Sold Through Exchanges As Of 2014,'' Health Affairs, (2012), available at: *http://content.healthaffairs.org/content/early/2012/05/22/hlthaff.2011.1082.full.pdf+html.*

[40] ASPE Issue Brief (2011). ''EHB: Comparing Benefits in Small Group Products and State and Federal Employee Plans,'' U.S. Department of Health & Human Services.

[41] Finkelstein A, McKnight R: ''What Did Medicare Do (And Was It Worth It)?'' Journal of Public Economics 2008, 92:1644–1669; and Finkelstein, A, ''The Aggregate Effects of Health Insurance: Evidence from the Introduction of Medicare,'' National Bureau of Economic Research. Working Paper No. 11619, Sept, 2005.

[42] Kaiser State Health Facts. *State mandated benefits in small group private health insurance: Mandated coverage in mental health, as of January 2010.* Available at: *http://www.statehealthfacts.org/comparereport.jsp?rep=2&cat=7.*

[43] Health Insurance Mandates in the States 2010, Council for Affordable Health Insurance, available at: *http://www.cahi.org/cahi_contents/resources/pdf/MandatesintheStates2010ExecSummary.pdf.*

[44] Health Insurance Mandates in the States 2010, Council for Affordable Health Insurance, available at: *http://www.cahi.org/cahi_contents/resources/pdf/MandatesintheStates2010ExecSummary.pdf.*

[45] ASPE Issue Brief, ''EHB: Comparing Benefits in Small Group Products and State and Federal Employee Plans, U.S. Department of Health & Human Services (2011).

[46] Goldman HH, et al. 2006. Behavioral health insurance parity for federal employees. New Engl J Med; 354 1378–86.

[47] Barry CL, Busch SH. 2007. Effects of state parity laws on the family financial burden of children with mental health care needs. *Health Serv Res; 42:* 1061–84. Ma CA, McGuire TG. 1998. Cost and incentives in a behavioral health carve-out. *Health Affairs;17:* 56–67,

[48] ASPE Research Brief (2011). ''EHB: Comparing Benefits in Small Group Products and State and Federal Employee Plans.'' Available at: *http://aspe.hhs.gov/health/reports/2011/MarketComparison/rb.shtml.*

exercise the option to define habilitative services, small group market issuers may incur administrative and contracting costs associated with bringing their products into compliance with a state's definition. However, because it is not yet clear which states will exercise this option or how any such states will define habilitative services, HHS cannot estimate these costs at this time.

With respect to AV, research indicates that the overwhelming majority of employer-sponsored health plans meets and exceeds an AV of 60 percent.[49] Combining both small group and large group, an estimated 1.6 percent to 2.0 percent of people covered by employer-sponsored insurance are enrolled in plans with an AV of less than 60 percent.

In the individual health insurance market, McKethan et al. estimated the percentage of individual market plans falling below 60 percent (the AV of a bronze plan), meaning that the health insurance coverage paid for less than 60 percent of benefit costs for the average enrollee, at between 9 percent and 11 percent.[50] To keep premium costs low, the Affordable Care Act allows certain individuals (adults under age 30 and people who otherwise have unaffordable coverage) to purchase catastrophic coverage, which still guarantees first dollar coverage of preventive services and primary care check-ups but has higher deductibles and lower AVs.

Costs to States

State governments are generally responsible for health insurance enforcement in the individual and small group markets, with the federal government assuming that role in connection with federal law requirements if a state does not do so. While HHS expects that states may need additional resources to enforce the requirements that non-grandfathered plans in the individual and small group market provide EHB, and that these plans offer coverage with an AV equal to one of the four metal levels, these costs will be relatively minor. We request comment on the burden states will incur in enforcing these requirements.

If a state requires issuers to cover benefits in excess of EHB, the Affordable Care Act directs the state to defray the costs of these benefits in QHPs. States may include as part of their benchmark plan state benefit requirements that were enacted before December 31, 2011, avoiding costs associated with these provisions.

Costs to Health Insurance Issuers

Issuers will incur administrative costs to modify existing offerings to meet EHB and AV standards as defined in this proposed rule. For example, issuers that do not currently meet the standards for prescription drug coverage will incur contracting and one-time administrative costs to bring their pharmacy benefits into compliance. Issuers may also incur minor administrative costs related to AV standards and computing AV. However, because EHB will be based on a benchmark plan that is typical of what is offered in the market in each state currently, the modifications in benefits are expected to be relatively minor for most issuers. Further, issuers have extensive experience in offering products with various levels of cost sharing, and HHS expects that following the process for computing AV outlined in this proposed rule will not demand many additional resources.

I. Regulatory Alternatives

In addition to the regulatory approach outlined in the Essential Health Bulletin issued on December 16, 2011, HHS considered several alternatives when developing policy around defining EHBs and calculating AV.

Definition of EHBs

At the request of some commenters, HHS considered one national definition of EHB that would have applicable issuers offer a uniform list of benefits. However, this approach would not allow for state flexibility and issuer innovation in benefit design, would require a burdensome overhaul for issuers, and would disrupt the market.

HHS also considered codifying the 10 statutorily required categories without additional definition and allowing issuers to adjust their benefit packages accordingly. However, this approach would have allowed wide variation across plans in the benefits offered, would not have assured consumers that they would have coverage for basic benefits, and would not have improved the ability of consumers to make comparisons among plans.

HHS believes the benchmark approach best strikes the balance between comprehensiveness, affordability, and state flexibility. Additionally, HHS believes that the benchmark approach, supplemented when necessary, best addresses the statutory requirements that EHBs reflect a typical employer plan and encompass at least the 10 categories of items and services outlined in the statute.

Calculation of AV

In the calculation of AV, the statute specifies the use of a standard population. As described in the AV/CSR Bulletin, HHS considered allowing issuers to use their own utilization and pricing data in connection with an HHS-defined standard population (that is, HHS-set demographics for the standard population) to calculate a standard population. However, this would not have allowed for consumer transparency and would not have increased competition. The approach in this proposed rule instead reduces issuer burden while allowing consumers to compare more easily among plans.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) (RFA) requires agencies to analyze options for regulatory relief of small businesses if a proposed rule has a significant impact on a substantial number of small entities. The Act generally defines a ''small entity'' as (1) A proprietary firm meeting the size standards of the Small Business Administration (SBA), (2) a not-for-profit organization that is not dominant in its field, or (3) a small government jurisdiction with a population of less than 50,000. (States and individuals are not included in the definition of ''small entity.'') HHS uses as its measure of significant economic impact on a substantial number of small entities a change in revenues of more than 3 to 5 percent.

As discussed above, this proposed rule is necessary to implement standards related to the EHB, AV, cost-sharing limitations, and quality, as authorized by the Affordable Care Act. For purposes of the Regulatory Flexibility Analysis, we expect the following types of entities to be affected by this proposed rule: (1) Issuers; (2) employers; and (3) providers.

We believe that health insurers would be classified under the North American Industry Classification System (NAICS) Code 524114 (Direct Health and Medical Insurance Carriers). According to SBA size standards, entities with average

[49] ASPE Research Brief (2011). ''AV and Employer Sponsored Insurance,'' available at: *http://aspe.hhs.gov/health/reports/2011/AV-ESI/rb.pdf.* Similar results were found in a recent study by Gabel and colleagues. Jon R. Gabel, Ryan Lore, Roland D. McDevitt, Jeremy D. Pickreign, Heidi Whitmore, Michael Slover and Ethan Levy-Forsythe, ''More Than Half Of Individual Health Plans Offer Coverage That Falls Short Of What Can Be Sold Through Exchanges As Of 2014,'' Health Affairs, (2012), available at: *http://content.healthaffairs.org/content/early/2012/05/22hlthaff.2011.1082.full.pdf+html.*

[50] Aaron McKethan, Mark Zezza, Lawrence Kocot, Mark Shepard, and Don Cohn, ''Minimum Creditable Coverage,'' Bipartisan Policy Center, January 2010.

annual receipts of $7 million or less would be considered small entities for this NAICS code. Health issuers could possibly also be classified in NAICS Code 621491 (HMO Medical Centers) and, if this is the case, the SBA size standard would be $10 million or less.

As discussed in the Web Portal interim final rule (75 FR 24481), HHS examined the health insurance industry in depth in the Regulatory Impact Analysis we prepared for the proposed rule on establishment of the Medicare Advantage program (69 FR 46866, August 3, 2004). In that analysis we determined that there were few, if any, insurance firms underwriting comprehensive health insurance policies (in contrast, for example, to travel insurance policies or dental discount policies) that fell below the size thresholds for ''small'' business established by the SBA (currently $7 million in annual receipts for health insurers, based on North American Industry Classification System Code 524114).[51]

For purposes of this proposed rule, HHS used 2011 National Association of Insurance Commissioners (NAIC) Supplemental Health Care Exhibit data to develop an updated estimate of the number of small entities that offer comprehensive major medical coverage in the individual and small group markets. HHS used total Accident and Health (A&H) earned premiums as a proxy for annual receipts. Table IV.3 shows that HHS estimates that there were 35 small entities with less than $7 million in accident and health earned premiums offering individual or small group comprehensive major medical (CMM) coverage; however, this estimate may overstate the actual number of small health insurance issuers offering such coverage, since it does not include receipts from these companies' other lines of business.

HHS estimates that 83 percent of these small issuers are subsidiaries of larger carriers, and 71 percent also offer large group or other types of A&H coverage. On average, HHS estimates that individual and small group CMM coverage accounts for approximately 45 percent of total A&H earned premiums for these small issuers. HHS estimates that 75 percent of these small issuers only offer individual and small group CMM coverage in a single state. Additionally, HHS estimates that approximately a third (11) of these small issuers only offer individual market CMM coverage.

TABLE IV.3—DESCRIPTION OF ISSUERS OFFERING INDIVIDUAL OR SMALL GROUP COMPREHENSIVE MAJOR MEDICAL (CMM) COVERAGE BY SIZE, 2011

Total earned premiums for accident and health coverage	Total issuers offering individual or small group market CMM coverage	Percent of issuers that are part of larger carriers	Average number of states in which individual or small group CMM coverage is offered	Percent of issuers only offering individual or small group CMM coverage in a single state	Individual & small group CMM premiums as a percent of total A&H premiums	Percent of issuers also offering large group CMM or other A&H coverage	Number of issuers only offering individual market CMM coverage
Less Than $7 Million	35	82.9	2.3	74.3	45.0	71.4	11
$7 million to $99 million	93	68.8	4.5	62.4	37.2	66.7	6
$100 million to $999 billion	184	87.0	5.2	65.8	27.0	84.8	11
$1 billion or more	115	87.8	4.8	69.6	24.0	93.9	1
Total	427	82.9	4.7	66.7	24.5	82.2	29

Notes: (1) Issuers represents companies (for example, NAIC company codes). (2) Licensed Entities represents company/state combinations. (3) Total issuers excludes data for companies that are regulated by the California Department of Managed Health Care. (4) To be counted as offering coverage in a particular comprehensive major medical market, the issuer must have reported positive premiums, non-zero claims and had at least $1,000 in total premiums per life year for at least one state. (5) Small group is defined based on the current definition in the PHS Act.

Sources: ASPE analysis of 2011 NAIC Supplemental Health Care Exhibit data.

This rule proposes standards related to EHBs, AV, and accreditation. These standards may impose some additional costs on issuers offering coverage that is affected by these provisions. For example, as discussed earlier, issuers are likely to experience some administrative costs associated with reconfiguring existing non-grandfathered plans to meet EHB and AV metal level standards as defined in this proposed rule. However, these costs will vary depending on a number of factors, including the extent to which an issuer offers coverage in multiple states or is a subsidiary of a larger carrier, and the variation between these standards and current practice. Further, some of the changes that standardize coverage may reduce administrative costs. Accordingly, we cannot estimate an effect on premiums with precision prior to final state selection of benchmarks.

As discussed in the regulatory impact analysis for the Establishment of Exchanges and Qualified Health Plans; Exchange Standards for Employers final rule (77 FR 18310 (Mar. 27, 2012)), the cost of participating in an Exchange is an investment for QHP issuers, with benefits expected to accrue to QHP issuers because of access to new markets where consumers may receive generous tax credits to purchase insurance.

This proposed rule also establishes standards that will affect employers participating in the small group market, including those that choose to participate in a SHOP. As discussed in the Summary of Regulatory Impact Analysis for the Establishment of Exchanges and Qualified Health Plans; Exchange Standards for Employers final rule, the SHOP is limited by statute to employers with at least one but not more than 100 employees. For this reason, we expect that many affected employers would meet the SBA standard for small entities. However, the standards outlined in this proposed rule apply to issuers of small group market health insurance coverage, and not to any small employers that elect to purchase such coverage on behalf of their employees (that is, the proposed rule impacts what coverage is available to be purchased).We anticipate that the essential health benefits, coupled with the ability to compare plans based on metal level, will lead to greater

[51] ''Table of Size Standards Matched to North American Industry Classification System Codes,'' effective November 5, 2010, U.S. Small Business Administration, available at *http://www.sba.gov*.

transparency and reduce transaction costs for small employers.

HHS anticipates that the provisions in this proposed rule will have a positive effect on providers—particularly those offering services in areas where many individual market enrollees previously did not have coverage for these services, and those who serve a substantial share of the low-income population. HHS anticipates that small providers will also experience positive effects relating to the provisions of this proposed rule.

Therefore, the Secretary certifies that this proposed rule will not have a significant impact on a substantial number of small entities. We welcome comment on the analysis described in this section and on HHS's conclusion.

VII. Unfunded Mandates

Section 202 of the Unfunded Mandates Reform Act (UMRA) of 1995 requires that agencies assess anticipated costs and benefits before issuing any proposed rule that includes a federal mandate that could result in expenditure in any one year by state, local or tribal governments, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. In 2012, that threshold level is approximately $139 million.

UMRA does not address the total cost of a proposed rule. Rather, it focuses on certain categories of cost, mainly those ''Federal mandate'' costs resulting from: (1) Imposing enforceable duties on state, local, or tribal governments, or on the private sector; or (2) increasing the stringency of conditions in, or decreasing the funding of, state, local, or tribal governments under entitlement programs.

Because states are not required to set up an Exchange, and because grants are available for funding of the establishment of an Exchange by a state, we anticipate that this final rule would not impose costs above that threshold on state, local, or Tribal governments. In addition, because states largely already collect information on plan rates and benefits to license them, we believe that the burden on states is limited. However, because these costs have not been estimated, HHS seeks comments on any additional burdens.

Under the proposed rule, issuers will provide coverage of certain benefits. While some issuers may not currently offer benefit packages that meet the standards outlined in the proposed rule, we anticipate that the administrative costs associated with compliance will fall below the threshold. We anticipate that such administrative costs will be concentrated in the initial year, with costs significantly tapering off during subsequent years.

The benchmark-based approach to defining EHB ensures that EHB will reflect the scope of services offered by a ''typical employer plan.'' Accordingly, we anticipate that many small group market plans meet or are close to meeting the coverage requirements for EHB and will not need to incur significant administrative costs to bring currently available plans into compliance. Individual market plans are somewhat less likely to cover all statutorily required benefits and services as described in this proposed rule; however, many such plans are offered by issuers with diverse portfolios that may include small and large group products or other individual market products that do include the required services. Accordingly, we do not anticipate that the provisions related to the EHB package outlined in the proposed rule impose costs greater than $139 million on the private sector.

Consistent with policy embodied in UMRA, this notice for proposed rulemaking has been designed to be the least burdensome alternative for state, local and tribal governments, and the private sector while achieving the objectives of the Affordable Care Act.

VIII. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has federalism implications.

States regulate health insurance coverage. States would continue to apply state laws regarding health insurance coverage. However, if any state law or requirement prevents the application of a Federal standard, then that particular state law or requirement would be preempted. State requirements that are more stringent than the Federal requirements would not be preempted by this proposed rule unless such requirements prevent the application of Federal law. Accordingly, states have significant latitude to impose requirements with respect to health insurance coverage that are more consumer-protective than the Federal law.

In the view of HHS, this proposed rule does not impose substantial direct costs on state and local governments. However, we believe that this proposed rule has Federalism implications due to direct effects on the distribution of power and responsibilities among the state and Federal governments relating to determining standards for health insurance coverage that is offered in the individual and small group markets. Each state would adhere to the federal standards outlined in the proposed rule for purposes of determining whether non-grandfathered individual and small group market health insurance coverage includes the EHB package, or have HHS enforce these policies.

HHS expects that the federalism implications, if any, are substantially mitigated for a number of reasons. First, the proposed rule affords discretion to states to select an EHB-benchmark plan. States also can choose to be responsible for evaluating the selected benchmark and making adjustments as needed, and for determining whether non-grandfathered individual and small group market health insurance coverage meets the standards outlined in the proposed rule. While the proposed rule establishes new federal standards for certain health insurance coverage, states will retain their traditional regulatory roles. Further, if a state elects not to substantially enforce the standards outlined in the final rule, the Federal government will assume responsibility for these standards.

In compliance with the requirement of Executive Order 13132 that agencies examine closely any policies that may have federalism implications or limit the policymaking discretion of the states, HHS has made efforts to consult with and work cooperatively with states as evidenced by continued communication through weekly calls and listening sessions.

HHS initiated weekly calls with key stakeholders from states in April 2010 as a way for HHS and states to have a regular means of communication about the Affordable Care Act. The audience for the call is ''State Government Implementers of the Affordable Care Act'' which often includes Governors' office staff, state Medicaid Directors' staff, Insurance Commissioners' staff, state high risk pool staff, Exchange grantees, health reform coordinators, and other state staff. National intergovernmental organizations are also invited to participate. Regular participants also include representatives from the following intergovernmental organizations:

- National Governors Association
- National Conference of State Legislatures
- National Association of Medicaid Directors
- National Association of Insurance Commissioners
- American Public Human Services Association

- The Council of State Governments
- National Academy for State Health Policy
- National Association of Counties

These calls, in addition to listening sessions specifically related to EHB, have helped HHS understand states' major concerns about implementation of the Affordable Care Act. Continuous communication with states allowed HHS to develop policy that addressed two central concerns: flexibility and state-required benefits. The benchmark approach allows states to select a benchmark option that offer benefit packages that reflect the needs of their populations and maintain state-required benefits that were enacted before December 31, 2011. This approach minimizes state burden while increasing access to quality health care.

List of Subjects

45 CFR Part 147

Health care, Health insurance, Reporting and recordkeeping requirements, state regulation of health insurance.

45 CFR Part 155

Administrative practice and procedure, Advertising, Brokers, Conflict of interest, Consumer protection, Grant programs-health, Grants administration, Health care, Health insurance, Health maintenance organization (HMO), Health records, Hospitals, Indians, Individuals with disabilities, Loan programs-health, Organization and functions (Government agencies), Medicaid, Public assistance programs, Reporting and recordkeeping requirements, Safety, state and local governments, Technical assistance, Women, and Youth.

45 CFR Part 156

Administrative practice and procedure, Advertising, Advisory Committees, Brokers, Conflict of interest, Consumer protection, Grant programs-health, Grants administration, Health care, Health insurance, Health maintenance organization (HMO), Health records, Hospitals, Indians, Individuals with disabilities, Loan programs-health, Organization and functions (Government agencies), Medicaid, Public assistance programs, Reporting and recordkeeping requirements, Safety, state and local governments, Sunshine Act, Technical assistance, Women, and Youth.

For the reasons set forth in the preamble, the Department of Health and Human Services proposes to amend 45 CFR parts 147, 155, and 156 as set forth below:

Subchapter B—Requirements Relating to Health Care Access

PART 147—HEALTH INSURANCE REFORM REQUIREMENTS FOR THE GROUP AND INDIVIDUAL HEALTH INSURANCE MARKETS

1. The authority citation for part 147 continues to read as follows:

Authority: Secs 2701 through 2763, 2791, and 2792 of the Public Health Service Act (42 U.S.C. 300gg through 300gg–63, 300gg–91, and 300gg–92), as amended.

2. Section 147.150 is added to read as follows:

§ 147.150 Coverage of essential health benefits.

(a) *Requirement to cover the essential health benefits package.* A health insurance issuer offering health insurance coverage in the individual or small group market must ensure that such coverage includes the essential health benefits package as defined in section 1302(a) of the Affordable Care Act effective for plan or policy years beginning on or after January 1, 2014.

(b) *Cost-sharing under group health plans.* [Reserved.]

(c) *Child-only plans.* If a health insurance issuer in the individual market offers health insurance coverage in any level of coverage specified under section 1302(d)(1) of the Affordable Care Act, the issuer must offer coverage in that level to individuals who, as of the beginning of a plan year, have not attained the age of 21.

PART 155—EXCHANGE ESTABLISHMENT STANDARDS AND OTHER RELATED STANDARDS UNDER THE AFFORDABLE CARE ACT

3. The authority citation for part 155 is revised to read as follows:

Authority: Title I of the Affordable Care Act, sections 1301, 1302, 1303, 1304, 1311, 1312, 1313, 1321, 1322, 1331, 1334, 1402, 1411, 1412, 1413, Pub. L. 111–148, 124 Stat. 119 (42 U.S.C. 18021–18024, 18031–18033, 18041–18042, 18051, 18054, 18071, and 18081–18083.

4. Adding § 155.170 to subpart B to read as follows:

§ 155.170 Additional required benefits.

(a) *Additional required benefits.* (1) A state may require a QHP to offer benefits in addition to the essential health benefits.

(2) A state-required benefit enacted on or before December 31, 2011 is not considered in addition to the essential health benefits.

(3) The Exchange shall identify which state-required benefits are in excess of EHB.

(b) *Payments.* The state must make payments to defray the cost of additional required benefits specified in paragraph (a) of this section to one of the following:

(1) To an individual enrollee, as defined in § 155.20 of this subchapter; or

(2) Directly to the QHP issuer on behalf of the individual described in paragraph (b)(1) of this section.

(c) *Cost of additional required benefits.* (1) Each QHP issuer in the state shall quantify cost attributable to each additional required benefit specified in paragraph (a) of this section.

(2) A QHP issuer's calculation shall be:

(i) Based on an analysis performed in accordance with generally accepted actuarial principles and methodologies;

(ii) Conducted by a member of the American Academy of Actuaries; and

(iii) Reported to the Exchange.

5. Revise § 155.1045 to read as follows:

§ 155.1045 Accreditation timeline.

(a) *Timeline.* The Exchange must establish a uniform period following certification of a QHP within which a QHP issuer that is not already accredited must become accredited as required by § 156.275 of this subchapter, except for multi-state plans. The U.S. Office of Personnel Management will establish the accreditation period for multi-state plans.

(b) *Federally-facilitated Exchange.* The accreditation timeline used in Federally-facilitated Exchanges follows:

(1) During certification for an issuer's initial year of QHP certification (for example, in 2013 for the 2014 coverage year), a QHP issuer without existing commercial, Medicaid, or Exchange health plan accreditation granted by a recognized accrediting entity for the same state in which the issuer is applying to offer coverage must have scheduled or plan to schedule a review of QHP policies and procedures of the applying QHP issuer with a recognized accrediting entity.

(2) Prior to a QHP issuer's second year and third year of QHP certification (for example, in 2014 for the 2015 coverage year and 2015 for the 2016 coverage year), a QHP issuer must be accredited by a recognized accrediting entity on the policies and procedures that are applicable to their Exchange products or, a QHP issuer must have commercial or Medicaid health plan accreditation granted by a recognized accrediting entity for the same State in which the issuer is offering Exchange coverage and the administrative policies and procedures underlying that

accreditation must be the same or similar to the administrative policies and procedures used in connection with the QHP.

(3) Prior to the QHP issuer's fourth year of QHP certification and in every subsequent year of certification (for example, in 2016 for the 2017 coverage year and forward), a QHP issuer must be accredited in accordance with § 156.275 of this subchapter.

PART 156—HEALTH INSURANCE ISSUER STANDARDS UNDER THE AFFORDABLE CARE ACT, INCLUDING STANDARDS RELATED TO EXCHANGES

6. The authority citation for part 156 is revised to read as follows:

Authority: Title I of the Affordable Care Act, sections 1301–1304, 1311–1312, 1321–1322, 1324, 1334, 1342–1343, and 1401–1402, Pub. L. 111–148, 124 Stat. 119 (42 U.S.C. 18021–18024, 18031–18032, 18041–18042, 18044, 18054, 18061, 18063, 18071, and 26 U.S.C. 36B).

7. Amend § 156.20 by adding definitions for ''Actuarial value (AV),'' ''Base-benchmark plan,'' ''EHB-benchmark plan,'' ''EHB package,'' and ''Percentage of the total allowed costs of benefits'' in alphabetical order to read as follows:

§ 156.20 Definitions.

* * * * *

Actuarial value (AV) means the percentage paid by a health plan of the percentage of the total allowed costs of benefits.

* * * * *

Base-benchmark plan means the plan that is selected by a state from the options described in § 156.100(a) of this subchapter, or a default benchmark plan, as described in § 156.100(c) of this subchapter, prior to any adjustments made pursuant to the benchmark standards described in § 156.110 of this subchapter.

* * * * *

EHB-benchmark plan means the standardized set of essential health benefits that must be met by a QHP, as defined in § 155.20 of this section, or other issuer as required by § 147.150 of this subchapter.

EHB package means the scope of covered benefits and associated limits of a health plan offered by an issuer that provides at least the ten statutory categories of benefits, as described in § 156.110(a) of this subchapter; provides the benefits in the manner described in § 156.115 of this subchapter; limits cost sharing for such coverage as described in § 156.130 of this subchapter; and subject to offering catastrophic plans as described in section 1302(e) of the Affordable Care Act, provides distinct levels of coverage as described in § 156.140 of this subchapter.

* * * * *

Percentage of the total allowed costs of benefits means the anticipated covered medical spending for EHB coverage (as defined in § 156.110(a) of this subchapter) paid by a health plan for a standard population, computed in accordance with the plan's cost-sharing, divided by the total anticipated allowed charges for EHB coverage provided to a standard population, and expressed as a percentage.

* * * * *

8. Revise subpart B to read as follows:

Subpart B—Essential Health Benefits package

Sec.

156.100 State selection of benchmark.
156.105 Determination of EHB for multi-state plans.
156.110 EHB-benchmark plan standards.
156.115 Provision of EHB.
156.120 Prescription drug benefits.
156.125 Prohibition on discrimination.
156.130 Cost-sharing requirements.
156.135 AV calculation for determining level of coverage.
156.140 Levels of coverage.
156.145 Determination of minimum value
156.150 Application to stand-alone dental plans inside the Exchange.

§ 156.100 State selection of benchmark.

Each state may identify a single EHB-benchmark plan according to the selection criteria described below:

(a) *State-selection of base-benchmark plan.* The options from which a base-benchmark plan may be selected by the state are the following:

(1) *Small group market health plan.* The largest health plan by enrollment in any of the three largest small group insurance products, as defined in § 159.110 of this subpart, in the state's small group market as defined in § 155.20 of this subchapter.

(2) *State employee health benefit plan.* Any of the largest three employee health benefit plan options by enrollment offered and generally available to state employees in the state involved.

(3) *FEHBP plan.* Any of the largest three national Federal Employees Health Benefits Program (FEHBP) plan options by aggregate enrollment that is offered to all health-benefits-eligible federal employees under 5 U.S.C. 8903.

(4) *HMO.* The coverage plan with the largest insured commercial non-Medicaid enrollment offered by a health maintenance organization operating in the state.

(b) *EHB-benchmark selection standards.* In order to become an EHB-benchmark plan as defined in § 156.20 of this subchapter, a state-selected base-benchmark plan must meet the requirements for coverage of benefits and limits described in § 156.110 of this subpart; and

(c) *Default base-benchmark plan.* If a state does not make a selection using the process defined in § 156.100 of this section, the default base-benchmark plan will be the largest plan by enrollment in the largest product in the state's small group market.

§ 156.105 Determination of EHB for multi-state plans.

A Multi-State Plan must meet benchmark standards set by the U.S. Office of Personnel Management.

§ 156.110 EHB-benchmark plan standards.

General requirements. An EHB-benchmark plan must meet the following standards:

(a) *EHB coverage.* Provide coverage of at least the following categories of benefits:

(1) Ambulatory patient services.

(2) Emergency services.

(3) Hospitalization.

(4) Maternity and newborn care.

(5) Mental health and substance use disorder services, including behavioral health treatment.

(6) Prescription drugs.

(7) Rehabilitative and habilitative services and devices.

(8) Laboratory services.

(9) Preventive and wellness services and chronic disease management.

(10) Pediatric services, including oral and vision care.

(b) *Coverage in each benefit category.* A base-benchmark plan not providing any coverage in one or more of the categories described in paragraph (a) of this section, must be supplemented as follows:

(1) *General supplementation methodology.* A base-benchmark plan that does not include items or services within one or more of the categories described in paragraph (a) of this section must be supplemented by the addition of the entire category of such benefits offered under any other benchmark plan option described in § 156.100(a) of this subpart unless otherwise described in this subsection.

(2) *Supplementing pediatric oral services.* A base-benchmark plan lacking the category of pediatric oral services must be supplemented by the addition of the entire category of benefits from one of the following:

(i) The FEDVIP dental plan with the largest national enrollment that is

described in and offered to federal employees under 5 U.S.C. 8952; or

(ii) The benefits available under that state's separate CHIP plan, if a separate CHIP plan exists, to the eligibility group with the highest enrollment.

(3) *Supplementing pediatric vision services.* A base-benchmark plan lacking the category of pediatric vision services must be supplemented by the addition of the entire category of such benefits from one of the following:

(i) The FEDVIP vision plan with the largest national enrollment that is offered to Federal employees under 5 U.S.C. 8982; or

(ii) The benefits available under the state's separate CHIP plan, if a separate CHIP plan exists, to the eligibility group with the highest enrollment.

(c) *Supplementing the default base-benchmark plan.* A default base-benchmark plan as defined in § 156.100(c) of this subpart that lacks any categories of essential health benefits will be supplemented by HHS in the following order, to the extent that any of the plans offer benefits in the missing EHB category:

(1) The largest plan by enrollment in the second largest product in the state's small group market, as defined in § 155.20 of this subchapter (except for pediatric oral and vision benefits);

(2) The largest plan by enrollment in the third largest product in the state's small group market, as defined in § 155.20 of this subchapter (except for pediatric oral and vision benefits);

(3) The largest national FEHBP plan by enrollment across states that is offered to federal employees under 5 U.S.C. 8903 (except for pediatric oral and vision benefits);

(4) The plan described in paragraph (b)(2)(i) of this section with respect to pediatric oral care benefits;

(5) The plan described in paragraph (b)(3)(i) of this section with respect to pediatric vision care benefits; and

(6) A habilitative benefit determined by the plan as described in § 156.115(a)(4) of this subpart or by the state as described in paragraph (f) of this section.

(d) *Non-discrimination.* Not include discriminatory benefit designs that contravene the non-discrimination standards defined in § 156.125 of this subpart.

(e) *Balance.* Ensure an appropriate balance among the EHB categories to ensure that benefits are not unduly weighted toward any category.

(f) *Determining habilitative services.* If the base-benchmark plan does not include coverage for habilitative services, the state may determine which services are included in that category.

§ 156.115 Provision of EHB.

(a) Provision of EHB means that a health plan provides benefits that—

(1) Are substantially equal to the EHB-benchmark plan including:

(i) Covered benefits;

(ii) Limitations on coverage including coverage of benefit amount, duration, and scope; and

(iii) Prescription drug benefits that meet the requirements of § 156.120 of this subpart;

(2) With respect to the mental health and substance use disorder services, including behavioral health treatment services, required under § 156.110(a)(5) of this subpart, comply with the requirements of § 146.136 of this subchapter.

(3) Include preventive health services described in § 147.130 of this subchapter.

(4) If the EHB-benchmark plan does not include coverage for habilitative services, as described in § 156.110(f) of this subpart, a plan must include habilitative services that meet one of the following—

(i) Provide parity by covering habilitative services benefits that are similar in scope, amount, and duration to benefits covered for rehabilitative services; or

(ii) Are determined by the issuer and reported to HHS.

(b) Benefit substitution is allowed if the issuer of a plan offering EHB meets the following conditions—

(1) Substitutes a benefit that meets the following conditions:

(i) Is actuarially equivalent to the benefit that is being replaced as determined in paragraph (b)(3) of this section;

(ii) Is made only within the same essential health benefit category; and

(iii) Is not a prescription drug benefit.

(2) Submits evidence of actuarial equivalence of substituted benefits to the state. The certification must:

(i) Be conducted by a member of the American Academy of Actuaries;

(ii) Be based on an analysis performed in accordance with generally accepted actuarial principles and methodologies; and

(iii) Use a standardized plan population;

(3) Actuarial equivalence of benefits is determined regardless of cost-sharing.

(c) A health plan does not fail to provide EHB solely because it does not offer the services described in § 156.280(d) of this subchapter.

(d) An issuer of a plan offering EHB may not include routine non-pediatric dental services, routine non-pediatric eye exam services, or long-term/custodial nursing home care benefits, or cosmetic orthodontia as EHB.

§ 156.120 Prescription drug benefits.

(a) A health plan does not provide essential health benefits unless it:

(1) Subject to the exception in paragraph (b) of this section, covers at least the greater of:

(i) One drug in every United States Pharmacopeia (USP) category and class; or

(ii) The same number of prescription drugs in each category and class as the EHB-benchmark plan; and

(2) Submits its drug list to the Exchange, the state, or OPM.

(b) A health plan does not fail to provide EHB prescription drug benefits solely because it does not offer drugs for services described in § 156.280(d) of this subchapter.

(c) A health plan providing essential health benefits must have procedures in place that allow an enrollee to request clinically appropriate drugs not covered by the health plan.

§ 156.125 Prohibition on discrimination.

(a) An issuer does not provide EHB if its benefit design, or the implementation of its benefit design, discriminates based on an individual's age, expected length of life, present or predicted disability, degree of medical dependency, quality of life, or other health conditions; and

(b) An issuer providing EHB must comply with the requirements of § 156.200(e) and § 156.225 of this subchapter.

§ 156.130 Cost-sharing requirements.

(a) *Annual limitation on cost sharing.* (1) For a plan year beginning in the calendar year 2014, cost sharing may not exceed the following:

(i) For self-only coverage—the annual dollar limit as described in section 223(c)(2)(A)(ii)(I) of the Internal Revenue Code of 1986 as amended, for self-only coverage that is in effect for 2014; or

(ii) For other than self-only coverage—the annual dollar limit in section 223(c)(2)(A)(ii)(II) of the Internal Revenue Code of 1986 as amended, for non-self-only coverage that is in effect for 2014.

(2) For a plan year beginning in a calendar year after 2014, cost sharing may not exceed the following:

(i) For self-only coverage—the dollar limit for calendar year 2014 increased by an amount equal to the product of that amount and the premium adjustment percentage, as defined in paragraph (e) of this section.

(ii) For other than self-only coverage—twice the dollar limit for self-only coverage described in paragraph (a)(2)(i) of this section.

(b) *Annual limitation on deductibles for plans in the small group market.* (1)

For a plan year beginning in calendar year 2014, the annual deductible for a health plan in the small group market may not exceed the following:

(i) For self-only coverage—$2,000; or

(ii) For coverage other than self-only—$4,000.

(2) For a plan year beginning in a calendar year after 2014, the annual deductible for a health plan in the small group market may not exceed the following:

(i) For self-only coverage—the annual limitation on deductibles for calendar year 2014 increased by an amount equal to the product of that amount and the premium adjustment percentage as defined in paragraph (e) of this section; and

(ii) For other than self-only coverage—twice the annual deductible limit for self-only coverage described in paragraph (b)(2)(i) of this section.

(3) A health plan's annual deductible may exceed the annual deductible limit if that plan may not reasonably reach the actuarial value of a given level of coverage as defined in § 156.140 of this subpart without exceeding the annual deductible limit.

(c) *Special rule for network plans.* In the case of a plan using a network of providers, cost-sharing paid by, or on behalf of, an enrollee for benefits provided outside of such network shall not count towards the annual limitation on cost sharing (as defined in paragraph (a) of this section), or the annual limitation on deductibles (as defined in paragraph (b) of this section).

(d) *Increase annual dollar limits in multiples of 50.* For a plan year beginning in a calendar year after 2014, any increase in the annual dollar limits described in paragraphs (a) and (b) of this section that do not result in a multiple of 50 dollars must be rounded to the next lowest multiple of 50 dollars.

(e) *Premium adjustment percentage.* The premium adjustment percentage is the percentage (if any) by which the average per capita premium for health insurance coverage for the preceding calendar year exceeds such average per capita premium for health insurance for 2013. HHS will publish the annual premium adjustment percentage in the annual HHS notice of benefits and payment parameters.

(f) *Coordination with preventive limits.* Nothing in this subpart is in derogation of the requirements of § 147.130 of this subchapter.

(g) *Prohibition of discriminatory cost sharing.* The structure of cost sharing required under a plan must conform to the nondiscrimination requirements applicable to benefits set forth in § 156.125 of this subpart.

(h) *Coverage of emergency department services.* Emergency department services must be provided as follows:

(1) Without imposing any requirement under the plan for prior authorization of services or any limitation on coverage where the provider of services is out of network that is more restrictive than the requirements or limitations that apply to emergency department services received in network; and

(2) If such services are provided out-of-network, cost-sharing must be limited as provided in § 147.138(b)(3) of this subchapter.

§ 156.135 AV calculation for determining level of coverage.

(a) *Calculation of AV.* Subject to paragraph (b) of this section, to calculate the AV of a health plan, the issuer must use the AV calculator developed and made available by HHS.

(b) *Exception to the use of the AV calculator.* If a health plan's design is not compatible with the AV calculator, the issuer must meet the following:

(1) Submit the actuarial certification on the chosen methodology identified in paragraphs (b)(2) and (3) of this section:

(2) Calculate the plan's AV by:

(i) Estimating a fit of its plan design into the parameters of the AV calculator; and

(ii) Having an actuary, who is a member of the American Academy of Actuaries, certify that the plan design was fit appropriately in accordance with generally accepted actuarial principles and methodologies; or

(3) Use the AV calculator to determine the AV for the plan provisions that fit within the calculator parameters and have an actuary, who is a member of the American Academy of Actuaries calculate, in accordance with generally accepted actuarial principles and methodologies, appropriate adjustments, to the AV identified by the calculator, for plan design features that deviate substantially from the parameters of the AV calculator.

(4) The calculation methods described in (b)(2) or (3) of this section may include only in-network cost-sharing, including multi-tier networks.

(c) *Employer contributions to health savings accounts and amounts made available under health reimbursement arrangements.* In plans other than those in the individual market that are offered with an HSA or HRA, annual employer contributions to HSAs and amounts newly made available under HRAs for the current year in the small group market are:

(1) Counted towards the total anticipated medical spending of the standard population that is paid by the health plan; and

(2) Adjusted to reflect the expected spending for health care costs in a benefit year so that:

(i) Any current year HSA contributions are accounted for; and

(ii) The amounts newly made available under an HRA for the current year are accounted for.

(d) *Use of state-specific standard population for the calculation of AV.* Beginning in 2015, if submitted by the state and approved by HHS, a state-specific data set will be used as the standard population to calculate AV in accordance with paragraph (a) of this section. The data set may be approved by HHS if it is submitted in accordance with paragraph (e) of this section and:

(1) Supports the calculation of AVs for the full range of health plans available in the market;

(2) Is derived from a non-elderly population and estimates those likely to be covered by private health plans on or after January 1, 2014;

(3) Is large enough that:

(i) The demographic and spending patterns are stable over time; and

(ii) Includes a substantial majority of the state's insured population, subject to the requirement in paragraph (d)(2) of this section;

(4) Is a statistically reliable and stable basis for area-specific calculations; and

(5) Contains claims data on health care services typically offered in the then-current market.

(e) *Submission of state-specific data.* AV will be calculated using the default standard population described in paragraph (f) of this section, unless a data set in a format specified by HHS that can support the use of the AV calculator as described in paragraph (a) of this section is submitted by a state and approved by HHS consistent with paragraph (d) of this section by a date specified by HHS.

(f) *Default standard population.* The default standard population for AV calculation will be developed and summary statistics, such as in continuance tables, will be provided by HHS in a format that supports the calculation of AV as described in paragraph (a) of this section.

§ 156.140 Levels of coverage.

(a) *General requirement for levels of coverage.* AV, calculated as described in § 156.135 of this subpart, and within a de minimis variation as defined in paragraph (c) of this section, determines whether a health plan offers a bronze, silver, gold, or platinum level of coverage.

(b) *Levels of coverage.* The levels of coverage are:

(1) *A bronze health plan* is a health plan that has an AV of 60 percent.

(2) *A silver health plan* is a health plan that has an AV of 70 percent.

(3) *A gold health plan* is a health plan that has an AV of 80 percent.

(4) *A platinum health plan* is a health plan that has as an AV of 90 percent.

(c) *De minimis variation.* The allowable variation in the AV of a health plan that does not result in a material difference in the true dollar value of the health plan is +/− 2 percentage points.

§ 156.145 Determination of minimum value.

(a) *Acceptable methods for determining MV.* For the purposes of determining that an employer-sponsored plan provides MV, a group health plan may use the following methods to calculate the percentage of the total allowed costs of benefits provided under the plan or coverage:

(1) The MV calculator to be made available by HHS and the Internal Revenue Service. The result derived from the calculator may be modified under the rules in paragraph (b) of this section.

(2) Any safe harbor established by HHS and the Internal Revenue Service.

(3) A group health plan may seek an appropriate certification by an actuary to determine MV if neither of the methods described in paragraphs (a)(1) or (2) of this section is appropriate. The determination of MV must be made by a member of the American Academy of Actuaries, based on an analysis performed in accordance with generally accepted actuarial principles and methodologies.

(b) *Benefits that may be counted towards the determination of MV.* (1) In the event that a group health plan uses the MV calculator and offers an EHB outside of the parameters of the MV calculator, the plan may seek an actuary, who is a member of the American Academy of Actuaries, to determine the value of that benefit and adjust the result derived from the MV calculator to reflect that value.

(2) For this purpose of the options described in this subsection in determining MV, a group health plan will be permitted to take into account all benefits provided by the plan that are included in any of the EHB benchmarks.

(c) *Standard population.* The standard population for MV determinations described in paragraph (a) of this section is the standard population developed by HHS for such use and described through summary statistics issued by HHS. The standard population for MV shall reflect the population covered by self-insured group health plans.

§ 156.150 Application to stand-alone dental plans inside the Exchange.

(a) *Annual limitation on cost-sharing.* A stand-alone dental plan covering the pediatric dental EHB under § 155.1065 of this subchapter must demonstrate to the Exchange that it has a reasonable annual limitation on cost-sharing. Such annual limit is calculated without regard to EHBs provided by the QHP and without regard to out-of-network services.

(b) *Calculation of AV.* A stand-alone dental plan:

(1) May not use the AV calculator in § 156.135 of this subpart;

(2) Must demonstrate that the stand-alone dental plan offers the pediatric dental essential health benefit at either:

(i) A low level of coverage with an AV of 75 percent; or

(ii) A high level of coverage with an AV of 85 percent; and

(iii) Within a de minimis variation of +/− 2 percentage points of the level of coverage in paragraphs (b)(2)(i) or (ii) of this section.

(3) The level of coverage as defined in paragraph (b)(2) of this section must be certified by a member of the American Academy of Actuaries using generally accepted actuarial principles.

9. In § 156.275, revise paragraphs (c)(1), (c)(4) introductory text, and (c)(4)(i) to read as follows:

§ 156.275 Accreditation of QHP Issuers.

* * * * *

(c) * * *

(1) *Recognition of accrediting entity by HHS*—(i) *Application.* An accrediting entity may apply to HHS for recognition. An application must include the documentation described in paragraph (c)(4) of this section and demonstrate, in a concise and organized fashion how the accrediting entity meets the requirements of paragraphs (c)(2) and (3) of this section.

(ii) *Proposed notice.* Within 60 days of receiving a complete application as described in paragraph (c)(1)(i) of this section, HHS will publish a notice in the **Federal Register** identifying the accrediting entity making the request, summarizing HHS's analysis of whether the accrediting entity meets the criteria described in paragraphs (c)(2) and (3) of this section, and providing no less than a 30-day public comment period about whether HHS should recognize the accrediting entity.

(iii) *Final notice.* After the close of the comment period described in paragraph (c)(1)(ii) of this section, HHS will notify the public in the **Federal Register** of the names of the accrediting entities recognized and those not recognized as accrediting entities by the Secretary of HHS to provide accreditation of QHPs.

(iv) *Other recognition.* Effective upon completion of conditions listed in paragraphs (c)(2), (3), and (4) of this section, HHS will notify the public in the **Federal Register**, that the National Committee for Quality Assurance (NCQA) and URAC are recognized as accrediting entities by the Secretary of HHS to provide accreditation of QHPs meeting the requirements of this section.

* * * * *

(4) *Documentation.* An accrediting entity applying to be recognized under the process described in (c)(1) of this section must provide the following documentation:

(i) To be recognized, an accrediting entity must provide current accreditation standards and requirements, processes and measure specifications for performance measures to demonstrate that it meets the conditions described in paragraphs (c)(2) and (3) of this section to HHS.

* * * * *

Dated: August 1, 2012.

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: November 14, 2012.

Kathleen Sebelius,

Secretary.

Note: The following appendices will not appear in the Code of Federal Regulations:

Appendix A: List of Proposed Essential Health Benefits Benchmarks

The purpose of this appendix is to list the proposed EHB benchmark plans for the 50 states and the District of Columbia for public review and comment. As described in the EHB Bulletin published December 16, 2011, and proposed in § 156.100 of this regulation, each state may select a benchmark plan to serve as the standard for plans required to offer EHB in the state.[52] HHS has also proposed that the default benchmark plan for states that do not exercise the option to select a benchmark health plan would be the largest plan by enrollment in the largest product in the state's small group market. As described in proposed § 156.110, an EHB-benchmark plan must offer coverage in each of the 10 statutory benefit categories. In the summary table that follows, we list the proposed EHB benchmark plans. Additional information on

[52] Non-grandfathered plans in the individual and small group markets both inside and outside of the Exchanges along with certain other types of plans must cover EHBs beginning in 2014. Self-insured group health plans, health insurance coverage offered in the large group market, and grandfathered health plans are not required to cover the essential health benefits.

the specific benefits, limits, and prescription drug categories and classes covered by the EHB-benchmark plans, and state-required benefits, is provided on the Center for Consumer Information and Insurance Oversight (CCIIO) Web site (*http://cciio.cms.gov/resources/data/ehb.html*).

State	Plan type	Issuer and plan name	Supplemented categories	Supplementary plan type	Habilitative services
Alabama	Largest small group product.	Blue Cross Blue Shield of Alabama PPO 320 Plan.	Pediatric oral Pediatric vision	FEDVIP FEDVIP.	Yes.
Alaska	Largest small group product.	Premera Blue Cross Blue Shield of Alaska Heritage Select Envoy PPO.	Mental health and substance use disorder, including behavioral health treatment. Pediatric oral Pediatric vision	Largest FEHBP FEDVIP. FEDVIP.	Yes.
Arizona	Largest state employee plan.	Arizona Benefit Options EPO Plan, administered by United HealthCare.	Pediatric oral Pediatric vision	FEDVCP. FEDVIP	No.
Arkansas	Plan from 3rd largest small group product.	HMO Partners, Inc. Open Access POS, 13262AR001.	Mental health and substance use disorder, including behavioral health treatment. Pediatric oral Pediatric vision	2nd largest FEHBP CHIP. FEDVIP.	No.
California	Plan from largest small group product.	Kaiser Foundation Health Plan, Inc. Small Group HMO 30 ID 40513CA035.	Pediatric oral	CHIP	Yes.
Colorado	Plan from largest small group product.	Kaiser Foundation Health Plan of Colorado Ded HMO 1200D.	Pediatric oral	CHIP	No.
Connecticut	Largest state non-Medicaid HMO.	ConnectiCare HMO	Pediatric oral Pediatric vision	CHIP FEDVIP.	No.
Delaware	Plan from second largest small group product.	Highmark Blue Cross Blue Shield Delaware Simply Blue EPO 100 500.	Pediatric oral Pediatric vision	FEDVIP FEDVIP.	No.
District of Columbia	Plan from largest small group product.	Group Hospitalization and Medical Services, Inc. BluePreferred PPO.	Pediatric oral Pediatric vision	FEDVIP FEDVIP.	Yes.
Florida	Plan from largest small group product.	Blue Cross Blue Shield of Florida, Inc. BlueOptions PPO.	Pediatric oral Pediatric vision	FEDVIP FEDVIP.	No.
Georgia	Plan from largest small group product.	Blue Cross Blue Shield of Georgia HMO Urgent Care 60 Copay.	Pediatric oral Pediatric vision	FEDVIP FEDVIP.	Yes.
Hawaii	Plan from largest small group product.	Hawaii Medical Service Association Preferred Provider Plan 2010.	Pediatric oral Pediatric vision	CHIP FEDVIP.	No.
Idaho	Plan from largest small group product.	Blue Cross of Idaho Health Service, Inc. Preferred Blue PPO.	Pediatric oral Pediatric vision	FEDVIP FEDVIP.	Yes.
Illinois	Plan from largest small group product.	Blue Cross and Blue Shield of Illinois BlueAdvantage PPO.	Pediatric oral	CHIP	No.

State	Plan type	Issuer and plan name	Supplemented categories	Supplementary plan type	Habilitative services
			Pediatric vision	FEDVIP.	
Indiana	Plan from largest small group product.	Anthem Blue Cross and Blue Shield of Indiana Blue 5 Blue Access PPO Medical Option 6 Rx Option G.	Pediatric oral Pediatric vision	FEDVIP FEDVIP.	Yes.
Iowa	Plan from largest small group product.	Wellmark Inc. Alliance Select Copayment Plus PPO.	Pediatric oral Pediatric vision	FEDVIP FEDVIP.	Yes.
Kansas	Plan from largest small group product.	Blue Cross and Blue Shield of Kansas Comprehensive Major Medical Blue Choice PPO GF 500 deductible with Blue Rx card.	Pediatric oral Pediatric vision	FEDVIP FEDVIP.	No.
Kentucky	Plan from largest small group product.	Anthem Health Plans of Kentucky, Inc. PPO.	Pediatric oral	CHIP	Yes.
Louisiana	Plan from largest small group product.	Blue Cross and Blue Shield of Louisiana GroupCare PPO.	Pediatric oral Pediatric vision	FEDVIP FEDVIP.	Yes.
Maine	Plan from largest small group product.	Anthem Health Plans of Maine Blue Choice 20 PPO with RX 10 30 50 50.	Pediatric oral	FEDVIP	Yes.
Maryland	Largest state employee plan.	CareFirst of Maryland, Inc. State of Maryland PPO.	Pediatric oral Pediatric vision	CHIP FEDVIP.	Yes.
Massachusetts	Plan from largest small group product.	Blue Cross Blue Shield of Massachusetts, Inc. HMO Blue 2000 Deductible.	Pediatric oral	CHIP	Yes.
Michigan	Largest state non-Medicaid HMO.	Priority Health PriorityHMO 100 Percent Hospital Services Plan.	Pediatric oral Pediatric vision	CHIP FEDVIP.	No.
Minnesota	Plan from largest small group product.	HealthPartners 500 25 Open Access PPO.	Pediatric oral Pediatric vision	FEDVIP FEDVIP.	Yes.
Mississippi	Plan from largest small group product.	Blue Cross and Blue Shield of Mississippi Network Blue PPO.	Pediatric oral Pediatric vision	CHIP FEDVIP.	Yes.
Missouri	Plan from largest small group product.	Healthy Alliance Life Insurance Co. (Anthem BCBS) Blue 5 Blue Access PPO Medical Option 4 Rx Option D.	Pediatric oral Pediatric vision	FEDVIP FEDVIP.	Yes.
Montana	Plan from largest small group product.	Blue Cross and Blue Shield of Montana Blue Dimensions PPO.	Pediatric oral Pediatric vision	FEDVIP FEDVIP.	Yes.
Nebraska	Plan from largest small group product.	Blue Cross and Blue Shield of Nebraska BluePride PPO.	Pediatric oral Pediatric vision	FEDVIP FEDVIP.	Yes.
Nevada	Plan from largest small group product.	Rocky Mountain Hospital & Medical Service, Inc. (Anthem BCBS) GenRx PPO 45 Copay.	Pediatric oral Pediatric vision	FEDVIP FEDVIP.	Yes.

State	Plan type	Issuer and plan name	Supplemented categories	Supplementary plan type	Habilitative services
New Hampshire	Plan from largest small group product.	Matthew Thornton Health Plan (Anthem BCBS) HMO Blue New England 25 50 WITH Rx 10 35 30 OOP 2500.	Pediatric oral Pediatric vision	FEDVIP FEDVIP.	Yes.
New Jersey	Plan from largest small group product.	Horizon HMO Access HSA Compatible	Pediatric oral Pediatric vision	FEDVIP FEDVIP.	Yes.
New Mexico	Plan from largest small group product.	Lovelace Insurance Company Classic PPO.	Pediatric oral	CHIP	Yes.
New York	Plan from largest small group product.	Oxford Health Insurance, Inc. Oxford EPO.	Pediatric oral	CHIP	Yes.
North Carolina	Plan from largest small group product.	Blue Cross and Blue Shield of North Carolina Blue Options PPO.	Pediatric oral Pediatric vision	FEDVIP FEDVIP.	No.
North Dakota	Largest state non-Medicaid HMO.	Sanford Health Plan HMO	Pediatric oral Pediatric vision	CHIP CHIP.	No.
Ohio	Plan from largest small group product.	Community Insurance Company (Anthem BCBS) Blue 6 Blue Access PPO Medical Option D4 Rx Option G.	Pediatric oral Pediatric vision	FEDVIP FEDVIP.	Yes.
Oklahoma	Plan from largest small group product.	Blue Cross and Blue Shield of Oklahoma BlueOptions PPO RYB05.	Pediatric oral Pediatric vision	FEDVIP FEDVIP.	Yes.
Oregon	Plan from 3rd largest small group product.	PacificSource Health Plans PPO Preferred CoDeduct Value 3000 35 70.	Pediatric oral Pediatric vision	CHIP FEDVIP.	No.
Pennsylvania	Plan from largest small group product.	Aetna Health, Inc. PA POS Cost Sharing 34 1500 Ded.	Pediatric oral	FEDVIP	No.
Rhode Island	Plan from largest small group product.	Blue Cross and Blue Shield of Rhode Island Vantage Blue PPO.	Pediatric oral Pediatric vision	FEDVIP FEDVIP.	No.
South Carolina	Plan from largest small group product.	Blue Cross Blue Shield of South Carolina Business Blue Complete PPO.	Pediatric oral Pediatric vision	FEDVIP FEDVIP.	No.
South Dakota	Plan from largest small group product.	Wellmark of South Dakota Blue Select PPO.	Pediatric oral Pediatric vision	FEDVIP FEDVIP.	Yes.
Tennessee	Plan from largest small group product.	Blue Cross Blue Shield of Tennessee PPO.	Pediatric oral Pediatric vision	FEDVIP FEDVIP.	Yes.
Texas	Plan from largest small group product.	Blue Cross Blue Shield of Texas BestChoice PPO RS26.	Pediatric oral Pediatric vision	FEDVIP FEDVIP.	Yes.

State	Plan type	Issuer and plan name	Supplemented categories	Supplementary plan type	Habilitative services
Utah	Plan from 3rd largest state employee plan.	Public Employee's Health Program Utah Basic Plus.	None	None	Yes.
Vermont	Plan from largest small group product.	The Vermont Health Plan, LLC, CDHP–HMO.	Pediatric oral Pediatric vision	CHIP FEDVIP.	No.
Virginia	Plan from largest small group product.	Anthem Health Plans of VA PPO KeyCare 30 with KC30 Rx plan 10 30 50 OR 20.	Pediatric oral Pediatric vision	FEDVIP FEDVIP.	Yes.
Washington	Plan from largest small group product.	Regence BlueShield non-grandfathered small group product.	Pediatric oral Pediatric vision	CHIP FEDVIP.	Yes.
West Virginia	Plan from largest small group product.	Highmark Blue Cross Blue Shield West Virginia Super Blue PPO Plus 2000 1000 Ded.	Pediatric oral Pediatric vision	FEDVIP FEDVIP.	No.
Wisconsin	Plan from largest small group product.	UnitedHealthcare Insurance Company Choice Plus Definity HSA Plan A92NS.	Pediatric oral Pediatric vision	FEDVIP FEDVIP.	No.
Wyoming	Plan from largest small group product.	Blue Cross Blue Shield of Wyoming Blue Choice Business 1000 80 20.	Pediatric oral Pediatric vision	FEDVIP FEDVIP.	No.

Note: If the base-benchmark plan does not include habilitative services, then states have the opportunity to define those benefits.

Appendix B: Largest FEDVIP Dental and Vision Plan Options, as of March 31, 2012

Section 156.110(b)(2)–(3) directs States to supplement base-benchmark plans that lack pediatric oral or vision services with benefits drawn from either the Federal Employees Dental and Vision Program (FEDVIP) or a state's separate CHIP program. Specifically, states may select benefits from either: (1) The FEDVIP dental or vision plans with the largest national enrollments, or (2) the state's separate CHIP program's dental or vision benefits, where they exist, which offer benefits to the eligibility group with the highest enrollment. To assist states with this process, we collected information about the benefits provided in the FEDVIP dental and vision plans with the highest national enrollments, as issued by MetLife and FED Blue, respectively. Below, we provide a chart with a summary of the benefits offered by these plans.

LARGEST FEDVIP DENTAL AND VISION PLAN OPTIONS, AS OF MARCH 31, 2012 *

Issuer name	Plan name	Additional information
MetLife (dental)	MetLife Federal Dental Plan—High	2012 Plan Benefit Brochure: *http://www.opm.gov/insure/health/planinfo/2012/brochures/MetLife.pdf.*
BCBS Association (vision)	FEP BlueVision—High	2012 Plan Benefit Brochure: *http://www.opm.gov/insure/health/planinfo/2012/brochures/FEPBlueVi.pdf.*

Source: U.S. Office of Personnel Management.
* Please note that this information will be updated with the latest data when released.

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